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The Belt And Road Initiative: Reflections On Legal Structures and Considerations

William F. Bresee, Esq.

The Value-Add of a Business Lawyer...



Legal Issues Come Up All The Time.

If You Wait Until You Know You Have A Problem,
You Missed The Opportunity To Avoid The
Situation.

Your Lawyer Can Help Anticipate Problems Before
They Arise, ...And Take Steps To Keep Them From
Ever Happening In The First Place... Or Lessen
Their Impact If They Can't Be Entirely Avoided

Working Overseas



- ❖ In Business, You Don't Know What You Don't Know
- ❖ Lawyers Are, By Nature Or Training, Analytical And Bring A Different Perspective (“Mutual Knowledge Problem”)
- ❖ An Honest Broker / Advisor (Lawyer As “Counselor”)
- ❖ A Good Sounding Board For Issues To Prevent Disputes, Foreign National Employment , Tax, & Equipment Delivery Issues, Bad Customer Relations, Tax Problems, And Other Operational Problems
- ❖ Lawyers Are A Knowledge Bank (And Not Only Of The Law)
- ❖ A Good Lawyer Is A Strategist - Knowing Your Industry And Knowing What Others Are Doing In Other Industries

Working Overseas



- ❖ More Likely To Deliver Novel, Useful, Advanced Solutions
- ❖ Not Every Problem Requires A New Solution. Instead, Many Problems Are More About Adapting An Existing Solution To A New Specific Situation
- ❖ Almost Every Business Decision Is Multi-faceted, And Has Many Considerations:
 - ✓ Economic
 - ✓ Political / Social / Cultural
 - ✓ Financial / Funding / Currency
 - ✓ Company Management
 - ✓ Contractual
 - ✓ Regulatory
 - ✓ Technology / Intellectual Property
 - ✓ Managing Expectations



Working Overseas Is “Comfort Food”



Working Overseas



All That Said.....

**...We're Not in
Kansas Anymore**



Business Practices



- ❖ Treat Business Colleagues With Respect; Relationship Is Important; Business Etiquette Transfers Across Cultures
- ❖ Quickness In Business; Slowness In Government
- ❖ Many Countries Have Central Governments...
Some Others Act As If They Do
- ❖ Paradigms Change – The Need For Project Finance And Statutory Compliance Becomes The Need For Government Approval -- You Need To Learn The Local Process
- ❖ “If You Can Tell Me Just One Thing That My Competitor Is Doing Better Than We Are, Then I’ll Give You All The Time In The World.”

Risk Management



- ❖ Can You Benefit From Participation In The Belt And Road Initiative?
- ❖ Are You In A Position To Penetrate Foreign Markets?
- ❖ Do You Offer Something Unique And Sought-after?
- ❖ Do You Understand How To Conduct Business In The Country In Which You Are Interested?
- ❖ Do You Understand The Regulatory Environment In The Country In Which You Are Interested?



Corporate Practice Overseas



- ❖ Identify Registration Requirements... Indigenous Persons, Foreign Persons, Joint Ventures With Locals
- ❖ Subsidiary, Branch, Joint Venture, Public Private Partnership, Onshore/Offshore Contract Splits
- ❖ Obtain A Copy Of The Business Practice Act Controlling The Right To Conduct Business Where You Want To Work
- ❖ Identify If You Must – By Law Or Custom – Associate With A Local Person Or Business
- ❖ Do You Understand How To Conduct Business In The Country In Which You Are Interested?
- ❖ Are There Standards Of Care Which Differ From Those With Which You Are Familiar And Comfortable?

Regulatory Compliance



- ❖ Enforcement – Are Written Laws And Code Followed, Or Are Other, Informal Practices Accepted?
- ❖ Are There Local Or National Laws (Or Multilateral Accords) Regulating Your Proposed Business Activity?
- ❖ Identify Government Agencies That Control The Business Permitting Process
- ❖ Assess Local Employee Availability And Your Firm's Communication Capability. Assess The Desirability Of Local Management Hires
- ❖ Are There Regulations Or Requirements – Either Codified Or In Practice – Which Are Contrary To Practices You Are Required To Follow Here?

Contract Considerations



- ❖ Country Legal System: Based On Civil Law (Written Statutes) Or Common Law (Customs, Usage And Court Decisions) Or Do There Exist Other Considerations?
- ❖ What Methods Are Used To Resolve Disputes?
 - ✓ Litigation, Mediation, Arbitration – And... Where?
 - ✓ Is The Country In Which You Are To Be Involved Signatory To An Enforcement Treaty Or Convention?
 - ✓ Is Indemnification Permitted Or Restricted By Law?
- ❖ Do Laws And Regulations Mandate Or Regulate Insurance?
- ❖ Are Contracts In A Standard Form? What Form of Proposal Requests Are Common? What Purchase And Payment Arrangements Are Common?
- ❖ Are There Currency Conversion, Stability, Repatriation, And Exchange Rate Considerations?

Other Considerations



- ❖ Foreign Earned Income Exclusion
- ❖ Transborder Transfer Of Personal Data (& Transborder Data Transfer)
- ❖ Holidays And Festivals; Infrastructure
- ❖ Export Controls And Importation Restrictions
- ❖ Ethics, Corrupt Practices, And “White Envelope” Practices
- ❖ Intellectual Property Infringement; Software Piracy
- ❖ Tax Treaties, Tax Holidays And Economic Zones
- ❖ Deference And Attitudes Towards Seniority And Government



Tangible Intangibles



- ❖ Cultural Considerations (Time, Planning, Decision-making)
- ❖ Information Flow And Information Sharing; Collaboration
- ❖ Taxation, Currency Risk Insurances, Billing Electronically, Invoicing Separately For Services And Reimbursable Expenses
- ❖ Business Customs - Introductions
- ❖ Undefined Deliverables In The Context Of Contracting
- ❖ Do Expectations Come From A Generalist Approach Or From A Specialist Approach?
- ❖ Negotiation Tactics Vary Widely
- ❖ Escrow Accounts And Letters Of Credit Payment Approaches



Done Properly, Expenditure on Legal Work Is An Investment That Will Bring You An Attractive Return Over Time. Sometimes It's The Best Money You Can Spend.



If You View Legal Fees As Just Another Cost To Minimize, You Either Have The Wrong Lawyer Or Your Not Using Him or Her The Right Way.

Why Not You?



“These European architects are doing things in China they wouldn't dare do at home.”

Peng Peigen, Architecture Professor
Qinghua University, Beijing
(before the 2008 Beijing Olympics)



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Thank You

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