



303 Roundtable: In-house Guide to Managing a Global Legal Practice

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Faculty Biographies

Nicholas R. Sayeedi

Nick Sayeedi is a legal director at EchoStar Communications Corporation, a Fortune 500 publicly traded international distributor of satellite video, audio, and data content and related hardware. In addition to comanaging the EchoStar legal department, Mr. Sayeedi is responsible for all of EchoStar's international legal work, as well as securities and M&A matters.

Prior to joining EchoStar, Mr. Sayeedi worked as an associate in the corporate and securities department of a large international law firm.

He received his JD from the University of California, Hastings College of Law, where he served as a Law Review editor.

Susan T. Travis

Ms. Travis is senior corporate counsel at Pitney Bowes, Inc. for the intellectual property and technology law department providing counsel for worldwide intellectual property and technology agreements including patent, trademark, copyright and technology licenses, confidentiality, development, and distribution agreements, consulting services, trademark and trade name protections, maintenance contracts, private label and co-branding, original equipment manufacturers, value-added resellers, and other joint venture arrangements. She also currently serves as a volunteer for the Pro Bono Partnership, and is a commercial arbitrator for the American Arbitration Association.

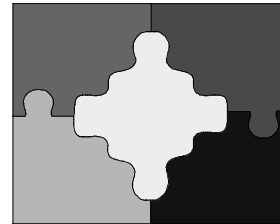
Prior to joining Pitney Bowes, Inc. Ms. Travis conducted transactional duties for procurement contracts for a \$40 billion global Fortune 100 pharmaceutical corporation. She has also handled the general counsel, litigation management, and contractual negotiations for companies selling goods and services in a wide range of markets and channels for consumer, photographic, and graphic arts products, medical equipment and consumables, gas and chemical delivery systems, and office products.

Ms. Travis is a former faculty member of the Pace University School of Law, litigation associate at a firm in White Plains, NY, and labor counsel for a New York labor union. She has written various articles and treatise chapters, and is a lifelong member of PSU Alumni Association, elected to Education Alumni Board, past president, and member of Town of Somers Zoning Board.

Ms. Travis received her BS cum laude from Pennsylvania State University and her JD from Syracuse University.

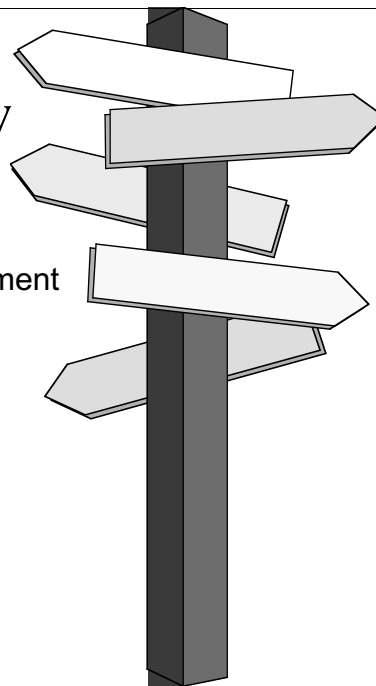
Conducting And Managing International Legal Work From the U.S.

Nicholas R. Sayeedi
Legal Director
EchoStar Communications Corporation



Overview

- International Business Growth
- Law Firm vs. In-House Management
- Good Local Counsel is Key
- Prepare for the Deal
- Conducting Due Diligence
- Draft and Negotiate the Deal
- Setting up a foreign office
- Maintaining a Foreign Office
- Litigation Management
- Use Modern Technology!



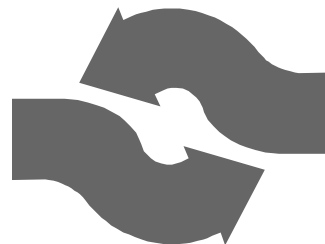
International Business Growth

- Cost vs. Quality analysis leads many to purchase products or services abroad
- Often easier to enter an untapped market than to expand in an existing market
- The World Wide Web and e-mail greatly facilitate international business communication
- The fall of communism created many new markets and suppliers



Law Firm vs. In-House Management

- Law firm advantages: greater resources, specialty knowledge, possibly local offices
- In-House advantages: lower cost, greater control over proceedings, greater knowledge of business, corporate culture, and industry
- Law firm may be preferable if
 - it has significant in country knowledge
 - the deal is multi-jurisdictional
 - complex subject matter is involved (e.g., securities or IP licensing)



Good Local Counsel is Key

- This is no place to skimp on resources; good local counsel can help you avoid many pitfalls
- Check ACCA's foreign counsel website:
<http://www.internationalcounsel.org>
- Research the credentials of the attorney hired
- E-mail is extraordinary useful for distant time zones
- Look for fluent English speakers who have studied law in the United States
- Get fee arrangements in writing
- Recommendations from other lawyers are the best basis on which to hire
- Outside of the developed world, make sure you visit the lawyer at the law office

Prepare for the Deal

Visit the country in person.

Research the local legal system. Examine tax consequences of the proposed action.

Thoroughly understand the deal your company wants to do, their motivations for entering into it, and what they expect to get out of it.

Thoroughly investigate the other party and their business (including any official or unofficial ties to local government). Be aware of the FCPA.

Consult third parties (other lawyers, accountants, chambers of commerce, U.S. Embassy) about the jurisdiction and the other party.

Learn about the local currency and your ability to exchange it for dollars.

Learn the basics of the culture of business in the country.



Conducting Due Diligence



- Hire good local counsel, and give them clear instructions
- Get the 50,000 foot picture of essential items (e.g., repatriation of profits, government licenses, foreign ownership restrictions)
- Methodically quiz local counsel and the other party regarding any and all necessary licenses, permits, and approvals, and the cost and timing of obtaining them
- Special emphasis should be paid to issues that differ from U.S. law treatment

Draft and Negotiate the Deal

Try hard to control the document, either directly or through local counsel.



Whenever possible, push hard for the other party to accept U.S. law and to retain a U.S. lawyer to negotiate the deal.

Have frequent conference calls. Trade comments by e-mail whenever possible.

Take advantage of the fact that English is so widely spoken by insisting that all documentation of the relationship be in English.

Meet at least once face to face, preferably in the early stages of negotiation.



Take nothing for granted as understood by the other party. Go through the contract line by line with the other party to confirm understanding.

Setting up a foreign office

- First priority is getting good local counsel
- Review business, legal, and tax considerations
- Choose whether to set up a branch, a subsidiary, a joint venture, partnership, or other arrangement
- Get cost and timeline estimates on filings, approvals, and permits from counsel prior to making a decision
- Hire at least one local native professional to help guide you

Maintaining a Foreign Office

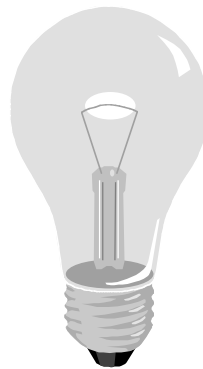
- Visit the office at least once every other year
- Get updated constantly regarding the business conducted from the office
- Insist that you are copied on all communications with outside counsel and that you approve all legal bills
- Give a presentation to management of the local office, describing the company's legal policies and teaching them to spot legal issues
- Require management to get legal approval from the home office before taking any action that could subject the company to liability (e.g., before executing any contract over \$X or obligating the company for more than 12 months)
- Make sure you have local lawyers handling corporate governance issues of foreign based entities
- Try to have a locally trained accounting professional on staff (or outsourced) to handle payroll withholding, taxes, and other related issues

Litigation Management

- Hire good local counsel, preferably a native lawyer
- Research the local country's civil procedure system
- Look at lobbying (i.e., applying political pressure) if the government is the plaintiff
- Meet with local counsel to understand the relevant differences between U.S. and local law and procedure
- Dig deep to make sure you understand fully all of the costs involved, including any reimbursement of the victor's legal fees

Use Modern Technology!

- Rely on e-mail and word processing applications
- The Internet can be used to perform significant due diligence and legal research
- Online translation services can give you a very rough translation almost instantly, and can also be used to translate foreign websites
- Carry a laptop if you are negotiating a deal
- Search Edgar for similar contracts done by other U.S. companies in the foreign country
- Make sure that any hotel you book has data lines to enable you to connect your laptop to your home network



Conclusion: You *can*
successfully conduct and manage
international work from the U.S.



GLOBAL GOVERNANCE

An accelerated process of globalization has changed the structure of the international legal system. Traditionally, when thinking of the applicable law, the national law was what came to mind first. Yet, a form of global governance is evolving through alliances, treaties and multinational corporations to promote global commerce. Now we have international, supra national, regional, local and municipal authorities interacting in global governance.

MERGER, ACQUISITION AND OUTSOURCING

Cultural as well as statutory differences may be significant. For example, in Japanese the term for mergers and acquisitions literally means a sale of people. That connotation is viewed unfavorably and tended to make Japanese business owners reluctant to sell their business to foreigners. Obviously, today the translation problem has greatly dissipated, but such cultural issues remain important considerations when combining companies and business interests.

In some jurisdictions, such as developing countries, the national host government may impose conditions from permitting foreign investment. These conditions may dictate hiring, staffing and training of native personnel or place restrictions on expatriate management personnel. For example, a condition of foreign investment may be the national host governments' selection of employees from state controlled agencies restricting the foreign investor's option to select and recruit personnel.

Changes are perhaps most visible in the area of global sourcing. We are familiar with the child labor condemnations aimed at Wal-Mart and Kathie Lee Gifford. And, we have seen considerable bad publicity for Nike and Reebok on reports of labor abuses in Southeast Asia. Less visible, yet equally challenging for your clients are the rapidly evolving international laws and regulations. Regardless of the contractual arrangements, be it a direct supplier-purchaser contract, a joint venture, a subsidiary, a distributor, or some other sourcing relationship.

SELECT COMPETENT COUNSEL

Selection of competent foreign counsel in the relevant jurisdiction is a critical step to successful global transactions.

As with selection of outside counsel in any jurisdiction, due diligence is in order in the selection of foreign counsel for specific legal issues. Identify what services you need and what you expect to accomplish for your company. Use your colleagues for referrals. If certain expertise is required, consult with other professionals with expertise in the subject area. In a multinational corporate structure, utilize your counterparts in affiliated companies in that jurisdiction. Ask employees who work in that country or do business there. And, use the web. Check your ACCA site, some of the sites that provide subject matter newsletters and links, or legal directories.

Once you have identified appropriate candidates, continue your selection process by interviewing the candidates, preferably in person. Not only will this help determine if you are comfortable with the candidate's experience, training, education and resources, it will also help when you later address issues involving an engagement letter, cultural differences, scope of the assignment, language issues, reporting and communication requirements.

Now that you have selected a qualified candidate, set forth the terms of engagement and established a working rapport, you are set. Right? Well, not necessarily. Make sure you understand the foreign rules on privacy, privilege and confidentiality. As many of you may know, privacy issues have been much in the news, especially as between the United States and the European Union. Similar issues are involved with attorney-client privilege. European Union practice does not provide the same level of protection we are accustomed to in the United States. According to the European Commission, there is no attorney client privilege between in-house counsel in Europe and their clients for internal communications.



Reach
Over 13,000
In-house
Counsel—
Free!

When members of the American Corporate Counsel Association/Global Corporate Counsel Association have a practice issue they need advice on, they turn to the association. Now, they have a new association resource to rely on when they seek to retain outside counsel:

InternationalCounsel, a database of outside counsel who practice outside the United States. Put your qualifications before the over 13,000 in-house counsel who are members of the American Corporate Counsel Association/Global Corporate Counsel Association. Post your information online—at no cost to you—at www.internationalcounsel.org.

