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Are you Risk Ready?

Emerging Risks for Mining Companies in Latin America

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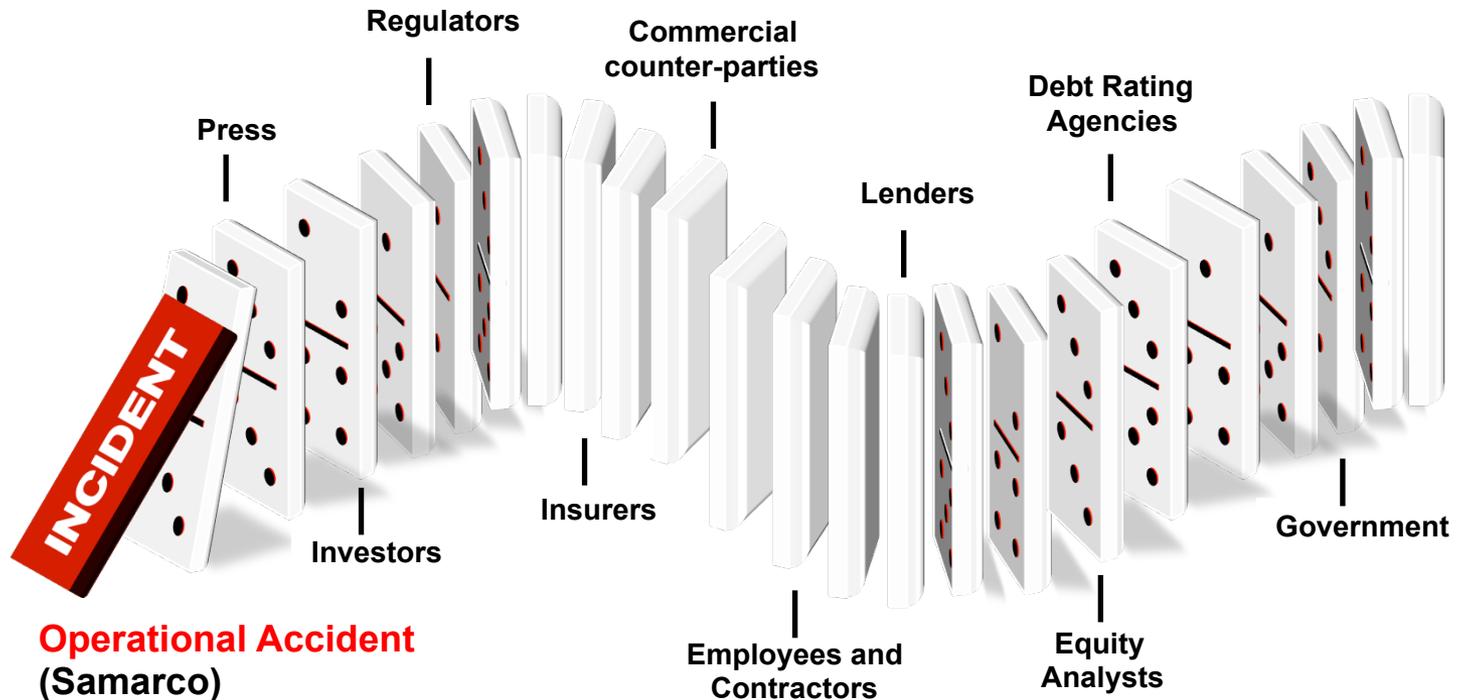
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Risks are interconnected – The Domino Effect

One incident can lead to follow-on consequences and loss of confidence across multiple issues and parties:



- Operational Accident (Samarco)**
- Fraud/Anti-Corruption (Petrobras)**
- Business Interruption (Venezuela)**

Scenarios

Scenario 1

Global Mining Co –
Shareholder
Activism

Scenario 2

Global Food Retailer –
Supply Chain Code of
Conduct development

Scenario 3

Energy and Mining
Company – Investment
Due Diligence (local
laws and international
standards)

Scenario 4

Class Action
Litigation – Rana
Plaza

Future Trends – Conduct Risk (Ethics and Culture)



Source: Ernst & Young

OSC Emerging Market Review

- The “Eight Areas of Concern”
 - Business and operating environment
 - Language and cultural differences
 - Corporate structure
 - Related parties
 - Risk management and disclosure
 - Internal controls
 - Use of and reliance on experts
 - Oversight of external auditor

Reporting and Compliance

Legal Framework

Reporting criteria under traditional legal requirements are triggered by “materiality” threshold

- CEO and CFO certifications
- Secondary market liability
- Litigation risk from class action firms
- Review by stock exchanges and securities regulators

Regulation by disclosure

- Address policy concerns eg., “publish what you pay”
[*Extractive Sector Transparency Measures Act – ESTMA*]
- Sets standardized reporting [43-101]

Shareholder activism
(Shareholder proposals)

Compliance Program

- **Top Level Commitment**
 - Culture
 - Reflected in Board and Committee Mandates
- **Corporate Structure / Size**
 - Oversight of local management and core assets located outside Canada
 - Reporting Lines?
 - Information Flow?
- **Risk Assessment**
- **Internal Controls**
 - Internal Audit
 - Recordkeeping
 - Disclosure Controls and Procedures
 - Due Diligence
 - Training, Monitoring and Assessment
 - KPIs
 - Grievance Procedures
 - Whistleblowing

International Standards

Financial Institutional Standards

- Set guidelines on social and environmental risk to determine whether to finance the project (which become market standards)

Voluntary Principles

- Best practices

Industry Guidelines and Standards

- Sets professional guidelines and standards
- Sets standardized reporting [Global Reporting Initiative]

Deals and Projects in Difficult Jurisdictions

Doing deals or projects in “difficult” jurisdictions adds a layer of complexity.

Understanding the operating environment

- Political risk
- Business Culture
- Judicial System – dispute resolution planning
- Restrictions to consider
- Transfer Pricing and Taxation
- Approval process

Due diligence matters

- Conducting due diligence
- Additional considerations
- Local counsel

Negotiations with the Government

Practical steps for negotiating in a difficult jurisdiction

Practical Steps

Do's

- Use experienced team
- Agreeing governing law ASAP
- Need physical presence/local contact
- Keep it simple and agree who holds pen
- Be aware of cultural and linguistic issues
- Be prepared for unpredictable
- Get each page signed (including appendices)

Don'ts

- Assume a meeting will take place when planned
- Assume you have received ALL documents from the other sideor that they will be delivered within the promised timeframe
- Assume what the parties agreed upon yesterday will remain a resolved issue throughout the negotiation process
- Trust a PDF
- Take Shortcuts

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