

TOP TAKEAWAYS

Protecting Yourself When Doing Business Internationally

1. **Puda Coal Case**

Last year, the Delaware Court of Chancery heard a shareholder derivative lawsuit stemming from director misappropriation of corporate assets of a Delaware corporation with significant business operations in China and the corresponding duty of loyalty of the outside directors of the company. The Court acknowledged that circumstances are different in every case, but independent directors need to monitor what the other directors are doing, and that often will mean that independent directors need to be physically present in, and understand the native language of, the geographic location where a business has significant operations.

2. **Understanding Cultural Differences in Business Dealings: Relationship Building**

In America, “the early bird gets the worm,” but in China, “the first bird in the flock is the first one to be shot.” Cultivating strong business relationships takes time, but in China, relationship building is the foundation to any business dealing.

3. **Understanding Cultural Differences in Business Dealings: Negotiation Strategies**

In Chinese culture, people are more reserved and are sensitive of “saving face” and accumulating social capital. A businessperson may say “yes” when they really mean “no,” or say “no problem” when they really mean “big problem.” When doing business in China, one must pay attention not only to the spoken word but also to body language and nonverbal cues. In the case of significant business transactions, it is advisable to bring your own translator into negotiations.

4. **Chinese Regulatory Restrictions**

Governmental approval is required for many transactions in China, and a closing date is often tied to satisfaction of the appropriate governmental approval, and not to a specific date. A company can only engage in activities specifically approved within its scope of business. Before doing business in China, one should always ask for a Company’s business license in order to determine whether the proposed arrangement would be within the approved scope of business.

5. **State Owned Enterprises**

China remains a communist country, and as an owner of all state owned enterprises, the Chinese government plays sometimes conflicting roles: (a) an economic role by generating profit and (b) a governmental role by carrying out governmental policy. The state owned enterprise concept has interesting repercussions with respect to the FCPA. When doing business in China, one must be aware that he or she cannot give something of value to any employee of a state owned enterprise, as such person is considered a “foreign government official” under the FCPA.

6. **What Happens When the Deal Goes Wrong**

When doing business internationally, one should set out a plan of what to do if things go wrong. In order to cultivate a meaningful plan, one must consider and have a good reason for choosing the applicable law, dispute process, enforcement mechanisms, forum and related procedural considerations. A prudent businessperson will choose a governing law that he or she understands and as confidence in.

7. **Extracting Value from a Proposed Contract – “Show Me the Money”**

One should think carefully regarding how to extract value from any proposed contract so that all parties can be paid appropriately and in a timely manner. If a transaction involves a foreign investment and could be subject to expropriation or unwanted interference by the host State, Government (national or local), Regulators, Authorities, etc. then one should consider structuring the transaction to allow access to BIT/MIT arbitration.

8. **The Increasing Global Response to Bribery and Corruption: UK Bribery Act – An Update from Europe**

When doing business internationally, one needs to take into account the local mindset. In the United States, bribery is considered wrong at a base level. Many people around the world are not of the same mindset as they pay bribes in their day-to-day life. The UK is taking cues from the United States on how to get companies to police and report themselves. Coordination between US and foreign counterparts has increased dramatically over the past few years.

9. **Understand the Risks**

In assessing whether to do business internationally, a prudent businessperson should seek to understand the operational, political and compliance risks and the extent to which the local market’s systems support the enforcement of legal rights.

10. **No Substitution for Knowledge**

When doing business internationally, an in-depth understanding of local customs, language and laws is crucial. Before expanding into a foreign country, one should with engage with local businesspeople in order to get a sense of the culture and should research all applicable laws.

**For more information**

For more information on Protecting Yourself When Doing Business Internationally, please feel free to contact the moderator directly:

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