The Do’s & Don’ts of International Contracts

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Presented by Vandeventer Black, in association with the VEDP
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Firm Profile:

Vandeventer Black offers a broad range of legal service with a focus on providing practical solutions for our business clients. We have been doing so since 1883. Our guiding principle is to provide excellent legal services at a reasonable cost to our clients while maintaining the highest of standards.
Norfolk & Portsmouth Harbor
(Today)
Our Firm:

Vandeventer Black LLP is a full-service, International Business Law Firm

Strengths
- Business and Tax
- International Law
- Government Contracts
- Commercial Development
- Labor and Employment
- Immigration
- Environmental
- Maritime
Practices:

- International Business
- Design Professional E&O Defense
- Government Contracts
- Environmental

- Energy
- Ship Repair & Shipbuilding
- General Litigation
- Insurance Coverage Defense

- Labor & Employment
- Workers Compensation Defense
- Immigration
- Maritime

- Commercial Real Estate
- Banking & Finance
- Business
- Construction
Our People Here Today:

- **Katharina Brekke Powers**
  - 15+ years of experience.
  - International business transactions with emphasis on Northern European companies doing business in the US, and US companies doing business overseas.

- **Michael Sterling**
  - 30+ years of experience in public contract law, construction law, and alternative dispute resolution.
  - General counsel to numerous contractor organizations.

- **Geoffrey Hemphill**
  - 18+ years of experience in tax and business matters such as corporate taxation advice, limited liability company issues, international tax as well as state and local tax.
International Sales Contracts

• Country Environment
  – Business
    • Stability, political, economic, geographic, environmental
    • Economic controls e.g. price
    • Currency
    • Banking & Finance
    • Regulation of foreign investment
    • Incentives e.g. tax
    • Exchange controls
    • Special Rules
    • Immigration
International Sales Contracts

• Legal system
  – Constitution
  – Statutes
  – Regulations
  – Judicial
  – Intellectual property law
  – Enforcement
International Sales Contracts

• Setting up a business
  – Entity type
    • Formalities
    • Forms
      – Stock, limited liability, branch, partnership, proprietorship, JV
  – Regulation
  – Accounting, filing and audits
  – Taxation
International Sales Contracts

• Labor and Employment
  – Employee rights
  – Wages & Benefits
  – Pensions and social security
  – Terminations
  – Labor relations
International Sales Contracts

- **Forms**
  - E.g. International Trade Centre

- **Applicable Law**
  - Jurisdiction
  - Treaties

- **Dispute Resolution**
  - Court
  - ADR
International Sales Contracts

• Organization to comply with U.S. law
  – Foreign Corrupt Practices Act (FCPA)
  – International Traffic In Arms Regulations (ITAR)
  – Export Administration Regulations (EAR)
  – Antitrust

• Communication infrastructure and protocol
  – E.g. Special email accounts
International Sales Contracts

• Taxation of Worldwide Income
  – US companies are subject to tax on worldwide income
  – Operating in a foreign country will likely subject a US contractor to that country’s tax

• Tax Treaties

• Special Tax Status

• Foreign Tax Credits

• Foreign Subsidiaries vs. Branch Operation
Foreign Income Tax Issues

• Tax Treaties
  – US has tax treaties with most industrialized countries
  – Treaties limit each country’s ability to tax residents of the other country unless that company has a “permanent establishment” in the foreign country.
  – Permanent establishment is met if the US company has
    • a physical presence,
    • conducts continuous activities or
    • has an agent in the foreign country
Foreign Income Tax Issues

• Special Tax Status

  – Status of Forces Agreements (SOFAs)
    • Can alter tax status of US contractors abroad

  – Technical Assistance Agreements
    • Can exempt US contractors from foreign tax
Foreign Income Tax Issues

• Foreign Tax Credits
  – Designed to limit the risk of double taxation
  – Elect Credit or Deduction
Foreign Income Tax Issues

• Choice of Entity
  – Branch
    • PE rules apply
    • Liability issues
  – Foreign subsidiary
    • Foreign sub subject to foreign taxes
    • Tax credits
    • Limited liability
    • Deferral possibilities
  – Joint Ventures
Foreign Income Tax Issues

• Transfer Pricing
  – US company must charge arm’s length prices in transactions with commonly controlled parties in other jurisdictions
  – IRS has power to re-characterize such transactions
Foreign Income Tax Issues

• Employment Taxes
  – Employees working abroad may be subject to foreign income taxes, payroll taxes, withholding

• Value Added Tax / Goods & Services Tax
  – Rates can be high – 15% - 25%
  – Calculation complex

• Local Taxes
Thank You!