



Entering New Markets: Compliance Considerations

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PRESENTED BY OPTUM COMPLIANCE TEAM:

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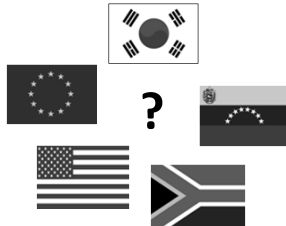


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Director
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Audience Survey Question #1

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



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.



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_MKQI

Entering New Markets:
Examples of Cultural Pitfalls




"Head Nod"
"Never say 'No' "



Said	Meant
I only have a few minor comments	Please re-write completely
Very interesting	That's nonsense
Another cup of tea?	Give me more time
I almost agree	I don't agree at all
That's a brave proposal	You are insane
I hear what you say	I disagree

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 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!
