

Establishing Entities in China

By William R. Dodson

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Siva Yam, C.P.A., C.F.A. engaged listeners with his own hard-won experiences and observations from the China Market. Siva is President of the U.S.-China Chamber of Commerce. He is also Managing Director of Siva Yam & Associates, L.L.C., a private investment banking and consulting firm that specializes in micro and middle market companies that invest in China.

Siva framed his presentation with the statement "everything in China is illegal until proven innocent," to underscore his sentiment that "the people in China who make money are the ones who give the approvals [to do business in the country]."

Siva supported his opening remarks with the historical fact that China suffered 200 years of political turmoil catalyzed by the colonial aspirations of Western powers. Siva emphasized to the audience that that memory is still fresh for China, which "will not let anyone take control of it again."

A further complication to doing business in China is that "the South is not the same as the North," he said. "The way you do business in Beijing or Shanghai or Shenzhen is all different." So, "the McDonald's theory does not work." The theory holds a company can sell the same thing across the entire country and expect success overnight. "Companies that source from China make more money than companies that try to sell into China," he added.

"A developing economy with Chinese characteristics," Siva said, "has government involved with business." He counseled that Western company representatives "must know the parties you're negotiating with." State-owned Enterprises (SOEs) take a long time to approve deals. Negotiators on the Chinese side see no personal compensation from the deal. "They need to see their security ensured in the future coming from the deal," he added. Private companies are faster to deal with since they operate from a profit-motive instead of from concerns with personal security.

Siva insisted 50-50 joint ventures do not work in China. "You cannot evaluate machines, property, or intellectual property. You can only evaluate cash." He also warned that "selling old technology to China doesn't work, since China wants technology transfer." Siva said joint ventures also have substantial government involvement. Also, the Chinese side of a joint venture can veto Western partners who wish to sell off assets or ownership.

Siva offered that Wholly Owned Enterprises (WOEs) work better for foreign companies investing in China than do joint ventures. Many industries are still prohibited from forming WOE's, including news media, publishing, domestic commerce, and telecommunications among others, according to a white paper prepared by Siva Yam & Associates. The white paper, entitled "Establishing Entities in China," was included in the Conference proceedings. WOE's with advanced technology and/or that export their products may see tax privileges they wouldn't under other business structures. Siva pointed out, however, that "Western investors still may need to convert their China company from a WOE "to an offshore-based entity to get their money out [of China]."

Siva concluded his talk by giving advice on how to do business in China. "You need to collect information, that's the most important thing. You need to understand the players." He continued that China has an extensive approval process, so "you need to know high to low:

all the players," he emphasized. "Eat dinner, sing karaoke with these people to understand everything." Western operators must personally attend to details, determine what is real and unreal in doing business in China, and be very patient.

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