

PUBLICATION

Five Things to Consider When Expanding in a Global Market

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More and more oil and gas companies, based in the United States or elsewhere, are considering a venture into foreign waters (or land). Following is a list of just a few issues that could impact expansion efforts.

Foreign Corrupt Practices Act (FCPA) and Anti-Fraud Laws: The coverage of this U.S. act, and its counterparts in the U.K. and elsewhere, is quite broad. To oversimplify, the FCPA is designed to prevent a “U.S. person” (broadly defined) from participation in foreign corruption, which is rampant in some countries as a way of life.

Inbound and Outbound Currency: Almost every country has limitations on the cross-border movement of currency, and in particular the “repatriation” of profits from the foreign enterprise. The type of foreign entity and the ownership structure for that entity is should be carefully considered.

Banking: We have recently noticed an increase in delays in opening foreign accounts as a result of some countries' reaction or over-reaction to money laundering that has occurred and tarnished reputations. Selecting a banker that confirms well in advance what information will be required to establish the banking relationship, and the time required to do so, can help avoid unexpected delays.

Legal Requirements: Some processes that seem second nature in your home country will be unfamiliar to local counsel, such as operating by “proxy” or under a power of attorney rather than through the familiar directors' resolutions. It can be helpful to obtain from local counsel a comprehensive list of what authorizations, powers of attorney, contracts and the like are required to form an entity, obtain licenses, capitalize the entity, register with tax authorities, and qualify to do business with state-run oil companies.

Employment Matters: Each country has its own rules about hiring and firing, termination, importing personnel (to work on an offshore platform, e.g.), importing equipment, benefits and other employment matters. Some are very surprising to U.S. companies.

This is meant not to list all issues involved in opening operations overseas, but merely to suggest some issues that are often overlooked in the planning process. There will surely be other surprises.