Proposals for a Definition and Map of Legal Risk

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The mapping of legal risks is founded on a single major idea: it must be based on the potential consequences of legal risk in terms of value destruction, evaluated in three registers: strategic value (achievement of strategic objectives, reconsideration of a competitive advantage over the longer term, effects on the reputation of the company), financial value (costs, loss of profits over the medium or longer terms), and institutional value (impact on relationships with institutions and government authorities, as well as with such civil-society institutions as nonprofits, consumer associations, and so on). The identification of legal risks is the most complex phase. The basic tool for detection of legal risk is the definition of legal risk itself, which must be rigorous and practicable from an operational point of view. In this respect, we have come up with a "definition/tool" to which are inherent the principles of its use: Legal risk arises from the conjunction of a legal norm and an event, with either one or the other (or both) being characterised by a degree of uncertainty. This conjunction of a legal norm and an event in a context of uncertainty will have consequences likely to affect the value of the company. This proposal can be summed up in a three-part recommendation, the formulation of which is of interest in terms of communication: Look for the legal norm, look for the event, gauge the degree of uncertainty weighing on one or the other or on both: the norm, the event.

Our method of mapping legal risks is founded concretely on a continuum encompassing the following phases:
1. starting from the value chain of the business under consideration
2. a/ identifying the legal norms involved in each part of the value chain
   b/ evaluating, in keeping with particular coding, the degree of legal uncertainty presented by the identified norm
3. a/ identifying the factual events that may intersect the legal norm under consideration
   b/ evaluating, in keeping with specific coding, the factual degree of uncertainty presented by the identified event
4. identifying legal risk by crossing the results of phases 2 and 3
5. evaluating the impact of legal risk on value.

This process was tested from an operational point of view (and can thus be illustrated) by going through the abovementioned phases—that is, 1. -> 2. a/ b/ -> 3. a/ b/ -> 4. -> 5. This process was explored in the other direction—that is (as the order of the phases must then be revised): 5. -> 4. -> 3. a/ b/ -> 2. a/ b/ -> 1.

In other words, the proposals above mean that mapping legal risk can be done either forward or backwards. This leads us to propose two methods—complementary methods or alternatives—of mapping legal risk: the forward identification process, the advantage of which is its analytical nature, and the backwards identification process, the advantage of which is that it promotes the ranking of legal risks.
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Introduction

Risk management, in the broad sense of the term (ERM or enterprise risk management), is now a major concern, so much so that it has become a matter for top management and boardroom discussion. The past decade has seen widespread creation of rules for the governance of publicly traded companies—as well as other companies—in an attempt to ensure ethical practices and to promote secure performance (for example, the French financial security law—LSF). There is no longer a single sector or company department for which risk and risk management are not a concern. Corporate counsels are no exception to this rule: a LegalEdhec Research Centre study of the perception of the law and of corporate counsels by executive managers shows the latter consider risk management one of three major reasons for resorting to corporate counsels. As for general and corporate counsels, they consider risk one of the key elements of corporate legal culture. Although they emphasise they use law to manage risk more than legal risk itself, the result of these studies confirm the conclusions of earlier studies. Thus, in 2007, the law firm Ernst & Young ranked risk management at the top of the changes observed by general counsels in the performance expectations sought of them by executive management, and for 40% of these general counsels anticipating and managing legal risks was the most important issue for the two following years.

All the same, the notion of legal risk has been somewhat neglected by the academic literature. Moreover, the notion is defined in multiple ways, and it can have different meanings even in a single company. Finally, legal risk is not defined by the law, although some European or national laws, some more clearly than others, refer to it.

So it seems necessary first of all to propose a practical and operational definition of legal risk. The creation of a common standard—at the very least in a single company—is the indispensable prerequisite to any mapping and management of legal risk.

If one believes that mapping is “an important phase in preparation for risk management decisions” (AMRAE 2010, 22) and the legal risk is specific as a result of its cross-sectional nature, the utility of mapping legal risk can hardly be doubted. It is the mapping method that remains to be determined. Mapping legal risk cannot be limited to an approach pertaining, for example, to a classic dichotomy of the “criminal risk/civil risk” type or to a categorisation by field (or branch) of law (competition law, social law, corporate law, and so on). Or it must be accepted that this cartography will be of use only to lawyers, which reduces the utility of it considerably, or even wipes it out altogether if it is meant to be part of enterprise risk management.

So we propose a method of mapping legal risk that is founded on several principles:

- a definition of legal risk meant to serve as a reference
- coding of the two components of legal risk as those components are identified in our definition
- mapping of legal risk along the length of the value chain
- the taking into account of the value destruction—of three types of value—to determine the seriousness of the legal risk.

This method was developed and tested by drawing on the case study of a large retailer.

2 - Law n° 2008-649 of 3 July 2008 complements the LSF of 1 August 2003 by requiring that annual reports of listed companies deal with risk management procedures. See also Ordonnance n° 2008-1278 of 8 December 2008.
3 - A study done by C. Roquilly and M. Santos and presented at the first Business & Legal Forum, held in Paris on 14 and 15 October 2009.
4 - A study done by C. Roquilly and M. Santos, in partnership with the AFJE. See Roquilly (2010).
5 - See http://www.ey-avocats.com/FR/fr/informations.aspx?c=-000-000-000.00-000-000-000-000-000.
Devising a mapping method requires, in the first place, a clear definition of legal risk, a definition on which the entire process will be founded. In the company, this definition will also be a reference shared by all those who contribute to the map of legal risk. In this first part, we propose a definition and use it to code legal risk. This coding will enable us to map this risk and to identify the parties in the company that should be involved in identifying it, analysing it, and dealing with it.

1.1 Proposed Definition of Legal Risk

The term legal risk(s) is widely used, especially by corporate counsels themselves, and is often incorporated into legal texts, but in neither instance is it seriously defined. The difficult of defining the notion probably comes from the multidimensional (and cross-disciplinary) essence of any risk: it is not only legal or financial or commercial or reputational... It is often, at the same time or not, legal and financial and commercial and affecting the company's reputation. It is not for all that any less necessary, for operational purposes, to establish with precision the bounds of the notion of legal risk.

In France, the first analyses of legal risk (in the mid 1980s) provide no real definition: they are essentially taxonomic undertakings, highly descriptive, often relying on empirical observation or even intuition: the register of these few studies is that of the classification of legal risks and they are of but little practical utility; legal risks are not really defined; rather, they are illustrated by varied mentions of the fields of the law to which they pertain: criminal law, tax law, social law, economic legislations, corporate law, and so on (Hirsch and Mazeaud 1984; Dupichot 1986; Cailloux, Bidaud, and Bignon 1995). Most subsequent doctrinal contributions (Trzaskowski 2005; McCormick 2006; David 2006), almost all non-French, often propose an excessively restrictive or partial definition (or a definition of limited practical utility) of legal risk; they are interesting syntheses from an intellectual point of view but difficult to put into practice if the aim is to map the legal risks a company is exposed to.

At the same time, the rise of the notions of corporate governance, transparency, and internal oversight, as well as of obligations to comply with regulation, has led to industry- (banks and financial institutions) and role-specific (internal control) definitions of legal risk. The resulting definitions, regardless of their importance to their particular contexts, are excessively elliptical, reductive, and artificial: they do little to help create a comprehensive approach to the notion of legal risk.

Two significant contributions targeting the definition of legal risk to enable real management of it have nonetheless drawn our attention and are the foundation of the definition of legal risk we propose:

• Verdun (2006): The management of legal risks, which defines legal risk as the result of an encounter between a legal norm and an event, an encounter giving rise to measurable consequences

• Mahler (2007): Defining legal risk, which makes three useful proposals: a risk is of a legal nature if its source involves a legal norm; legal risk is the manifestation of the potential damage caused by the norm; legal risk, as a species, takes one of its fundamental elements—uncertainty—from the genus risk.

The combination and expansion of these two approaches enables us to propose the
following definition of legal risk: Legal risk arises from the conjunction of a legal norm and an event, with either one or the other (or both) being characterised by a degree of uncertainty. This conjunction of a legal norm and an event in a context of uncertainty will have consequences likely to affect the value of the company. It is also possible to propose a more concise version of this definition: legal risk arises from the conjunction of a legal norm and an event, with either one or the other (or both) characterised by uncertainty, having consequences likely to affect the value of the company.

Putting the notion of uncertainty (legal and/or factual) at the heart of the definition of legal risk is compatible with ISO 31000 (published in 2009), which defines risk as "the effect of uncertainty on objectives." What these two types of uncertainty encompass is still to be defined, which brings us to the coding of legal risk.

The figure below depicts this notion of legal risk.

The Components of Legal Risk

1.2 Coding of Legal Risk

When it is a matter of identifying the source of the legal risk, a simple formula may do: Look for the norm, look for the event, gauge the degree of uncertainty weighing on one or the other or on both: the norm, the event. These dimensions are to be explored jointly to identify legal risk, as the uncertainty factor is distributive (it applies to the norm—legal uncertainty—and/or to the event—factual uncertainty).

As for the notion of legal uncertainty, it is sufficiently broad to embrace both a general norm (treaty, law [parliamentary statute], government regulation, and, to a certain extent, case law) and a norm of relative character (contract, custom, subjective rights held by third parties or by the company, lower-court rulings, and so on). We do not mean to enter the debate about the nature and the bounds of the rule of law, but the reference to the norm may include rules whose legal power is arguable but that are enforced at the company as a result of obligations in the industry in which it is active (recommendations from supervisory authorities and other frameworks of reference) or that it imposes on itself or adheres to voluntarily (codes of ethics, for example). On this score, we believe that it is up to the company to take a stance, depending on its approach to legal risk, on bringing within the purview of the legal norm everything pertaining, in the strictest sense of the term, to soft law. In our method, we take a simple dichotomy: external legal norm (Ext.LN) and internal legal norm (Int.LN).

As far as legal uncertainty is concerned, we propose examinations of the following cases (several of which are intersecting):

- The uncertainty linked to the contents and interpretation of the legal norm:
  - the need to interpret the norm (the obscurity of the law or contract), absence of an unequivocal interpretation, doctrinal and/or jurisprudential differences, contradictory laws, contracts, or clauses.

7 - This definition draws on our earlier work (Collard 2008; Collard and Roquilly 2010).
Définition et codification du risque juridique

- la complexité de la norme ou de la combinaison de normes applicables
- les vacuums juridiques
  - L’incertitude liée à la qualification juridique
    - Difficulté d’application de la norme, standard vague ou élastique
    - Difficulté d’établissement des éléments factuels en fonction des critères d’application de la norme.
  - L’incertitude liée à l’application de la norme par la cour
    - La marge de l’interprétation juridique, standard vague ou élastique, fluctuations ou incohérences dans la jurisprudence.
    - L’imprévisibilité des sanctions (montant de la peine ou des dommages, par exemple).
  - L’incertitude liée au fléchissement de la norme
    - L’absence de stabilité de la norme, changements fréquents ou attendus à la norme.

Il y a trois niveaux d’incertitude juridique: bas, moyen et élevé (niveaux 1, 2, 3). L’avantage de cette échelle à trois niveaux est la simplicité de son utilisation (une simplicité qui peut être renforcée graphiquement par l’utilisation d’un code de couleurs classique: vert, orange, rouge, par exemple).

L’incertitude juridique est codée de la manière suivante:
- LN = norme juridique
- Ext.LN/Int.LN = norme juridique externe ou interne
- Sous-catégories (spécialisation de la norme juridique): par exemple, Ext.LNL = norme juridique externe, Ext.LNL = norme juridique externe législatif, Int.LNL = norme juridique interne législatif
- Dernier niveau de catégorisation en fonction du degré d’incertitude (voir exemple dans l’annexe 1).

La détermination de l’incertitude juridique, la composante principale du risque juridique, repose naturellement, sur l’expertise et la compétence des juristes.

As for factual uncertainty, it shows the fact that the event (action, decision, or mere fact) or combination of events that generates it is itself subject to uncertainty. The typology we propose is based on the origin of the event, external or internal to the company.
- External: client, supplier, partner, competitor, the public, the government
- Internal: individual (employee, manager, executive, shareholder) or collective (the company, executive or overseeing body, group of shareholders).

We have here the same coding method as for legal uncertainty:
- E = event
- EExt./EInt. = external event or internal event
- Sub-categories (specification of the source of the event): EExt.CL = external event client (degree of uncertainty linked to the relationships with a client, especially to the client’s financial situation, the client’s tendency to bargain and to compromise rather than to go to court when it considers that its rights have been violated, the client’s tendency to maintain its contractual ties with the company or the need for it to maintain such ties [economic dependence], the interest of the client in making negative comments about the company or its products/services or its willingness to do so)
- Final level of categorisation in view of the degree of uncertainty (see example in appendix 2).

The evaluation of factual uncertainty, the second component of legal risk, is often the purview of an expertise external to the legal department of the company. So identification of legal risk will depend on the quality of processes and on ties between lawyers and non-lawyers. The lawyer is not the sole proprietor of legal risk; his work must be done in a context of co-ownership of this risk.8

8 – To use Verdun’s (2011) expression.
Once legal risk is defined and coded, the next tasks are combining the two components of this risk and providing a comprehensible depiction of them that can be shared throughout the company—that is, a map of legal risk.
The maps of legal risk that we have seen fail to convince. Those based on the “probability/impact” couple seem largely unrealistic, insofar as legal risk cannot usually be probabilised in the mathematical sense of the term. Likewise, maps of the “risk radar” type enable, in our view, very little visibility. The one that seems to us most easily shared throughout the company takes a “risk portfolio” approach, identifying the major categories of risk and the business units concerned.

To draw a model for a map of legal risk, we believe that two major considerations must be kept in mind. For one, identification of legal risk is of interest only if its potential impact on value is measured or at least estimated. For another, the usefulness of the map depends greatly on its legibility to all parties involved, not just to lawyers.

2.1 A Map of Legal Risks Based on the Value Chain

Introduced by Michael Porter (1985), the concept of the value chain makes it possible to break down the work of a company into a series of fundamental operations, distinguishing, if necessary, between the organisation’s primary activities and its support activities. From this foundation, it is possible to identify the set of legal norms (legislative, regulatory, contractual, and so on) that are involved in each link of the value chain, as well as the “events” to bring together. Although the value chain model has come in for criticism, in particular for its apparent unsuitability for service businesses, it is still a widely used tool, and its depiction of the sequence of activities seems to us of interest as a tool for mapping legal risk. Applied, for example, to the distribution value chain of a large retailer, our method of identifying legal risk can be depicted in schematic fashion (see below).
Legal risk is mapped and numbered on each link—and on each sub-link (not shown)—of the value chain. By way of illustration, for the link “manage logistics”, there is a “manage warehousing” sub-link. A “security and salubriousness of warehouses” legal risk can be identified. As it happens, a retailer that does business in several countries deals with a great variety of rules that depend on the areas (local and national) where these warehouses are located. Here, legal uncertainty can arise from the multitude and complexity of rules covering safety and pollution—noise pollution as well as any other kind—and salubriousness. Factual uncertainty can arise from specific features of the natural environment and of the conditions in which the warehouse is run. So this risk should appear in the “right spot” on the value chain. The operational usefulness seems to us to be of interest: the legal risks common to several links or sub-links can be hyperlinked; it is possible to enter the map either through a particular legal risk or through a link in the value chain; each role in the company can easily identify the legal risk it shares ownership of.

The impact of legal risk is identified at the end of the chain (see figure above). Drawing on several studies of value, we believe that the value susceptible to being destroyed should fall into one of three categories: financial value, strategic value, and institutional value (Jokung-Nguéna et al. 2001; Fustec and Marois 2006; Aliouat 2008).

Financial value—There are different methods of computing financial value, and our aim is neither to review them nor to determine the most suitable method. From a methodological point of view, the impact of legal risk in terms of destruction of this value can be sorted into one of three levels: light destruction (the financial value destroyed is less than X), medium destruction (the financial value destroyed is between X and Y), and heavy destruction (the financial value destroyed is greater than Y). In any case, it is up to each company to set its own threshold of tolerance, that is, the figures for X and Y. Several causes of financial value destruction can be determined, among them:

- penalties, monetary sanctions
- compensation for damages caused
- damage to a material asset
- damage to an immaterial asset
- regulation (in the broad sense) leading to additional costs
- etc.

Strategic value refers to the use of strategic resources with a view to improving the company’s market positioning. It refers to the acquisition, preservation, or loss of a competitive advantage over the long term. From a methodological point of view, the impact of legal risk in terms of destruction of this value can be sorted into one of three levels: light destruction (corporate strategy is not, in principle, called into question), medium destruction (corporate strategy is called partly into question, thwarted, or made more difficult), and heavy destruction (corporate strategy is seriously called into question or thwarted). The evaluation of each level is tied closely to the strategy of the company and to its strategic resources, and it is not possible to formulate “universal markers”. By way of illustration, if the strategic aim of a company is to expand the franchise model in certain countries, loss of strategic value could arise from any event affecting the ability of the company to use franchising as a distribution channel: stricter regulation; destabilisation of franchising contracts; absence of reliable franchisees.

Institutional value refers to the quality of the company’s ties with authorities
and government institutions—in particular, supervisory authorities—and with such civil-society institutions as NGOs, consumer associations, and labour unions, as well as to the degree of mutual trust resulting from them. From a methodological point of view, the impact of legal risk in terms of destruction of this value can again be sorted into one of three levels. When it comes to gauging the ability of the company to meet or even exceed regulatory standards or to measuring the quality of its institutional ties, this type of value destruction is usually revealed in non-compliance in such fields as antitrust legislation, corporate governance, internal oversight, the struggle against corruption, or the respect of human dignity at work. Several factors—measurable, in principle—can increase this risk and the level of value destruction: the company’s compliance history, the existence of compliance programmes, the existence of a code of ethics, commitments made by the company, a discrepancy between company communications and reality, and so on.

The major stumbling block of this method is that it can lead to an observation that the company is dealing with a substantial number of legal risks, only to notice in the end that a number of these risks have a very limited impact on value. So we propose an approach that can be taken either as an alternative or as a complement to the approach described above.

2.2 A Backwards Method: From Value to Legal Risk

We call the method involving identifying legal risk from the value chain and then looking at impact in terms of potential value destruction the FIP (forward identification process). As we have noted, it is possible to use an alternative or complementary method (to intersect the most important hypotheses of value destruction identified through the FIP): the backwards identification process (BIP).

The first phase of the BIP involves identifying and analysing, in the three types of value considered, the most important hypotheses of value destruction, by drawing on scenarios that can have a serious impact on each of these types of value. Each catastrophe scenario should then be linked to the elements of the value chain (or chains) involved in the materialisation of it, by identifying at this level the combinations of uncertainties (legal and factual) that can lead to the scenario. It is thus possible to segregate the most substantial legal risks (and the legal norms from which they are most likely to arise); in other words, those that will have the greatest impact in terms of value destruction (or non-creation).

By way of illustration, for strategic value, the elaboration of this type of scenario requires detailed analysis of the strategy of the company. In this phase, it is recommended that teamwork be done, by country, teamwork that can take the form of brainstorming sessions. Such an approach will foster appropriation by stakeholders not only of the method of mapping legal risks but also of the company’s strategic objectives.

If, for example, the objective of a large retailer is to become (or to remain) “the preferred retailer”, the most important hypothesis of value destruction will be able to correspond, in a deliberately cartoonish approach, to a diametrically opposed result: becoming “the most detested” or the “least loved” retailer, or the retailer “not so much loved as taken for granted”. It is a matter of image and name here, and elaborating feared scenarios encourages examination of the causes of such a falling out of love, which can be summarised by mentioning hypotheses of “scandal” (the term refers
to a serious affair that affects public opinion), together with "media coverage" (the term refers to publicity given this affair by the media, which leads to the feared effect). Observation of certain tendencies in our modern society leads to the identification of several registers propitious to the development of this type of catastrophic scenario: that of human dignity and individual liberties (for example, discrimination in hiring and treatment, child labour, compromising of personal information), the physical integrity of clients and employees (for example, product flaws that cause deaths or serious illness, fatal accidents in-store, illnesses or other problems caused by wilful negligence), respect for the environment (for example, pollution, ecologically irresponsible behaviour), the moral integrity of the company (for example, corruption, hidden payments, fraud, abuse of economic power, extreme enrichment, collusion with political officials), respect for the consumer (for example, failure to make good on the brand's commitments and keep its promises, customer swindled and sorely disappointed). In short, with this example, it is possible to come up with the following equation: sensitive issue + serious events or events involving a large number of people + media coverage (a consequence as much as a condition) = formidable scenario.

Another example makes it possible to illustrate the advantages of a complementary use of the FIP and the BIP, as well as the resulting usefulness in terms of ranking risks. Take the retailer's price positioning. In a forward identification process, examination of the company's value chain makes it possible to segregate the negotiation-purchasing and promotion-sales activities as being the major activities involved here. It is then possible to identify the legal norms involved in each link and sub-link of the value chain, as well as the degree of (legal) uncertainty that they present; the same approach can be taken for events that can intersect the legal norm and the evaluation of the degree of (factual) uncertainty posed by each event on its own. Identification of legal risks is completed by crossing the two phases above, and it should lead to a gauging of their impact on the value of the company (strategic, financial, institutional value). In a backwards identification process, it is the objective—often strategic—for improvement (or preservation) of the price image of the brand that serves as a starting point. Therefore, the most important hypotheses of value destruction (feared scenarios) are a neutral outcome (stagnation of price image) or a worsening of the price image. Again, the negotiation/purchasing and promotion/sales activities concentrate most of the factors likely to hamper, prevent, constrain, or call into question the pursuit of the objective of improving the price image. It turns out that the rules under which commercial negotiation takes place, as well as those having to do with the promotion of sales, are sources of legal uncertainty to which particularly close attention should be paid. There is also a non-negligible risk of scandals related to these aspects being covered by the media, just as there is of being a target for scrutiny from the authorities and/or from customer organisations, which could mean the legal risks considered could have a great impact on strategic, financial, and institutional value (to variable degrees in each of these three types).
The mapping of legal risks is indispensable to effective management of them. Depicting the legal risks of the company requires identifying them, as well as ranking them. So the architecture of the map of legal risks that we propose draws on a key idea: it must be based on the potential consequences of the legal risk in terms of value destruction (or non-creation), destruction gauged in three facets: strategic, financial, and institutional. When legal risks are analysed in view of the negative impact they can have on the achievement of company objectives (which dovetails with the ISO 3100 definition of risk: "the effect of uncertainty on objectives"), the use of a scale of qualitative values, drawing on a classification by order of importance, is perfectly conceivable; it seems much more preferable to a probabilistic approach or an approach leading to Prévert-style inventory, the suitability or practical utility of which can be questioned. In short, it is ultimately more useful to identify, for each country in which the company is located, or for each element of the value chain, a limited number of legal risks (five to ten) on which to focus.

Finally, one of the major lessons that can be learned from our study lies in the pressing need to develop in-house processes meant to facilitate the exchange of information between the legal department and all of the other departments to which the management of legal risk is relevant. In addition to the processes, the success of an effective mapping of legal risks depends on the effect of a key factor: the ability of the organisation to create the conditions for a culture of information-sharing between the legal department, the risk management department (if there is one), and the other functional or operational departments in the company.
Ext.LN. /L. 1
1. An unambiguous law providing a stable legal framework, either originally or as a result of homogeneous doctrine, a clear and stable set of regulations, and/or broadly unambiguous, constant, and accessible jurisprudence
2. A law broadly compatible with the internal legal order and with the international commitments of the country under consideration
3. A law requiring no regulatory provisions for it to be applied, or for which the regulatory provisions are unambiguous and stable
4. A law to which any changes are relatively predictable and can be planned for as part of transparent processes
5. A new law whose appearance and contents can be prepared for with no particular difficulty

Ext.LN. /L. 2
1. A law with vague or obscure parts, made only partially unambiguous by doctrine and/or jurisprudence, with this clearing up being neither definitive nor incontestable
2. A law whose application in a given situation is made unambiguous by doctrine, by a set of regulations, and/or by jurisprudence, but from which it is not possible to extract entirely reliable criteria for application
3. An unambiguous law for which the jurisprudence referring to it or the regulatory provisions are relatively unclear or unstable
4. A law whose compatibility with norms of a higher, internal, or supranational level is likely to get it called into question
5. A law to which changes are predictable in part, all while leaving uncertainty, or to which changes are founded on a process that is not entirely transparent
6. A new law likely to appear but the timetable and contents of which cannot be predicted

Ext.LN. /L. 3
1. An obscure or vague law, not cleared up by doctrine and/or jurisprudence, or the clearing up of which is equivocal or contradictory
2. A law leaving a large margin for interpretation, or for which application in a given situation is arguable, with no way for this doubt to be cleared up by homogeneous doctrine or unambiguous and stable jurisprudence
3. A law whose incompatibility with norms of a higher, internal, or supranational level will certainly cause it to be called into question
4. A law for which the jurisprudence or the necessary regulatory provision is non-existent, obscure, and/or unstable
5. A law that, in view of chaotic—usually political—environment is certain to change
6. A new law likely to appear, but the timetable and contents of which cannot be predicted
Ext.E. /Cl.-1
a. Unambiguous financial statements or unambiguous future financial capacity
b. A marked “non-litigious” profile, absence of records of disputes
c. Strong signals of tendency of the client to want or to have to prolong contractual ties (expressed intent, absence of significant alternative in the market, economic dependence)
d. A client with a “non-aggressive” profile in an environment in which there is little support for disputes or for negative publicity

Ext.E. /Cl.-2
a. Financial statements clear in part or future financial capacity partly visible
b. Traces of contentious past relationships that do not prove a highly litigious history
c. Signals that the client may need to maintain/prolong contractual ties
d. Signals attesting to potential client aggressiveness, especially when it comes to its eagerness to spread negative comments, or an environment potentially propitious to support of this eagerness

Ext.E. /Cl.-3
a. Very vague financial statements or a future financial capacity that cannot be determined with ease
b. A pronounced tendency of the client to litigate, existence of a contentious past
c. A very weak signal, or none at all, of the client’s eagerness to prolong the contract, no dependence on the part of the client
d. Real aggressiveness on the part of the client, especially when it comes to its tendency to spread remarks, and/or an environment highly favourable to disputes
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