

Business Opportunities in ASEAN:

Issues for SMEs to Consider Before Expansion

By Say Sujintaya

Dialogue on Trade and Investment Coherence :

Enabling Thai SMEs for AEC 2015

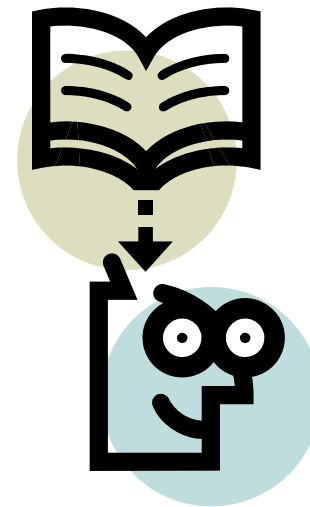
Centara Grand, Central Plaza Ladprao Hotel, Bangkok

22nd January 2013



Outline

- How to Prepare Your Business Before Expansion
- Sample Models for Expansion
- Remarks



How to Prepare Your Business Before Expansion

1. Local Success

- Create and maintain good quality products or services
- Know how to promote its own products or services
- Maintain track record in the business
- Create and maintain good back office systems e.g. logistics, supply chains, accounting, HR, etc.



2. Know The rules For Investment in the Countries of Interest

- Foreign investment rules / restrictions
- Tax and any other incentives
- Required licenses / permission for conducting the business



3. Know What IPRs You Have and Properly Protect Them

- Conduct internal audit
- Seek relevant protection of IPRs including the local languages
 - Conduct relevant searches
 - Seek registration of key IPRs including those in the local language 1-3 years prior to expansion, or at least before any trade exhibition
 - Study if there is any alternative protection system that would be helpful e.g. recordation of copyright



3. Know What IPRs You Have and Properly Protect Them (Cont.)

- Systemize the collection
- Accumulate and prepare all confidential information, know-how or key formulas for licenses
- Prepare a manual on manufacturing / distribution / service standards for quality control in the countries of interest



4. Record All Agreements In Writing

- Business partners
- Customers
- Employees



Sample Models for Expansion

1. Licensing (e.g. Software, Online games, e-magazine, etc.)

- Exclusive or Non-exclusive
- Mostly get one time payment
- Reservation of IPRs that are not licensed

The
Economist

ELLE TIME



Microsoft®
Office 2010



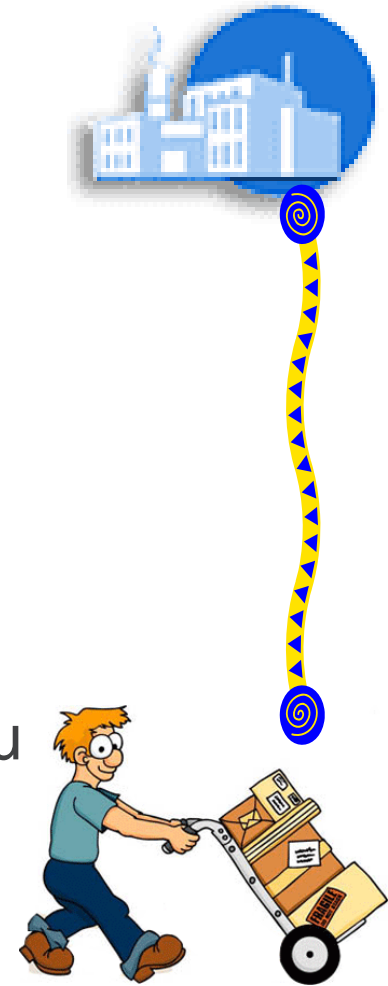
2. Distribution (+ Sponsorship)

- Exclusive or Non-exclusive in the Territory
- Right to appoint sub-distributor
- Scope of rights to use the mark
- Reservation of IPRs that are not licensed



3. Manufacturer + Distributor

- Transfer of know-how and licensing
- Exclusive or Non-exclusive in the Territory
- Required manufacturing standards
- Minimum manufacturing capacity
- Minimum sales targets
- Right to appoint sub-contractor / sub-distributer
- Scope of right to use IPRs
- Reservation of IPRs that are not licensed.



4. Franchise

- Exclusive or Non-exclusive
- Scope of Territory (District, City, State, Country)
- Manual/ Handbook to operate the business, and initial set up equipment (if any)
- Supply of raw materials
- Right to appoint sub-franchisee
- Scope of right to use IPRs
- Reservation of IPRs that are not licensed



5. Joint Venture

- Jointly form an entity with a person or entity in a territory and appoint such entity to be exclusive or non-exclusive distributor and/or manufacturer of certain products
- Terms and conditions on obligations of each party and termination of joint venture
- Same rules for appointment of distributor and / or manufacturer



6. Set Up a Subsidiary

- Setting up its own subsidiary in a territory to operate the business such as distribution of products or operating service business
- Term & Conditions for IPRs should be at a professional level



7. Take Over an Overseas Company

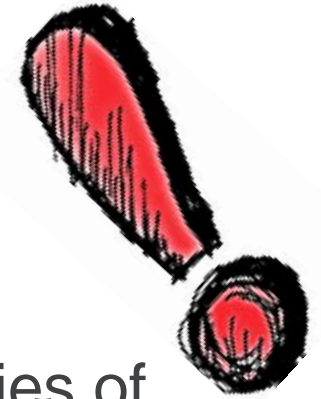
- Take over an entity in a territory by way of share or asset purchase.
- Conduct due diligence to determine the benefits and risks of a take over
- Sale and purchase agreement should address at least:
 - list of purchased shares or assets;
 - Each part of the transfer process, timeframe, and relevant documentation;
 - indemnification from the seller;
 - resolution in case of delay in transferring;
 - confidentiality.
- Term & Conditions for IPRs should be at a professional level



Remarks

Remarks

- Local Success
- Know The Rules For Investment in the Countries of Interest
- Know What IPRs You Have and Properly Protect Them
- Record All Agreements In Writing
- Prepare for Termination and Post Termination Effects / Actions.





BAKER & MCKENZIE

**Abdulrahim Place 22-25 Floor
990 Rama IV Road, Silom Bangrak
Bangkok 10500
Tel. (0) 2636-2000 Ext. 4546
Fax. (0) 2636-2111 Ext. 4546**

Say Sujintaya

E-mail : say.sujintaya@bakermckenzie.com

Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.