

Practical Tips and Guidelines for Doing Business in Asia¹

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Introduction

While China and some of its Southeast Asian neighbors are experienced double-digit economic growth in the past few years, the global financial crisis which had its epicenter in the US is already triggering a rash of new of insolvency proceedings and workouts in Asia. In that event, U.S. workout and insolvency professionals may soon find themselves on planes either heading back to the destinations they frequented in the late '90s or heading off to their first Asian insolvency or workout experience. Moreover, as foreign investors and distressed debt players are already heading to Asia looking for new opportunities, some of their U.S. professionals may

¹ This content of this article is substantially drawn from materials prepared by the author that were originally provided to attendees at a cross-border presentation at the 2001 National Conference of Bankruptcy Judges and later, at a 2005 SRI Distressed Debt Conference. The suggestions and guidelines set forth in these materials are solely those of the author and are principally based upon the author's actual experiences in doing business in Thailand, Greater China and elsewhere in Asia, as well as from information gleaned from a variety of sources, including conversations and interactions with long-time "Asia hands." To the extent that any of you may have further questions for the author, you may contact him directly at gkelakos@crystalcapital.com.

have little experience in dealing in Asian in general and in the countries where their clients are seeking their and their firms' professional assistance.

For those of you who may be traveling to Asia for the first time on business, the following materials, presented in a Q&A format, should provide you with a basic road map and will hopefully guide you past some of the major pitfalls. Since cultural practices and social etiquette vary from country to country, the author has chosen to focus on practical tips and guidelines that are generally applicable throughout Asia. The materials also include general references to help get you started on obtaining necessary background information on the country or countries which you will be traveling to – including some of the resources available on the internet.²

Q: If I provide professional services to my client in Asia, will I be violating any immigration or labor laws?

A: Possibly. In some Asian countries, if you provide professional services in that country without a work permit and without having first obtained the appropriate entry visa, you may be violating that country's immigration and labor laws. By way of example, the Thai Alien Employment Act³ provides that, with limited exceptions, a foreigner who enters Thailand without a work permit and who performs any kind of work ("work" is loosely defined to include volunteer work) must first obtain a work permit. Failure to abide by these restrictions may result in the imposition of fines and even, incarceration. Visa and work permit restrictions also abound in other countries – the People's Republic of China and Malaysia are two notable examples.

² Alien Employment Act B.E.2521 (1978).

³ For a general description of the restrictions imposed under Thai law, please refer to the material set forth on the website of Tilleke & Gibbins International, Ltd. (www.tillekeandgibbins.com). Alternatively, you might refer to the links and materials compiled on the website for the Royal Thai Embassy in Washington, D.C. (www.thaiembdc.org.)

Despite these laws, some Western professionals regularly breach these laws, either deliberately or just out of ignorance. However, professionals who ignore these restrictions and perform professional services in situations where they could be violating a country's immigration and labor laws do so at their risk. In Thailand, for example, it is not unheard of for adverse parties to report violators to local authorities who are only too willing to enforce these laws.⁴ As a result, check with your local professionals or at the very least, with the embassy or consulate of the country that you will be visiting to ensure that you will not be violating local labor and immigration laws if you enter the country with a tourist (or even a business) visa for the purposes of conducting professional services in that country.

Q: My client has asked me to attend an important meeting in an Asian financial center. I have been advised that this country has laws that might restrict me from performing professional services in that country on behalf of my client. Are there any practical alternatives?

A: Yes. Consider participating in the meeting telephonically or through a web or video conference. In addition, consider having your local professional physically present at the meeting. If your presence is required, you might consider changing the venue of the meeting to a more “business friendly” venue (for example, Hong Kong SAR or Singapore). Most of Asia's business and financial centers are all a short flight away from each other, with the result that your request for a change of venue may very well be honored.

Q: This will be my first trip to Asia. Will I need to worry about obtaining any visas?

A: Possibly. Be aware of each country's visa and immigration requirements before you commence your trip. While visas are not required for tourists visiting most countries in Asia

⁴ Former management in the well-publicized *TPI* case in Thailand used that country's restrictive work permitting laws to advantage to harass the foreign employees of the Planner entity that were charged with administering *TPI*'s confirmed plan of reorganization; the Planner entity was eventually dismissed and replaced with a Planner chosen by the Thai government.

(notable exceptions are the People's Republic of China, Laos, Myanmar and Vietnam, to name a few), you should check each country's requirements with respect to conducting business abroad by contacting that country's embassy or consulate. Most of the embassies and consulates are very accommodating, even when you have to rush to obtain a visa on short notice. Many of these materials are available on-line. For example, the website for the Royal Thai Embassy in Washington, D.C. (www.thaiembdc.org) provides all relevant information on the types of visas that are available, as well as each visa's requirements.

Q: I understand that the meeting that I will be attending in Asia will be conducted in English. Should I advise my client to retain a local professional or, at the very least, engage a competent interpreter?

A: If possible, yes. If you have been asked to participate in a meeting in Asia, particularly where there will be other Westerners present at the meeting, it is likely that the meeting will be conducted in English. However, even if you are unable to retain a local bilingual professional, you will find it extremely useful to have a competent translator at your side. When selecting an interpreter, make sure that she or he is comfortable with the technical language and jargon that will be used at the meeting and is truly fluent in English. Western professionals working in Asia often find themselves at a disadvantage in meetings where the bulk of the discussions are conducted in the local language. In addition, Western professionals sometimes find themselves in situations where many of the parties are unable to fully understand and comprehend the English discussions. In those circumstances, if you don't have a native speaker at your side, you might have to rely on parties whose interests may not be aligned with your own to interpret your words and the words of others in the room. In order to avoid these situations, it is advisable to either retain a local foreign professional or a competent interpreter to accompany you to your meetings.

Q: I am a seasoned U.S. bankruptcy professional who has earned the reputation of being a tough negotiator. I have heard that my forceful negotiating style might clash with Asian cultural and social practices. Is that correct?

A: Generally, that is correct. A first-time traveler to any of the Asian capitals or financial centers might be lulled into thinking that Western culture has permeated all facets of Asian society. However, it doesn't take long for that visitor to figure out that many of the cultural traditions and rules of social etiquette remain in place. For example, business people and professionals in many of the Asian countries, as a rule, try to avoid conflict if at all possible and there is a cultural preference towards resolving conflict through non-aggressive and adversarial means (such as through non-judicial "conciliation" processes). As a result of early experiences with the West and particularly, with Americans, the negative stereotype of the "ugly American" still exists today. We are perceived as being loud, brash, rude, and in many cases, disrespectful of local customs and practices. If you have an aggressive style, leave it at home. You will be more effective if you tone down your approach and maintain a low profile. In situations where you have to deliver an unpleasant message to a party in Asia, for instance, as in the case where your lender client has asked you to make a demand for payment in person, if you want to preserve the prospect of resolving the dispute out-of-court, either through a debt restructuring or some other arrangement, tone down the delivery of your message so that it is delivered in a calm fashion, leaving the door open for the parties to discuss non-litigation alternatives. If negotiations fail, you may, or may not (depending on the country) still be able to effectively pursue and obtain an in-court remedy. However, as out-of-court resolutions are generally favored in Asia, if you reach an impasse, you might consider attempting to resolve the dispute through alternative dispute resolution procedures (such as mediation or arbitration).

While cultural practices and social etiquette will vary from country to country, the tips and principles set forth below should be adhered to if you want to avoid being branded as an "ugly American" businessman or professional:

- **Play the role of a diplomat – respect your hosts, behave with dignity and be considerate and aware of the cultural rules and social etiquette of the host country.** Try to familiarize yourself in advance of the meeting with that country's cultural and social etiquette. Avoid direct criticism, emotional outbreaks (see below) and stay "centered" – even if negotiations start to break down. Again, while the rules vary from country to country, Westerners who are able to maintain their *sangfroid* and patience in the face of long and difficult negotiations will be held in high esteem.
- **Keep your emotions in check.** While this is good advice for anyone participating in difficult negotiations, it is particularly apt in Asia. In Thailand, for instance, an individual who maintains a "cool heart" (*jai yen*) is respected and admired; a person who has a "hot heart" (*jai rohn*) and who approaches a difficult situation by showing his anger, impatience and displeasure, is someone to be shunned. In the "Land of Smiles", a Thai, when faced with an individual who shows signs *jai rohn*, may still continue to smile on the surface. Inwardly, he will be in turmoil and will shut down and effectively cease to communicate with the "hot head."
- **Maintain "face" in your relationships in Asia and be aware of the consequences that can result when your actions cause another to lose "face".** As a foreign visitor to Asia, you are not expected to know and be aware of all of the intricate rules of social etiquette and culture that may vary from country to country. However, beware that if by your actions you either cause someone to lose "face" or do

something that results in your losing face in front of others (such as losing your temper at a business meeting or committing a cultural faux pas), you may kill any chances of resolving the dispute through an out-of-court settlement. On the other hand if you act in a manner calculated to preserve your dignity and that of your hosts, you will earn the respect of your hosts. Once again, avoid direct criticism, loud and abusive language and any actions (or inactions) that might show disrespect for the host country's government, culture and society.⁵

- **Keep your body language to a minimum.** In most Asian countries, pointing and gesticulating with your hands is considered rude behavior. Even a simple handshake should be handled in a low-key manner, as an enthusiastic handshake might be interpreted as aggressive behavior. In many countries, particularly avoid pointing, shaking hands or offering anything with your left hand. In some countries, you will also need to keep your feet in check. In Thailand, showing the soles of your feet or pointing your feet at someone is extremely offensive. Likewise, touching a Thai on the head is considered offensive.
- **Learn to approach business disputes with “circular” rather than “linear” approaches.** In the West, we often approach business negotiations or the resolution of a dispute through “linear” and two-dimensional approaches. By contrast, Asian counterparties will likely approach the negotiations and discussions with a “circular” or three-dimensional approach (think of Sun Tzu’s admonition that to be successful at war one needs to think like the enemy). Cross-cultural guides and resources can be

⁵ In Thailand, for instance, Thais revere their monarch and the Royal Family. Not only is it extremely rude to level any criticism concerning the Royal Family in public, but your actions may also subject you to civil and criminal penalties.

useful tools for getting started on developing an Asian mindset for upcoming negotiations.

Q: Although I am an experienced "road warrior" will I have any difficulty in using the tools of my trade (laptop computer, cellular phone and Blackberry) in order to maintain contact with my office and clients back home?

A: Absolutely not. It is the author's experience that, for the most part, the cellular phone infrastructure in Asia seems to work better than in the U.S. As far as using your own U.S. cellular phone in Asia, unless you already have a multi-band cell phone that is able to roam on the local cellular GSM networks or broadband 3G networks, you should do the following: (i) arrange with your U.S. service provider for the rental of a phone in the U.S. that will operate in that Asian country; (ii) arrange to rent a local phone at your hotel or at the airport; or (iii) purchase a local unlocked phone (or bring along an unlocked multi-band GSM phone) and utilize the myriad prepaid services.⁶ With respect to internet connectivity issues, while connectivity varies from country to country, city to city, most hotels and businesses have access to high speed internet service and many offer access to secure wireless networks. Alternatively, you may have the ability to use the dial-up service for your domestic ISP. In a pinch, if you have web-based e-mail, you can always do what the locals and tourists do: walk down to your local internet café, pay the per-minutes charges in the local currency and retrieve and send mail at a public terminal (usually connecting with DSL but increasingly, with broadband services). In order to avoid any unpleasant surprises, you might consider bringing along appropriate cables, adapters and a step-down travel transformer, if necessary. Country travel guides (such as those published by *Frommers* and *Lonely Planet*) are good sources of information on these matters.

⁶ The options that are available and the flexibility of call and payment plans will vary from country to country. In Thailand, for instance, while you can purchase a telephone with prepaid service or, if you have an "unlocked" GSM phone, you can simply purchase a local "SIM" card with prepaid service that can be "refilled" at myriad locations around the country.

Q: This will be my first trip to an Asian country. Can you recommend any good materials that I might consult to familiarize myself with that country's social etiquette, culture and history?

A: While there are plenty of good travel guides that you can read while you take the long flight over to your Asian destination, you might consider exploring some of the materials that are available on the internet. For instance, the local chapters of the American Chamber of Commerce have excellent country-specific materials. These materials may be obtained from the Chamber's website at www.uschamber.org. Other sources are the country pages that are found on the State Department's website www.state.gov. As I indicated previously, another good source is the website for that country's embassy or consulate here in the United States. As an example, the Royal Thai Embassy website (www.thaiembdc.org) is an excellent source of information on Thailand. Country-specific portals are also good starting points and the websites of U.S. embassies in these countries are also good sources of information. By way of example, the U.S. embassy in Thailand regularly updates its website with current economic, social and cultural information on Thailand (www.usa.or.th). Your local travel store will also have useful regional and country-specific guides that you might consider purchasing. Depending on how adventurous you are, you might even consider buying language tapes or basic phrase books so that you can learn to say a few phrases in the local language. If you choose to spend a few moments to learn a few key words and phrases, be careful how you pronounce your words and (depending on the language), watch your intonation, as a botched attempt to use the words or the phrase may result in your local hosts either bursting into uncontrollable fits of laughter or glaring at you in silence.⁷

⁷ Let's assume you are in Thailand and your host asks you in Thai whether the food that you are eating is good (*arroy mai?*). The appropriate response "very good" is said in Thai as follows: "*arroy maak*". The last word (*maak*) is pronounced with a falling tone and the letter "k" is generally pronounced as a soft "k". If you should make the

Conclusion

The foregoing tips and guidelines are intended to provide a starting point for the first-time business or professional traveler to Asia. As these guidelines and principles are general and not country specific, first time business travelers to the Far East are well advised to learn as much as possible about the country or countries that they will be visiting – before boarding the long flight to Asia.

mistake of saying "maa" omitting the soft "k" ending and using a rising tone (as if you were asking a question in English), you'd literally be saying "the dog is good." Native English speakers soon discover that the Thai language is a linguistic minefield when it comes to these tonal errors.