



LEGAL ISSUES IN GOING GLOBAL

SOME QUESTIONS, SOME ANSWERS, SOME RESOURCES

Why are you going “global”?

- Possible Drivers:
 - new markets
 - lower production costs
 - less competition
 - economies of scale
- Whatever your reasons, do your due diligence first:
 - define your objectives
 - conduct market research
 - assess what resources you need and what is available.
 - (See: [7 Traits of Companies on the Fast Track to International Growth](#))

Many of the Things You Will Need to Investigate Have Possible Legal Implications

- Office or Manufacturing Facilities
 - Cost/Financing
 - Location
 - Utilities
 - Environmental Regulation
 - Security Issues
- Transportation Issues
 - Shipping/Logistics
 - Infrastructure
 - Postal Services
- Banking

Many of the Things You Will Need to Investigate Have Possible Legal Implications (cont'd)

- Internet Issues
 - Website
 - Data Transference
 - Data Storage
- Language
- Culture
 - Hours
 - Meals
 - Gifts and Gratuities
 - Criminal Laws

Many of the Things You Will Need to Investigate Have Possible Legal Implications (cont'd)

- Employee Pool
 - Local Employees
 - Wages
 - Unions
 - Employment Protections
 - Benefits
 - ExPats
 - Immigration Laws and Regulations
 - Health Issues
 - Benefits Issues

Business Structure

- Will you be US- based or foreign-based?
- A branch or subsidiary of an existing business or a new entity?
- Will you have a foreign-based partner? (Joint Venture, Partnership, Contract Manufacturer, Licensing relationship)
- Formal Agreements to Create the appropriate entity
- Registration Licensing Requirements?
- Tax Implications
 - Personal Income Tax
 - Entity Taxes
 - Many US tax regulations; e.g., Foreign Account Tax Compliance Act (FATCA); Federal Foreign Earned Income Tax Exclusion

Employee Issues

- ExPats:
 - Immigration Restrictions
 - Passports
 - Visas
 - Work Permits
- Local Employees:
 - Wages
 - Benefits
 - Employment Contracts
 - Local law may require a written employment contract for most employees, specific notice periods prior to terminating an employee, and substantial severance payments based upon length of service.
 - Unions
 - Some countries, such as Germany, require employers to have workers' councils made up of employee representatives and management, which by law must be included in and approve certain management decisions.
 - Health and Safety Issues
 - Holidays

Intellectual Property Issues

- Intellectual property (IP) such as patents, trademarks, copyrights and trade secrets are often a company's most valuable assets. The United States, the EU, and other jurisdictions provide strong protection for IP rights.
- U.S. patent or trademark rights are valid only in the United States:
 - . If you plan to do business in another country, you first need to apply for a patent or to register your trademarks.
 - If you are working with a partner in your target market, include a provision in your contract with that partner that prohibits them from registering your IP; otherwise, you might not own your patent or trademark there.
 - Some countries may require you to license your IP to a local partner in order to do business there, which can increase the risk of infringement or piracy.
- Some countries, e.g., China, India and Russia, provide little protection for the intellectual property of foreign companies.

Trade Issues

- Exporting (from the US...)
 - Quotas and prohibitions to certain countries
 - especially technologically advanced products and technical data
 - Tariffs
 - Countries adversely impacted by recent US tariffs have imposed “retaliatory” tariffs on US goods
- Importing (to the US)
 - Prohibitions and quotas on certain goods from certain countries (e.g., steel; automobiles)
 - Tariffs
 - Steel and aluminum from certain countries
 - All goods (essentially) from China
 - Automobiles and auto components?
 - Other (TBD...)
 - Regulatory Compliance
 - Automobiles
 - Agriculture

Data Privacy Issues – EU General Data Protection Rule (GDPR): Legal Bases for Processing of Personal Data

1. **Consent:** the data subject has provided clear consent to process his/her personal data for the specified purpose.
2. **Contract:** the processing is necessary for a contract with the data subject, or because the individual asked the controller/processor to take specific steps before entering into a contract.
3. **Legal obligation:** the processing is necessary for the controller/processor to comply with the law (not including contractual obligations).
4. **Vital interests:** the processing is necessary to protect someone's life.
5. **Public task:** the processing is necessary for the controller/processor to perform a task in the public interest or for official functions, and the task or function has a clear basis in law.
6. **Legitimate interests:** the processing is necessary for the controller's legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if the processor is a public authority processing data to perform its official tasks.)

Foreign Corrupt Practice Act

- The [Foreign Corrupt Practice Act \(FCPA\)](#) prohibits U.S. companies and their employees, including overseas agents or employees, from paying bribes to foreign government officials or falsifying records to cover up such payments. The U.S. Department of Justice has been getting more aggressive in recent years with enforcing the FCPA, and penalties can be steep. Any company seeking to do business abroad, in particular with foreign governments, must be familiar with the FCPA and how to comply.

Contracts for Sale/Purchase of Goods

- Governed by UN (“Hague”) Convention on Contracts for International Sale of Goods (CISG) unless contract expressly states otherwise
- Dispute Resolution
 - Arbitration or Courts?
 - Choice of Law
 - Choice of Forum
- INCOTERMS
 - Title, insurance, duties
- Currency
 - If not in USD, currency fluctuation issues
- Payment Terms
 - Letter of Credit?
- Most countries outside the US use European civil law, which is different from the common law system we use here. For example, you can expect contracts written in a civil law country to have much broader language than a typical U.S. contract, because statutes and not case law will determine how it is interpreted.
- Contracts in those countries may look very different from what you are used to here, with fewer provisions and less specificity around many issues such as indemnifications, limitations of liability, and dispute resolution.

Resources

- [Foreign Corrupt Practices Act](https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act) – justice.gov/criminal-fraud/foreign-corrupt-practices-act
- [U.S. Embassy Resources for Entrepreneurs and Small Business Owners](#)
- [International Trade Administration of the US Department of Commerce](#) (utilizes its global presence and international marketing expertise to help US companies sell their products and services worldwide).
- [IRS FAQs](#)
- [World Intellectual Property IP Portal](#)

Lex Mundi

- We recognize that our clients are expanding their businesses to national and international markets. Butzel Long is a founding member of Lex Mundi, one of the first and largest networks of leading independent law firms located in 160 separate jurisdictions around the world. This resource enables us to provide our clients seamlessly with first rate counsel globally whenever the need arises. We also strive to be on the cutting edge of new developments including those involved in advanced technology and manufacturing, e-commerce, biotechnology, intellectual property and cross-border operations and transactions.
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Lex Mundi –cont'd

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Thank You!

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Catherine M. Karol is Counsel and practices in Butzel Long's Detroit office. Ms. Karol concentrates her practice in transactional negotiations, litigation, regulatory compliance, mergers and acquisitions, divestitures, and bankruptcy proceedings.

Ms. Karol recently retired from a 38 year career on General Motors Legal Staff, where she advised all levels of management on a wide range of global legal and business issues. Working with internal leadership, peers, subordinates, outside counsel, and other advisers, she developed and implemented strategies for issue resolution and business planning with suppliers, regulators, other OEMs and adversaries.

While at GM, Ms. Karol was part of a seasoned executive team that negotiated complex multi-million dollar global transactions and relationships. She was responsible for structuring, negotiating, drafting and reviewing agreements with other OEMs, Tier One parts and services suppliers, and major financial institutions world-wide. Additionally, while serving as GM's Chief Privacy Officer, she led a global multi-disciplinary team (including IT, OnStar, Marketing, and HR) in developing and implementing GM's global privacy policy.

Working with its divisional and corporate marketing groups, she had primary legal responsibility (including through General Motors bankruptcy proceedings) for GM's advertising, promotional, and media-buying agency agreements/ relationships, celebrity endorsement agreements, and its SAG/AFTRA relationship. She also had extensive experience negotiating with the Federal Trade Commission (FTC), the National Highway Traffic and Safety Administration (NHTSA), the National Association of Attorneys General (NAAG), the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), and the Federal Election Commission (FEC)