Managing Your International Business

Panelists:

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Understanding the Legal Culture in the Foreign Jurisdiction

- Importance of understanding the nuances of the legal traditions and culture in the foreign jurisdiction
  - Overcoming language barriers
  - Responsiveness expectations and preferred means of communication
- Importance of having capable local counsel
  - Tips for selecting local counsel including relevant criteria
  - Correlation between active engagement in understanding your business and quality of advice
  - Importance of experience with foreign companies as clients
- Oversight of local counsel, communication of instructions to local counsel
  - Direct vs. indirect (e.g. through domestic external counsel) - is there a preferred method?
- Oversight of local in-house counsel
  - Best practices for managing the internal counsel relationship in a foreign jurisdiction – when and to what extent is delegation to in-house counsel in the foreign jurisdiction appropriate?
Compliance Issues in Foreign Jurisdictions

• Local ownership requirements applicable to foreign subsidiaries
  – Minority shareholder issues
  – Qualifying shares
• Local residency requirements for directors and officers
  – Also consider:
    • directors fees
    • need/availability of D&O Insurance
    • Available mechanisms for shifting board responsibilities to shareholder-parent
• Local corporate compliance requirements
  – statutory audits
  – public filing of financial information
  – tax filings
  – special qualifications/registrations/licences required to carry on business
  – transfer taxes
• Interrelation of local disclosure requirements with US parent disclosure requirements
FCPA Extraterritorial Laws

• Foreign Corrupt Practices Act and similar laws of other countries
  – Compliance generally and internal systems for monitoring compliance and reporting
• Conflicts between the laws of the foreign and home jurisdictions
  – Process for identification and managing
Internal Controls

• Importance of documenting internal inter-company transactions
  – Equity or debt financing
  – Transfer pricing considerations

• Record keeping and reporting
  – Mandatory reports
  – Use of an Intranet
  – Filing compliance

• Other Best Practices
  – Document execution formalities
  – Privilege
  – Policy
Standard Form Documentation

• Challenges in attempting to use domestic standard form contracts or other documents in a foreign jurisdiction
  – Boilerplate provisions
  – Enforcement issues
  – Repeat usage commercial contracts vs. situation specific contracts (e.g. M&A)

• Translation issues
  – Impact on length, meaning or other content of your standard form contract
  – Who can translate? Practical tips for securing effective and cost-effective translation

• Examples of provisions that may need customizing
  – Governing law
  – Dispute resolution
  – Notice and termination provisions
  – Reps and warranties
Employment Issues

• Pros and cons of local employees vs. posted domestic employees
  – Local customer relationships
  – Establishing company culture
  – Immigration/work permit issues for posted employees
  – Workplace expectations (e.g. benefits, level of responsibility) for local employees

• Prevalence of unionized work forces
  – Availability of exemptions for foreign and/or new businesses

• Termination rights of employees in foreign jurisdictions
  – Generally more favorable than the U.S., i.e. most other countries do not have "at will" employment
  – May not be able to contract out of certain basic entitlements
  – Ability to mitigate through use of staffing agencies

• Privacy rights of employees and how these differ in different jurisdictions
  – In many cases more restrictions on ability to collect, use and disclose personal information of employees
  – EU-U.S. data privacy safe harbor; Impact of Patriot Act to cross-border transfer of personal information
Dispute Resolution

• Differences in local litigation process and procedures
  – Loser pays principle
  – Use/availability of contingency fees
  – Mandatory mediation
  – Class actions
  – Civil law jurisdictions
• Reliability and predictability of outcome
  – Use of foreign courts
• International Commercial Arbitration
  – Availability
  – Pros and cons
  – Best practices where contractually stipulated as dispute resolution mechanism