

## How to Identify Business Processes to Review for Legal Risks

### Business Processes: How Work Gets Done

***If you ask ten people in your company how the work gets done, you'll probably get ten different answers.*** People have their own perceptions of how processes work and have their own comprehension of how tasks flow through the organization. Each person can explain only one or a few steps of the process. Thus, few people see how the whole process works and whether legal risks arising that are being managed effectively.

A **business process** is a series of steps, managed by one or more specialist teams (from within or outside the company) with defined functional responsibilities, to produce a specific product, service or result.

### Clients Often Know More Than They Volunteer

There are various ways you can make it easy for clients to help you identify business processes that will benefit from review by the legal team.

#### 1. Informal Discussions

One approach is to simply ask clients from various parts of the business unit you support to identify processes that they know about that might fit the selection criteria. Of course, you'll want to share the criteria you are using and invite them to add their own criteria.

- See section below, "**Criteria to Select Business Processes for Review**"

You'll also want to give them examples of the types of risks related to legal issues that would be considered in the prevention review so that they are clear on the relevance of this project to your role as legal counsel.

**[Hyperlinks: [Identify Legal Risks in Business Processes.doc](#) and [Identify Legal Risks in Business Processes.ppt](#)]**

1. It would not be surprising to learn, that upon discussing this with seven to ten business clients, the same two or three business processes are identified by a majority of them.

#### 2. Client Team Meetings

You could also convene a meeting of outside counsel and business clients from various parts of the organization to have a more formal discussion about identify business processes that should be considered for a review.

There are several advantages of having such a meeting. You can set the stage by reviewing the concept of preventive law and getting across the point that preventive law is a key priority for the law

department. This in itself is a useful way to stimulate the group to see the law department as an ally in avoiding costly problems.

You can also review the categories of potential legal risk problems and discuss the types of questions that would be considered when reviewing a business process. This will help to strengthen their understanding of what a preventive law review includes and help them to identify business processes that are likely candidates.

2. One objective of this meeting is **to identify a short list of the business processes that may benefit the most from review**. (You may need to discuss the list further with people directly involved in the processes, as well as with any other lawyers who have recently worked with these specific clients.)

### Examples of Business Processes

1. Adding the names and addresses of new customers to marketing databases
2. Recruiting and hiring new employees
3. Tailoring and selling services to customers
4. Closing accounts of unwanted customers
5. Disposing of retail locations that are no longer wanted by the company
6. Developing and participating in joint ventures
7. Buying a business unit from another company

### Examples of Business Processes in the Law Department

- Outside counsel retention
- Document management and filing
- Staff recruiting and hiring
- Technology training
- Annual bar association dues payments

3. A second objective of the meeting is **to identify clients who would be willing to work with you on the review project**. It is certainly worthwhile to have one or more business colleagues involved in the project who can help you learn exactly how the process works and who the key managers are for each step in the process.

### 3. Meetings With Internal Audit and Compliance

Discussions with these departments can be especially helpful. They will be able to identify business processes where they may know of or be concerned about the potential for unmanaged legal risks. In addition, they will be able to tell you the business processes they have not reviewed recently. (Most Audit and Compliance units review business processes on a rotating schedule so that they systematically address key areas over a multi-year schedule.)

## Key Points About Processes

- **Steps in a business process may be taken sequentially or simultaneously.** For example, a lawyer may review a contract for a customer at the same time the sales person is working out the pricing for the transaction, or the lawyer may wait until the pricing arrangements have already been negotiated.
- **The "output" (or "result") from each step provides the "input" for the next step to be taken.** For example, once the lawyer approves the contract and the customer signs it (an "output" from the sales process), then the customer's order is given to the factory or service team that will fill the order (which is an "input" for the order fulfillment process).
- **Inputs for any given step may come from outside the company or from a company unit.** For example, when negotiating the contract, the in-house lawyer may need to use outside counsel and perhaps even consulting experts to be able to complete the legal review of the contract.
  - **Steps in the process are usually broken down into numerous sub-steps, each with its own inputs and outputs.** For example, when the contract is in the law department for review, it may need to be reviewed first by the intellectual property lawyer, then the securities lawyer and then by the investments lawyer, as would be true in with a joint venture agreement for an insurance company to partner with an internet company to sell financial services via the internet. In this way, the "legal review" step is really made up of several sub-steps.
  - **Every business process provides outputs that are used by other business processes.** For example, after the sales process is completed, the information about the sale is provided to the various processes that fulfill customer orders, manage company financial accounting and manage customer relations.

## Criteria to Select Business Processes for Review

Business processes that may be good candidates for review would include those that are:

- **Critical to the business and have been in place for a year or more.** Processes that have been established recently with the participation of lawyers may be less likely to need review unless there have been changes in laws and regulations. However, you may still want to verify that legal advice given about various procedures is actually being followed as intended.
- **Part of recently acquired business units.** The business units may take some time to modify their processes to comply with your company's legal policies and standards. For example, these processes may be using outdated and inadequate contracts or fail to adequately protect your company's intellectual property.
- **Affected by laws and regulations and/or customer expectations that are changing.** Many processes are affected by changing laws and regulations, particularly those that involve a global supply chain or overseas manufacturing.

- **Have given rise to undue litigation at your company or others.** You may need to review the specific allegations of lawsuits carefully to trace back to the specific business processes that gave rise to the suits. For example, it may not be readily obvious from the allegations that the real problem leading to the lawsuits was that the nature and scope of information flowing to salespeople and customers was not adequate or timely even though some information was provided.
- **Have generated complaints from key stakeholders.** A pattern of complaints from employees, investors, customers, suppliers or community neighbors generally points toward problems that need to be addressed.
- **Involve third party contractors or foreign subsidiaries or suppliers.** Supply chain processes are particularly vulnerable to legal problems because of the possibility that one or more teams in the chain do not have a complete understanding of the "big picture" of how their work and products fit in to the total system. Inconsistent standards and incomplete information or documentation make these processes particularly susceptible to poor follow-through on legal advice and obligations.
- **That involve disciplines where lawyers have not been traditionally expert in understanding how they work, such as financial operations and foreign exchange.** Some business processes have been undergoing rapid change because of deregulation and the rapid evolution of global commerce. As these processes have evolved, there is a greater need for significant legal expertise to ensure that the legal risks inherent in the processes are managed appropriately.