Focus on Japan: Coping with the Business and Legal Aftershocks

Session Four: Focus on Lessons Learned: Applying Japan’s Lessons to Supply Chain and Distribution Contracts

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Michael Mensik
Telephone: +1 312 861 8941
michael.mensik@bakermckenzie.com
Hiromitsu Kato
Telephone: +1 312 861 2544
hiromitsu.kato@bakermckenzie.com
Erin Maus
Telephone: +1 312 861 8202
erin.maus@bakermckenzie.com
Chicago

Sam Kramer
Telephone: +1 312 861 7960
samuel.kramer@bakermckenzie.com
The Extended Enterprise
Resulting Cross-Border Flows …

- Technology
- Components
- People
- Products
- Services
- Data
- Financing
Risk Management
Enterprise Risk Management

Enterprise risk management is a process, effected by an entity’s board of directors, management and other personnel, applied in a strategy setting and across the [extended] enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.
Today’s Focus: Supply Chain

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<th>Strategic Risk</th>
<th>Operational Risk</th>
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<td>Events</td>
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<td>Assessment</td>
<td>Likelihood/impact</td>
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<td>Response</td>
<td>Avoid, reduce, share, accept</td>
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<td>Controls</td>
<td>Design/tests</td>
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<td>Tools/dashboards</td>
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<td>Monitoring</td>
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Third Party Relationships

- Strategic Relationships
  - Core Activity – Keep In-house
  - Required Organizational Expertise: High
  - Potential Vulnerability of Enterprise: High

- Commodity-Based Relationships
  - Financially-Driven Relationships
  - Required Organizational Expertise: Low
  - Potential Vulnerability of Enterprise: Low
Addressing Risk

Minimize
- Redundancy with true diversification

Control
- “Real time” information flows

Mitigate
- Effective business continuity plans

Allocate
- Cost of risk management and exposure for residual risk

Insure
- Coverage and financial reliability of insurer
Business Continuity Planning

- Disaster Recovery
- Employee Safety
- Systems Back-Up
- Emergency Communications
- Step-In Rights
- Contingent Relocation
- Transition Assistance
- Springing IP Licenses
- Governmental Permits/License
- Import/Export
- Product Safety/Recalls
- Creditor Pre-Arrangements
Negotiated Risk Allocation

- Representations/Warranties
- Indemnities
- Limitation of Liability
- Legal Compliance Obligations
- Force Majeure
- Termination Rights
Residual Exposure

- **Reputational Damage**
  - Adverse publicity

- **Shareholder Value**
  - Loss of market capitalization

- **Credit Rating**
  - Standard & Poor’s ERM rating

- **Governmental Investigation**
  - Supervisory bodies
  - Politically charged advocates

- **Legal Liability**
  - Corporate duties
  - Tort, Misrepresentation
CLE Forms

- California CLE Record of Attendance
- California CLE Evaluation
- Florida CLE Record of Attendance
- Illinois CLE Record of Attendance
- Illinois CLE Evaluation
- New York CLE Attorney Affirmation
- New York CLE Evaluation
- Texas CLE Record of Attendance
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