

**IBA - Conference Singapore 2007
Law Firms and CSR
- A Continental European Approach -**

Slide 1 - Cover Page

Thank you very much Jonathan for the kind introduction.

Ladies and Gentlemen, dear colleagues,

this is - in a nutshell - what I want to talk about today:

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- I will start with a short introduction into the framework, the basic thesis and the objective of my presentation on continental law firms and CSR
- followed by an overview of the business environment of continental law firms from a CSR perspective
- and a discussion which driving factors of a structured CSR approach we may expect in this environment.
- My conclusion will summarize the points discussed and give you my expectations on the future development of CSR in continental law firms.

Slide 3 - Introduction

a) Activities covered by CSR

When I refer to CSR in the following presentation, I mean this term to include all sorts of Internal and external activities with an ethical background such as

- professional conduct
- community investment (e.g. cultural or social sponsoring, improvements of social infra-structure)
- workplace aspects such as diversity, health and education as well as
- environmental issues and sustainability.

As a result, I want to cover a very wide range of activities by the term CSR.

But I would like limit the type of activities for the purpose of this presentation:

CSR relevant activities take place in or around every law firm through the efforts of individuals who pursue their ethic principles. But this is not what I will be speaking about. In-

stead, the subject of this discussion is a structured / organized approach to CSR on a firm-wide level.

b) Law Firms addressed

The second aspect setting the scope of this speech is the type of law firms addressed.

To be clear: I do not speak about the Baker McKenzies, the Clifford Chances, the Freshfields or the Linklaters of this world. These multi-nationally organized firms all have their own rules and policies which are very much driven and governed by US / UK requirements and standards - so they are not really representative for a continental approach.

Instead, I will focus on

- mid-size law firms (say with 50 to 200 / 300 lawyers)
- with a national orientation in terms of office presence and clientele and
- - what in my experience is also a differentiating factor - a partnership (rather than a corporate) structure.

c) Uniform continental approach?

In principle, already the headline of my presentation puts me in a dilemma because there is - of course - not a uniform continental approach to CSR.

So what aspects can be pointed out as being common to continental law firms?

Experience shows that significant differences exist between the importance and role of CSR in the US and the UK compared to most of the European continent. I will focus on these differences to explain the "continental approach" to CSR.

d) Objective of this speech

This leads me to the objective of this speech:

My basic thesis is that CSR issues still have little importance for mid-size law firms in continental Europe - internally as well as from a business field perspective. Consequently, there is hardly any structured approach to CSR - which is quite different from the situation in the US or the UK.

I will try to give you an explanation for this difference and address the points where this may change in the mid-term future.

Slide 4 - Business environment

In my attempt to structure the business environment, I have distinguished between the marketplace influence, the partnership influence and the workplace.

a) Marketplace

- **Business clients**

One of the most important distinguishing factors on the marketplace level is:

On the continent, the majority of our business clients does not perceive CSR as a relevant performance indicator.

To give you an example:

A German / US comparative business study was published on corporate citizenship just in August 2007 (Centrum for Corporate Citizenship Deutschland). For this study, ca. 500 German and 1200 US businesses of different sizes were interviewed about their approach to corporate citizenship. Here are some of the key findings which I find very illustrative :

Only 40 % of the German businesses interviewed expect a positive economic effect from their social activities while in the US 63 % of all businesses interviewed have such expectations and even 84 % of the big companies.

Or: In Germany, 39 % (> 1/3) of the businesses believe that social activities are not important for client satisfaction while in the US this is only 11 %.

So if continental clients do not regard CSR as a decisive business factor - why should this be different for continental law firms? They just mirror the general business situation.

My personal experience and the experience of my partners and many colleagues from other European countries is: we have very rarely been asked by a potential client about our firm's social activities in connection with a professional engagement. What counts here is professional reputation and the price.

- **Pro bono work**

Pro bono work is not a relevant rating criterion on the continent. This is decidedly different from the situation in the USA where pro bono activities have become the second important rating factor.

One of the reasons for this situation may be seen in the fact that tax resp. government funded legal aid systems are in place on the continent which are considered as functioning and sufficient to guarantee legal assistance to people in need.

There is even a reluctance perceptible to engage in structured pro bono work such as to not release the government from its (tax funded) responsibility. Moreover, small law firms and sole practitioners tend to derive a large part of their revenues from legal aid work. If medium size and large law firms would engage in structured pro bono programs, this could be misinterpreted as an attempt to push the small firms out of the legal aid market.

Also: Please bear in mind that - where a statutory schedule of fees exists - free legal advice can be rendered only under restrictive conditions if it shall not be considered an unfair competitive practice.

- **Ownership restrictions**

Restrictions on the ownership structure of law firms prevent that law firms are measured from the outside under shareholder value criteria. These criteria do not play a role in the rating of law firms.

In Germany for example, an incorporation of a law firm is possible, however, professional rules prescribe that the shareholders must be lawyers or related service providers (accountants, tax advisors, notary public etc.) and the majority of the voting rights as well as the management of the firm must be in the hands of lawyers. Moreover: third parties may not be granted profit shares of a law firm.

Arguably, these limits are too restrictive in view of the freedom of establishment granted within the EU. We also have heard about contemplated changes in the UK. Nevertheless, the restrictions currently exist and have shaped the attitude of law firms towards shareholder value criteria. And I still think it is fairly safe to say that we won't see a private equity financed law firm or publicly listed law firm (like in Australia) on the continent in the near future. Consequently, financial analysts should not play a decisive role for the evaluation of law firms.

- **PR restrictions**

One more point why CSR has not yet been "discovered" by continental law firms may be the fact that it can't be used freely as PR instrument.

Like the ownership also the marketing activities of law firms are subject to restrictions under professional rules. Companies such as Bayer, BP or Henkel can place genuine image campaigns in the papers. This is not allowed for law firms.

Under German standards, a law firm may only advertise in a factual informative way and in relation to its professional activities. In other words: Campaigns with soft factors such as CSR are not permissible for a German law firm. The fact that a law firm has decided to become carbon neutral, for example, may be mentioned on its website or in an advertisement but just in an "informative" way.

- **Compliance issue**

Finally, CSR still tends to be seen as a compliance issue rather than a strategic subject. Thus the marketplace does not attribute a specific value to structured CSR activities of a law firm but tends to see them as a means to ensure compliance with legal provisions.

Slide 5 - Business environment (cont'd)

From the specific marketplace environment I would like to move on now to the influence that a partnership structure may have on a strategic CSR approach.

b) Partnership

- **De-centralized management**

Experience shows that professional partnerships - in particular - tend to have a de-centralized management structure. Only if the number of professionals becomes too large, one will find a quorum high enough to vote for a centralized or even full-time management. As far as law firms are concerned, this is certainly a consequence of the strong focus on individuality and self responsibility in our profession.

On the other hand, a structured / organized approach to CSR definitely requires strong management involvement. Typically a CSR policy or something similar will be initiated and implemented only upon management initiative. This is, however, much more difficult and time consuming in organizations with a de-centralized management structure. So it is not surprising that we see hardly any structured CSR approach in mid size law firms where a de-centralized management prevails.

- **Cost sensitivity**

In a partnership structure, each partner is allocated a certain portion of the law firm's profit. Consequently, there is a high cost sensitivity because any cost element is - partly - each partner's cost element. In such an environment, law firms are reluctant to spend firm money without foreseeable and measurable return on investment. But exactly this is required when CSR shall be dealt with as a strategic issue: Setting up a CSR policy requires adequate funding but the benefits from such step grow slowly and are difficult to quantify.

- **Individuality and independence**

Professional partnerships - and law firms in particular - are built on an established culture of individuality and independence. Every professional has his or her personal fields of social interest (be it human rights, culture, education or environment) and is used to pursue them as he/she thinks fit. We all have a "social conscience" but it comes with totally different content. An organized firm-wide CSR policy requires that common goals are identified, defined and then pursued firm-wide. This means for each lawyer to give up a certain part of his/her individuality which is a step not easily taken.

- **Ethical self responsibility**

The next point is - in my view - a typical continental point which I have heard repeatedly in the discussions I had with colleagues from other countries:

On the continent, lawyers have a firm belief in their ethical self responsibility. We have and practice ethical responsible behavior for decades. The community of lawyers is and conceives itself as an independent body of the administration of justice.

As far as CSR is concerned, however, the necessity to adopt such principles in doing your business originates predominantly in the USA and has spread from there. When a potential client requests a lawyer to confirm the law firm's compliance with the client's ethical principles, chances are that it is a US resident client. While it may be necessary to give such confirmation in order to win the engagement, such request is not happily received on the continent. The reason is that many of us are reluctant in accepting ethical standards set by the outside.

As a result, an organized approach to CSR issues can only be successful if it is regarded / perceived as a means to pursue the own goals in a structured and more efficient manner and not as a response to requests set from the outside. This attitude still seems to be missing in the many of the mid size continental law firms.

- **No strategic consulting field**

Lastly, also from the partnership perspective, CSR is not - may be not yet - recognized as a strategic consulting field.

Big groups of companies - multinationals, ask for legal assistance in this field only in selective points while the strategy and implementation of CSR policies are managed in-house. Those selective points where outside legal advice is retained are mostly connected with compliance issues such as anti-corruption, equal treatment or environmental protection. Smaller business clients often do not see the necessity to develop their own CSR policy and consequently do not retain legal assistance in this field.

Generally the potential fee volume attributed to CSR consulting is not such that it is regarded as a strategic field of its own but rather an ancillary business to - say - environmental or public law services departments.

This being said I would like to move on to the workplace environment.

c) Workplace

- **Compliance matters**

Workplace issues in the narrow sense are regulated very much in detail on an EU-wide basis: Employers need to ensure equal opportunities, non-discrimination, workplace health, workplace safety etc., etc. Therefore, the workplace aspects of CSR are traditionally treated as compliance issues.

Treating an issue as compliance issue has significant impact on the attitude towards the issue: It typically means that you don't do more than you have to do because you consider activities required as a burden rather than a chance.

An organized CSR approach, however, is all about over-complying. In terms of workplace matters, CSR is about making people feel good and satisfied at work. This is something a law firm can only achieve if the firm is prepared to go beyond what is legally required and handles workplace issues as a chance to improve the daily work environment and thus the productivity. This requires a process of rethinking that has not taken place yet.

- **No recruitment / retention factor**

Up to now, CSR issues and similar soft factors have not yet turned up as relevant recruitment factors - at least as far as they are openly addressed by job applicants. In interviews the candidates are still mainly interested in the salary level, the partnership perspective and the professional reputation of a firm. The only CSR related factor that is regularly addressed is a structured professional training for the beginners. And here I think it is safe to say that all major law firms have already recognized the ne-

cessity to organize and offer a program for job freshmen - they just do not perceive it as a CSR matter.

Similarly, CSR factors are still not acknowledged as being crucial for fluctuation of staff or professionals. The main reasons given by people on the move are money, concrete partner perspectives, the qualitative or quantitative level of work or the "team chemistry". Of course these are partly soft factors, but the general opinion is that the soft factors are hardly manageable through a firm policy. So law firms focus on staff and professional development programs which are designed to manage promotions, salaries and similar easily measurable circumstances.

It needs to be recognized that structured CSR measures can serve to enhance job satisfaction and thereby become a sizeable recruitment / retention factor. People will feel much more tied to a firm emotionally if they share the same corporate spirit or if they are convinced to do something good beyond being an excellent professional.

- **Cost saving**

In my talks with colleagues I have not heard any one confirm that his firm would regard the establishment of a CSR policy as a means to save cost. I am talking here in particular about the aspect of responsible resource management but also personnel retention. CSR - in particular the environmental aspects - are still seen as philanthropic exercises or, at best, a response to the society because this subject is just "en vogue".

I think we can all agree that CSR measures have the potential to improve the quality of the workplace environment. And there is an interrelation between quality and cost. Experience in business has shown that quality improvement measures will help to reduce cost while cost-cutting measures will normally reduce quality. So I am convinced that a structured approach to resource management could - besides the fact that it polishes a firm's image - have a cost reducing effect.

Slide 6 - Potential drivers

Up to now I have been trying to explain some of the reasons why continental law firms rarely take a structured firm-wide CSR approach. The next question is: Is this situation likely to change and if so, what are the potential drivers of a different attitude towards CSR matters?

Of course this is a little bit like looking into the glass bowl but this is what I have collected so far:

a) External drivers

- **Cost saving**

In my personal opinion, cost saving aspects may become a very realistic driving factor towards a structured CSR approach - at least as far as resource management is concerned.

I expect a significant cost increase for items such as paper, energy, waste disposal, water consumption etc. over the next years. Most law firms will already have re-

viewed and optimized their sourcing cost. So the area where there may still be some room to influence cost is the level of consumption.

When a responsible utilization of resources saves cost, it will become an area where law firms will have to act and take an organized approach.

- **Risk management**

In times where we face an increasing tendency to regulate - even over-regulate -, ethical standards are also likely to become implemented into regulatory frameworks.

We have heard from our colleague that - at least in the UK - a number of ethical principles has been included in the 2007 Solicitors Code of Conduct. Likewise, the Code of Best Practice initiated by the IBA Law Firm Governance Initiative also includes a substantial number of ethical guidelines for the conduct of law firms.

In such an environment, taking a structured CSR approach in terms of professional ethics becomes a necessity to prevent or control professional risks. It is even conceivable that professional liability insurances will revise their policies and demand law firms to establish ethical standards and monitor the compliance.

- **Reputation**

Like in all highly competitive markets, the quality and pricing level of top law firms is very similar. So other differentiating factors besides professional expertise become increasingly important.

CSR activities do already and will increasingly play an important role as a means to increase and complement the professional reputation. In times where globalization and the climate change are headline topics all over the continent, not just the multinationals but also mid size law firms with a visibility to the public have to position themselves in these matters. Otherwise they might not be able to preserve their position in the market.

- **Client demands**

The last external driver on my list is client needs or demands. I have read in several articles on the subject of CSR that client demands are likely to drive the development towards a firm-wide CSR policy for law firms because clients will increasingly expect their advisors to mirror their own corporate values.

Yet I do not believe that this is a development we will be seeing in medium term for the law firms I am talking about. Nor do the colleagues from Germany or other countries I have talked to. Continental clients are far from expecting a formal sign-up of the attorney to their corporate values. All colleagues I have asked about this subject have confirmed my personal experience: such cases are rare and if they occur, the client is mostly a US business.

And even if more and more clients would expect a value statement from their attorney - adopting a CSR policy might provide the law firm with credentials on its social commitment but the policy will never fully match the client's policy. So these cases will continue to be solved on an incident by incident basis.

So as a result: I don't see client needs or demands as decisive external drivers for law firms to develop a CSR policy.

b) Internal drivers

- **Personnel recruitment / retention**

The first relevant internal driver on my list is personnel recruiting and retention. Here again I expect a growing importance in an increasingly competitive market:

High potential lawyers are rare. From a certain salary level onwards, money is no longer all that counts. The awareness of young lawyers that there are other factors important for job satisfaction besides money and partnership is constantly growing. More and more high qualified women become partners and they also want to have a family life. So the work / family compatibility becomes an increasingly relevant factor for picking the right place to work. We at Heuking Kühn Lüer Wojtek, for example, seriously consider to establish a kindergarden facility for our Düsseldorf office because 7 of our young partners and associates have had or will have babies within a period of about 1 year.

These developments demand a well balanced strategic approach to workplace issues and the social engagement of law firms. So in my judgment, this factor will be one of the most important factors for mid size continental law firms driving them to structured CSR activities.

- **Workplace satisfaction**

The factor workplace satisfaction is closely related to the retention factor.

It will become more and more important with the growing competition for qualified and motivated lawyers and employees. Only in firms where a high workplace satisfaction rate exists, personnel retention will be high. High personal retention is a considerable cost factor because of the high investment in training and education that is necessary for a functioning professional organization.

And again: In these times, the quality of the work and the pay is no longer the only relevant factor. It is not enough to work for "a leading law firm". More sophisticated identification factors are needed. This is one more challenge for a law firm: to create an environment where professionals and staff do not just feel competent and respected but where they actually feel good about the firm they work for.

In my view the area of workplace satisfaction will become one of the most distinguishing factors for the competitiveness of high profile law firms.

Because: It is the people who are our assets!

Slide 7 - Conclusion and future prospects

With this being said, let me come to the conclusions of this speech:

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- An existing fact is that CSR does not yet play an important role in the continental business world.
 - And it is no surprise that this applies also to continental law firms who are part of the continental business world.
 - However, a growing social awareness in our industrialized world and the increasing shortage of natural resources are likely to strengthen the importance of a structured CSR approach. This, again, applies to all kinds of businesses.
 - The driving factors for continental law firms to engage themselves in structured CSR activities may be expected in the areas of
cost control,
risk management
reputation building and
recruitment / retention of personnel.
 - Whereas, in my view, Clients' needs or demands in the field of CSR will not become a relevant driving factor for mid size firms in the near future.

Thank you for your attention.

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