Entering New Markets: Compliance Considerations

Regional Compliance & Ethics Conference | Minneapolis
March 2, 2018
2:15 – 3:15pm

PRESENTED BY OPTUM COMPLIANCE TEAM:

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Audience Survey Question #1

Where are you most focused in new market expansion?
- Asia
- Europe
- South and Central America
- Africa
- US-only

Audience Survey Question #2

On what type of market expansion are you most focused?
- Mergers & Acquisitions / Joint Ventures
- Organic New Market Expansion ("green fielding")

or
### Options for Entering New Markets

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<tr>
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<th>M&amp;A or Joint Venture</th>
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<tr>
<td></td>
<td>“Green Fielding”</td>
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<tr>
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<td>(organic growth in a new market)</td>
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<td>Due Diligence</td>
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<td>Performed Pre-Transaction</td>
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M&A / Joint Venture: Due Diligence

Scope of due diligence may be limited by other party and should be risk-based

Examples:

VS.

VS.

M&A / Joint Venture: Due Diligence Practicalities

Functions as a pre-closing risk assessment

Tip: Allocate resources and focus to highest risk areas

Used to identify, quantify, and mitigate risk post-closing

Tips:

• Essential for integration planning and implementing an effective compliance program
• Based on findings, business may modify purchase price, seek indemnification, or take other actions to mitigate compliance concerns
## “Green Fielding” Basics
(organic growth in a new market)

- **Develop an understanding of the business, regulatory, political, and cultural environment**
  
  Tip: A pre-entry risk assessment may also be appropriate. This will help you understand risks and allocate resources to mitigate the risks.


## “Green Fielding” Practicalities
(organic growth in a new market)

- **Often involves a third party for market analysis and identifying customers**
  
  Tip: Third party will require diligence, especially in countries at-risk for corruption

- **Will likely require in-country resources to ensure compliance program implementation**
Entering New Markets: Compliance Integration

In-country / In-person presence preferred, alternatively frequent travel and site visits
Tip: Build a relationship with the business, and they will share information

Entering New Markets: Compliance Integration Practicalities

Implement the essentials of an effective compliance program until integration is complete
Tip: Your program requirements will be shaped by your due diligence findings or risk assessment; success will require involvement of HR, Tax, Treasury, Finance, Legal, and Business colleagues.
Entering New Markets: Cultural Challenges

Understanding culture is essential to creating an effective compliance program

Practicalities:
- There may be an evolving understanding of compliance between companies/divisions
- Languages, time zones, holidays, cultures, etc. make consistent communication difficult

Don’t under estimate differences between the acquiring and acquired company

Tip: Balance an entrepreneurial attitude with basic need to implement a consistent enterprise compliance framework

Video: Cultural Nuances

https://youtu.be/ORaBxH_MKQI
Entering New Markets: Examples of Cultural Pitfalls

"Head Nod"  "Never say 'No'"

<table>
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<tr>
<th>Said</th>
<th>Meant</th>
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<tr>
<td>I only have a few minor comments</td>
<td>Please re-write completely</td>
</tr>
<tr>
<td>Very interesting</td>
<td>That’s nonsense</td>
</tr>
<tr>
<td>Another cup of tea?</td>
<td>Give me more time</td>
</tr>
<tr>
<td>I almost agree</td>
<td>I don’t agree at all</td>
</tr>
<tr>
<td>That’s a brave proposal</td>
<td>You are insane</td>
</tr>
<tr>
<td>I hear what you say</td>
<td>I disagree</td>
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For Discussion - Hypothetical #1: Foreign Software Company Acquisition

**Preliminary Due Diligence**
- $20M USD annual revenue
- Based in Gibraltar
- 40 employees, some remote workers
- Customers in UK, Spain, Morocco, Argentina, Canada, Grand Cayman
- Customized, patented product provides electronic-medical record-integrated medical billing for private healthcare
- Product consists of 8 component software vendors
- Compliance and legal historically outsourced
- Acquiring company is US-based

**Additional Compliance Considerations?**
- Jurisdiction, i.e. EU vs. UK vs. Gibraltar
- Location of remote workers
- Brexit
- Customer diligence, i.e. potential risky jurisdictions / corruption / tax evasion
- Industry risk profile
- Patent filing compliance
- Vendor diligence
- Application of US compliance, i.e. FCPA, etc.
- Hire local compliance staff vs. manage from US office
- Permits, licenses, government approvals, etc.
- Director or Officer approvals
- Other?
For Discussion - Hypothetical #2: “Green Field” Foreign Government Customer

<table>
<thead>
<tr>
<th>Preliminary Due Diligence</th>
<th>Additional Compliance Considerations?</th>
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<tr>
<td>• Mexico-based payroll and payment processing company seeking to expand to Iceland, Norway, and Denmark</td>
<td>• Jurisdiction, i.e. EU vs. non-EU</td>
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<tr>
<td>• Company wants to lease a sales office</td>
<td>• Local real estate / health and safety / facilities management regulations</td>
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<tr>
<td>• Several consultants hired to identify bid opportunities; some consultants former government employees</td>
<td>• Sales restrictions / regulations / licenses / procurement compliance</td>
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<tr>
<td>• Company IT Director thinks GDPR is hairband from the ‘80s</td>
<td>• Staff mobility, ex-pats, etc.</td>
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<tr>
<td>• Company has no “Scandi” experience, other than 3 employees from Minnesota</td>
<td>• Diligence on former government employee consultants, e.g. conflicts</td>
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<tr>
<td>• Business currently seeking additional investment to expand</td>
<td>• Currency / tax regulations</td>
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<td>• EU data privacy regulations</td>
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<td></td>
<td>• Culture, culture, culture</td>
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<tr>
<td></td>
<td>• Budget part of investment for in-country compliance resource(s)</td>
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<tr>
<td></td>
<td>• Permits, government approvals, etc.</td>
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<td>• Director or Officer approvals</td>
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Q&A

That’s a brave proposal!
Thank you!