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**Book Review:** George Siedel and Helena Haapio, *Proactive Law for Managers – A Hidden Source of Competitive Advantage*, Gower Publishing 2011, xiv + 172 pages, RRP£45.00

From a business perspective the law has at least two different sides and not seldom a legal concept reflects both sides of the coin. The law refers to the whole of statutory, regulatory and case law. There is of course the *normative* function of the law: it limits free enterprise and makes the exercise of operational and strategic management dependent on fulfilling legal requirements. For instance products on the market should be safe. The marketing of defective products gives rise to claims based on liability rules. Establishing strategic alliances with other firms may cause conflicts with antitrust authorities. The less well-known *instrumental* function of the law enables business management to make use of legal concepts like agreements, intellectual property rights and legal persons to advance the prosperity of the firm. It is in educational respect very rewarding for the teacher to explore together with students of business studies a legal concept like for instance worker's participation according to the legislation on Works Councils. Students will discover in this legislation both legal functions: the normative one in requirements for organisational decision making and the instrumental one in using a legal tool for creating a supportive atmosphere amongst personnel for making business policies more effective. *Managerial law* combines these two functions in order to compose a legal agenda for the personnel, product, commercial, finance manager and the strategic management of businesses. Brought back to essentials managerial law as a method uses the different structures of management functions and links these structural subfields to legal subjects.<sup>1</sup> For marketing management this means for example meeting legal requirements for the packaging of the product, using regulatory acceptable indications of price and refrain from price fixing. As far as the financial management function is concerned by legal aspects of the treasury we mean using legal arrangements like the leasing of machinery and the factoring of debt collection. As an educational model managerial law can work both ways: to introduce the managerial way of thinking and operating of business people to law school students and to present and categorise legal subjects to business school students in such a way that business law is integrated with business administration.<sup>2</sup> Using managerial law as a practical method means that the management of a business is able to map out the main legal aspects of its particular operational and strategic activities. Only this way the management can be sure that legal performance results in being compliant with legal and regulatory requirements.<sup>3</sup>

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<sup>1</sup> So does the business law text book I am using. See: A. Brack, *Bedrijfsrecht op een bedrijfskundige manier* (5th edition, Noordhoff uitgevers 2010). The Dutch title would read in English: *Business Law the Managerial Way*

<sup>2</sup> A Brack, *The Paradigm of Managerial Law* 15 *Journal of Legal Studies Education* 237–244 (1997).

<sup>3</sup> A Brack, *A Managerial Format for a Business Legal Audit* 12 *European Business Law Review* 34–39 (2001).

Compliance is the status of being legally in control. It means continuously managing legal affairs properly and can be very beneficial. Being compliant is a good idea for several reasons. First of all, legal care is far better than cure. Meeting regulatory requirements prevents time consuming disputes with governmental agencies. Second, authorities turn for inspections more and more to what is called “horizontal” arrangements with business organisations. If these can show to be compliant with law and regulations and are able to remain compliant the relations with the inspectorate may change and be based upon trust. Monitoring is executed then on the organisational level of the capability of the firm to handle a method of legal management instead of the, called outdated, “vertical” approach of the sanctioning of non-compliance incidents. “*Using the law for competitive advantage*”<sup>4</sup> is a suitable indication of a third reason for better be compliant. Businesses able to professionally manage their legal agenda and having reached a state of legal control are in lasting lead over competitors still busy with the repair of unforeseen legal and regulatory damage.

The traditional business approach to legal affairs is a reactive one. Established traditional providers of legal services are used to work on the solution of a problem after it arises. Outside counsel is not equipped to prevent legal problems. Legal problems are the input of their work and the very reason of their existence. Corporate management or in case of small and medium-sized enterprises (SMEs) the entrepreneur is in charge of managing the firm’s legal affairs. The reactive approach will more often than not still be a layman’s assessment of the need to seek legal advice. Two resembled movements make headway so it seems. The north-American “preventive lawyer”<sup>5</sup> has essentially the same approach as is in Europe called “proactive law”<sup>6</sup>. To quote from the latter website: “... a future-oriented approach to law placing an emphasis on legal knowledge to be applied before things go wrong.” Unfortunately, there is little public and academic knowledge of the legal problems companies face. “The literature on this topic is sketchy at best.”<sup>7</sup> Quite remarkable considering the amounts of money involved more research is done on legal conflicts citizens encounter. Fortunately, a very welcome and interesting survey is published recently.<sup>8</sup> Now we know for instance that a serious legal problem of many SMEs in The Netherlands during one certain year (2006) has been related to the quality, quantity and delivery time of goods and services sold. A perfect starting-point for an operational analysis to prevent and save legal costs! But how to organize and structure such a project? “The Manager’s Legal Plan™” is the heart of *Proactive Law for Managers*. I would call this plan a method, an analytical way of integrating legal matters into general management. The authors describe the Plan as a four-step process:

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<sup>4</sup> George Siedel, *Using the Law for Competitive Advantage* (San Francisco, CA: Jossey-Bass, 2002).

<sup>5</sup> <http://www.preventivelawyer.org>.

<sup>6</sup> <http://www.proactivelaw.org>.

<sup>7</sup> Next footnote, p 52.

<sup>8</sup> Marnix T Croes, *Companies on their Paths to Justice – How Small and Medium-Sized Enterprises in the Netherlands Deal with Potential Legal Problems* 8 *Utrecht Law Review* 51–77 (2012), at (<http://www.utrechtlawreview.org>).

1. “Understand the law”: basic legal knowledge is needed in order to become sensitive to the legal dimensions of business activities;
2. “Know how to cope with legal problems and learn from them”: the authors present a choice between fighting claims and conflicts or flight from them for instance by settling cases;
3. “Develop business strategies and solutions to prevent future problems”: essentially, I would say, establishing legal risk management;
4. “Climb to the balcony to see the big picture and become more proactive”: a broader perspective stimulates to develop a view in which legal problems become part of professional operational and strategic management.

No doubt, at least at first sight, such a plan consisting of four steps looks attractive. Moreover, steps refer to a staircase which is the usual way to arrive at the balcony. And this is the place to be if you like to see the big picture. After a closer look I have hesitations. The plan suggests that managers can learn step by step to handle legal affairs more professionally. But are all steps of similar importance? Step one is the ground floor. Having basic legal knowledge is *conditio sine qua non* for legal management. The first step is rather a prerequisite for legal management which, furthermore, should not be performed passively in a reactive way but obviously in a modern way aiming at the prevention of legal risks. It shows that I am not sure whether every step on the authors’ stairs is a step forward. Besides, as a teacher or legal coach I have no objection at all if my student or pupil would leap from step one directly to step three. The third step is the core of the plan: here is the result we like to achieve. Step two represents the traditional legal conduct: without a problem at hands we do not have something to solve! “You get sick, you seek treatment. You encounter a dispute, you turn to a lawyer” (page 11). Certainly, the opposite concepts of fight and flight have an easy appeal, but settling a case is anything but flight. Indeed: “From a business perspective, many disputes should be settled rather than litigated ...” (page 14). Moreover, mediation could be an instructive way of understanding people’s motives for certain legally relevant behavior. Mediation can help to see the broader picture.

Anyhow, the three highest steps do present the catalogue of reactions to legal problems. If one is unable to make a choice between being preventive or proactive, for instance because the difference is too subtle, than it is basically a matter of either remaining passive or becoming (pro)active in preventing legal misery. Most probably the key issue of being a successful legal manager is in the combination of being able to transform the knowledge of business law into the insight of managerial law on the one side and on the other the attitude or mindset enabling to manage legal affairs with foresight. It is all about insight and foresight. Nevertheless I welcome this book because it marks an important phase in the development of professional legal management performance. It presents a thought provoking method of how to approach business legal affairs. It is my recent experience that the Manager’s Legal Plan™ has proven to be a success as a means to discuss the management of legal risks with students enrolled in an executive master program risk management. Currently I am using the book in an undergraduate course of business law for students of international business

administration. In this course I find in comparison with the preceding version one improvement very beneficial. As mentioned previously in this review, Professor George Siedel published in 2002 “*Using the Law for Competitive Advantage*”. Apparently, this earlier version was written with the American market of readers in mind. The updated and extended version under review here shows a lucky hand of influence of co-author Helena Haapio. She has contributed highlights of European law<sup>9</sup> which has certainly enriched the book and makes it much more worthwhile to readers of the old side of the world. The Manager’s Legal Plan™ does not need more legal detail; descending to the various differences in the laws and regulations of the member or United States can be omitted. “*Proactive Law for Managers*” is a very welcome addition to the business law literature.

Antoni Brack\*

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<sup>9</sup> And among other things she also added a chapter on Contracts Management.

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