



# 47<sup>th</sup> Annual Symposium on Global Markets

## Preparing for Entry into New Markets

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# I. Preliminary Inquiries

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- Assessing likelihood of success/achieving one's goals
- Can my company/client do business in this new market and comply with its legal, ethical, and social obligations?
  - FCPA
  - Anti-boycott rules
- What are my company/client's risk exposure, special concerns, tolerance, and experience working in new markets?
- Do we understand the social, business, government and legal culture?
- What is direction of the political/legal process in new market?
- What are market's special circumstances/pitfalls?

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- Choices for doing cross-border business
    - Contractual
    - Passive investment ("indirect")
    - Establishment investment ("direct")
  - Business choice based on many factors
  - More than one structure may work
  - Choice need not be identical to domestic strategy

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# Risk Management

- Firm FCPA policy on all payments
  - Re-assess timeline for permits and other critical path items
- Identify local constituents who will support you
- Build team of beneficiaries
- Insurance coverage
- Staffing to deal with local compliance issues
- Identifying local resources who can support you
  - Local advisers, trade associations, embassy and consulates
- Intellectual property protection
- Formal compliance program

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- Legal structure should
    - Magnify, reinforce business strategy
    - Not be a barrier
  - Understand legal and business consequences of choice
  - Four key factors
    - Risk, reward, commitment, and control

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- Legal questions during the choice process
  - What is legal regime of host country?
    - Stability?
    - Economically developing?
  - Is the proposed transaction legally permissible?
  - Must a foreign partner participate? Control?
    - Forms of control
    - Officer level, board level, shareholder level, super-majority voting, contractual etc.
  - To what extent will host country law apply?
    - 100% opt out not possible





## II. Leveraging Investments

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# Joint Ventures

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# Joint Ventures

- Designing Joint Venture
  - Client understanding as to dynamics
  - Local talent within organization
  - Time required to develop relationships with private and public actors
- Joint venture negotiations
  - Identify strategy, objectives
  - Find joint venture partner
  - Clarify scope of business, overlapping strategies (exclusivity)
  - Negotiate control and contributions

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- Choose legal structure
  - Assess legal problems
  - Identify potential conflicts
  - Memorandum of understanding
  - Legal and business due diligence


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- Required documents – an example
    - Confidentiality agreement
    - Memorandum of understanding
    - Joint venture agreement
    - Charter documents
    - Licensing contract
    - Supply/distribution contract
    - Management/technical services contract
    - Employment/secondment contracts

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- "Problem" provisions of cross-border joint venture agreements
  - Control and management decisions
    - The specter of 50/50 deadlock
    - Separating daily and high impact decisions
  - Government approvals, regulations, contingencies
  - Anti-bribery and anti-boycott rules
  - Buy-Sell



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- Other important provisions
    - Independence of and competition with venturers
    - Disputes
    - Governing language
    - Currency provisions
    - Modification and renegotiation

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# Borrowing

- Availability
- Restrictions
- Exchange risk
- Cost

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# Incentives

- Cash
- Loans
- Tax
- Reductions in duties
- Land (subsidized or gifted)
- Infrastructure
- Training
- Hiring
- Relocating
- Risks – EU, WTO, reduction in the value of the incentive, political instability



Thank you!

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