

War in Ukraine: Addressing Business Risks and Crisis Management

SPECIAL REPORT | The Ukraine Crisis



The Russian invasion of Ukraine took many by surprise. The relative peace and stability of the past 75 years in Europe contributed to a sense of complacency. Since the invasion, of course, news and media outlets feature plenty of experts who will share their opinion that the world should have expected the invasion all along. So many things are obvious in retrospect.

Preparation is always better than mitigation. If preparation did not happen, mitigation becomes essential.

PREPARING FOR CHANGE - DISSOLUTIONS, WITHDRAWALS, AND WIND-DOWN

The steps for stopping business in a foreign country depend on many factors. If the business is limited to soliciting and filling orders for merchandise, it is a simple matter to stop soliciting orders. A decision on fulfilling existing orders will depend on the logistics of shipping, and any export restrictions that may have been put in place.

If your foreign business is a subsidiary company, the process becomes more complex. A subsidiary that is a legal entity will need to be dissolved in accordance with the laws of the foreign jurisdiction. Other practical steps will be similar to those that need to be taken when any unit of business is closed anywhere. Office or equipment leases will need to be terminated, local suppliers need to be paid, and bank

accounts will have to be closed. Data and records will need to be transferred. Special care must be taken with data security, as business records and information will be particularly vulnerable during a relocation.

Employees are another matter of concern. Arrangements must be made for the repatriation of non-local employees. For local employees, local laws should be reviewed regarding the rights of terminated employees to compensation.

Assets that will not or cannot be transferred out of the country must be liquidated. Note that there may be restrictions on the movement of capital out of the country.

It should be understood that an orderly dissolution or withdrawal may not be possible, and there may not be time to wind down business operations before leaving. It may be that there is no time for anything other than a hopefully safe exit. Although it may seem unthinkable at the time, some consideration should be given to how to minimize the impact of leaving the country suddenly. Reviewing insurance coverage, particularly business interruption coverage, is essential to this process.

CRISIS MANAGEMENT AND RESPONSE PLAN

Crisis management is an important, if unfortunate, part of every business's operation. It

is almost inevitable that a crisis that makes it difficult or even impossible to continue business will happen. A well-thought-out response plan, tailored to the business's operations and needs, will make managing the crisis easier and more effective.

The response plan should look at the types of risks that a business could potentially face. These risks could include financial risks, physical risks to employees or assets, and reputational risks. The risks addressed should include the risks of harm from criminal activity, which may also allow for addressing the risks of terrorism or acts of war.

STAFF TRAINING AND COMMUNICATION

A response plan is only as good as the people implementing it. All staff must be trained on the response procedures, and must understand fully the roles they are expected to play.

When dealing with war or political risk in a foreign country, local employees may be a valuable source of information. They are often attuned to currents of knowledge that are overlooked or unavailable to others. For example, an employee may have a friend or relative in another country who has shared news about political instability or an increasingly hostile environment. While you don't want to have employees think that you are using them as spies or informants, they should be told that you appreciate



receiving any “on the ground” information they may have.

No response plan will be even remotely effective without clearly defined communication protocols. The operation of the plan must be coordinated among everyone involved.

It is best to have one person, or one office, designated as the main center for internal communications. This will eliminate potential confusion about who said what, and when they said it. It will also allow continual assessment of the operation of the plan, and allow for adjustments or modifications in the plan to be made in response to what is happening on the ground.

COMMUNICATION/NOTIFICATION – GOVERNMENT AGENCIES

Although you probably will not need to be in continuous communication with government agencies during a crisis, the personnel

in charge of the response should be aware of the agencies who may need to be contacted during a crisis or kept apprised of the situation.

When responding to a crisis in a foreign country, U.S. diplomatic personnel could prove to be an important resource. This is especially the case if you need to withdraw quickly from the country. Diplomatic personnel may be able to assist with the safe repatriation of U.S. nationals.

NATIONALIZATION OF BUSINESS ASSETS BY A FOREIGN GOVERNMENT – TAX IMPLICATIONS

The nationalization – or expropriation – of business assets by a foreign government could have U.S. tax consequences.

Taxpayers whose business assets have been expropriated may claim the value of the expropriated loss as an “uncompensated

loss” under section 165 of the Internal Revenue Code. The deduction for the loss is limited to business assets. The loss will not be sustained until it can be ascertained with reasonable certainty whether reimbursement for the expropriated assets will be received. In addition, the taxpayer has the burden of proving the taxable year in which the expropriation occurred – in other words, when the expropriation is a closed and completed transaction, fixed by identifiable events.

LOOKING AHEAD

The only thing certain about the future is that we don’t know what will happen. The best we can do is look for probabilities and likelihoods, and decide what to do about them if they should come to pass. While no prediction is guaranteed, planning ahead can make it less likely that the consequences of future events will be entirely catastrophic. ■