

Taking Your Business International

May 29, 2015

Going international is a complicated undertaking. The steps required will depend on your specific situation and concerns. The following outlines, in very general terms, some of the issues you must consider as you begin to contemplate international operations.

Anti-Bribery Compliance If you plan to bid for government contracts, develop an anti-bribery compliance program from the start. The United States has strict rules against corruption in business procurement or retention. The Foreign Corrupt Practices Act (FCPA) governs you and everyone who works for you, whether employees, agents, or partners. In short, the FCPA prohibits giving anything of value to a governmental official or anyone else who might give something to a government official to influence the official in exercising his or her power to award business or allow you to retain business. It also requires you to maintain accurate books and records, which also guards against improper expenditures. A proper compliance program requires training everyone in your business, plus regular compliance checks. If in hindsight, you are deemed to have ignored warning signs, you can be guilty of violating the FCPA. Violations bring substantial fines, and possible jail time.

Local Partners or Agents Check out your local partner thoroughly before agreeing to do business with it. If it doesn't have a good reputation, don't become partners. If you do plan to have a local partner or agent, you will need a written understanding with that person. The FCPA and other compliance and termination laws require this understanding to specify the compensation the person will receive and under what conditions. Under local laws, agents often receive severance payments. As this is a matter of public policy in their place of operation choosing Florida law, for instance, will not avoid the obligation. You will also want to determine whether the agent can bind you to contracts. Additionally, the structure of the entity you use to do local projects is important. Be sure you are protected as to the entity's governance. If possible, have your people control the entity's financial aspects. At all times, be aware of contracts with entities related to your local partner and ensure that you do not overpay for whatever you contract for. If overpaid funds wind up in the pockets of a government official, problems will result. Stay involved and vigilant. Local general managers can siphon significant funds if you are asleep at the switch. If possible, control the local entity from outside the foreign country. For example, have the local entity owned by a U.S. entity controlled by you and have the local partner own a part of the U.S. entity. If you do this (or choose some other jurisdiction with predictable law) you may avoid being home-towned in a foreign court if there's a dispute over shareholder's rights and prerogatives. You

can then have a U.S. law-governed shareholders agreement with predictable results as to defining the shareholders' rights. **Bilateral Investment Treaties** Whenever possible, choose projects in a country that has a bilateral investment treaty (BIT) with the United States. BITs protect you if you are discriminated against in procurement. They also provide an arbitration mechanism if you are entering into a contract with a government entity or enterprise, and have a dispute. **Corruption Perceptions Index** Visit the website of Transparency International, a global coalition against corruption. There, you can check the corruption perceptions index (CPI) for the countries in which you wish to do business. A ranking that indicates high corruption should be a warning to avoid doing business in that country, or to be extra vigilant. The SEC uses the CPI as one indicator that a country is to be treated with extreme caution. **U.S. Counsel** Use U.S. lawyers familiar with conducting international business. Knowing what questions to ask is important. As the saying goes, "Ignorance is not knowing what you don't know." U.S. counsel will use local counsel. You may think you understand the language or the customs, but local law is important and local counsel experienced in representing foreign investors will teach you a great deal and keep you out of trouble. **Hiring Concerns** Proceed with caution when hiring new employees. You may be unable to terminate an underperforming employee without substantial cost. Remember, employment law worldwide often protects employees to the detriment of the employer. **Intellectual Property Concerns** Protect your intellectual property before you venture abroad. Register trademarks and logos before you go. In many countries it does not matter who used a trademark or logo first. What matters is who registered it first. Many big U.S. businesses have paid to liberate their trademarks from others who registered them first. Regarding trade secrets and know-how, have written protection that will be effective under the law of the place in which you will operate. **Tax Concerns** Structure your operations efficiently from the start from a U.S. tax perspective. Withholding taxes on distributions can be as much as 30 percent unless you take advantage of reduced withholding under double tax treaty regimes. Moving money from one location to another takes planning. **Funding Your Project** Structure your project's funding in the foreign location. If there will be central bank requirements for registering your investment, make sure you comply. That way, you will be able to repatriate your invested funds. Unofficial investments can cause repatriation of capital problems. Determine how your banks will fund your operations in foreign jurisdictions. If they cannot take the country risk of your chosen location and you need the financing, you may be unable to do the project. Check out U.S. government sources of loans for your project as well as U.S. government insurance protections. The Overseas Private Investment Corporation (OPIC) and the Inter-American Investment Corporation as well as the International Finance Corporation have lending capabilities. OPIC also provides insurance against expropriation and inconvertibility of currency.

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