

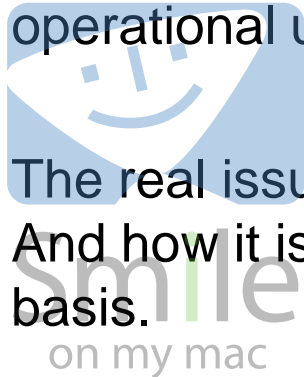
Risk Management Tools

John Lowe



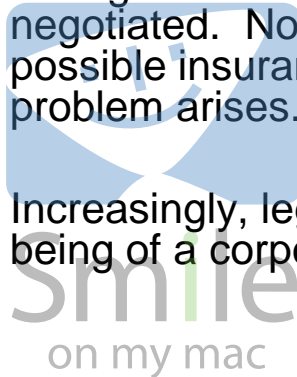
Initial Questions

- Who handles risk management?
- Could be the General Counsel? Could be someone else. Could be a number of different persons/committees.
- Difficulty is that each department (as well as departments in operational units or divisions) will have a role to play.
- The real issue is how is risk management is brought together. And how it is reviewed, updated and managed on a continuing basis.



Risk Management Register

- Provides a tool for looking at the totality of a company's risk profile. Let's the management team assess whether the risks have been properly identified and whether those that are the most significant are being addressed properly.
- Idea is to provide management (as well as the board and investors) with information about the risk exposure of the company.
- Important also that insurance providers are aware of the risks faced by the company (particularly operating risks which are more susceptible to mitigation through insurance) such that insurance is properly identified, scoped and negotiated. Not having identified significant risks may result in a situation where possible insurance cover was not obtained or coverage is not possible once the problem arises.
- Increasingly, legal and compliance risks are of major importance to the well-being of a corporation. Identifying and managing such risks is very important.



Identify high-impact risks relevant to your business

- Top-down approach and bottom-up approach
- Examples might include:
 - Asset loss such as having a factory destroyed,
 - Breach of financial covenants,
 - Interruption in raw material supply,
 - Internal fraud,
 - Theft of trade secrets
 - IT system failure
 - Currency fluctuations
 - Workplace injury
- Categorize risks as high, medium or low.

Segment the high-impact risks

Examples might include:

- **Financial:** risks that can adversely impact the financial results or that are related to the financial aspects of the company.
- **Strategic:** risks that adversely affect the strategic plans or key capabilities of the company
- **Legal and Compliance:** risks that result in a failure to comply with either corporate policies or laws and/or regulations applicable to the company's business.
- **Operational:** risks that affect the operational performance of the company



Identify those risks requiring the most attention

These are the high or medium-level risks that carry the greatest potential loss for the company.

What might bring about the identified risks?

What is the result if the risk manifests itself?

How serious is the impact if the risk occurs? Financial and otherwise.



Assess the adequacy of risk controls

- Risk controls are, in all likelihood, in effect for at least some, if not all of the risks that have been identified.
- For each category of risks (and then on a risk by risk basis) what do the existing controls fully address the risk or category of risk? I.e do the risk controls apply to all aspects of the risk and are they understood by all relevant personnel?
- Do they fully or partially address the risk?
- Is the risk not addressed, i.e. appropriate controls have not been fully implemented?
- Despite what has been done or what will be done what residual risk remains?
- What further actions are possible? Who will carry them out and when?



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Risk register

The risk register is the document which identifies the following: (1) the risk categories, (2) the specific risks related to each category, (3) what might make such a risk become reality, (4) the consequences of the risk occurring, (5) who in the company has responsibility for handling the risk, (6) the likelihood of the risk occurring and (7) it's likely severity, (8) efforts undertaken to ameliorate the risk, (9) risk that remains after mitigation efforts have been undertaken, (10) further necessary actions, who is responsible and when completion is expected.

Sample Risk Register Template (separate document)



The risk assessment process

- Must be practical, cannot be overly complicated
- Must be transparent
- And, it must not be a one-time effort. It must be sustainable over time.
- Responsibilities must clear.
- Regular reporting. Annual or semi-annual reporting and high-level review (executive committee and/or board) is of fundamental importance

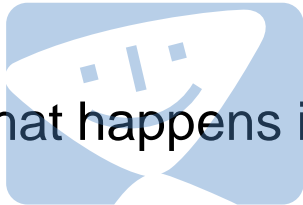


Business Continuity Plans

Certain risks, if they become reality, can have a major impact on the activity of the company.

For these risks, a business continuity plan is indispensable.

For example, what happens when the company's IT system ceases to function as it should?

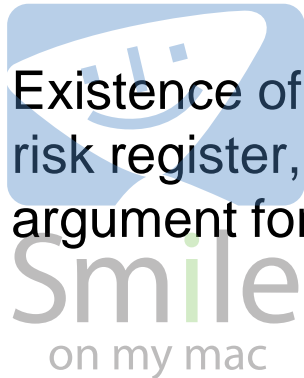


What happens if one of the major factories burns to the ground?

Not all risk factors will require business continuity plans. These are not easy to do. Nevertheless, they could prove extremely valuable.

Insurance

- Insurance is used to mitigate or address many (but not all) of the risks identified in the risk register.
- Insurance providers may, on occasion, release part of the insurance premium to cover the work on a risk management program.
- Existence of a comprehensive risk management program and risk register, updated on a regular basis, may be a strong argument for a decrease in insurance premiums.



Issues

- Is a risk management program worth the effort?
- How do you convince the CEO or the Board that such a program is important?
- Are not insurance programs in reality costs that are best avoided?
- Why should I bother getting involved in the minutiae of insurance policies?



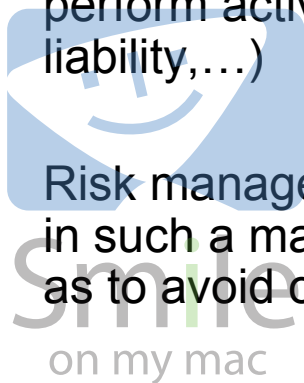
The Legal Affairs Department and Risk Management



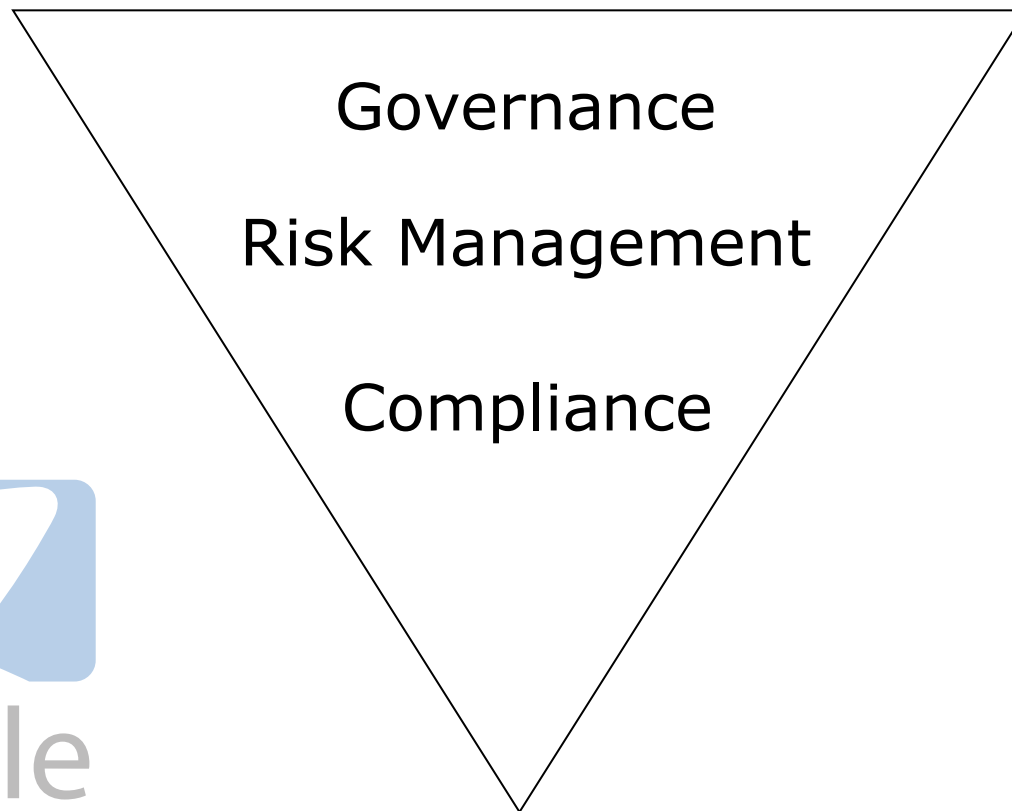
by Dominique Golsong
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Goodyear Dunlop Tires Europe B.V.

Compliance management? Risk Management?

- Compliance management implies organising and implementing processes to increase compliance with rules or principles (issued by legislators or regulators, professional associations or internally) within an organisation
- Compliance management aims above all at protecting the company and its employees against legal sanctions (prohibition to perform activities, invalid contracts, contractual, civil or criminal liability,...)
- Risk management implies the process of assessing risk and acting in such a manner, and/or prescribing policies and procedures, so as to avoid or minimize loss associated with such risk.



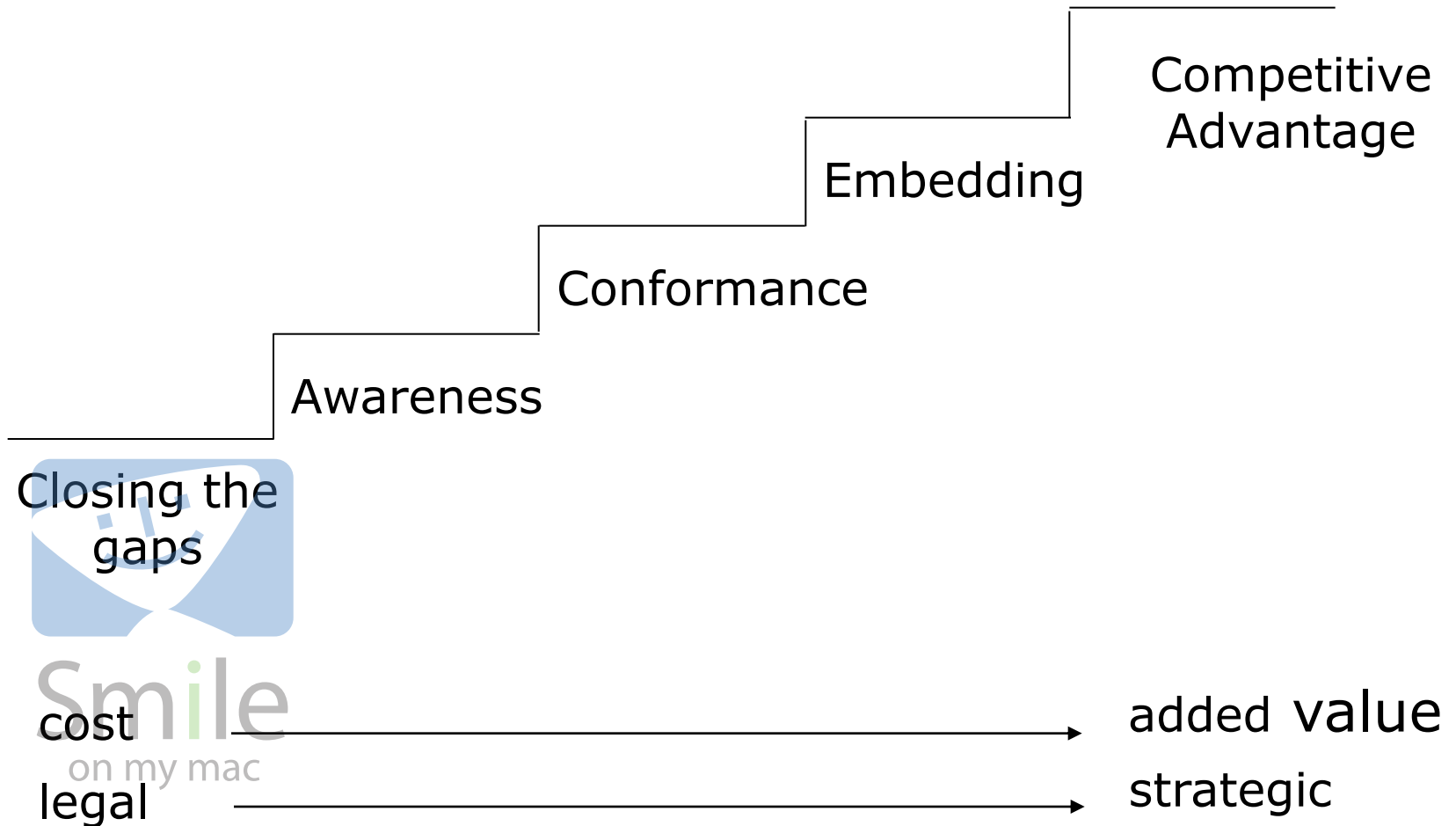
Risk Management is a part of GRC



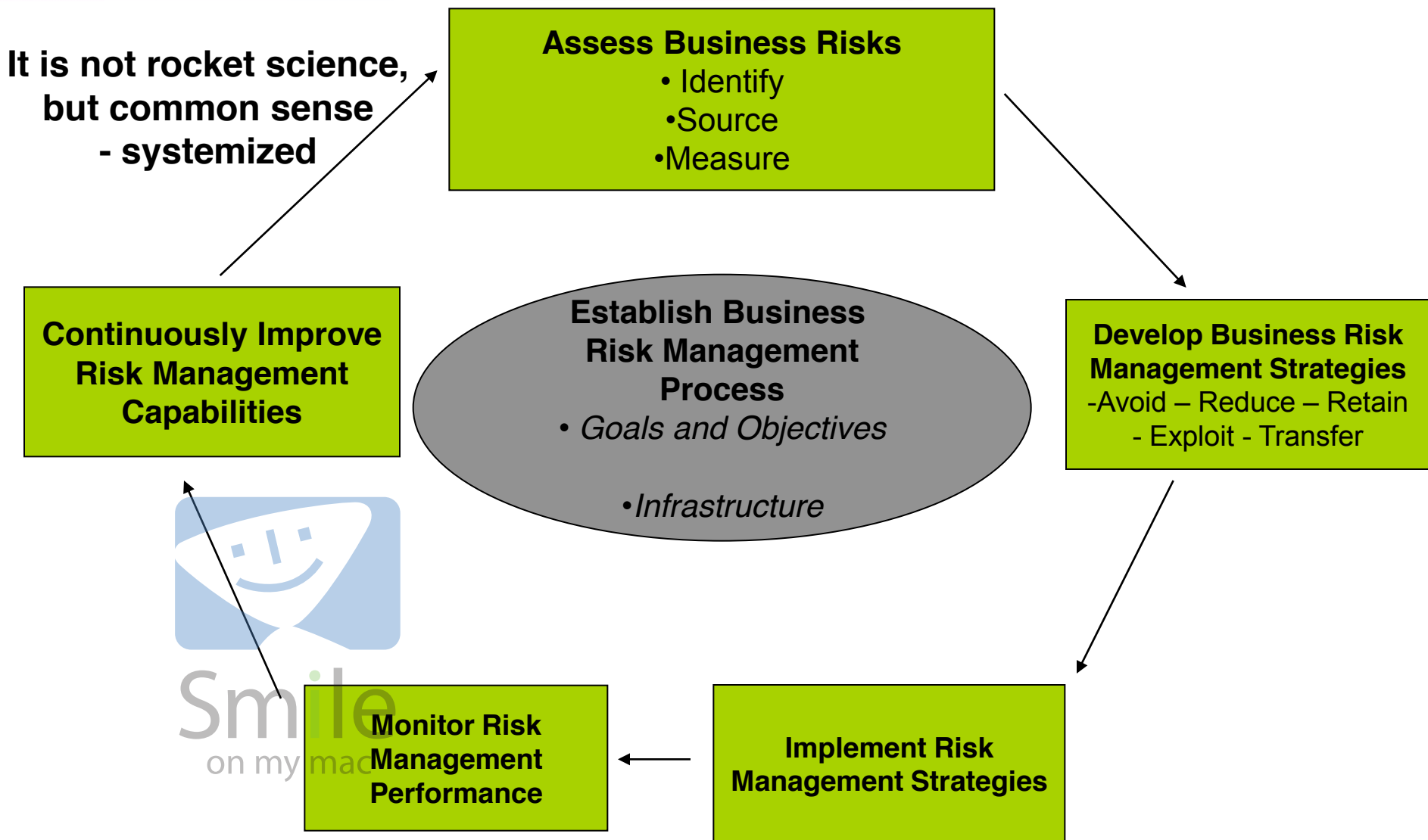
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An integrated
approach

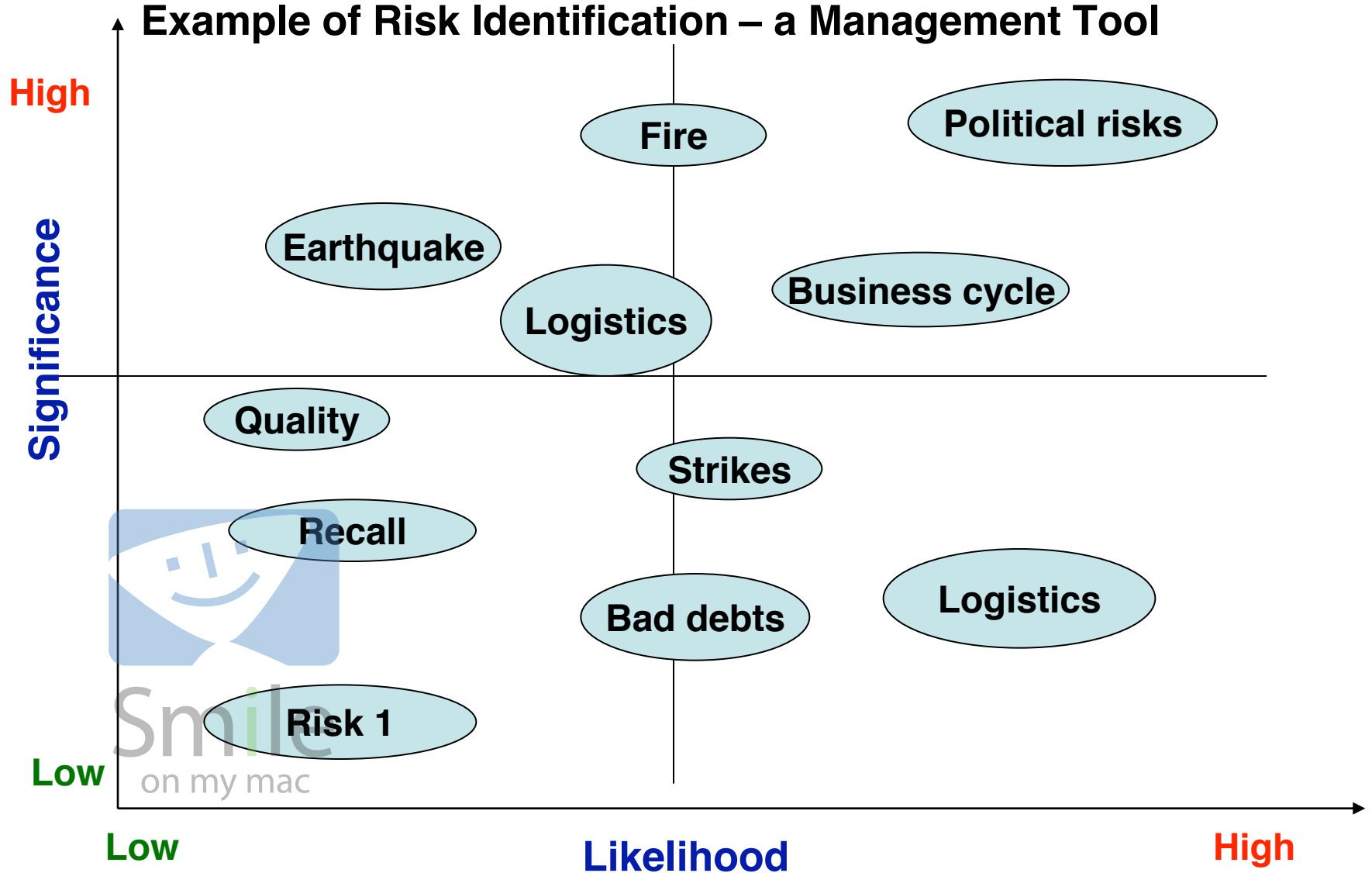
Risk Management: the various steps



Risk Management Process



Example of Risk Identification – a Management Tool



Assess Likelihood of Occurrence

- **A:**
 - The risk **will certainly come up** with limited time (this year)
 - 76-100%
- **B:**
 - The risk **will probably come up** (this year or next year)
 - 51-75 %
- **C:**
 - The risk **will probably come up medium term** (2-4 years)
 - 26-50 %
- **D:**
 - The risk **will probably not come up** or very long term (5 years or above)
 - 0-25 %

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Assess Consequence & Severity

- **A: Severe**
 - Extensive management time spend on solving issue
 - Severe financial consequence
 - Destroys brand value immediately (international brands)
- **B: High**
 - Management involvement on ad hoc basis
 - Some financial consequence
 - Has potential for destroying brand value at short term (international brands) or immediate effect on local brands
- **C: Limited**
 - Limited management involvement
 - Limited financial consequence
 - Has potential of destroying brand value of local brands
- **D: Low/None**
 - No Management involvement, no direct financial consequence in short term

Risk Leads to Following Exposures

- Financial Exposure
- Personal Exposure
- Combination
- Reputational Exposure



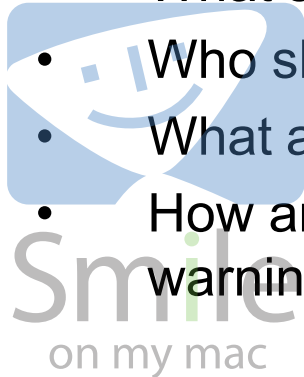
Ownership

Assign responsibilities of risks

- Who (from legal) owns the risk?

Prepare action plans – one for each of top 10 risks

- What should be done?
- Who should do it?
- What are the early warning signals to look for?
- How and who will monitor the risks and look for early warnings?



Goodyear Dunlop Legal Dept.

Legal Risk Management

**Regulatory &
Compliance**

**Contract & Matter
Management**

**Claim & Dispute
Resolution**

**Governance &
Company Secretarial**

**Counseling
&
Training**

**Who & What; Prioritize; Need & Requirements; Outside Counsels
Management; Communication & Reports; Objectives & Measures;
Database; Professional Development; Knowledge Sharing**

What is Expected from EMEA Legal?

➤ Regulatory and Compliance

1. Competition law

1. Direct business/contacts with competitors (including trade associations, OEM business,...)
2. Pricing (discounts/rebates, bonus systems,...)
3. Vertical agreements (block exemption)

2. Environmental law (e.g. sites, REACH)

3. EU Privacy regulations

4. GVT affairs (consumer rights, tire labeling,...)

5. Export control & FCPA

6. Code of Business Conduct

7. Reporting & Certification (activities, claims,...)

8. Fraud

9. Compliance training

➤ Claim and Dispute Resolution

1. Restructurings (including tax, HR, ...)

2. Product liability

3. Insurance (claims notification, broker relationships,...)

4. Dispute resolution / Litigation, Arbitration

➤ Contract and Matter Management

1. Projects

2. Brand positioning & protection (IP, trademarks)

3. Advertising

4. Contract management (database, legal approvals)

5. Standard agreements

6. General terms & conditions (sale & purchase)

7. Distribution networks (retail & franchise networks)

8. M&A & divestitures

9. Outsourcing

➤ Governance and Company Secretarial

1. Shareholders Agreements

2. Company structures

3. Companies set up with competitors

4. Directors / Officers and Company Secretarial duties

5. Delegations of authority, authorized signatures

6. Board-related activities (appointments, governance guidelines, ...)

7. D&O liability insurance

What is Expected from the Business?

➤ Regulatory and Compliance

1. **KNOW THE BASIC LEGAL REQUIREMENTS AND THE COMPANY POLICIES APPLICABLE TO YOUR BUSINESS AREA**
2. **COMPLY WITH CODE OF BUSINESS CONDUCT AND CONDUCT ANNUAL FORMAL REVIEWS**
3. **SEEK FOR TRAINING**
4. **REPORT NON-COMPLIANCE or DOUBTS**
5. **LEAD BY EXAMPLE**

➤ Governance and Company Secretarial

1. **KNOW YOUR RESPONSIBILITIES**
2. **TAKE BOARD MEMBERSHIP SERIOUSLY**
3. **THE LOCAL ENTITY BOARD, NOT THE EXECUTIVE MANAGEMENT TEAM, IS LIABLE TOWARDS THIRD PARTIES.**
4. **THE BOARD IS RESPONSIBLE FOR ALL ACTIVITIES WITHIN THE LEGAL ENTITY**
5. **DO NOT UNDERESTIMATE THE COST AND PERSONAL CONSEQUENCES OF NON COMPLIANCE**

➤ Contract and Matter Management

1. **YOU SHOULD KNOW AND UNDERSTAND ANY COMMITMENT STATED IN AGREEMENTS OR EXPRESSED OTHERWISE (INCLUDING IN E-MAILS!)**
2. **YOU ARE RESPONSIBLE FOR ANY SUCH COMMITMENT**
3. **USE STANDARD AGREEMENTS PROVIDED BY EMEA LEGAL AND, WHERE AVAILABLE, CONTRACT MANAGEMENT SYSTEM**
4. **PROVIDE SUFFICIENT DETAIL AND PUT EFFORT IN ANY DRAFT SUBMITTED TO EMEA LEGAL**
5. **SEEK ADVICE IN THE EARLIEST STAGE OF NEGOTIATIONS**
6. **BE AWARE OF THE IMPORTANCE AND VALUE OF BRANDS AND OTHER INTANGIBLE ASSETS OF THE COMPANY**
7. **ASSESS RELEVANT LEGAL ENTITY AND BUSINESS APPROVER**

➤ Claim and Dispute Resolution

1. **DO NOT TAKE A POSITION ON LIABILITY WITHOUT PRIOR LEGAL CONSULTATION (EARLY INVOLVEMENT OF LEGAL REQUIRED)**
2. **CONSULT AND COMPLY WITH ADJUSTMENT & CLAIMS HANDLING POLICY**
3. **REPORT MATERIAL CLAIMS IMMEDIATELY TO LEGAL AND MANAGEMENT**

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Claim/Risk Description

Plaintiff / Third Party	
Defendant / Legal Entity involved	
Risk areas	
Date of filing / of occurrence	
Court (if any)	
Next step	
Decision	
Option(s)	
Basis for the risk	
Consequences	
Likelihood	
Significance	
Counsel	



Outline of Legal Risk Categories



Regulatory & Compliance	<ul style="list-style-type: none"> Competition law Privacy Export control FCPA Environmental New laws + regulations Diversity of legal systems/Laws Health & Safety Employer/Employee
Contractual	<ul style="list-style-type: none"> JV Contract management system Standard agreements/clauses Contract database contractual liability/risks Contractual policies + guidelines
Operational	<ul style="list-style-type: none"> Corporate memory Product liability Understanding of legal requirements Policies + guidelines Advertising/marketing Sales + distribution JV IP/trademarks
Corporate Governance	<ul style="list-style-type: none"> Roles + responsibilities of BOD Liability exposure of BOD members empowerment to represent the company Maintenance of corporate company books/records
Legal Function	<ul style="list-style-type: none"> Resources/location Outside counsel management Knowledge sharing Communication Prioritization Budget Skills processes/systems

Session 102 - Part 2

Legal Risk Management: Key Performance Indicators



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Is my legal risk management system...

- Reliable?
- Efficient?
- Effective?



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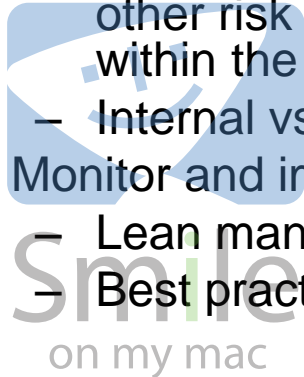
Reliability

- Level of certainty that LRMS adequately identifies and assesses all material legal risks of the company
- Key factors to consider:
 - Clear scope and materiality definitions
 - Reliable information-gathering process (facts and figures)
 - Transparent assessment criteria
 - Periodicity
- Monitor and improve based on:
 - Incidents and litigation
 - Other sources
 - Internal (e.g. audit and other reports)
 - External (e.g. regulatory watch)

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Efficiency

- Level of resources required to organise and operate the LRMS
- Key factors to consider:
 - Clear governance structure and process
 - Easy-to-use/understand standard tools
 - Clear budget/ressources allocation
 - Integrating LRMS in other (information and reporting) systems operated by the Legal Department
 - Potential efficiencies to be gained (or lost) by integrating LRMS with other risk management/internal control systems and processes within the company
 - Internal vs external sourcing
- Monitor and improve processes based on:
 - Lean management principles
 - Best practices within and outside company



Effectiveness

- Extent to which LRMS results in adequate and effective risk mitigation/remediation
- Key success factors:
 - Quality:
 - Substance and presentation
 - Availability/capacity:
 - Clear focus
 - Business involvement
 - Constancy and consistency:
 - Overall risk profile adopted by board/audit committee
 - Day-to-day approach by Legal Department
 - Integration/links with:
 - Relevant other actors/systems in the company (accounting, audit, compliance, insurance,...)
 - Tools:
 - Tracking/reporting/management evaluation
- While:
 - not forgetting the objectives and limits of LRMS (not a substitute for compliance and governance); and
 - properly managing confidentiality risks

