Culture of Ethics and Compliance
FCPA and Global Bribery Challenges
Workshop

Governance, Risk, and Crisis Management

Clinton O. Allen, Ethiprax Associates, LLC

Session Objectives

- Establish common understanding of terms
- Examine the boundaries of terms, such as Governance, Risk, Crisis and more
- Not about semantics --- just so we all speak the same language

Governance

- The act, process or power of exercising authority or control in an organizational setting. (University of California, Office of the President, Adapted from and used with permission of the Ethics Resource Center, 1747 Pennsylvania Avenue NW, Suite 400, Washington, DC, 20006 (www.ethics.org) October 2006)

- Corporate governance specifies the rights and responsibilities among the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making. (European Central Bank, 2004, Annual Report 2004 ECB, Frankfurt, Glossary).

Risk

- Risk: the probability or likelihood of losses relative the expected return on an investment.
  (Paraphrased from: The Economic Times, 2013)

- Risk = $\dfrac{\text{\$\$ Impact of an unintended event}}{\text{Probability of its occurrence}}$

- Opportunity = the *opposite* of Risk (i.e., - Risk)

Crisis

- A crisis is a change, which may be sudden or which may take some time to evolve, that results in an urgent problem that must be addressed immediately.

- Although crisis events are unpredictable, **they are not always unexpected**.

Think: tidal wave

Governance – Accountability for Compliance Assurance

- **Accountability**: the unavoidable duty to explain the ways in which an individual or group has carried out, or caused to be carried out, the obligations placed upon him or them by contractual, ethical or legal requirements.
- While the discharge of compliance performance may be delegated to others, **the obligation** to account for the actions **cannot be delegated.**

Responsibility for Results

- Responsibility lies with those exercising material control over processes designed to achieve business objectives
- Those responsible execute, do, make it happen
- Responsibility is often shared or related to the performance of others
- But those responsible own **both** what happens, and what fails to happen in an effort

Compliance responsibility : the same as any other aspect of business performance

Processes to Achieve Results

- Processes: documented or customary methods for conducting business
- They help to achieve results
- Processes can create liability --- what happens when we do not follow processes, and things go wrong?

Ethics/Compliance Requirements ➔Policies ➔Procedures ➔ **Processes** ➔ **Results**

Transparency: Fostering a Culture of Compliance

- Sharing information, and acting in an open manner.

- **Transparency** allows those affected by business decisions to know not only the facts and figures, but also the processes. It supports an ethical duty to act visibly, reasonably and in the interests of stakleholders. (Paraphrased from the Transparency International website, 2013).

Risk Management

Risk management has four main components:

1. **Assessing** risk
2. **Developing response options** such as accepting and monitoring risk, guarding against, preventing/reducing, or insuring against (transferring) risk
3. **Selecting** among options
4. **Implementing decisions** to manage assessed risk.

Compliance Risk Assessment & Business Goals

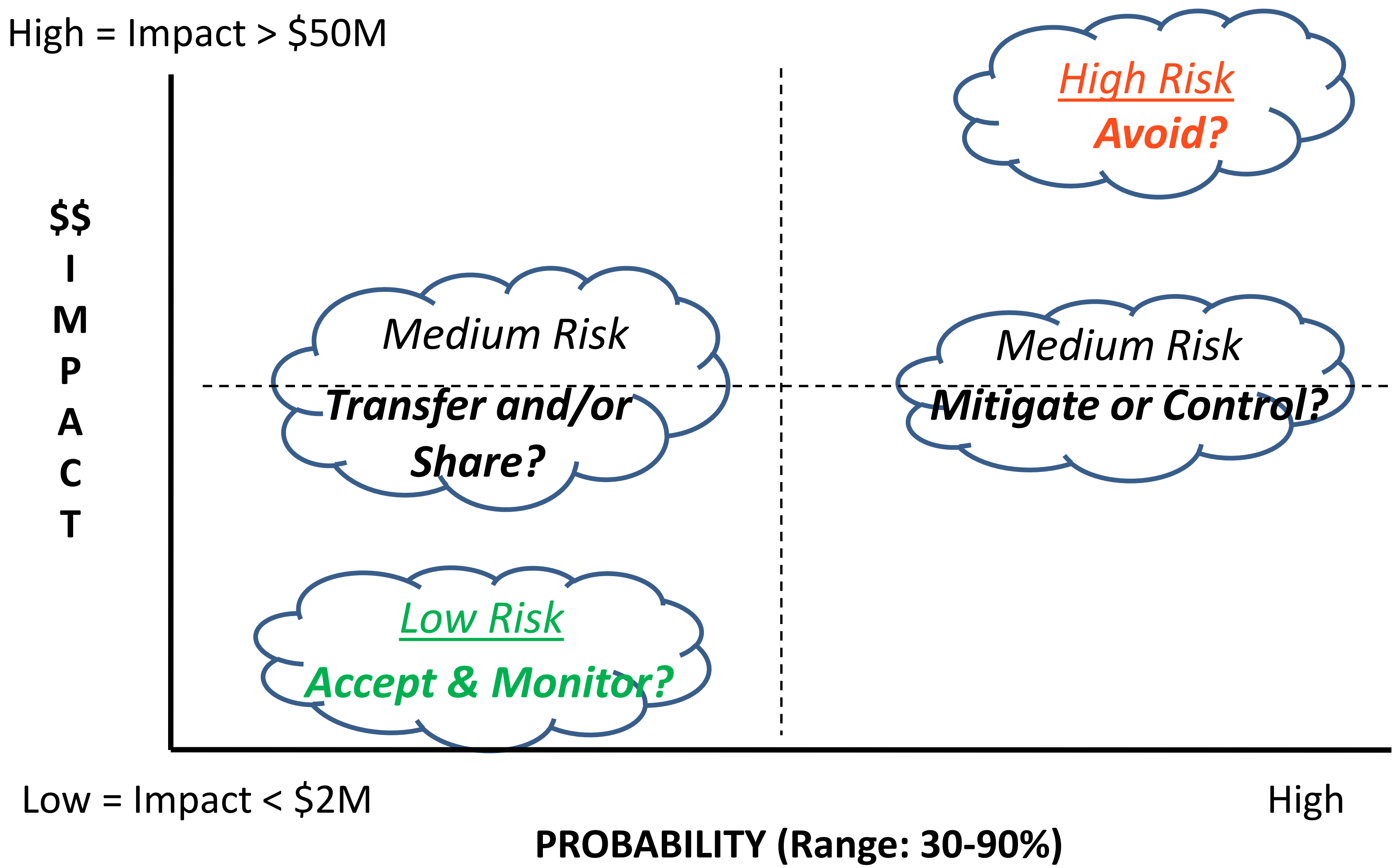
Risk Assessment:

A process for assessing and integrating, or rejecting judgments about potential adverse outcomes. A compliance risk assessment should input the risk-adjustment of business goals, and estimated outcomes

(Paraphrased from

Effects of European Union Accession, Part 1: Budgeting and Financial Control, OECD SIGMA Paper No. 19, March 1998, Appendix 3: List of Useful Terms)

Estimate, Monetize, Communicate



Plan to Mitigate – Responding to Risks

COSO (Committee of Sponsoring Organizations of the Treadway Commission) and other authorities recognize four basic risk management strategies when considering risk mitigation

Accept: monitor risk and advise leadership of changes
Share: partner, purchase insurance or gain backers
Control: implement procedures, policies
Mitigate: raise prices, renegotiate, exit business

The right strategy for the situation depends on the organization's risk appetite, tolerance, and attitudes

Planning for the Unexpected

- Compliance Risk Assessment goes only so far, the Unexpected always occurs!
  - Emergent or recently enforced regulation
  - Acquisition/Divestiture
- How do we plan?
  - Estimate and budget a reserve
  - Buy Insurance or self-insure
  - Maintain response capacity – be organizationally tolerant to change and ready to change direction

Respond When Unexpected Events Materialize

- Gain traction by executing the plan: avoid panic
- Have a bias for action, modify plans on the fly
- Communicate, communicate, communicate
- **But no Crying Wolf**: communicate situations in business perspective.
  - What is material to business results?
  - What actions best preserve strategic options?
  - What increases compliance risk to the organization, or personal liability?

Crisis Management

- The **identification** of acute, material threats,and **the methods used to deal** with such threats. Due to the unpredictability of global events, organizations must be able to cope with the potential for drastic changes to the way they conduct business. Crisis management **requires decision making within short time frames**, often as events develop. To reduce the potential for missteps in crisis management, organizations plan and conduct crisis exercises.

- **Unlike risk management**, which involves planning for events that might occur in the future**, crisis management involves reacting to events underway**. An oil company for example, may have a plan in place to deal with the possibility of an oil spill, but if such a disaster actually occurs, the magnitude of the spill, the backlash of public opinion and the cost of cleanup can vary greatly and may exceed expectations.

The Value of a Plan

Crisis Plan: sometimes referred to a *Business Continuity Plan* or *Disaster Recovery Plan*. The aim of the plan is to ensure actions taken during a crisis reduce:

- business interruption,
- loss of business,
- loss of market share (if relevant),

And that actions are ethical and in legal compliance.

Crisis Recognition

Crisis recognition is a criteria driven process for:

- Identifying a major developing issue or acute, material adverse situation
- Alerting the organization as appropriate
- Coordinating stakeholder response as necessary

The enemies of crisis recognition are **denial** and **lack of transparency**

Crisis Response

- Crisis management structures are often created to coordinate crisis management. Such structures may consist of crisis leadership teams, command centers, special equipment, and outside consultants.

- More than the Crisis Plan itself, **drills and prior coordination** establish an organization's **ability to respond** well to a crisis.

After Action Reviews: Key to Learning

- An After Action Review is a process for gathering crisis respondents after the event has been addressed
- The AAR is led by the person with ultimate authority for the success or failure of the crisis response
- The AAR's purpose is to document what worked well and what should have worked better
- It cements learning and enables an improved response to the next crisis

Questions or Comments?

Clinton O. Allen
Ethiprax Associates, LLC
510-913-0799
covertonallen@gmail.com

Thank You