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Strategic Government Affairs

It's about leadership

by **Julian Ha**, Esq.

Facing a tidal wave of new government regulation, companies and trade associations in highly regulated industries must make sure they have the right government affairs team to navigate the uncertain waters ahead. Understanding the complex demands of this function and finding the right leaders to fill it should be a high priority for CEOs and organizations whose success can be profoundly affected by government action.

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Ambiguity, complexity, fluidity – these are conditions that government affairs professionals in corporations and trade associations have always faced in their work with legislators and regulators. But with nearly three-decades of deregulation having come to an end and an upsurge of new regulation now well underway, those conditions have greatly intensified.

Drawing on in-depth conversations with leaders in government affairs and from our experience placing them, we provide here a picture of the increasing complexity of the government affairs function, and the skills required to succeed in the role today. Those skills fall into three interdependent categories:

- The ability to pursue *strategic* government relations.
- The ability to lead the government affairs function.
- The ability to become an industry as well as company-wide leader.

In today's world of increasing regulation, companies and trade associations will need to better understand precisely what those skills entail and find professionals who have them.

Need for Strategic Government Affairs

The need for a strategic approach to Government Affairs has never been more critical.

In the US, consider for example, the advent of the Consumer Financial Protection Bureau (CFPB). Established by the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law on July 21, 2010, the CFPB was formed in July 2011. Housed in the Federal Reserve, but insulated from Fed control, it has the power to write

and enforce new rules for all financial institutions offering consumer financial services, enforce numerous existing federal laws, and levy fines. Precisely what form those rules and actions will take, however, remains ambiguous. How those practices are defined, how infractions are enforced, and how they ultimately affect the health of the industry will to a great extent depend on the skill and effectiveness of the government affairs team of financial institutions and financial services trade associations in their give and take with the Bureau. Similar skills will be needed to address the bill's new regulations governing banks; hedge funds; payment, clearing, and settlement entities; and the insurance sector.

In Europe, at the time of writing this, the final proposal for MiFID II, which proposes to overhaul secondary trading in several asset classes, has just been released by the European Commission. A final draft of the European Market Infrastructure Regulation (EMIR), which sets out to increase stability within OTC derivatives markets, is proceeding to negotiations in the European Parliament with ramifications for exchanges and clearing houses. The implementation of Basel III continues to be debated and, in the UK, the Vickers Report suggests that UK banks will need to exceed Basel III recommendations against risk weighted assets (RWA). Lastly, but by no means least, Solvency II requirements will be switched on for firms in 2014, affecting the insurance industry.

It cannot be denied that there is a tsunami of regulation currently hitting the financial services industry. Financial institutions and trade associations must engage with the key players in Europe to get their voices heard. Their effectiveness in doing so will largely depend on the caliber of their government affairs teams and, to a certain degree, the level of involvement from their CEO. Traditionally, government affairs functions have not been regarded as a key function for some firms, if they indeed had a function at all. The current regulatory landscape has changed that. In order to achieve the most favorable position it can, firms require technically competent, highly skilled and highly

commercial government affairs professionals to not only interpret legislation but also influence the debate. The financial services industry is by no means alone. Virtually every major industry is confronting new or pending legislation and regulation of similar complexity and ambiguity – offering both challenges and opportunities to those who lead government affairs. A list of affected industries, that by no means is exhaustive, would include:

Healthcare

In Europe, healthcare reform is a key initiative for the majority of countries. Although the delivery models vary across Europe, each system is facing similar problems of an ageing population, increased demand for healthcare, rising medical inflation and competition for tax revenue. In response to the economic climate many countries are taking steps to pass on the costs of healthcare from the state to employers and individuals and restructuring the provision of services to reduce the cost of delivery. It is vital for all employers to keep abreast of health reform regulations across Europe and globally.

In the US, following the passage of the health reform bill signed into law on March 23, 2010, the Department of Health and Human Services (HHS) created the Office of Consumer Information and Insurance Oversight, charged with “implementing the provisions of the health reform bill that address private health insurance.” That mandate includes ensuring compliance with the new insurance market rules, overseeing the new medical loss ratio rules, and assisting states in reviewing insurance rates. Among other things, this office will be writing rules to define when premium increases are “unreasonable” and they will be defining what counts as medical care.

Pharmaceutical

Issues surrounding drug importation, the safety of drug ingredients derived from abroad, prescription drug costs, patent challenges and drug approval are all continuing sources of concern for the industry.

Food & Drink

The food and drinks sector is affected by a mass of laws, regulations, codes of practice and guidance covering the production, distribution, processing, retail, packaging and labeling of food and drink. Much of the detailed legislation originates in the European Union. Recent examples include new European legislation on maximum levels for nitrate in green leafy vegetables, restrictions on the use of aluminum-containing food additives and the level of OTA in wheat gluten. Policy develops rapidly in this area, therefore, it is very important for food and drinks companies to engage in meaningful consultation and obtain early stakeholder input.

Oil & Gas

Always a highly regulated industry, oil and gas companies are now faced with even more compliance and risk mitigation demands both at the operational and the financial / legal levels. Following the BP oil spill in the Gulf of Mexico, the industry has seen a moratorium on deep-water drilling (which has since been lifted), a shake-up in the agency that regulates the industry, and new regulations for offshore oil and gas drilling that will guide future leasing in the Arctic, the Gulf of Mexico and elsewhere. With the development of ‘Shale Gas’ and ‘Heavy Oil’ projects, environmental impact has again come to the fore and is being vigorously debated in Washington and elsewhere. Beyond those immediate concerns lie environmental issues generally, governmental industrial policy on energy sources, and safety issues.

Utilities

Carbon policy, energy policy, and issues around the revival of nuclear power are all enormously complex and must be addressed simultaneously on the federal/central government and local levels.

Technology, Telecommunications, and Internet

'Net neutrality,' online taxation, privacy, intellectual property issues, and national security are just a few of the many issues facing companies in this rapidly evolving industry.

From consumer products to chemicals to transportation to manufacturing and more, companies and trade associations face similarly challenging legislative and regulatory landscapes. They need government affairs leaders who can negotiate this difficult terrain, remove barriers to commercial success, anticipate problems and identify opportunities.

Changing Role of Strategic Government Affairs

Two decades ago, many government affairs functions primarily monitored legislation and regulation, alerted their companies or associations to new rules, and tried to protect their organizations' interests. They still perform those functions, broadly speaking, but in recent years their activities have become far more focused, sophisticated and strategic. They are expected not only to protect the company's or the industry's interests but also to anticipate future developments, pre-empt them, and identify opportunities to create value – in short, to be strategic.

For example, at one time, a Head of Government Affairs (HGA) might have been satisfied to soften the impact of some of the more onerous provisions being considered in a piece of legislation like Dodd-Frank. While HGAs still strive to achieve such results and are fulfilling a large part of their responsibilities when they do so, the best of them go further in trying to shape legislation and regulations not merely in their organization's current interests but in line with their forward-looking strategies. The very best identify strategic openings and new business opportunities in regulations that others merely regard as constraints.

The ability to develop and execute a genuinely strategic approach to government affairs begins with an in-depth understanding of the legislative and regulatory process as well as the roles and decision-making processes of key

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governmental and regulatory entities. Government affairs leaders must also be able to work with key players on both the majority and minority side in the legislative body and with staff in the relevant government departments and agencies. The government affairs team has to communicate persuasively with these constituents, and become trusted sources of advice and counsel on industry issues.

Effective HGAs become trusted sources of counsel to government law and policymakers by demonstrating a good grasp of technical matters that are at issue in industry regulation. Effective and continuous communication with government officials is critical, as is the ability to effectively voice disagreement when necessary. That reservoir of trust can also be invaluable when the company's or industry's reputation is threatened by adverse events or the prospect of harsh regulatory action – enabling the HGA and regulators to settle matters outside the glare of the public spotlight.

Mastery of technical issues must be complemented by knowledge of the industry and, in the case of corporate HGAs, an in-depth understanding of the company's business – its strategy, its business model, and potential disruptions to that strategy and model. For example, the HGA for a twenty-first century utility company that has ambitions to participate in building the "Smart Grid" and in increasing its share of the alternative energy market might

take an approach with respect to carbon legislation that is different from the representative of a more traditional utility.

Armed with technical knowledge and a firm sense of industry and company direction, effective HGAs are able to identify issues well in advance of legislative and regulatory action, prioritize those issues, and develop strategies to address them. This firm grounding in the issues and the industry also enables them to quickly grasp the complex implications of actions and make sound, independent decisions in the often pressure packed, fast-moving process of a bill's passage.

Another key component of success in the HGA role is a broad and deep understanding of the complex relationships across various entities – including trade associations, political action committees, industry organizations, and public interest groups. Successful HGAs are adept at orchestrating coalitions and coordinating their efforts. This can, of course, mean mobilizing various players to act in concert in influencing regulations. But it can also mean organizing or supporting initiatives to win the trust and confidence of the public and policy-makers alike.

Leading the Government Affairs Function

While pursuing a strategic government relations program with legislators, regulators, and other external entities, the HGA must also provide internal leadership to the government affairs function. In the desire to win legislative and regulatory results, the importance of these management skills can sometimes be overlooked. But external success and the ultimate value of that success to the business or industry depends in no small measure on the ability of the HGA to collaborate at the highest levels of leadership, assemble the right team, and manage resources effectively.

A corporate HGA must work especially well with the CEO, General Counsel, and Head of Public Affairs/Head of Communications. Depending on the company, the HGA might report to any one of those people, but should in any case work closely with all three – the CEO for matters of strategy and direction, the General Counsel

for legal issues, and the Head of Public Affairs/Head of Communications to ensure the company's policy efforts are coordinated. A genuinely strategic government affairs approach – one that maximizes value to the business – depends as much on this collaboration and coordination as it does on the ability to wield influence at the national government/supra-national level.

Because regulation can cut across any aspect of a business, corporate HGAs must also be able to coordinate with leaders throughout the organization – from the Chief Risk and Compliance Officers to the Heads of Finance, HR, Environment, Health & Safety, as well as Strategic Business Unit leaders. Furthermore, legislation or regulation that is ostensibly targeted at one industry can have implications for all. For example, the increased focus on risk management that has come in the wake of the financial meltdown is not confined to financial services companies. The sudden drying up of credit affected companies of all kinds, giving them a significant stake in the outcome of subsequent government action. Similarly, the impact of healthcare legislation is not only felt by companies in the healthcare industry but has HR implications for all companies.

Corporate HGAs must also be in sync with Corporate Communications and with Marketing to ensure that lobbying efforts don't contradict central brand and identity messages. A company that is in the process of rebranding itself as committed to sustainability, for example, can find itself accused of "greenwashing" if high-profile lobbying efforts undermine that position or cannot reasonably be framed as part of the company's sustainability objectives.

It is through such organization-wide collaboration and coordination that the corporate HGA comes to know the business intimately, gaining the indispensable foundation for a strategic approach to government relations. The trade association HGA derives similar benefits from working with the relevant leaders at member organizations, providing them with thought leadership and policy development. Association HGAs must also take a holistic view of the entire industry and be adept at balancing the interests of smaller and larger members. And when events strike a member of the association that have implications for all members, the HGA must often act as the voice of the industry with the public, the media, and policy makers.

In corporate settings as well as trade associations, leadership skills such as collaboration and strategic thinking should be complemented by effective management of the function. The HGA must assess staffing needs and deploy resources efficiently. That includes managing relationships with outside consultants and lobbyists and balancing the right mix of internal and external resources to achieve the department's objectives in a cost-efficient manner. An effective HGA should also liaise with relevant trade associations to ensure their company's positions are heard and represented, especially if they are a smaller player compared to other trade association members.

Finding the Right Person for the Role

How difficult is it to find someone who can shoulder the multiple responsibilities of the role, 'change the game' with policy makers, and fully deliver on the benefits of a strategic approach to government relations?

On the one hand, the qualifications that typify today's HGAs are clear. HGA candidates often have a background in law, although this is not always the case. They usually have 15 or more years of experience that is directly

relevant to government relations work. Those experiences may include time spent in a government agency or a European institution. They may have worked for a major lobbying firm, or in some cases they may have been groomed in-house, rising through the organization to the top government affairs job. Though there are of course exceptions, most HGAs and senior government affairs leaders have one or more of these experiences, and such candidates are often readily identifiable.

On the other hand, making sure that ostensibly qualified candidates have the right leadership qualities requires careful assessment and judgment. You must be able to determine if a candidate has the ability to grasp your business and work as part of the executive team. What evidence is there of a candidate's ability to think strategically, communicate persuasively, act decisively, and manage effectively? To this increasingly complex role, a prospective Head of Government Affairs must bring the same qualities of leadership and business acumen that boards and CEOs expect of other top leadership. Beyond qualifications, it is those attributes that determine the success of a Head of Government Affairs, because ultimately it's not about influence or relationships; it's about leadership. ■

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Government Affairs Practice

Within the Legal Practice of Heidrick & Struggles is a group of highly experienced consultants dedicated to helping organizations identify and assess the best Government Affairs leadership talent in the world.

Our consulting team has extensive experience in Government Affairs searches, including assignments in related fields such as Associations and across all Industry sectors – especially those subject to regulatory and US Congressional and Parliamentary oversight and scrutiny.

In a volatile regulatory and enforcement environment, effective Government Affairs representation removes barriers to commercial success and neutralizes headline risk that could otherwise damage franchise, brand and reputation.

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