



202 - Successfully Preparing Your Company for Global Business

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Faculty Biographies

Margaret McLean

Margaret B. McLean is vice president and chief legal officer for CH2M Hill Companies, Ltd., a US \$4.5 billion global engineering, construction and project management company that provides services to public and private clients on six continents from 180 offices in more than 30 countries. Before becoming CH2M Hill's general counsel, Ms. McLean was the company's chief international counsel, and in that role she advised management on business structuring, project delivery, risk management, and policy and compliance issues outside of the United States.

Before joining CH2M Hill, Ms. McLean was a partner with the Denver-based law firm of Holme Roberts & Owen, practicing in its Denver, London and Moscow offices. Her practice focused almost entirely on international acquisitions and finance transactions in natural resources, technology, infrastructure development and manufacturing industries in Europe, the former Soviet Union, the Middle East, South America and the Pacific Rim.

She holds a B.S. degree in computer science from the University of Arizona, an MBA from the University of Colorado, and a J.D. from the University of Michigan Law School.

Charles Moorse

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Susan Mussell

Susan Mussell is the general counsel and corporate secretary of Starkey Laboratories, Inc., a privately held hearing-device manufacturing company with headquarters in Eden Prairie, Minnesota (a suburb of Minneapolis). Starkey has more than 4,000 employees with 35 facilities in 24 countries. As Starkey's first in-house counsel, Ms. Mussell established the legal department in December 2004. Currently the department includes two additional attorneys and a paralegal. Ms. Mussell is responsible for all legal matters affecting the company, including acquisitions, commercial contracts, litigation and intellectual property management.

Before joining Starkey, Ms. Mussell served as litigation counsel for H.B. Fuller Company for nearly six years, providing counsel in a variety of litigation matters in the U.S. and abroad. For the preceding 17 years, she was a trial attorney as a partner in private practice, focusing on product-liability defense work.

Ms. Mussell received her J.D. from the University of Kansas law school and her B.A. from Kansas State University.

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202 SUCCESSFULLY PREPARING YOUR COMPANY FOR GLOBAL BUSINESS (presented in cooperation with Lindquist & Vennum)

Panel: Greg Wolsky, Introducer (Lindquist & Vennum P.L.L.P.)
Charles Moorse, Moderator (Lindquist & Vennum P.L.L.P.)
Susan Mussell, Starkey (Minnesota)
Margaret McLean, CH2M Hill (Colorado)
James Nelson (Lindquist & Vennum P.L.L.P.)

The law department must take a leadership position in preparing a corporate client for global business. Counsel should play a lead role in the audit of the company to assure that assets, systems, and resources required to do business globally are available. This program features checklists to assist counsel. The panel will provide examples of ways gaps can be filled in the client's resources in order to minimize the risk of beginning to do business outside of the US. In addition, you will learn steps to become better prepared to manage the provision of legal services needed for global operations.

- I. The Corporate Setting
 - A. The strategy (is the decision strategic or responsive to some inquiry?)
 - B. The champion (is the organization committed? Is there a corporate champion? Has there been a commitment of resources?)
- II. The audit
 - A. Assessing the company's current resources?
 - B. Reviewing the company's legal environment? High Tech?
 - C. Gap analysis and plan to cover such deficits.
- III. Building the team
 - A. Identifying the corporate stakeholders
 - B. Finding outside counsel and other support

- IV. Compliance
 - A. Hot Issues in global business (FCPA, boycott, export controls, money laundering, etc.)
 - B. Building a robust compliance program
- V. Providing on-going legal support to global operations

PREPARING YOUR COMPANY FOR GLOBAL BUSINESS

CORPORATE AUDIT

I. Corporate Status

- Is the company in good standing?
- Are all corporate documents up to date?
- Does the company have all of the licenses that it needs?

II. Corporate Commitment

- Is there a corporate champion?
- Has there been a resource review?
- Is there a financial commitment?

III. Systems

- Are corporate systems in order – including the compliance system?
- Are there contract review procedures?
- Is there a current code of business conduct?

IV. Risk Assessment

- Country risk review
- Commercial risk review
- Insurance risk review
- Customer/Partner due diligence

V. Resource Assessment

- Is the company's intellectual property protection in good order?
- Has the company developed appropriate policies for human resource issues associated with international business, including travel policies and relocation policies?
- Does the company have appropriate banking relationships for international business?

VI. Support Team

- Is the staff knowledge of the legal department sufficient to support international operations?
- Does the company have accounting support and relationships for such operations?

- Has the legal department built a network of counsel it could use in support of international operations?
- Does the company have in-house or outside interpretation and translation service available?

VII. Outside Resources

- Has the company established relationships with organizations which can provide information and knowledge, including chambers of commerce, World Trade Centers and trade associations?
- Has the company accessed governmental resources, including the U.S. Department of Commerce and the commercial attachés of the target country consulates?

**Presented by:
James E. Nelson
Lindquist & Vennum P.L.L.P.
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PREPARING YOUR COMPANY FOR GLOBAL BUSINESS

COMPLIANCE PROGRAMS IN SUPPORT OF INTERNATIONAL OPERATIONS

I. Export Controls

1. High Technology
Export Control Classification Number (ECCN)

2. Denied Persons
Maintained by the Bureau of Industry and Security, U.S. Department of Commerce

3. Prohibition by Country
Commerce Country Chart

II. Financial Disclosures

1. Money Laundering Regulations
Payment Methods

2. Reporting Requirements

III. Federal Corrupt Practices Act

1. Internal Controls
 - Codes of Conduct
 - Training
 - Written and Signed Acknowledgements

2. Contract Controls
 - Agents
 - Purchase Orders
 - Payment Instructions

IV. Boycott

1. Risk Areas

2. Contract Intake Procedures

3. Documents
 - Contracts
 - Shipping Instructions
 - Letters of Credit

PREPARING YOUR COMPANY FOR GLOBAL BUSINESS

A LEGAL CHECKLIST FOR CONDUCTING
TRANSNATIONAL BUSINESS

V. Resources

1. U.S. Department
2. Local District Export Counsel
3. Banks, Accounting and Law Firms
4. Trade Associations
5. **Association of Corporate Counsel**

- I. ESTABLISHING A FOREIGN ENTITY OR OTHER PRESENCE
- II. TRADE REGULATIONS AND REPORTING
- III. INTELLECTUAL PROPERTY
- IV. HUMAN RESOURCES
- V. INTERNATIONAL CONTRACTS
- VI. TERMINATION

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I. ESTABLISHING A FOREIGN ENTITY OR OTHER PRESENCE**Forms for Market Entry**

- Independent Distributor
- Sole Proprietorship
- Representative Office (Liaison Office)
- Branch
- Locally Organized Legal Entity
 - Wholly-owned entity (subsidiary)
 - Joint venture
- Hybrid: the “Contract Joint Venture”

Types of Local Legal Entities

- Limited Liability Company
- “C”-type Corporation
- Public company
- Other corporation
- Partnership
- Partnership without Legal Status (see “Contract Joint Venture” above)

Local Law Considerations

- Which entity forms are permitted?
- What is the process for registration or incorporation?
- Is government participation in ownership or operation required?
- What is the requirement that a national of the country participate in the ownership or management?
- What are the capitalization requirements?
- Does the entity form protect the investor and its partners from entity liabilities?
- What is the cost and timing of registration or incorporation?
- What are the limitations on activities of a chosen entity?
- What governmental approvals are required to conduct the business?
- What licenses and permits are required?

Investment Regulations and Reporting

- What restrictions exist for direct investment in the country?
- What restrictions exist for indirect investments in the country?
- Are there limits on amount invested?
- Are there treaties relevant to the investment?
- Is reporting of foreign investment required in the United States?

Accounting and Tax Considerations

- Is there an understanding of the accounting differences from local GAAP and US GAAP?
- Are there adequate controls and procedures in place to assure accurate and timely reporting?
- What kinds of special benefits (and corresponding obligations) may apply?

- Tax Holidays for Investment or Employment
- Tax Deferment for Investment or Employment
- Incentives for Higher Levels of Exports
- Tax Assistance for Levels of Employment
- Do special benefits depend on negotiated or legally mandated obligations to specific localities of operation?
 - Special Economic Zones
 - Economic and Technological Development Zones
 - Free Trade Zones
- Are there transfer pricing agreements in place and documentation to support the same?
- Is there an understanding of the tax consequences to the entity and the investors?
- Is there registration duty due upon incorporation, transfer of assets or shares or any other tax or duties due on a periodic basis?
- Are there mandatory contributions for social security, retirement, pension or unemployment matters?
- Are there any applicable tax treaties?
- If treaties exist, has either government developed any interpretations that vary from international standards?

II. TRADE REGULATIONS AND REPORTING

Customs Regulations

- Is the country a member of WTO?
- Is the country a member of the EU?
- Is the country a party to a regional free trade agreement?
- Does the Customs Department value the goods?

- What are the procedures for valuing the goods, classifying them, and clearing them through customs?

Exports

- Do restrictions, limitations, or prohibitions apply to exports
 - From the United States
 - From the foreign country
- Are actual export licenses required?
- Are there applicable export taxes, or possible rebates of duties?

Imports

- Are import licenses required?
- Are there applicable import duties?
- Are there applicable import quotas?
- Are there applicable import barriers or impediments (e.g., unusual national standards, requirements of registration with national boards)?

Foreign Trade Regulations

- Are there foreign trade regulations on the import or export of goods involved in the business?

Manufacturing Requirements

- Must the product contain ingredients or components which are found or produced only in the country?
- Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?
- Will importation of components be permitted or duties limited only if resulting goods are exported?

Product Labeling

- Are there applicable labeling or packaging requirements (e.g., multi-lingual notices, safety warnings, listing of ingredients, country of origin markings, medical claims, etc.)?

Commerce Department Controls

- Are any of the goods “dual use” items subject to U.S. export restrictions?
- Is any of the underlying technology subject to U.S. export restrictions?
- Are technical updates within the U.S. subject to Commerce Department restrictions and licensing as “domestic exports”?
- Are the companies, joint venture partners, trading partners, or others included in any of the various U.S. government blacklists?

State Department and Treasury Department Controls

- Are there any restrictions on exports of products and technology
- Are there restrictions on (or prohibitions of) direct business with certain countries and their nationals
- Are there restrictions on (or prohibitions of) indirect business with specific countries and their nationals
- Are the companies, joint venture partners, trading partners, or others included in any of the various U.S. government blacklists?

Foreign Corrupt Practices Act Anti-Bribery Provisions and Accounting Provisions

- Has a corporate policy statement been adopted which evidences the company’s commitment to comply with the FCPA?
- Does the company have a policy for reporting possible violations?
- Does the company train new employees in, and remind other employees of, the FCPA prohibitions?
- Does the company require approval of counsel or an appropriate officer for payments made to international bodies, foreign government officials, and candidates for foreign political office?
- Do consultant contracts and appropriate employee contracts include protective provisions confirming agreement to comply with the FCPA, agreeing not to pay money or anything of value to foreign officials or undisclosed third parties and representing that they are not an employee, officer or agent of a foreign government or candidate for public office?
- If the company is a public company, does it have sufficient policies and procedures to comply with the recordkeeping and internal control provisions of the FCPA?

III. INTELLECTUAL PROPERTY

- Does the company follow a regular policy and procedure for identifying and protecting its intellectual property rights in its own developments?
- Does the company follow a regular policy and procedure for determining whether its developments, products, or activities are subject to the intellectual property rights of third parties?
- Is any action (registration or other) required in the foreign countries to protect the company’s intellectual property rights? And of what value is the protection that is offered there?
- Has the company explored the possibility of prior or conflicting claims to trademarks or other intellectual property rights by parties in the foreign countries?
- Are the goods involved in foreign commerce (manufacturing or sales) protected by the company’s rights or subject to intellectual property rights of another party?
- If so, are the rights recognized in the U.S.? In the other countries?
- Are intellectual property licenses, and possibly royalties, required? Or are royalties to the U.S. company available as a financial planning tool?
- How likely is it that third parties will assert intellectual property claims against the company based on goods or activities in the foreign country, and does the company have a method of determining the risks of loss based on such claims?
- If the company’s intellectual property rights must be practiced by the foreign operations (e.g., for manufacturing), should they be licensed to the foreign entity by the U.S. entity, or contributed to the entity?
- Can royalty payments be made to a parent or an affiliate by the foreign entity, and if so what are the tax implications of such payments?
- Who will own any intellectual property rights in developments made by the company’s subsidiary or other foreign entity: that entity, the U.S. entity, or a third party? Are contracts or other documents in place to avoid any doubt with respect to ownership?
- Is confidential information (know-how, trade secrets, or the like) protectable in the countries in question?
- Can employees be required to protect the company’s intellectual property, including confidential information?

IV. HUMAN RESOURCES

- Should company activities be carried on by employees of the U.S. office or the foreign entity or another entity?
- Should a joint venture partner be relied on for human resources issues?
- There are almost always substantial restrictions and requirements on employment in other countries. Do they apply to the company's foreign operations?
- Is the foreign subsidiary or other entity able to employ people? If so, must it use a government employment agency?
- What are the local requirements for job security, health benefits, tax withholding, vacations, pension fund contributions, and the like?
- Is a reliable service available to handle all payroll issues until the foreign subsidiary or other entity attains a revenue or employment level that justifies handling such matters itself?
- Are non-compete clauses enforceable, and if so under what circumstances?
- Are there special requirements of notice or payment upon termination?
- Is downsizing permitted?
- Is mass termination permitted upon winding up of the foreign entity?

V. INTERNATIONAL CONTRACTS**Choice of Law**

- Can the contract be governed by the law of another jurisdiction?
- Are there public policy considerations?

Mandatory Law

- What local law will apply notwithstanding selection of a different governing law by the parties?

Dispute Resolution; Choice of Forum

- Is mediation a viable alternative?
- Is arbitration a viable alternative?
- Are neutrals readily available?
- Are non-nationals permitted to be neutrals?
- Is the country a signatory to any international arbitral enforcement treaty, e.g., New York Convention?
- Are arbitral awards enforced without difficulty?
- Are parties free to choose the arbitral tribunal?
- Are there restrictions on the arbitral process and selection of representatives?

Currency Issues

- Are there exchange controls which permit a particular payment and at a specified rate?
- Is the particular currency freely convertible and available?
- Can the local party get access to currency?
- Can profits or payments be repatriated if payment takes place in the local country?

VI. TERMINATION**Termination of the Business**

- Is government permission required for termination of the business, winding up of the local entity, or withdrawal from the country?
- What costs are involved in withdrawal from the business or from the country entirely?
- Are there remaining obligations regarding tax benefits, employee obligations, or regular tax filings and payments?
- What sort of timing is required?

- Do any obligations to creditors, suppliers, or other parties survive or affect the termination of business?
- What becomes of intellectual property rights and other assets of the foreign entity upon termination (e.g., do they revert to their original owners (if any), are they shared by joint venture partners, or are they sold in a liquidation of assets)?
- What are the consequences of terminating an agent, sales representative or distributor?