Entering New Markets: Compliance Considerations

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2:15 – 3:15pm

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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”)

Options for Entering New Markets

- M&A or Joint Venture
- “Green Fielding”
  (organic growth in a new market)

M&A / Joint Venture

- Due Diligence
  Performed Pre-Transaction
M&A / Joint Venture: Due Diligence

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

Examples:

- vs.
- 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/0RaBxH_MKQg

Entering New Markets:
Examples of Cultural Pitfalls

<table>
<thead>
<tr>
<th>Said</th>
<th>Meant</th>
</tr>
</thead>
<tbody>
<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>
</tr>
</tbody>
</table>

“Head Nod”
“Never say ‘No’”
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

Preliminary Due Diligence
- Mexico-based payroll and payment processing company seeking to expand to Iceland, Norway, and Denmark
- Company wants to lease a sales office
- Several consultants hired to identify bid opportunities; some consultants former government employees
- Company IT Director thinks GDPR is a hairband from the '80s
- Company has no “Scandi” experience, other than 3 employees from Minnesota
- Business currently seeking additional investment to expand

Additional Compliance Considerations?
- Jurisdiction, i.e. EU vs. non-EU
- Local real estate / health and safety / facilities management regulations
- Sales restrictions / regulations / licenses / procurement compliance
- Staff mobility, ex-pats, etc.
- Diligence on former government employee consultants, e.g. conflicts
- Currency / tax regulations
- EU data privacy regulations
- Culture, culture, culture
- Budget part of investment for in-country compliance resource(s)
- Permits, government approvals, etc.
- Director or Officer approvals
- Other?

Q&A

That’s a brave proposal!
Thank you!