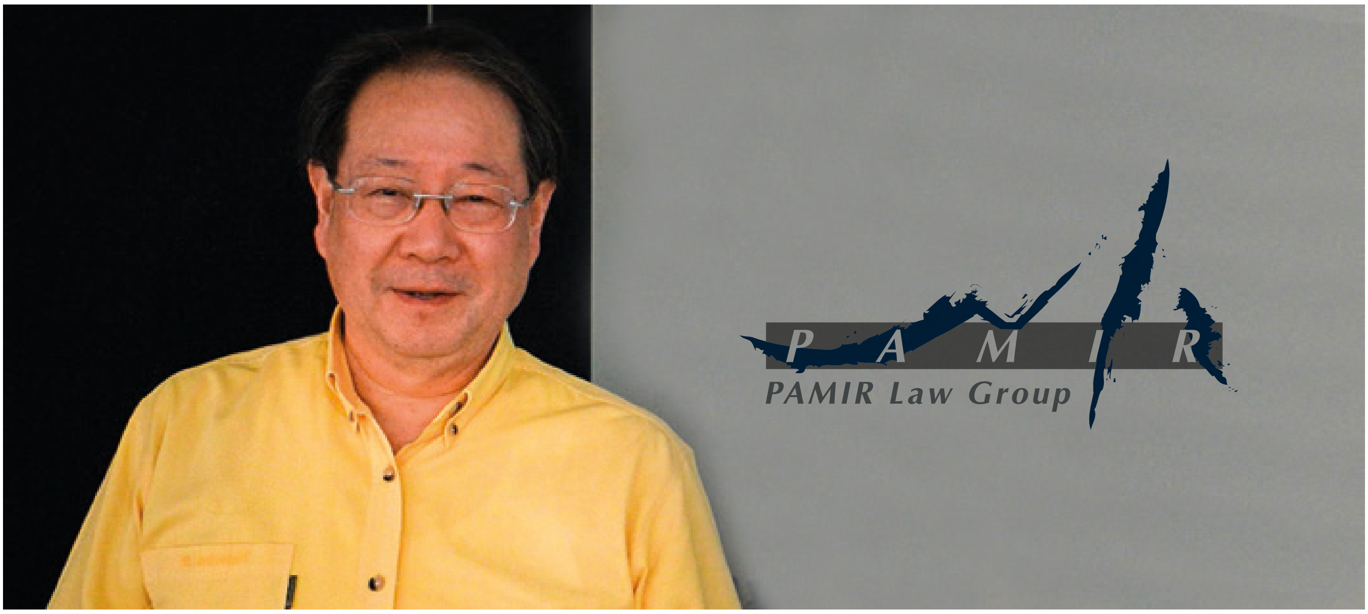

CHINA

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Nick has been travelling and working in China since 1973. He is the managing partner of Pamir Law Group, an international law and business consulting firm based in Asia with offices in Beijing, Shanghai and Taipei, with a long track record of successfully closing transactions in a broad range of industries in China and Taiwan.

He has successfully completed hundreds of foreign investments into Greater China in all coastal and many interior provinces for Fortune 100 Multinational Corporations, privately held and family group companies and private equity groups from the US, Europe and Japan.

Pamir is an international law and business consulting firm based in Asia with offices in Taipei and Shanghai, with a long track record of successfully closing transactions in a broad range of industries in the PRC and Taiwan.

Pamir's lawyers are from top law schools and law firms. Our attorneys are former partners and senior associates from global law firms located in New York, Silicon Valley, London, Hong Kong and Tokyo.

Pamir's clients include multinational Fortune 100 companies, venture capital funds, international law and private equity firms. We also represent Asia-based listed companies, privately-held conglomerates and high net worth family groups. We co-counsel with leading law firms from Asia, North America, Latin America and Europe on their client matters

Key considerations for multinationals operating in high-risk industries and jurisdictions:

Do you know whether all your key service providers, partners and vendors are KYC "clean"? Do you currently ensure that none of them have a criminal record? Do you ensure that they are not in any local bribery watch-lists? How can you document that these checks were done properly?

When receiving investment from local sources, can you ensure that the source of funds ("SOF") is clean? Do you have a professionally prepared SOF report?

Do you have a market-and-facts-based (not checklist document based) due diligence process to ensure all your partners' meet regulatory compliance standards?

Are checks and balances in place on all operational and organizational processes?

Do you have an open hotline to report misconduct? Is an investigation team assembled and on standby?

Do you have a SOP to push back on petty administrative "asks"?

QUESTION ONE

When representing a client with significant business activities in foreign jurisdictions, what are some key risk-related concerns that arise in a cross-border context and how can a parent company minimise such risk?

There are 3 major types of China risk: (i) Jurisdictional Risk, (ii) Organisational Risk and (iii) Operational Risk. The latter two can be managed with standard management best practices.

The former is the most dangerous because it is a wild card and it can flip the boat. Many companies do not proactively or consciously manage jurisdictional risk because it does not fit neatly into a single executive's job description. This can be huge mistake, especially in troubled times e.g.: pandemic conditions.

Jurisdictional risk is a huge challenge since converting terra incognita into terra cognita is difficult in China, even in the best of times. Currently, China's unique dynamics are more complicated than ever. Being prepared or not is the difference between night and day.

The government's decision two years ago to retreat from three decades of reform policies is coming home to roost. Continued diversion of capital towards debt-generating state-owned laggards, away from the productive efficient private sector has a negative global impact. Mounting domestic inflation, continued market regulatory obstacles, rising cost of living and operating costs, trade war tariffs and pandemics has increased business and social disruption and accelerated the need to seek new markets and production bases and rapidly shifts entire supply chains overseas, causing mass layoffs. Technological innovations such as automation have also caused considerable job losses. The entire ecosystem is in rapid transformation and uncertainty is higher than ever.

Many management teams accept entropy as inevitable. Maintaining business-as-usual managerial inertia by doing nothing is blissful ignorance. Darwin speaks of the survival of the most adaptable; the alternative is gene pool culling.

One example: Is your management team aware that the recent "phase one" trade deal is widely viewed in China as a modern "unequal treaty" extracted at gun point akin to the Treaty of Versailles? What can history tell us about the repercussions of such agreements? Has the organization systematically focused on what risk management steps should be considered to prepare for this?

QUESTION TWO

What degree of control should a parent company have over its overseas subsidiaries? How does the degree of control impact the risk exposure level, and how can control issues be managed to minimise liability?

There are many internal and external aspects to managing organisational risk in China. Building success in China means building capacity and sustainability (both organisational and operational), to reduce risk and liability across the entire organisation—both parent and subsidiaries. This is not an either/or parent/subsidiary question.

In China, the road to success includes focusing on operational and supply chain excellence; finding and retaining great people and partners; proactive risk management systems; sophisticated financial management; proactive asset management; transparent corporate governance; and strategic growth management.

To achieve organisational success, the entire organisations' best talent and know-how must converge to create China-specific capacity and sustainability to protect and grow the business. "Control" is not the issue. Accepting liability for either the parent or the subsidiary is compromising enterprise value and cannot be a given.

In each of the above areas, challenges include managing relationships, awareness, expertise, administrative support, enthusiasm and positive convergent views. Many capacity building tools and strong support are required to address those challenges: examples include clear China-specific organisational standard operating procedures ("SOPs") with cross teaming, relationship building, knowledge sharing, strong project and shared services support, organised annual events, external trainings, forums, media management and many other tools.

At the heart of this, coordination is key. Organisations mired in corporate cultures that focus on control, bureaucratic turfs, reporting lines, individual egos or fragmented agendas do not excel in China as they cannot recruit, retain or grow the best human capital. Success in China is about teamwork and bringing the team's best to compete. Applying proven market expertise to design, build, implement, maintain, monitor and adapt systems and processes to protect success is hard work. There is no simple one-size-fits-all approach. SOPs must be tested, verified and adapted *in situ*.

QUESTION THREE

What constitutes the right balance between risk and liability for a company and its overseas subsidiary? What examples can you give?

The "right" balance of risk and liability is to design and operate so that there is minimal risk to both parent and subsidiary. The best way to achieve that is to build China specific operational systems and processes. Such capacity will generate operational excellence and sustainability.

Every company function,from human resources, legal, logistics, finance, security, intellectual property asset management, strategy, should be audited and reviewed with risk management in mind. Each function/department should verify its best practices and map out its processes to show the coordination of all officers and functionaries to insure coordinated individual and enterprise best practices.

Tailored processes are needed to coordinate individual and organisational performance, especially when multiple C-Suite officers need to act in coordinated fashion, such as:

- Many operational tasks involve multiple corporate officers and functions such as: making investments, resolving internal/external conflicts, hiring/firing key management staff, major transactions, related party transactions, borrowing and the provision of guarantees;
- Periodic legal, finance, securities and environmental audits and reports to regulators or to a related/parent company;
- Where common directors are in both the parent and subsidiaries, SOPs may need to be in place to avoid conflicts of interest as well as to enhance common group interests;
- Internal policies providing the guideline on matters that must be voted by the board;
- Directors appointment by the parent company in the subsidiaries must clearly define their fiduciary duties as they should not be shadow directors;
- Coordinated actions when handling a public company crisis;
- Major decisions must be documented and rationales provided; and
- Specific systems and SOPs need to be established and planned based on the company realities for all operational functions.