

## How to Identify Legal Risks in Business Processes

When you decide to review a business process to identify potential legal problems, there are a number of risk categories you can focus on to get started.

Outside counsel can be especially valuable in providing insights about the ways that legal risk is arising for other companies through litigation and regulatory actions. If possible, representatives from law firms should be considered for participation on any internal legal risk management committees or review teams that are established.

- Outside counsel will be especially careful not to divulge confidential information about other clients, but their general guidance about risks to identify and mitigate will help to ensure that key developments, such as relevant court decisions, are not being overlooked.
- In-house and outside counsel participation with clients is also a very effective forum for informal cross-training. In-house lawyers and clients may learn better how to interpret business operations as seen through the eyes of counsel working with other companies. Outside counsel will learn more about the business operations of the clients they are supporting through their regular work.

### 1. Application of Current Laws and Regulations

- Does the process itself conform to current legal requirements in such areas as use (or disposal) of materials, recycling, disclosure, privacy, warning notifications (for employees and customers), packaging, and other topics?
- Is the process part of a supply chain such that the laws and regulations of multiple countries apply and possibly conflict?
- Are the clients involved in the business process receiving timely notification of changes in laws and regulations as well as appropriate legal advice about meeting the new requirements?

### 2. Version Control

- If the process involves multiple versions of contracts, ingredients, notifications and so forth, are the appropriate versions being used?
- Are the employees involved in the process adequately trained to make decisions about which versions to use in each situation?
- Is there adequate tracking on what versions are used in each situation so that appropriate records can be produced in the event of litigation?
- Is there an opportunity for the law department to streamline the process by developing a new standard that can be used by multiple business processes?

### 3. IP Protections

- Is the company's intellectual property used or produced by the process adequately protected through patents, copyrights and trademarks?
- Are any required notifications (such as trademarks, service marks or patent numbers) included

- on or with the products or materials produced by the process?
- Are appropriate steps being taken to protect the confidentiality of proprietary information used in the process, such as labeled and locked filing cabinets and appropriate protections on computer systems?
- Are third parties involved in the process appropriately bound by confidentiality, secrecy and noncompete agreements?

#### **4. Transparency and Sustainability**

- Are any activities in the process subject to reporting requirements as covered by the company's policies on transparency, sustainability and corporate governance or the company's code of ethics?
- If there are such activities, are the activities being properly reported?

#### **5. Bottleneck Problems**

- Are any legal steps being set aside or truncated because the people managing the process have too little time to complete these steps properly?
- Is the Legal function inadvertently creating problems because response time is too long in meeting the needs of the process deadlines

#### **6. Client Awareness Problems**

1. Are the business people properly trained to understand the legal issues related to the process so that they know how to properly complete any steps related to these legal issues?
2. Do they know when they should ask for legal advice and how to do so?

#### **7. Messaging and Communication**

- Are all the people involved in the process receiving appropriate messages and communications informing them of the "do's and don'ts" that apply to their roles?
- Are there any key individuals or groups of people who are not actually receiving these communications due to faulty lists or addresses?
- Are these messages and communications truly conveying with clarity what is expected and what they need to know?
- Do the recipients of the communications understand what they are being told? Or, are they confused and thus set aside the communications out of frustration?

#### **8. Appropriate Follow Through to Achieve Outcomes**

If legal documents (such as standard agreements, notifications, etc.) are used in the process, are the business people actually using the most up-to-date final versions provided by the law department? Are transactions in the process being tracked appropriately so that events can be reconstructed in the future if there are required regulatory reports or there is a legal challenge? If the process involves transactions where data is expected back from suppliers, customers or

employees, are these transactions tracked to ensure that the required responses are received in a timely way?

If data is required to be provided along with the results of the process (such as batch numbers for products produced, or certification of ingredients in the case of food products) is this data being provided in the required format in a timely way?

Is data required for any legally required government filings backed up offsite in a secure fashion?

Are historical records from the process archived securely in the event of litigation?

If contracts are involved in the process, are “significant events” in the contracts being acted on properly, such as renewals, expiration of warrants or options, disclosure and reporting, payments and so forth?