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# Analysis

# International Risk Management Needs a Different Mindset

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***Biography***

*Nick Hood is the Senior Business Adviser at the Opus Business Advisory Group (https://www.opusllp.com), the largest independent advisory, restructuring and insolvency firm in the UK.*

*Nick was a licensed Insolvency Practitioner, working in the business rescue market for 25 years. He is a committed internationalist, having created the largest global network of independent business rescue firms and having also worked overseas in Canada, Milan and Bahrain.*

*In his earlier career and after qualifying as a Chartered Accountant in 1970, Nick held senior executive positions in major companies in the construction, engineering and media sectors, as well as working for a boutique investment bank.*

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## Abstract

*Globalization has tempted or forced many UK businesses into looking for trading partners in new overseas markets, of which they may have little previous experience. However interesting and potentially profitable those markets might be, risk management and mitigation in a far-flung land can be very different and sometimes extremely challenging. As the author of this article explains, developing an international mindset and being well-informed about these markets is the best strategy.*

## Introduction

With a centuries-old tradition of global trading and a fundamental lack of self-sufficiency in so many aspects of its commerce, the UK business community cannot avoid either occasional or regular significant exposure to downside risks around the world.

Dealing effectively with international risk means ditching parochial attitudes about not just dispute resolution and debt collection at the far end of the transaction

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timeline, but also in how relationships are first established with overseas customers, suppliers and other stakeholders.

Too often, the first time there is any serious due diligence about the foreign business environment involved is after the proverbial has hit the fan and a company is staring down the barrel of a significant bad debt or a major investment write-off, not to mention scary costs for specialist professional advisers.

Not every recovery action can be ended as satisfactorily as ringing an accountant contact in Sydney and being referred to their colleague in Brisbane who then persuaded a retired lawyer friend to get off their sun lounger on the South Pacific island of Vanuatu to rush to the airport to intercept the absconding sole director of a British debtor and serve vital legal documents on them.

## Initial research

Whether a business is selling into a new overseas market, buying from it, setting up a subsidiary or branch, or going into some sort of joint venture, there should be more to the decision than just checking out the financial bona fides of the prospective counterparty, important as that is. This also applies where a trading partner is British, but it is foreign-owned or controlled.


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There is a whole range of aspects to any foreign market that need to be looked at and questions asked, including:

- **Commercial laws and legal precedents** – In terms of dispute resolution, is the legal regime creditor or debtor friendly? Are they biased in favour of local businesses and individuals against foreign claimants? What examples are there of successful outcomes for foreign claimants? Even if court proceedings or recovery actions are successful, can the proceeds be repatriated to the UK? Before actual litigation, are there effective dispute resolution processes, such as mediation or arbitration?

- **Commercial court system and court capacity** – How efficient is the court system? How long will it take to bring a case to court? Are there judges experienced in cross-border issues? What are the costs of going to court? Is there a culture of out-of-court settlements?

- **Business culture and ethics** – Are contracts taken seriously, or are they just a starting point for further negotiations? Even if the counterparty is overseas, can the contractual relationship be governed by the law in England & Wales or Scotland, rather than that of the foreign jurisdiction? Will that be respected in foreign court proceedings? Is the culture 'won't pay' rather than 'can't pay'?

- **Capacity, ethics and regulation of accountants, lawyers and other advisers** – Are there sufficient professional advisers who are experienced in cross-border matters and, most importantly of all, independent? Will any potential or actual conflicts of interest be disclosed? Is there effective regulation which ensures good professional standards?

- **Banking regime** – Is the banking system dominated by state-owned entities or independent (and preferably international) financial institutions, or a mix? Banks owned or influenced by governments often behave differently when involved in workout or insolvency processes, especially those involving foreign parties.

- **Societal priorities** – Dispute resolution and debt recovery can run up against unexpected attitudes, particularly when they require a formal insolvency procedure. There are jurisdictions where the interests of creditors are subservient to, say, employees or else there is a presumption for preserving the affected business as a going concern even where creditors will suffer a loss. Equally, in some countries local creditors are given priority over foreign ones.

- **Political priorities** – Commercial laws can be changed or 'carve outs' created to suit the agendas and interests of the government, sometimes on an exceptional basis where a major or systemically important business is likely to be affected. Is there a history of that or of the government or other special interests influencing court decisions?


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- **Personal safety** – In some jurisdictions and under certain circumstances, the physical presence in court of an official from a claimant company or the parent company of a local business going through a formal insolvency procedure may be mandatory. An example is one European country where local staff cannot be made redundant without a Director being present. Authorized representatives such as lawyers are not acceptable for these purposes. This not only raises cost and inconvenience issues, but in some locations there will be genuine personal safety concerns.

## Insolvency and restructuring regimes

Unfortunately, resolving disputes or recovering debts may sometimes involve either threatening formal restructuring or insolvency procedures or pushing the counter-party into the relevant process.

Here there are more questions to be asked to make sure this option is understood:

- Is there a working insolvency legal regime?
- Is it modern, particularly does it post-date the global financial crisis and/or the pandemic?
- Does it include provisions for cross-border recognition for foreign insolvency proceedings and office holders?
- Who leads on insolvency proceedings: accountants, lawyers, specialist insolvency practitioners or judges?


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- What is the capacity, experience and skill level of the insolvency profession?
- Is the regime creditor or debtor-friendly, or neutral?
- Does it discriminate against foreign creditors or any particular group of creditors?
- What do insolvency processes cost?
- What is the history of recoveries by creditors and how long do any recoveries take?

## Having the right professional advisers

Existing UK advisers may or may not be appropriate to support action overseas. Some will have the requisite international knowledge, experience and reach. Others will not and may need to be supplemented by advisers who do. This is not a matter of disloyalty to trusted advisers; it's a necessary judgment based on the circumstances of each overseas risk.

One particular expertise often required when things go wrong with foreign exposure is forensic investigative and court appearance skill, but these advisers must be internationally experienced. What works in litigation and court proceedings in the UK may not fit the bill elsewhere round the world.

## In conclusion

As with so many aspects of commercial problem solving, the answer to knowing when to take remedial or mitigating action is as soon as the risk is identified. Very few adverse international situations get better through procrastination. Far better to be proactive at the outset, rather than delaying through nervousness about taking action in a foreign jurisdiction.

There is one caveat: nailing down the likely costs at the beginning as far as is possible is essential, as is ensuring that the advisers instructed know to report back in advance if the costs seem likely to escalate significantly above initial estimates. Understanding the potential timelines is important too.