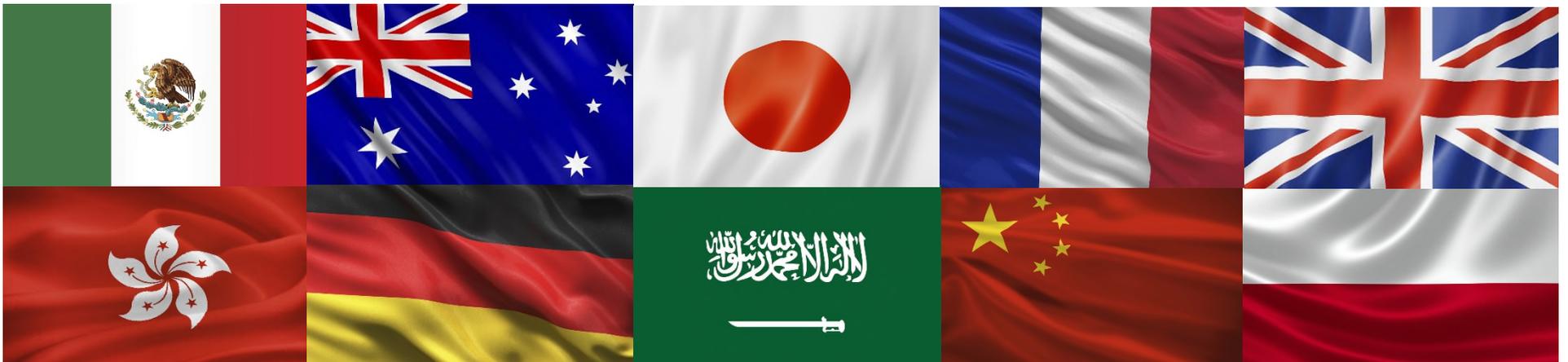




# Talk to the International Experts

May 13, 2019



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  - IV. Our Experts Say . . .
    - Brexit State of Play by Jane Haxby
    - China Legislative Agenda by Nick Chan
    - General Country-by-Country Tips

# Introduction to Experts – Europe



**Jane Haxby**  
European Managing Partner,  
London



**Tony J. Reed**  
Partner, Paris



**Dr. Volker Heidbüchel**  
Partner, Berlin



**Marcin S. Wnukowski**  
Partner, Warsaw

# Introduction to Experts – Asia & Australia



**Daniel F. Roules**  
Partner, Shanghai



**Nicholas Chan**  
Partner, Hong Kong



**Ken Kurosu**  
Partner, Tokyo



**Campbell Davidson**  
Managing Partner, Sydney

# Introduction to Experts – Saudi Arabia & Latin America



**Alex Gross**  
Partner, Riyadh



**Alvaro J. Mestre**  
Partner, Washington DC  
(Chair of Mexico Country Desk)



**Awilda M. Alcántara-Bourdier**  
Partner, Santo Domingo

# General Overview of Doing Business in Foreign Jurisdictions: Setting Up Business



- Timing & Cost; Culture & Language
- Branch/Registered Office vs. Subsidiary
  - France — Tax advantages for branches not considered “permanent establishments”
  - China — Representative offices cannot carry out substantial business operations such as entering into commercial contracts
  - Australia — More extensive documentation required to set up branch
- Subsidiary Director & Stockholder Requirements
  - China — Based on the type of entity, a minimum number of directors may be required
  - Mexico — A minimum of two stockholders is required for a “*Sociedad Anónima*”
- Registered Office of Subsidiary
  - Most countries require a registered office if doing business in country in some form (e.g., Germany & Poland allow a domiciliation company)
- Bank Account
  - Many countries require a bank account in country (e.g., Germany & France required a bank account in order to incorporate a subsidiary and Saudi Arabia requires a bank account for both a branch and a subsidiary)

# General Overview of Doing Business in Foreign Jurisdictions



- Scope of Business
  - China — No unlimited scope of business; certain industries require licenses, approval and/or permits
  - Mexico — Purpose of an entity/branch must be disclosed and verified that such purpose is allowed under Mexican law
- Land Use & Real Estate
  - Some countries require real estate documents to be notarized (e.g., Germany requires documents selling real estate to be notarized)
  - China — Land is not owned privately; a “land use right” must be obtained
- Licenses & Other Filings
  - Saudi Arabia — Foreign Investment License, Commercial Registration and either a Services License or Commercial License
  - China — Audited financial report and audited tax report must be filed annually with regulators for inspection

# General Overview of Doing Business in Foreign Jurisdictions: Labor/Employment



- Nationality Requirement
  - Saudi Arabia — Employers must have at least one Saudi national employee; certain company functions limited to Saudi nationals (e.g. HR manager)
- Works Council
  - Germany, Poland & France
- Collective Bargaining Agreements
  - Germany — Collective bargaining agreements often provide special termination protection for employees having acquired years of service or reaching a certain age
- Strict Employment Legal Regulation
  - France — Burden of proof is on an employer to demonstrate employee has not worked all or part of overtime hours claimed (“working time”)
  - Poland — New requirement in 2019 for employers of over 250 employees to set up employee pension plans
  - United Kingdom — TUPE
  - Japan — “Dispatch” employees must move sections within a company after 3 years

# General Overview of Doing Business in Foreign Jurisdictions: Commercial Contracting



- **Contract Execution**
  - China — Company seal required to be enforceable and only original contracts recognized by authorities, so both parties generally keep at least one original
- **Intent of the Parties**
  - France/Germany/Mexico — Courts give consideration to the intent of the parties which may include looking at pre-contract correspondence and documentation
- **Time Constraints**
  - France — No indefinite contracts
  - France — Commercial negotiation required to be formalized annually for supply agreements before March 1 every year (with certain exceptions)
- **Consideration**
  - Germany — No concept of consideration
- **Interest**
  - United Kingdom — If contract (for goods or services) is silent on interest, a supplier can rely on a statutory right to claim interest at a rate of 8% above base rate
  - Saudi Arabia — Receipt of interest is generally an unenforceable contract term
  - Poland — Automatic default interest in late fulfilment of monetary obligations

# General Overview of Doing Business in Foreign Jurisdictions: Mergers & Acquisitions



- Structure — Generally, only asset or stock deals
- Execution & Regulatory Filings — Registration/stamping/notarization of acquisition document may be required
  - Transactions in certain industries and exceeding certain value thresholds subject to prior merger control clearance
  - Germany — Sale of shares (not assets) in an LLC is required to be notarized
  - France — Registration tax payable on the transfer of shares in French company
- Labor — Generally, employee inform and consult process
  - France — Must notify and consult Works Council Committee
  - France/Germany/Poland — Not permitted to “cherry pick” employees of target company post-acquisition
- Successor Liability
  - Mexico — Asset deal does not automatically isolate the liabilities of the company
- Liability caps — Vary by market
  - France/Germany compared to United Kingdom — Cap on a seller’s liability for breach of reps and warranties typically in the range of 10-30% of purchase price compared to U.K. at up to 100%

# General Overview of Doing Business in Foreign Jurisdictions: Undoing Business



- Process
  - Wide variation of process and parties involved
  - France — Even in a solvent process, mandatory consultation process for collective dismissal plan with representatives and union's representatives and generally involve experts, a collective dismissal plan presented to Works Council, the health and safety committee and trade union representatives
- Time & Cost
  - China — Tax deregistration process is complicated and time-consuming (one year or longer)
  - Germany — Voluntary liquidation process has duration of at least one year

## Our Experts Say . . .

- State of Play of Brexit (Jane Haxby)
- China Legislative Agenda (Nick Chan)



# Our Experts Say . . .

## Top 3 Things to Know In China

- **Government Relations** – The State engages directly in the local economy more actively than in the U.S., not only through regulations but through encouragement of trade unions and periodic policy campaigns and through the activities of State-owned enterprises, often making the role of Government Relations critical for companies doing business in China.
- **Laws and Regulations** – Typically written with a combination of specificity and ambiguity in order to allow flexibility in interpretation and application by officials.
- **China's Currency** – Subject to strict foreign exchange controls, which may impact a wide range of operational matters, such as the distribution of dividends, the payment of offshore royalties and fees, and the receipt of capital contributions and payments from overseas.



# Our Experts Say . . .

## Top 3 Things to Know In France



- **French FDI Approval Régime** – U.S. buyers of French assets, whether direct or indirect, should check whether pre-approval is required.
- **Works Council Requirement** – Build into your M&A timetable the mandatory requirement to obtain a Works Council before making any binding commitment to buy or sell a French target.
- **Commercial Agreements** – Beware of French Law imposing longer notice periods than the contractual notice period agreed between the parties.



# Our Experts Say . . .

## Top 3 Things to Know In Germany

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- **Works Council** – Do not underestimate the importance of the works council elected by the employees, neither in your day-to-day business nor in a transaction.
- **Non-compete for Employees** – Non-competes are not very popular as the employer has to pay compensation of 50% of the employee’s salary to the employee for the non-compete period.
- **General Terms and Conditions** – German law provides very strict rules on General Terms and Conditions. As a consequence, for example, most limitation of liability clauses are invalid.



# Our Experts Say . . .

## Top 5 Things to Know In Poland



- **Taxation and Tax Planning** – Very strict tax optimization techniques. Poland implemented MDR (Mandatory Disclosure Rules) for tax-schemes including domestic ones.
- **Real Property** – Certain limitations in trading real property and shares in companies holding the real property (European Economic Area entities may be exempt from such limitations)
- **Labor** – Separate branch of law, where protection of employees is a key principle. Workers Council requirement (which operates in addition to trade unions), but the trade unions hold more power and negotiate key issues with employers.
- **Asset Transactions** – Employees connected with the assets transfer by operation of law to the purchaser under Acquired Rights Directive.
- **E-Economy** – Steps towards e-economy and limit wet ink documents, Polish law is still very formalized; and, in certain cases, if certain form of the agreement is not observed, the transaction is invalid.

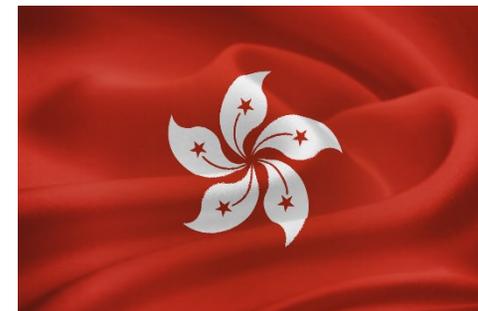


# Our Experts Say . . .

## Top 3 Things to Know In Hong Kong



- **“One Country, Two Systems”** – Under such principle, (a) Hong Kong is a common law jurisdiction with robust world-class laws and fiercely independent judiciary and (b) Hong Kong government and Mainland China have signed Closer Economic Partnership Agreements that open up more sectors and lower taxes for international businesses.
- **Geopolitical Stable Jurisdiction / Low Tax Jurisdiction** – Many Chinese investments and joint ventures are conducted out of, and publicly traded in, Hong Kong for many good reasons.
- **Modern City** – Welcoming to international business and expatriates, ranked as one of the least corrupt cities, and ranked at the top of freedom index.



# Our Experts Say . . .

## Top 3 Things to Know In Japan

- **“Galapagos Effect”** – While Japanese institutions, practices, norms and laws borrow heavily from abroad, at the same time they retain their *sui generis* character.
- **Consensus Building** – In business, Japan is NOT a “top down” society or culture. Consensus building is key, and this can require time, patience and compromise.
- **Legal Reform** – Opportunities in Japan are being created at an unprecedented pace through deregulation and legal reform, greater empowerment of women, the needs of an aging population, and other social changes.



# Our Experts Say . . .

## Top 3 Things to Know In Australia



- **Subsidiary or Branch** – Consider whether to carry on business through a branch of a foreign company or establish an Australian subsidiary company.
- **Employee or Contractor** – Contractors working for a business can be deemed to be employees where the relationship is more akin to that of employer/employee. If a contractor is deemed to be an employee, additional costs will be borne by the business including leave, superannuation, workers compensation insurance, payroll tax and possibly fines and penalties.
- **Consumer Laws** – Businesses that supply goods or services to consumers need to be aware of the Australian consumer laws including provisions which imply conditions and warranties into contracts for the supply of goods and services to consumers; prohibit misleading, deceptive and unconscionable conduct; and prohibit unfair contract terms.



# Our Experts Say . . .

## Top 3 Things to Know In Saudi Arabia



- **Vision 2030** – A program for sweeping socio-economic reform including reducing the country’s dependence on oil and developing public services (e.g., health, education, infrastructure, etc.).
- **Economy and Investment** – The diversification of the economy and appetite for inbound investment.
- **Public and Private Sector** – Public Private Partnership (PPP), and wider private sector participation (e.g., long-term contracts between private parties and government).



## Our Experts Say . . . Top 3 Things to Know In Mexico



- **Potential Policy Shift away from Neoliberalism and Globalism** – AMLO is a left-leaning, nationalist, populist type President that is prioritizing a Mexico-First and somewhat isolationist type policy that is focused inward on domestic policy (placing AMLO more and more at odds with the U.S. Trump policy).
- **General Uncertainty in Government Contracting** – Under AMLO's leadership, a number of massive, previously awarded government contracts are in jeopardy.
- **Friendly to Foreign Investment** – With the exception of a few regulated industries and sectors requiring permits, foreign investors are generally able to do business freely in Mexico.



# Global Coverage

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Darwin  
Denver  
Doha  
Dubai  
Frankfurt  
Hong Kong

Houston  
Leeds  
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Manchester  
Miami  
Moscow  
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Turkey  
Ukraine

■ Office locations

■ Regional desks and strategic alliances

