

Risk Management: The Role of Corporate Counsel in a Changing World

Presented by ACC Canada and Borden Ladner Gervais LLP

Wednesday, January 20, 2010

RISK MANAGEMENT: THE ROLE OF CORPORATE COUNSEL

INTRODUCTION DON ROSE

- What is the role?
- Formal?
- Informal?
- It is a key part of what we do

TODAY'S PROGRAM

- Theoretical Framework
- Methanex Risk Management Program
- Related and topical issues
- Questions

Ian Webb

BUSINESS RISK

Business Risk

- Risk of loss arising from the Company's activities
- Anything that has the potential to result in negative consequences for the Company

Legal Risk (a subset of Business Risk)

- Risk of loss arising from the Company's activities that results from the application of law

EXAMPLES OF BUSINESS RISKS

- **Non-Legal Risks**
 - Availability of capital
 - Commodity prices/currency fluctuations
 - Market acceptance of product/competition
 - Pandemic
- **Legal Risks**
 - Breach of contract
 - Failure to meet regulatory requirements
 - Failure to secure legal protection

LEGAL RISK MANAGEMENT PROGRAM

- **Three Aspects of Risk Management Program**
 - Identification
 - Evaluation
 - Management

First Aspect: IDENTIFICATION

- Analysis of business activities - understanding the business process, interviews of operational personnel, and reviews of systems, policies and documentation
- What are the laws applicable to the activities?
 - laws of general application (e.g. contract law, employment)
 - industry specific laws (e.g. Health Canada)
- Are we in compliance?
- Are we taking advantage of protection or rights afforded by law?
 - e.g. - protection afforded by contract law or intellectual property law

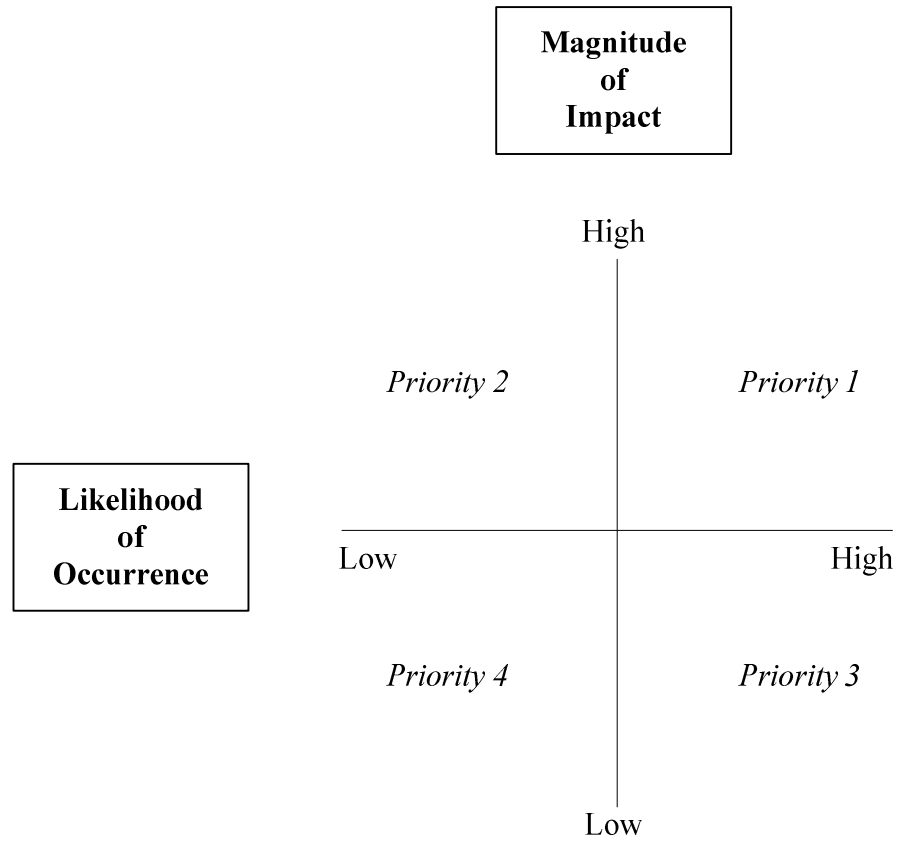
EXAMPLES OF TYPES OF LEGAL RISKS

- Regulatory: industry specific regulations, competition/anti-trust, environmental, taxation, employment, privacy, health and safety
- Contract: breach - no contract - poor contract
- Board of Directors activities: fiduciary obligations - business judgment rule requirements
- Litigation
- Protection of Assets: intellectual property - use and protection of copyright and trademarks - patents
- Information technology: electronic contracts - libel - violation of advertising or disclosure rules - collection, use and disclosure of personal information

Second Aspect: EVALUATION

- Involves:
 - Assessing the potential impact on the Corporation and the probability of the threat
 - Prioritizing risks
- Risk mapping can be helpful (probability vs. significance of outcome - both economic and organizational)
 - Mapping diagram
 - Program summary document

EVAULATION (Cont'd)



Third Aspect: MANAGEMENT

Once risks are identified and prioritized, the next step is to develop management strategies for each risk:

- avoid
- accept
- reduce

EXAMPLE MANAGEMENT COMPONENTS

- Assess who has the ball and their capability
- Allocate resources – ownership and accountability (defining responsibilities, setting up coordination and budgeting)
- Educate those responsible on legal obligations
- Develop a system to track contractual and regulatory legal obligations and compliance
- Establish corporate procedures, policies and best practices guidelines (e.g. contract policy, employee manual, stock trading policy, disclosure policy)

EXAMPLE MANAGEMENT COMPONENTS (Cont'd)

- Consider how to mitigate each risk
 - Mitigation of the problem, or
 - Mitigation of the impact (e.g. insurance or indemnities)
- Develop a process for dealing with existing or anticipated claims and proceedings
- Establish a protocol for engaging external advisors
 - identification of appropriate external expertise and development of relationship with legal service providers

EXAMPLE MANAGEMENT COMPONENTS (Cont'd)

- Implement an appropriate documentation and record keeping program
- Conduct periodic audits – measure performance
- Develop a crisis management protocol
- Establish a protocol for dealing with legal issues as they arise:
 - Develop reporting structures –early warning protocol
 - Immediate action protocol
 - Litigation hold process

EXAMPLE MANAGEMENT COMPONENTS (Cont'd)

- Learn the lesson – recording problems, causes and solutions - debriefings – updating standards, policies and best practices



METHANEX

®

A Responsible Care® Company

**ACC Lunch Presentation
Risk Management**

January 20, 2010

Randy Milner

SVP, General Counsel and Corporate Secretary

Methanex Corporation Understand the business – understand the risk

- Production Sites
 - Chile
 - Trinidad
 - New Zealand
 - Egypt (2010)
- 2008 Sales ~ 15% of global demand
- 2008 Revenues: US\$2.3 Billion
- Low-cost Waterfront Shipping Subsidiary: ~19 vessels
- Employees: ~825
- Shares listed: NASDAQ, Toronto, Santiago



What methanol is used for..

Traditional Uses (Mature Markets)

Formaldehyde

Pharmaceuticals, Wood Industry, Automotive



Acetic Acid

Fleece, Adhesives, Paints



Dimethyl Terephthalate

Recyclable plastic bottles



Methyl Chloride

Silicones

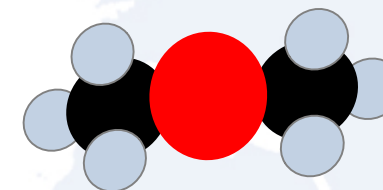


Energy Uses

(High Growth Potential Markets)



Fuel Blending



DME

(dimethyl-ether)



BIODIESEL

METHANEX
10th

A Responsible Care® Company

Risk identification and management historically...

- Not an integrated activity
- Each dept. does its own thing
- No oversight

Management of risk

- The most valuable thing to come out of the governance revolution?

“The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for: ...(c) the identification of the principal risks of the issuer’s business, and ensuring the implementation of appropriate systems to manage those risks”

- National Policy 58-201

Mx Strategic Risk Review Process

- Risk identification now a formalized process
- Development of a Strategic Risk Matrix
- Strong governance
 - Developed by senior management group
 - Reviewed by Audit Committee & Board
 - Annual review process

The 5 Basic Components of the Strategic Risk Matrix

1. Identify Strategic Risks

- e.g. Adverse Political Actions; Gas Supply risk; Customer Demand; Access to Capital; Catastrophic Loss; Critical IT system failure; HR; etc.

2. Apply Inherent Risk Rating

- (Extreme, High, Medium, Low)

3. Assess ability to mitigate each risk

4. Apply residual risk rating to each risk

- (Extreme, High, Medium, Low)

5. Determine accountability

- ID who is responsible for mitigation efforts; ID the mitigation efforts; ID which board committee has oversight

An Example ... “Ethics and values”

1. Identify Strategic Risk

- Maintaining high ethical standards as company moves into countries with reputation for bribery/corruption
- Risk examples: dealings with corrupt public officials; FCPA action; employees thinking “cutting corners” during downturn is desirable
- Potential impacts: loss of reputation; suits; penalties; jail; corroded morals; inability to attract quality talent; loss of focus on the business

2. Inherent Risk Rating

- HIGH

Ethics and values cont'd

3. Mitigation

- Current controls and mitigation practices
 - Hiring practices; strong corp. policies; code of ethics; compliance training;
- Future actions
 - Implement hi-level communication strategy (CEO video reminders & e-mails; Snr. Mgmt. in-region presentations; etc.)

4. Accountability (Risk Owner)

- Senior Management Team
- Reporting to Corporate Governance Committee

5. Residual Risk Rating

- LOW

Where Mx applies focus

- 20+ Strategic risks identified
- 5 identified where:
 - Inherent Risk: Extreme or High
 - Residual risk: Extreme or High
 - i.e. Limited ability to mitigate the risk
 - Lose sleep over these
- Where residual risk is lower, apply stronger mgmt control

Implications on workflow management on Legal Department

- Limited time and resources
- Need for triaging of risk issues
 - Decide which risk areas to get involved in and how
 - Internal v. external resources

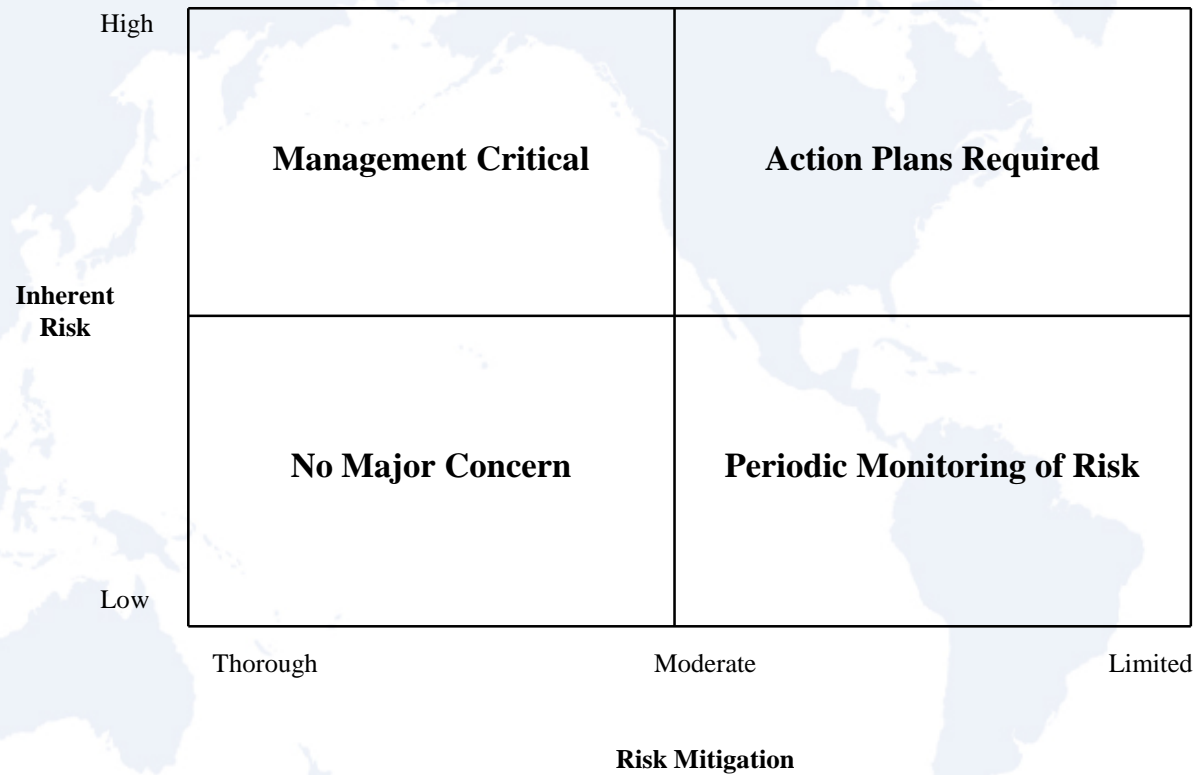
Triaging using 4-box process - #1

High	Administration/Management Advertising Review	Sales and Marketing Complex Litigation Compliance Employment Litigation
Low	Benefits Logistics	Corporate/Securities Trade Practices
	Low	High

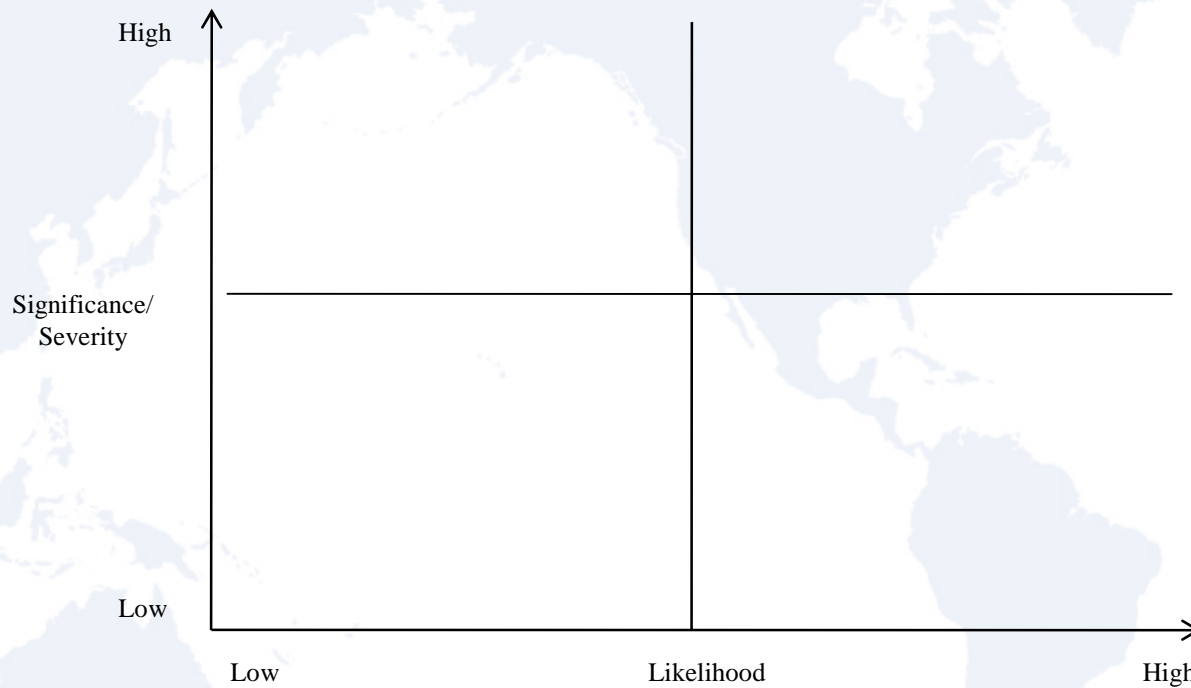
Effort (FTEs)

Value (Importance)

Triaging using 4-box process - #2



Triaging using 4-box process - #3





Thank you!

New Risks and Related Issues

Don Rose

New Areas of Risk

- To manage risk effectively, you must *identify* it
- To *identify* risk, you need a robust risk management program
- Theory and practice
- What gets measured, gets done
- Re-evaluate the information and assumptions
 - Methanex repeats the process annually
- Risks *change in unexpected* ways
- Forest and the trees

Topical and Related Issues

Some topical risk and risk-related issues:

- economic crisis affects risk and disclosure
- link between compensation programs and risk
- focus on corruption
- International Financial Reporting Standards IFRS
- global warming
- lobbyist registration

The Financial Crisis

the financial crisis

- customers can't pay; suppliers can't supply
- new supplier from politically risky country
- insurance to manage risk; is this a new risk?
- for many reasons, risk profiles increase
- disclosure gets more scrutiny from regulators

Continuous Disclosure

2009 - the Canadian Securities Administrators (CSA) regularly review continuous disclosure (current focus includes):

- reporting and disclosure issues associated with market conditions
- disclosure of pension funding obligations for issuers with defined benefit pension plans
- valuation and disclosure issues related to non-bank sponsored asset-backed commercial paper

Compensation and Risk

link between compensation program and risk

- “Risk” is the new buzz word in executive compensation (*Shearman & Sterling LLP, 2009 Director & Executive Compensation Survey)
- Large bonuses under attack in the US, especially where support received under programs such as the Troubled Asset Relief Program (TARP)
- have compensation practices led to excessive risk taking?
- late 2009 SEC new proxy rules require disclosure on relationship of compensation policies and practices to risk management

Compensation and Risk

- narrative disclosure of policies and practices for all employees if they create risks that are reasonably likely to have a material adverse effect
- Canadian regulators not there - but much discussion about “say on pay” at AGM’s
- consequence - public, private or crown - shift to:
 - deferred compensation based on risk periods;
 - clawbacks of performance based compensation; and
 - intense disclosure obligations

New Focus on Corruption

Re(new)ed focus on corruption

- Canada criticised for lax policing
- US FCPA policed aggressively
- 1999 - Canada passed the Corruption of Foreign Public Officials Act – one \$25,000 fine
- pressure to enforce
 - RCMP recently created an International Anti-Corruption Unit
 - 2009 federal bill would extend jurisdiction to offence committed outside Canada
- The point: no cutting corners in downturn

International Financial Reporting

International Financial Reporting Standards (IFRS)

- conversion to IFRS completed by 2011
- a lot to do and little time left
- some unexpected issues
- how income and fixed assets are measured
- implications for legal departments:
 - may affect contracts

Global Warming: What risk?

global warming

- all kinds of risk issues
 - Mississippi gulf coast land owners sue over Hurricane Katrina
 - a natural disaster?
- related implications
 - Securities administrators will focus on disclosure of environmental matters

Conclusion and Q&A

Ian Webb

Conclusion and moderate Q & A

LEGAL RISK MANAGEMENT SUMMARY

Legal risks involve circumstances or actions that could, by application of law, have an impact on the Company's profitability or ability to achieve its business strategies. The following identifies the Company's more significant legal risks and discusses their assessment and the strategies that have been put in place to manage them.

Risks are rated based on the possible impact on the profitability of the Company if the circumstance or action should occur. They have also been rated based on the probability of occurrence.

Risks, ratings and management strategies are reassessed periodically and as circumstances warrant.

RATINGS

RATINGS			
<u>Impact</u> Net Earnings:	<u>High</u> > \$• mil	<u>Moderate</u> \$• mil to \$• mil	<u>Low</u> < \$• mil

RATINGS					
Likelihood: Probability:	Expected Occurs almost annually > 90%	Likely Occurs every 2 to 3 years 40% to 90%	Moderate Occurs every 4 to 8 years 20% to 40%	Unlikely Occurs every 9 to 15 years 5% to 20%	Rare Occurs every 15 years or more < 5%

SUMMARY

<u>Risk</u>	<u>Impact</u>	<u>Likelihood</u>	<u>Possible Cost</u> (\$ mil)	<u>Legal Risk Management Action</u>	<u>Allocation of Responsibility/ Comments</u>
Breach of Banking Covenants	High	Unlikely	\$●	Provide explanation to finance Diarize timing for compliance Remind finance (<i>frequency</i>) Receive reports from finance (<i>frequency</i>)	General counsel Finance
Breach of Material Contract	Moderate to High	Unlikely	\$●	Establish and maintain a list of material contracts Identify covenants Set up monitoring and reporting system	General counsel
Incorrect Disclosure	Moderate to High	Unlikely	\$●	Establish and monitor disclosure certification process Monitor legal disclosure requirements and their changes	General counsel Disclosure Committee
Selective Disclosure	Moderate	Unlikely	\$●	Establish External Communication Policy Educate spokesmen on legal requirements Monitor public disclosure events. Prepare step by step process for dealing with inadvertent selective disclosure	Those officers who are tasked with talking to press and analysts. General counsel

<u>Risk</u>	<u>Impact</u>	<u>Likelihood</u>	<u>Possible Cost</u> (\$ mil)	<u>Legal Risk Management Action</u>	<u>Allocation of Responsibility/</u> <u>Comments</u>
Insider Trading and Reporting	Low/ Moderate	Unlikely	\$●	Establish internal policy (including trading approvals and blackouts) Educate insiders on the rules Establish periodic reminder Consider allocating filing responsibility to an employee	General counsel Insiders
Product Liability Claim	Low	Unlikely	\$●	Establish proper terms of sale and warranties Ensure proper documentation of sales Litigation preparation (hold memorandum) Establish list of external legal experts Review Insurance	General counsel Operations personnel
Failure to protect intellectual property	Moderate to High	Moderate	\$●	Educate business personnel on legal requirements Establish trademark and patent policy Ensure employment contracts deal with the Company's rights Establish list of external legal experts Establish maintenance program	General counsel Operations personnel
Failure to obtain a licence, permit or other authorization	Moderate to High	Moderate	\$●	Establish a process to identify, obtain and monitor compliance with necessary authorizations	General counsel Operations personnel
Breach of competition law	Moderate to High	Moderate	\$●	Review sales practices Educate business personnel on the do's and don't's Monitor compliance	General counsel Operations personnel