It’s On! RIMS Tech, the Insurtech Competition Gets Underway

by Josh Salter, ARM

With the rise of new, innovative Insurtech solutions that are creating opportunities for risk professionals to optimize their efforts, RIMS has selected six up-and-coming start-up companies to demonstrate their products in the inaugural “RIMS Tech, the Insurtech Competition” later today. The competition is set to take place in the Start-Up Stadium—a section of the RIMS Marketplace dedicated to emerging start-up exhibitors.

The “Shark Tank”-style competition starts at 9:30 am and will feature presentations from the following exhibitors: Aclaimant, Chronwell, Cybernance, Maptycs, Pillar Technologies, TrustLayer.

“Technology is transforming and strengthening risk management practices around the world,” said RIMS President Gloria Brosius, RIMS-CRMP. “From thought-leading experts, to students and everyone in between the RIMS Annual Conference & Exhibition brings the world’s risk management community together and we’re excited to hear from this elite group of Insurtech companies.”

The event will be hosted by Audrey Rampinelli, CEO and cofounder of OnRamp Risk LLC, who helped develop the competition and assemble the expert panel of risk professional judges that includes: Barry Dillard, director, risk strategies, insurance and compliance at Walt Disney World® Resorts; Alan Gier, global director, corporate risk management & insurance at General Motors Company; Anja Rittling, risk manager at Ocean Spray Cranberries, Inc.; Lori Seidenberg, global director real assets insurance at BlackRock; and Liz Walker, director, enterprise risk & global insurance at Groupon.

“Artificial intelligence, internet of things, mobile applications and other Insurtech technologies are allowing organizations to collect and analyze better data, identify trends and root causes and develop more efficient processes,” said Rampinelli. “In a competitive market, the RIMS Tech competition provides a platform for these start-up companies, as well as a valuable opportunity for risk professionals to familiarize themselves with potentially game-changing solutions.”

The winner will be announced at the RIMS Conference Finale this afternoon at 3:00 pm in the Boston Convention & Exhibition Center Ballroom.
Cyber security can only do so much to prevent attacks. Fight back with a full suite of cyber insurance products designed to help prevent loss and aid in recovery. See us at booth #1033.

RESILIENCE IS A CHOICE.
On Tuesday, Joe DePaul, national cyber / E&O risk advisor for Willis Towers Watson, shared his experiences helping global organizations assess, quantify and protect for cyber events and instill confidence in leadership. RIMS Show Daily spoke with DePaul to review some of the key takeaways from his presentation.

During the Thought Leader Theater session, “Answers for the Board on Cyber and Privacy Risk Management,” DePaul acknowledged that cyber concerns are unquestionably the top concern for board directors around the world.

“Our research with The Economist Intelligence Unit (EIU) about the challenges of governing a cyber-resilient organization shows 33% of companies surveyed experienced a serious cyber incident. One that disrupted operations, impaired financials and damaged reputations. Most respondents placed high odds on another incident in the next 12 months,” he said.

To prepare for this, risk professionals must become proficient in the basics of cybersecurity, understand cyber exposures and be ready to engage others in the organization to support this collaborative effort.

“In previous years, risk professionals might not have had to be that knowledgeable about cybersecurity. That is not the case anymore. While they might not have to be experts, they must know and be able to explain these risks to others in the organization.”

A culture that integrates risk management into its decision-making and that has established channels to deliver and receive information to and from employees is essential to cyber resiliency.

“Risk professionals will need to gain support across the organization holistically. They will need to engage the right stakeholders from the beginning and form a cybersecurity team with varying perspectives.”

Once the risks are assessed, determining how to employ that data will become the risk professional’s next challenge.

“Once you have the data to support decision-making, common risk management practices can be applied. The exposures can be assessed, quantified and thus protected with a mitigation strategy or, as we are seeing more of, transferred with cyber insurance.”

He dispelled misconceptions about cyber insurance. According to DePaul, the common misconception that cyber insurance policies are costly is not necessarily true, especially when compared to the impact of an event. Instead, he notes, that it should be considered part of the cost of doing business in today’s technology-driven world.

“Companies are spending a tremendous amount of capital on technology. While we are continually seeing an increase in money spent on technology, we are not seeing the equal percentage spent on cyber insurance.

“We have sprinklers throughout our buildings to mitigate the financial impact of a fire, why shouldn’t organizations look at cyber insurance the same way?”

Another important piece to the cybersecurity puzzle is communication. “Communication to the board must be precise and concise,” Joe said. “They are going to want to know what the exposures are, their financial impact and how we are going to move forward to make sure it doesn’t significantly impede our business goals.”

There is no 100% secure, cyber resilient organization. It is not if, but when a company will be compromised. However, the session maintains that a proactive cyber resiliency plan allows companies to better understand threats before it is too late. This should include a tailored, innovative and integrated cyber risk management solution that is designed to help businesses achieve cyber resiliency with an emphasis on people, capital and technology. A sound cyber response strategy will ultimately save time, resources and protect the organization against the devastating financial impact of a cyber event.
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Q & A

Session Spotlight
Emerging Risks Soon to Make the Radar
by Justin Smulison

Attendees seeking a glimpse of the future of risk management should visit room 258AB at 11 am for “Emerging Risks Soon to Make the Radar.” The one-hour session will be led by Chris Mandel of the Sedgwick Institute, Jeff Mycroft of Express Employment Professionals International Headquarters, and Rob Quast of Kroger. RIMS caught up with Mandel to discuss the growing expectation that risk professionals act as reliable, strategic advisors to management and improve the chances of an organization’s success.

Q. What is one emerging risk you will explore during the session?
A: The effect of accelerating technological change is forcing companies to become more digital. As a result, their risk profiles are being transformed to what will ultimately be digital risk profiles, meaning that most risks—especially those that would be considered emerging—will have digital characteristics or in some cases be completely digital. This raises the bar for risk leaders to gain knowledge and skills in technology that in the past may not have been necessary to be effective. The rate of this change will differ by both industry and company, but it will become the norm soon. The good news is that most risk managers have the time to concurrently advance their understanding and skills in this area and their careers.

Q. Will black swans be a subtopic?
A: Black swans in particular will not require much of our time. We’ll focus on what I call “gray swans,” which can be thought of as events that may have occurred but perhaps not to a company or firm, yet. They might still be highly improbable, but if they happen, they may be highly destructive and deserve more of our emerging risk planning and attention. Preparing for specific effects is likely not possible due to the range of potential outcomes, but like the central tenet of business continuity planning, it’s not so much what might happen as preparing for the potential disruptive impact.

Q. How do ISO and COSO frameworks help protect against new and emerging risks?
A: ISO31000 does not explicitly address “emerging risk” or necessarily differentiate it from other risks. But the standard has evolved with a 2018 update that takes what was a systematic approach to uncertainty and expands upon it with revised principles that among other things, emphasize “anticipating” things more effectively through a dynamic process that may have been previously overlooked. While I don’t believe you must use a standard to be effective with your risk strategy, I do believe that both ISO and COSO have improved materially and offer thoroughly vetted and defined guardrails that can provide rigor and discipline in the way one approaches and manages risk.

Q. Why will the information from your session continue to be a critical topic for risk managers?
A: Mainly because C-suites and boards have been asking about the unknown or less-understood exposures as they continue to destroy large amounts of value. One of my prior CEOs used to regularly say: “Tell me what I don’t know.” It’s the right question, but not the easiest to answer because it implies risk leaders have crystal balls. And while they don’t, they are obligated to get a process in place that at least attempts to understand these uncertainties that in the worst case, can destroy entire companies. Once you realize that strategic risks have the most destructive value, it should compel risk leaders to develop processes and methods for at least asking the right questions, even if it doesn’t lead to any specific response deemed appropriate or worth the investment.
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Boston Sights | Back Bay

by Shauntay Jones

Got some shopping to do before you go home? Visit Back Bay, one of Boston’s most affluent residential neighborhoods. In this area, you’ll find boutiques, upscale shops, restaurants and brownstone buildings. Stroll through the neighborhood and see what Back Bay has to offer. Check out four recommendations below.

**SKYWALK OBSERVATORY**
800 Boylston Street | prudentialcenter.com |
$15–$21 | 10am – 10pm daily

Get an amazing 360-degree view of Boston from 50 floors high at the Skywalk Observatory. Take the educational audio tour which explains significant landmarks and is available in six languages. After the tour, go downstairs to shop and dine in the Prudential Center.

**TRINITY CHURCH**
206 Clarendon St | trinitychurchboston.org | Sun, 12:15pm – 4:30pm; W–Sat, 10am – 4:30pm

A National Historic Landmark, Trinity Church is a Boston treasure. The attention to detail on the exterior and interior is astounding; take a close look at the carvings and stained glass windows. For $10, you can take a self-guided tour or audio tour to learn more about the history of the church. You may even hear organ music while you’re there.

**THE MAPPARIUM**
200 Massachusetts Avenue
marybakereddylibrary.org/project/mapparium
$6 | 10am – 5pm daily

Visit the Mary Baker Eddy Library to see the Mapparium, a three-story stained-glass globe of the world as it was when the globe was created in 1935. You’ll walk inside the globe and experience a fascinating presentation on how the world has changed. For background information on this exhibit, you can check out “The Mapparium: An Inside View,” a complementary exhibition.

**BOSTON PUBLIC LIBRARY**
700 Boylston Street | Free | 617.536.5400 | M – Th, 9am – 9pm; F, Sat 9am – 5pm; Sun 1pm – 5pm

A library? Yes, the Boston Public Library is a sight to behold. Established in 1852, this library is the first free municipal public library in the U.S. and is listed on the National Register of Historic Places. When you enter, you’ll be amazed by how vast and majestic the building is. Walk through and admire the architecture, artwork and statues. View the current exhibitions and of course, browse the stacks.
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Visit Back Bay, one of Boston’s most affluent residential neighborhoods. In this area, you’ll find boutiques, upscale shops, restaurants and brownstone buildings. Stroll through the neighborhood and see what Back Bay has to offer. Check out four dining recommendations below.

**MISTRAL**
223 Columbus Avenue | mistralbistro.com
617.867.9300

Celebrate the end of RIMS 2019 with a dinner at Mistral, one of Boston’s highest-rated restaurants. Enjoy expertly prepared French meals in a warm atmosphere with exceptional service. We recommend the seared foie gras with duck confit in brioche, beef tenderloin with asparagus and horseradish whipped potatoes and the vanilla creme brûlée.

**THE FRIENDLY TOAST**
35 Stanhope Street | thefriendlytoast.com
617.456.7849

Feeling like breakfast for dinner? Come to the Friendly Toast, a casual, quirky restaurant that serves breakfast, lunch and dinner all day. We recommend Doughnut Stop Believin’, a sausage, egg and cheese sandwich on French toasted donuts; the Bat Out of Hell Burger made with meatloaf; and the So It Vegan, a tasty tofu scramble. If you get there and see a line outside, just hop on and wait it out because the food is worth it.

**BUTTERMILK & BOURBON**
160 Commonwealth Avenue
buttermilkbourbon.com 617.266.1122

Laissez les bons temps rouler… in Boston! Get transported to New Orleans in this restaurant that serves decadent southern cuisine. It is an absolute must that you order the warm honey-glazed biscuits, it is the perfect mix of sweet and salty. Other things to try are the pork belly cracklings and the buttermilk fried chicken. If you’re craving southern food, Buttermilk & Bourbon is the place to go.

**L.A. BURDICK HANDMADE CHOCOLATES**
220 Clarendon Street | burdickchocolate.com
617.303.0113

Grab a seat at L.A. Burdick Handmade Chocolates and enjoy a cup of rich European drinking chocolate and an artisan pastry made with the finest quality ingredients. Then order some chocolates to take home for yourself or someone special. We recommend the wood box of signature chocolate mice that includes dark, milk and white chocolate. Vegan chocolate options are available.
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ON THE SCENE

RIMS asked some conference first-timers, “What has surprised you most about RIMS 2019?”

Donna Arnstein  
*Atlas Air Worldwide*  
“The number of risk management professionals here in Boston. Also, the representation of insurers, brokers, solutions providers. It’s all been pretty impressive.”

Russell Carney  
*California Fish Grill LLC*  
“How big the Marketplace is. I’ve been able to find a lot of good technology solutions that could help my organization back home.”

Katie Jacobi  
*Heplerbroom LLC*  
“The size of the conference. Every time I turn a corner I find something new…and the dogs are cute too.”

TWEETS OF THE DAY

Can’t get enough of #RIMS2019!  
*@TweetsbyEddy*

One challenge between AI and humans: context. For instance, if you encounter a lion in a zoo, you feel safe; if you encounter one in the wild, you feel at risk. AI can’t always distinguish contextually. #risk #RIMS2019 #innovation at the @RIMSorg Innovation Hub.  
*@BrettMcWood*

Just had an agent at #RIMS2019 tell us how awesome it is to work with @patentinurance! #userfriendly  
*@chukbaxter*

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KN Vaidyanathan, CRO, Mahindra Group

Interview by Jhelum Bagchi

KN Vaidyanathan is the EVP and chief risk officer of the Mahindra Group, a US $20.7 billion multinational group, with locations in over 100 countries and over 240,000 employees. Vaidyanathan talks to RIMS Show Daily about global opportunities in India, challenges risk professionals may face and how RIMS can support India’s risk managers.

Q: As an emerging economy of 1.3 billion people, can you describe the opportunity India presents globally?
A: India has global opportunities across numerous areas, the key ones include investment opportunity through both foreign direct investment and foreign portfolio investment in growth and innovation; digital opportunity to develop tools that support government services and bring efficiency to business; technology opportunity to enhance productivity and modernization in areas such as agriculture; and global value chain to bring India into large scale industries such as automobile, consumer durables, food and pharmaceutical products.

Q: How can risk managers help make the most of this opportunity?
A: Risk and opportunity are two sides of the coin of strategy. In the language of scenario planning, India is witnessing a transformation across the X-axis of consumer—moving from beggar to king and the Y-axis of ecosystem—moving from imperfection to perfection. Risk managers can develop scenarios in this path of evolution, identify headwinds and challenges and work with businesses to build mitigation plans into their strategy. Specifically, risk management tools need to be deployed to bring rigour and add value. These include scenario planning, vulnerability assessment, resilience modelling and reputation risk management.

Q: What are the biggest challenges risk professionals encounter in India?
A: Risk management in India was initiated as a “compliance requirement” for corporations listed on the stock exchanges. To graduate from this “checklist” approach to a “strategic” perspective, the challenges that risk managers face are the positioning of the risk management function within the organization; knowledge of global best practices; expertise in risk management tools; global perspective of business, geoconomics and geopolitics and keeping pace with the ever-changing business ecosystem.

Q: How can RIMS support and grow India’s risk management community?
A: RIMS has a strategic opportunity to build its presence in this large emerging market by bringing to bear its breadth and depth of global expertise and resources. Specifically, RIMS could be a knowledge partner by being a credible center for best practices and risk management tools and techniques, and a catalyst in thought leadership by developing living labs to build India-specific risk management frameworks and tools.

Q: You are the chairman of RIMNext, leading a group of passionate risk managers in India—can you tell us more about RIMNext and how RIMS and RMNext can work together?
A: RMNext—as the name suggests—is focused on taking the risk management practice in India to the next level. It has set out as an informal association of over 100 risk professionals from over 60 corporations. RMNext and RIMS could build a strong, strategic and symbiotic partnership to leverage each other’s strengths to mutual advantage. It would be a wonderful double sundae of local insight and global expertise. But, like everything in India, it requires long-term commitment, perseverance, continuous engagement and an entrepreneurial approach to capture the imagination of corporate India.

To graduate from this “checklist” approach to a “strategic” perspective, the challenges that risk managers face are the positioning of the risk management function within the organization.
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RIMS 2019 Snapshots
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A New and Improved RIMS.org
by Nikole TenBrick

After nearly 12 months in development, RIMS proudly unveiled a brand new website for the Society this week. With an emphasis on delivering relevant content and resources, the site features simplified navigation and an improved user interface and functionality meant to support members of the risk community no matter where they are on their professional journey.

The navigation on the new RIMS website highlights the key tools that RIMS is committed to providing for risk professionals: resources and content, connections, certification, education and events. Website visitors can easily navigate to a variety of resources, or scroll down the new landing page to access Risk Management magazine and find new publications, events, communities or updates about the Society.

Recognizing that RIMS members and other visitors to the site have different needs and interests, or are at different points in their careers, RIMS has designed new landing pages for our largest resources, including:

- **Risk Knowledge**: A centralized hub for all RIMS content, including white papers, research reports, archived webinars, podcasts, articles, videos and more.
- **Strategic and Enterprise Risk Center**: A one-stop shop for content, case studies, templates and more, all focused on strategic and enterprise risk management topics.
- **RIMS Global**: RIMS hosts members from over 60 countries, and here they can find globally-focused content and access to regional landing pages.
- **Student Resource Center**: Supporting the next generation of risk professionals, here students can find career support, scholarship information, membership access, mentoring and the latest news most relevant to them.
- **Certification**: All information related to applying for, attaining and maintaining the RIMS-CRMP is located here.
- **Online Member Community**: RIMS members can access Opis, the members-only digital community where members can interact directly with one another, ask questions, share information and ideas and connect across geographical boundaries.
- **RIMS Chapters**: Members involved at the local level (or those looking to get involved) can find the chapter directory, award information, volunteering opportunities and support in this centralized location. Chapter leaders may also access this site for chapter management tools and resources.

Another exciting feature of the new RIMS website is its ability to analyze visitor behavior, and convert that data into personalized recommendations for education, content and resources for each individual visitor. Visitors will enjoy an enhanced experience and be able to easily find the content they are most interested in.

Just like home ownership, website hosting is an ongoing project. Look for even more enhancements in the coming months, such as deeper personalization, more members-only content, a new Risk Management magazine website and more.
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Denver has 300 days of sunshine per year—don’t forget your sunglasses!

Colfax Avenue in Denver is the longest uninterrupted street in the U.S. at 26.5 miles long.

Denver has seven professional sports teams: Denver Broncos (NFL); Denver Nuggets (NBA); Colorado Avalanche (NHL); Colorado Rockies (MLB); Colorado Rapids (MLS); Colorado Outlaws (MLL) and Colorado Mammoth (NLL).

Denver rejected the 1976 Olympics, which makes it the only city to do so.

**Did You Know? Facts about RIMS 2020 City Denver:**

1. Denver is known as “The Mile High City” because the city is literally a mile above sea level.
2. Colfax Avenue in Denver is the longest uninterrupted street in the U.S. at 26.5 miles long.
3. Denver has 300 days of sunshine per year—don’t forget your sunglasses!
4. Denver has seven professional sports teams: Denver Broncos (NFL); Denver Nuggets (NBA); Colorado Avalanche (NHL); Colorado Rockies (MLB); Colorado Rapids (MLS); Colorado Outlaws (MLL) and Colorado Mammoth (NLL).
5. Denver rejected the 1976 Olympics, which makes it the only city to do so.

**Upcoming RIMS Events**

**INSITE TOUR 2019**
June 2–5, 2019 | Denver, CO

**RIMS NEXTGEN FORUM 2019**
June 14, 2019 | New York, NY

**44TH ANNUAL FLORIDA RIMS EDUCATIONAL CONFERENCE**
July 29–August 4, 2019 | Naples, FL

**2019 RIMS CANADA CONFERENCE**
September 8–11, 2019 | Edmonton, AB

**2019 RIMS WESTERN REGIONAL CONFERENCE**
September 9–11, 2019 | Las Vegas, NV

**RIMS LEGISLATIVE SUMMIT**
October 16–17, 2019 | Washington, DC

**RIMS ERM CONFERENCE 2019**
November 4–5, 2019 | New Orleans, LA

It was wonderful having you with us in Boston for the RIMS 2019 Annual Conference & Exhibition. I hope you gained new knowledge, made new connections and enjoyed yourself at the events. The RIMS staff worked tirelessly to make this conference “the best RIMS ever!” and we hope you feel that we knocked it out of the park.

During each conference, I observe and take mental notes of features and events that attendees are enjoying. Then on the way home, I brainstorm ways to take those things to the next level. How can RIMS surpass the last conference? How can we give our attendees and exhibitors the best experience possible? That is a challenge that I embrace. The RIMS Events team is always on the lookout for exciting and innovative experiences that we can bring to the Annual Conference. And we also want to hear your thoughts. After the conference, be sure to complete the survey—which we’ll send to you via email—to provide us with your feedback. RIMS is your society, so your feedback is important to us. You can email me at sruff-lyon@RIMS.org to share your ideas.

RIMS 2020 will be in Denver, the mile high city. I’m already looking forward to welcoming you to this scenic location. You will enjoy everything that Denver has to offer: amazing art and cultural attractions, outdoor activities, diverse neighborhoods, music and nightlife, and restaurants—all against a spectacular backdrop. The possibilities that Denver presents for RIMS 2020 are endless; you won’t want to miss it. I hope to see you there.

In the meantime, please visit the new RIMS.org website to explore other RIMS events. Have a safe trip home.
That’s what it means to specialize. And you deserve a carrier that gets that. We make it a point to know all there is to know about a wide range of industries from construction and manufacturing to real estate, technology and more. With our deep specialization, The Hartford can help you develop customized solutions for the complex risks of your mid- to large-size clients – allowing us to be there for both of you in a way that many carriers cannot. **The Buck’s Got Your Back.**

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In a rapidly-changing business environment characterized by advancing technology, shifting geopolitical tensions and increasing regulatory scrutiny, it is more important than ever for organizations to look beyond near-term threats to prepare for the risks they could face in the future.

RIMS newest Executive Report titled, “Identifying and Evaluating Emerging Risks” explores the research and discovery processes needed to identify emerging risks, evaluation strategies, response planning, steps to integrate them into the known risk portfolio, as well as ways to address and overcome expected challenges to enhancing capabilities.

An important distinction is the definition between dynamic risks and emerging risks. RIMS Strategic Risk Management Implementation Guide defines a dynamic risk as those that are known to exist, but may change over time. As the Executive Report notes, emerging risks, on the other hand, are new or developing threats that have an unknown significance and impact. Emerging risks can also be known risks that have resurfaced due to changes in the business environment.

Although they are new and raise many questions, the report emphasizes that emerging risks can be identified, evaluated and response plans can be implemented to create a competitive advantage for the organization. As such, organizations will be better equipped to make important, risk-aware decisions to ensure the best long-term strategic outcomes. Finally, developing an emerging risk capability presents a clear opportunity for the risk management function to add value.

Other key takeaways:
- By focusing on trends that are just beginning to surface, organizations can identify potential shifts in strategy ahead of competitors;
- Understanding plausibility of emerging risks will help the organization determine which risks are most deserving of their limited resources;
- Changes to the organization’s strategy can create new blind spots;
- The tone in which a risk professional delivers information about an emerging risk to leadership matters;
- While one person might be responsible for strengthening emerging risk capabilities, that person must form a cross-functional team to develop the response plan.

The report is authored by the following members of RIMS Strategic and Enterprise Risk Management Council: Frank Fiorille, vice president of risk management, compliance and data analytics, Paychex; Lorie Graham, chief risk officer and senior manager, insurance services, American Agricultural Insurance Co.; and Christy Kaufman, risk analytics and insights director, and chief compliance officer, AmFam Ventures.

To download the report, visit RIMS Risk Knowledge library at www.RIMS.org/RiskKnowledge. For more information about the Society and to learn about other RIMS publications, educational opportunities, conferences and resources, visit www.RIMS.org.
RISE ABOVE RISK

Two industry leaders are now one epic partner, poised to help you rise above risk with programs tailored to your needs.

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While the United States has long used sanctions to implement foreign policy, their complexity has increased significantly in recent years, posing an array of practical challenges for companies operating internationally or engaging in cross-border transactions. A number of factors have contributed to this challenging environment, and now companies and risk managers need to examine the impact of these sanction trends and determine how to best address the risks they create.

1. Increased extraterritorial application of U.S. sanctions creates additional risks for non-U.S. companies.

While U.S. companies (and in certain cases, their foreign subsidiaries) must always comply with U.S. sanctions, the United States has increased the extraterritorial application of its sanctions programs in recent years, resulting in increased risk for non-U.S. companies.

First, the country has adopted an expansive interpretation of activities that have a U.S. nexus and are therefore subject to U.S. sanctions. For example, the United States has recently imposed criminal and civil penalties on foreign persons who engage in transactions with Iran that involve the transfer of funds through U.S. intermediary banks, even if the parties to the transaction are not U.S. persons and the transactions otherwise occur entirely outside of the United States. Accordingly, it is imperative to conduct a careful review of transactions and activities to determine whether U.S. sanctions may apply because of a U.S. nexus, whether due to the use of American currency or financial institutions, involvement of U.S.-origin goods or technology, or another such connection.

Second, the United States has increased its use of policy-focused “secondary sanctions” directed at non-American companies that engage in transactions with targeted countries or persons, even where there is no U.S. nexus. Within the past year, the United States has imposed secondary sanctions on non-U.S. companies that engaged in activities involving Russia, North Korea and Iran, including those found to have engaged in significant transactions with a Russian military entity, provided support to North Korea’s weapons programs, financed or participated in cyber interference activities, engaged in sanctions circumvention, or provided material support to sanctioned persons.

Additionally, as a result of President Trump’s decision to withdraw the United States from the Iran nuclear deal, the administration has threatened to sanction non-U.S. companies that engage in a broad range of transactions involving Iran. Given the increased application of U.S. secondary sanctions, non-U.S. companies must carefully assess whether their international business activities intersect with U.S. sanctions-targeted activities, countries or persons and determine whether to pursue or maintain such business. Further, U.S. companies should also consider the secondary sanctions risk exposure of any counterparties, which could disrupt their own business.
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2. Divergence between U.S. and EU sanctions creates compliance challenges.

During the Obama administration, the United States, European Union, and other U.S. allies cooperated to align their sanctions—particularly with respect to Iran and Russia—to limit disparities and maximize their impact. In conjunction with its “America First” approach to foreign and economic policy, the Trump administration has taken a more unilateral approach toward sanctions, resulting in a divergence in both the timing and substance of sanctions measures.

For example, while the EU remains a party to the Iran nuclear deal and thus permits EU persons to engage in most transactions involving Iran, following the United States’ withdrawal, it has re-imposed secondary sanctions that were suspended under the deal. Additionally, while the EU has not significantly ratcheted up sanctions against Russia in the past year, the United States imposed sanctions against some of Russia’s wealthiest businessmen and their global business interests in April 2018.

The divergence between the United States and its allies creates challenges, particularly for companies with a global footprint that requires they comply with both U.S. and EU law. For example, following President Trump’s decision to withdraw from the Iran nuclear deal, the EU expanded the scope of its blocking regulation to generally prohibit EU persons from complying with U.S. secondary sanctions targeting Iran, creating a dilemma for EU companies with business in Iran that must now choose between withdrawing business from Iran and potentially exposing themselves to EU penalties, or maintaining business in Iran and exposing themselves to U.S. secondary sanctions. Given these challenges, companies with both a U.S. and an EU presence should assess their exposure and take calculated measures to reduce risk in both jurisdictions.

3. The increased role of Congress requires companies to proactively consider legislative developments.

While Congress has always had a role in shaping U.S. sanctions, it has asserted its power to design and implement sanctions to a greater degree during the past two years, owing largely to concerns that the Trump administration would roll back sanctions imposed on Russia during the Obama administration. This was particularly evident when Congress overwhelmingly passed the Countering America’s Adversaries Through Sanctions Act (CAATSA) in 2017 to require the president to impose a broad range of sanctions against Iran, Russia and North Korea. Moreover, members of Congress have been pressuring the Trump administration to enforce CAATSA measures ever since the law was enacted.

As of this writing, a number of bipartisan sanctions bills are also pending before Congress that, if enacted, could further substantially impact both U.S. and non-U.S. companies’ business activities involving the Russian energy and financial sectors. As demonstrated by the speedy passage of CAATSA, unexpected domestic or international events can quickly trigger the resolution of pending legislation. Accordingly, companies must proactively monitor and assess the impact that such bills and evolving geopolitical events may have on their business and develop contingency plans to mitigate risk in case such legislation is enacted.

4. The increased use of sectoral sanctions complicates compliance.

Sectoral sanctions are a newer type of sanction designed to limit access to U.S. capital and debt markets or certain critical U.S. goods, services and technology. Sectoral sanctions gained prominence in 2014 following Russia’s annexation of Crimea and, to date, have been a critical element of U.S. sanctions on Russia and Venezuela.

The Russia sectoral sanctions program prohibits U.S. persons from engaging in certain transactions involving equity or debt issued by designated Russian energy companies, banks and defense entities, and entities owned 50% or more by these companies. These sectoral sanctions also prohibit U.S. persons from providing goods, services or technology to certain designated Russian energy companies and entities owned 50% or more by these companies for use in targeted deepwater, Arctic offshore and shale projects.

The Venezuela sectoral sanctions program, initiated in 2017, prohibits U.S. persons from engaging in certain transactions involving debt, bonds, securities, distributions of profit, dividends, digital currency and equity issued by or related to the government of Venezuela. The considerable range of impacted Venezuelan entities spans political subdivisions, agencies and instrumentalities, including Venezuela’s national oil company, PDVSA, its global subsidiaries and other parastatal entities subject to Venezuelan government ownership. Although sectoral sanctions restrict only certain transactions with targeted entities (and not all forms of commercial interaction), the measures necessitate careful scrutiny of activities with such entities and others that may be at risk of sanctions designation in the future. For example, with respect to Russia sectoral sanctions, prohibited debt transactions with Russian energy and financial entities subject to sectoral sanctions include transactions that may not commonly be viewed as “debt,” including extended payment terms in excess of 14 or 30 days.

The divergence between the United States and its allies creates challenges, particularly for companies with a global footprint that requires they comply with both U.S. and EU law.

Further, because the Russian sectoral sanctions apply to entities 50% or more owned by the designated companies, the reach of these sectoral sanctions is not limited to Russia but also includes non-Russian subsidiaries of the designated companies. The Venezuela sectoral sanctions program has its own complexities, including that it prohibits U.S. persons from engaging in transactions related to certain bonds issued by the government of Venezuela, but not others.

Companies engaging in business with entities subject to sectoral sanctions and entities operating in sectors that could be at risk for sectoral sanctions (e.g., Russia’s energy, financial and defense sectors) should adopt enhanced diligence practices to ensure compliance and mitigate risk. In particular, companies with ongoing commercial activities involving a counterparty (or its subsidiaries) subject to sectoral sanctions should undertake a case-by-case review of each transaction to determine the applicability of sectoral sanctions.

Further, when engaging in business with a counterparty in a sector that is at risk for future sectoral sanctions designations, companies should assess the likelihood and potential impact to its business of such a sanctions designation. Given the assessed impact, it appears likely that the United States’ use of sectoral sanctions will increase in the future.

5. Increased sanctions-related diligence and de-risking creates new exposures.

Mindful of the significant potential penalties for violating U.S. sanctions, financial institutions, investors and third parties have increased their focus on sanctions diligence and de-risking. For example, to ensure their own compliance with sanctions, institutional lenders are increasingly demanding provisions in loan agreements that require compliance with sanctions by or from the United States, European Union and other jurisdictions, even if the borrower is not actually subject to these laws. There have also been increased instances of financial institutions independently blacklisting or closing the accounts of companies suspected of engaging in business with countries or persons subject to U.S. sanctions in order to minimize their own risk exposure. Accordingly, companies should consider risks that may result from transactions involving sanctioned countries or persons, even if such transactions are otherwise lawful.

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TRENDING NOW – GLOBAL BUSINESS

The Global Economy’s New Frontiers
by Robert Flynn and Nathaniel Emmons

The global economy is in transition, not so much as the result of fluctuating superpower politics, but more so as the quiet byproduct of shifting investment in emerging economies. We are at the end of supersized returns previously found in Brazil, Russia, India, China, and South Africa (BRICS), foreign direct investment constants since 2001 that have in recent years become increasingly fragile economies. Their era as primary centers for investment has been replaced by a “Frontier Era,” a period marked by a concentration on economies scattered throughout Africa and Asia. This will be a dramatic shift as hundreds of millions of dollars in foreign direct investment will swing from the pockets of one group to new, emerging markets.

Frontier nations, as defined by Aldo Musacchiesi and Eric Werker in the Harvard Business Review, are countries at an early stage of economic and political development, characterized by weak legal systems, heavy corruption, low human development and significant political turmoil. As such, these nations present numerous risks to multinational companies. Despite these negatives, as Musacchiesi and Werker found, 19 of the 25 economies forecast to grow the fastest over the next five years are frontier countries. Key frontier economies include Angola, Mozambique, Myanmar, Vietnam, Ethiopia, the Democratic Republic of the Congo, Cote d’Ivoire, Bangladesh and Kenya.

Identifying the known and uncovering the unknown risks is definitively different from assessing risks in modern markets, where rule of law can be relied upon in business affairs. In frontier economies, as in the early BRICS, risk management requires extensive and broad expertise to provide insights and resolve problems. Gathering data in these environments, for instance, can be thwarted by not only cultural and language differences, but by national, tribal, or personal loyalty. Safety is a fear at the personal level and security of business operations can be threatened by both organized terrorist groups or opportunistic criminals. Additionally, with corruption as a factor, interaction with government representatives presents constant uncertainty. Therefore, the data needed to establish an entry decision. Notably, this data gathering must exceed the typical due diligence completed for routine investments in developed economies.

Elements discounted in other situations must be emphasized here: security, corruption, government stability, rule of law. The means through which companies obtain this information must necessarily be expanded. The risk management, facility security, logistics and investment staff of U.S.-based corporations do not have the requisite skills to obtain information about key factors of frontier nations. Complementing the team with external firms experienced in such exploration and sophisticated enough to operate without jeopardizing the opportunity or client brand is a critical aspect of managing the risk.

Properly analyzing the relevant information is another step in which companies fall short, leaving them open to certain gaps:

• Grouptink, during which no one can safely serve as the “devil’s advocate” and ask probing questions, especially common when the venture is initiated or championed by the CEO.
• Run of the mill due diligence, formulaic in nature, which therefore lacks the creativity and scope to consider critical questions relevant to the specific situation, such as “who has the authority to revoke our license?”
• The lack of structured contingency or scenario planning exercises that would uncover risks through the simulation of business operations on the ground.
• Analytical processes that are based on gut instinct alone and eliminate or discount the insights identified through proven, systematized analytical methodologies.
• The lack of clearly articulated recommendations with supporting evidence and that include pros and cons as well as accountability for ongoing oversight.
• A risk management plan and process that fails to continually gather data, analyze information appropriately, and address concerns directly to senior management. Seeing a risk management plan that follows the same template as that used for previous investments is a signal that the venture is at serious risk of failure.
• Using only in-house risk management officials, who often only nominally carry the risk management title along with other job responsibilities, or are limited with financial risk management skills alone. Complementing this team with external nonfinancial risk experts must be considered given the nature of these endeavors.
• Not specifically addressing security concerns, which are the predominant anxiety of company staff. U.S.-based corporate security representatives have expertise in domestic facility, perhaps even cyber issues, but are not likely to have expertise in how best to secure facilities, personnel, transportation and operations in Africa and Southeast Asia.

Executives must also consider options and alternatives and be prepared to adjust their business model should various scenarios arise. Government changes, both revolutionary and planned, are not unheard of in these frontier economies, for example, and require executives to contemplate various future environments. Through simulated exercises executives can ensure that operating models are flexible and creative. Along these lines, prior to market entry, business leaders together with risk experts must prepare an exit strategy. Key to this strategy is the identification of indicators for when the market becomes too risky or unstable, and establishing a monitoring program to quickly identify those indicators. Focusing on the long-term success while being ready for volatility in the near-term is the balance needed.

Most critically, companies need to develop a lucid understanding of the complete set of unique risks posed within each country and analyze how these dynamics, including competition, infrastructure, government and regulation, challenge their operations.

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