



**Wednesday, October 22**  
**11:00 am-12:30 pm**

## **908 Asia: Red Flags are Everywhere, Not Just on Buildings**

**David Kassel**

*Chief Executive Officer and Founder*  
SupplyScope, Inc.

**Scott A. Lane**

*Chief Executive Officer and General Counsel*  
The Red Flag Group

**David Metz**

*General Counsel-Americas*  
Hitachi Data Systems Corporation

## Faculty Biographies

### David Kassel

David Kassel is the CEO and founder of SupplyScope, Inc. SupplyScope's web-based supply-chain intelligence application helps companies leverage their employees' supply-chain knowledge and tap into the global supplier-intelligence network to make better sourcing decisions and avoid costly supply-chain mistakes. SupplyScope also provides traditional strategic-sourcing services to clients. Mr. Kassel brings nearly 20 years of global-sourcing and business-development experience at Fortune 500 firms to his role at SupplyScope.

Prior to founding SupplyScope, Mr. Kassel led strategic-sourcing activities for Sun Microsystems, Inc. Mr. Kassel was based in Hong Kong, leading the firm's Asia supply-base development activities, establishing an international procurement organization, and driving the firm's adoption of the Electronics Industry Code of Conduct. Prior to Sun, Mr. Kassel led corporate-venturing and business-development activities at Eaton Corporation.

Mr. Kassel received a BA from Duke University and holds an MBA from the Ross School of Business at the University of Michigan.

### Scott Lane

Scott Lane is the CEO and principal of The Red Flag Group, a Hong Kong based consultancy specializing in ethics and compliance with a focus on anti-bribery and corruption compliance in China.

Prior to founding The Red Flag Group, Mr. Lane worked for Hitachi Data Systems as their general counsel for Asia Pacific. He has spent almost 10 years working in-house in Australia, Hong Kong, and the United Kingdom, typically in field roles as part of the sales and management teams in emerging markets. While in-house, Mr. Lane's focus was on supporting demanding sales teams while building strong compliance systems that meet the headquarter requirements and, at the same time, are locally acceptable and effective.

Mr. Lane has traveled extensively throughout Asia and has worked in over 15 countries on various matters. He is a writer for the South China Morning Post, Asia's leading English language newspaper, and has a regular column titled "Corporate Ethics 101."

Mr. Lane received a Bachelor of Laws, with honors, a Bachelor of Information Technology, and a MA of Law all from the Queensland University of Technology in Australia.

### Chris Leslie

Chris Leslie is the vice president and general counsel of Hitachi Data Systems in Silicon Valley, CA.

Prior to joining Hitachi, Mr. Leslie spent 10 years with Sun Microsystems, Inc. in a variety of senior legal roles with an international flavor. Mr. Leslie has also served as general counsel of Everex Systems, Inc. Prior to Everex, he spent five years in Hong Kong working in private practice with the London firm of McKenna & Co.



*Straight talking, direct and open assessment of what goes on and what to look out for in doing business in Asia.*

### Some Disclaimers

- This presentation is intended to be
  - direct and straight talking
  - somewhat 'generalist' in its approach
- It is talking about negatives; there are significant positives about living and working in a place like Asia – these are not being addressed here
- We acknowledge that not all experiences in Asia are the same and many may share a different view
- Asia is not "The United States of Asia or the Asian Union"
  - Countries vary; cultures dictate most approaches
- All three of the speakers have lived in China and Hong Kong at various stages of their careers and have practiced in China/Asia related matters for over 25 years.
- All the speakers love Asia and working in Asia



## Agenda

- Some general observations about doing business in Asia
- Specific issues on the
  - 'sales side' of business in Asia
  - 'supply chain' of doing business in Asia
- View from the General Counsel
  - What to focus on
  - What keeps him up at night about Asia



By the end of this session....

- You will have an understanding of
  - the most important red flags regularly found by business people in Asia (with an emphasis on the China region)
  - where to look for potential issues when considering business dealings in Asia
  - the key issues keeping a General Counsel 'up at night' when thinking about the Asian business



General Observations on Asia

- Asia is an emerging market:
  - Focus is on growth and speed
  - Focus is on MONEY and lots of it
- Governments can not always be trusted
  - Laws are still developing
  - Contracts can be over-ruled
  - Transparency is poor



General Observations on Asia

- Intellectual Property Protection
  - Laws are very good; enforcement is poor
  - China is improving but long way to go
  - State owned entities are come of the worst infringers of IP rights in counterfeit products (mostly software)



General Observations on Asia

- Property Rights
  - Developing
  - Many countries have no system of real estate recordation (e.g. Vietnam)
  - Some countries property rights are leasehold and subject to return to the state on vague terms



## Competition Law

- Doesn't exist in most parts of Asia
  - Even if it does exist it is rarely enforced
  - Some laws have been in the 'planning' for 10 years
  - Many Asian companies have 2 or 3 families that 'own' the city and set prices
  - Competition in a real sense is poor and not likely to change overnight



## Consumer Law

- Typically does not exist
- Consumers have little or no right of action against a seller or a manufacturer
- Laws against misleading and deceptive practices typically do not exist – you will see some of the widest claims of advertising in Asia



## Employment Laws

- Completely unenforced in most jurisdictions
- Harassment, discrimination are very common and mostly tolerated
- China has new laws that are proving to be powerful



## Employees

- Many employees in Asia have a 'side business'
- Conflicts are very common and rarely asked about my US companies and rarely conflicts are detected let alone regulated or enforced
- Employees move companies regularly looking for higher salary and higher titles
  - Most don't have experience in International markets
  - Most skip leadership levels in the 'Leadership Pipeline'
  - Most simply want short term financial gain



### Intermediaries

- Very common in Asia
- 'Introducers', 'referral partners', 'agents', 'consultants', call them what you like but they exist and are potentially quite dangerous



### The Judiciary

- Can be very challenging for foreign companies
  - Some judges are not legally trained
  - Rules of evidence are sparse in most non former English colonies
  - Corrupt judges are common in Indonesia, Vietnam, Philippines
  - Binding arbitration in HK or Singapore is preferred by most companies



### Corrupt Practices

- Significant problem
  - Easy to detect; Very difficult to prove; but definitely happening
  - Most challenging areas as Philippines, Vietnam, Indonesia, India and China (incl. Taiwan)
  - Commercial bribery is very common
  - Gifts and hospitality are a real challenge



### General Observations on Asia

- Management/Leadership
  - Mostly with an iron fist
  - Generally less than preferred western standards
  - Short term gains always trump over long term strategy
  - Improving in Chinese Government senior sectors with more leaders becoming foreign trained



### Sales Activity

- Collusion between competitors in government tendering is common in China
- Price setting is common in China
- Vendors agreeing to 'big rig' is common
- You can almost guarantee that there is some improper payment going somewhere in any major transaction



### Sales Activity – Resellers/Distributors

- Typically used to move 'money around'
- Will generally be quite happy to act as a payer of kickbacks, bribes and illegal payments to vendors or government
- Generally are not foreign owned and are not (practically) bound by corruption laws



### Sales Activity – Staff

- Conflicts often arise in sales staff setting up deals; either as
  - a party to the transaction
  - owning a share in a party; or
  - By way of a kickback
- Detection is rare



### Sales Activity – Inflated Margins

- Margins to intermediaries (incl. resellers) are often inflated to account for illegal payments



### Sales Activity – Equipment

- Many equipment resellers are very successful at maintaining multiple vendor resale relationships and also managing a successful grey market program on the side
- Many also operate 'side inventory' requested by the vendor for channel stuffing purposes



### Sales Activity – Offsite Training

- Very common that customers in China request site visits or 'offsite training' to other locations outside Asia
- Generally it is embedded in a deal and facilitated by a reseller
- 'Lucent' recently settled FCPA allegations on this issue; Lucent is merely a somewhat (unlucky) example of widespread conduct that is extremely common in Asia



### Supply Chain – Design

- Intellectual-property protection
  - Lack of enforcement of international IP laws
  - Copying and fakery have less negative connotations than in U.S. and Europe
  - High employee turnover and lax non-compete laws enable IP infringement
- Local management practices
  - Less inclined to honor NDAs
    - Will discuss another client to gain new work



### Supply Chain - Manufacturing

- Factories are complex entities
  - Job-creation mechanisms
  - Revenue-generating entities
  - Sources of pride for local officials
- Economic pressures create moral hazards
  - Kickbacks to purchasers to maintain business
  - Entertainment of government officials
  - Employment of underage workers
  - Provision of substandard worker benefits



### Supply Chain – Logistics/Customs

- Shipments and delivery of inbound or outbound goods are prone to corruption
  - Risk or threat of delays may trigger corrupt practices (e.g., “expedite” fees)
  - Customs officials in Asia often seek payments for goodwill
  - Customs audits are frequent and may involve significant “entertaining”



### Supply Chain – Social Compliance

- Factories frequently try to beat an audit
  - Maintain a “show location” for audits/visits
  - Main production facilities have lower-quality working and living conditions
  - Most commonly, keep two sets of books
    - Employee records (e.g., age, overtime)
    - Finances (taxes and other payments)
- Factory audits in China are difficult to conduct with a high degree of confidence



### The GC Perspective - Staff

- I worry about our legal team in Asia
  - Finding the right ‘mindset’ for the legal team (local vs. international)
  - Making sure they don’t go ‘native’
  - Being poached by another MNC
  - ‘Face’ issues – hearing the bad news up the chain
  - Finding the balance between sales and compliance/ headquarter needs
  - Health & Burnout



### The GC Perspective – My Staff

- I worry about that legal management team’s in the US
  - Don’t appreciate how challenging it is to be a lawyer in the emerging markets (same applies to LATAM and EMEA)
  - Don’t get out to Asia enough and offer coaching, advice and guidance to those lawyers in regions that are a long way from HQ.





### The GC Perspective – The US Govt.

- I worry that members of the DOJ and other departments don't truly understand how difficult it is to operate in some of these markets
- I worry that there is not a level playing field with other non-US companies in the region – which gives US a companies a disadvantage



### The GC Perspective – Cost

- I worry about the cost of managing all the risks you heard today
- I worry about the manpower needed to manage all these risks
- I worry about the leadership of the business not appreciating the challenges that a legal counsel is under



### The GC Perspective – Managing Expectations

- I worry that no matter all the work and effort we put into the legal group in Asia that things will come up and that if they are not coming up then frankly we are not looking hard enough
- Communicating this message to the business teams is often challenging
- I worry that the 'GC' is the *"fall guy"*



### Summary - General Observations on Asia

- Visitors from abroad
  - Well trained to give visitors great hospitality
  - You will enjoy your trip significantly
  - What you see on your trip is rarely what is really happening after you leave
  - Lack of Language ability will constantly be used against you



### Last Comment

- There is tremendous business opportunity in Asia for US companies
- One focus is to engage the right people to help you in the market especially on due diligence for proposed suppliers, business partners, resellers, agents etc.