



# The 10-point plan

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## Point 1

### Win the trust of the German company management

In foreign countries it is much easier to build up personal relationships with Germans and gain their trust than it is in Germany itself. A lack of knowledge of the language and culture and the associated insecurity deceive some German entrepreneurs into being less choosy in the selection of the person they will have to trust.

These points can be selectively used in combination with the following measures to build up trust:

- › Good knowledge of the German language
- › Development of personal relationships for example through use of first names (in Germany this is usually a special demonstration of trust), invitations to restaurants, visiting the family home, invitations to join a hunt also in other localities and return visits to Germany, readily with the family

### Notes:

- › Good knowledge of the German language is no replacement for professional knowledge and in particular does not guarantee an honourable character.
- › Non-locals will find it almost impossible to differentiate between traditional hospitality and its misuse. Nobody need fear that the rejection of an invitation will be assessed as an insult. Business partners will accept this because you come from a different cultural background.



### Recommendations:

- › The introduction of compliance regulations which if necessary can be referred to.
- › Check the acceptance of personal invitations and if necessary consult knowledgeable people.
- › Before hiring management personnel or entering into a business relationship always carry out an integrity check (naturally while observing privacy rights).



## Point 2

### Impress the German company management

In Germany a culture of modesty prevails. Personal relationships also do not play a role to the extent that they still play in former socialist states and as a result are maintained with less energy. However, the unusual showing off attributes of (apparent) success are very effective and can mislead the German who may conclude that the person opposite him is successful and a powerful personality.

This opens up possibilities for:

- › Mentioning of acquaintances with and relations to prominent public personalities, judges, police, etc.
- › Arrangement of appointments with prominent public personalities, politicians, celebrities, etc.
- › Membership of associations
- › Awards/certificates
- › Luxury goods (cars, watches, clothes, houses, hotels/holidays)
- › Insider information/good relationship to employees in public authorities

### Notes:

- › The knowledge of the role of status symbols in transition countries with extreme social change enables the correct classification thereof.
- › The high financial burden associated with the acquisition (often financed by credit) and maintenance of status symbols can lead to financial difficulties which can threaten the company. This in turn lowers the threshold for irregular action, e.g. embezzlement and the employee/partner is a potential target for blackmail (e.g. with industrial espionage).
- › Good relationships are naturally decisive for the development of the corporate network and the success. However, they represent a higher potential risk for example for the granting of impermissible advantages or corruption.



### Recommendations:

- › There should be regular inspections as to whether the living conditions of partners/ employees correspond to their income and living situation.
- › Reports of emergency financial situations (e.g. requests for loans and advances, loss of a car, moving, and salary garnishments) should be followed up and if necessary discussed with the employee/partner.
- › The achieving of success not measurable through the balance sheet result should be agreed upon.



## Point 3

### Win control of the legal position of the subsidiary in the foreign country

One objective is the ability to control the legal position of the subsidiary for one's own advantage and to avoid too much influence from the German side on legal structures.

The following measures can lead to success, supported with appropriate arguments:

- › We'll take care of it ourselves ("Founding a company is very easy in our country – we always do it ourselves and we've never had problems up to now.")
- › A contract which is unfavourable for the German side ("We'll take care of that – we have a very good lawyer/notary who will draw up the contract.")
- › The lawyer is a friend/acquaintance ("He will do the job for a lower price.")
- › Contract concluded with a notary ("We will have the contract certified by the notary, then everything is sure to be correct and secure.")
- › Arbitration court (national) ("For the arbitration of disputes we will agree on the local arbitration court for commercial matters – the national courts are all no good.")
- › Contractual penalties ("Such contractual penalties are normal in this country.")
- › 50/50 shareholding ("That is fair".)
- › Minority shareholdings ("It will be very motivating for me if I have an interest in the company.")

### Notes:

- › Certification from a notary in principle means more security, but this is no replacement for the qualified drawing up of the contract. Furthermore, care should be taken to observe that in a number of countries the duties of the notary with regard to neutrality and clarification are considerably less strict than in Germany, whereby the inspection of the contents of the documents partly does not place or is subject to unclear or at least to differing standards.
- › Local arbitration courts are (in contrast to internationally recognised arbitration courts) usually controlled by certain persons or local interest groups and therefore not recommended. A decision to go through the appeal stages is usually not made. National courts usually (provided international arbitration courts have not been agreed upon) represent the "lesser evil" of the two.



### Recommendations:

- › No 50/50 shareholdings without regulations to deal with possible deadlock. Otherwise the company may be unable to take any action, e.g. not be able to dismiss a managing director who is no longer required or not be able to appoint a new one. In such cases the last resort is liquidation and in order to avoid possible loss of the investment there is the considerable risk of blackmail.
- › The concession of participation rights (e.g. for employees) should be carefully weighed up because also minority interests (for example in case the shares are sold) can lead to considerable problems.
- › A competent consultant who is free of local conflicts of interest will create the right legal conditions for your commitment which will enable you to have the necessary security and control.

## Point 4

### Act as if you are conscious of costs

Mittelstand companies are especially conscious of costs. Using the cost argument one can usually avoid the inclusion of consultants and other service providers who will enforce the interests of the German side.

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- > No contract "No one will benefit from a contract here – it will only cost money and if there is a dispute the courts will not work anyway, the right contacts are much more important." / "Why do you want a contract? I thought we trusted each other, my good friend!").
- > Show moderation with the fixed salary – high profit sharing ("I would like to be judged by my success and have the necessary self-confidence.").



### Notes:

- > High profit sharing with a low fixed salary can lead to a temptation to embellish results.

### Recommendations:

- > A healthy relationship between the fixed salary, profit sharing and incentive payments for achieving success not measurable through the balance sheet result.



## Point 5

### Ensure control over the figures of the subsidiary in the foreign country

Care should be taken that the control possibilities from the German side through an auditor or external person are restricted as much as possible.

The following measures can be used to achieve this:

- › No external financial accounting ("That is not usually done here/that will create problems/that is too expensive and will achieve nothing.").
- › No execution of the annual financial statement or management reviews.
- › If there is a statutory audit requirement, take a local auditor ("The auditing is only a requirement which is a nuisance and the information is of no value anyway which is why one can safely take the cheapest supplier."/ "We know an auditor who will give us an unqualified audit opinion without any problem.").
- › Tendering of the auditor with subsequent control of the tendering procedure so that the desired auditor gets the job for an excessive price with a kick-back payment to the organiser of the tendering.
- › Hiring of friends/relations/dependent persons for the financial accounting/CFO.
- › Regular information about obscure financial accounting regulations, numerous outstanding issues.
- › Regular presentation of German/English reports not possible (e.g. for technical reasons or due to lack of enough staff or translation capacity).

### Notes:

- › The view that the outsourcing of financial accounting is only practical at the beginning of the activity is incorrect. This takes away the possibility of an important and unbiased control instrument. If all the costs of doing own financial accounting are taken into account (IT, personnel recruitment, illness, etc.), outsourced financial accounting is often only insignificantly more expensive.
- › An independent and qualified audit of the annual financial statement provides (for example via the management letter) important information on the commercial situation of the company and the condition of the financial accounting.



### Recommendations:

- › Commissioning of an international auditing firm by the parent company for the audit of the annual financial statement or voluntary annual financial statement or review when there is no statutory obligation.
- › Outsourcing of the financial and payroll accounting and reporting to an international financial accounting firm which can provide the necessary answers to any questions at short notice and can also handle the transition for the local GAAP to HGB or IFRS in order to ensure understanding and comparability.

## Point 6

### Show success

Experience shows that if success is shown the requirements with regard to transparency and control can be reduced to minimum.

For this purpose it is relatively easy to bring about some success at least in the short term and sometimes in the medium term, for example, as follows:

- › Disclose a high level of receivables – without a legal or commercial requirement to do this.
- › Value adjustments of receivables are only made on a small scale (“in country X this is not possible or very difficult to do”)
- › Have an “independent” valuation report made (e.g. for current/fixed assets).
- › Push turnover and growth at any price, which is why security is neglected.
- › Regularly report about own merits and regularly report on alleged errors and failures of external consultants (“They can't and don't do anything and cost a heap of money.”).



### Recommendations:

- › Even when a positive commercial development is reported, compliance and control measures should not be neglected.
- › See recommendations to point 5.

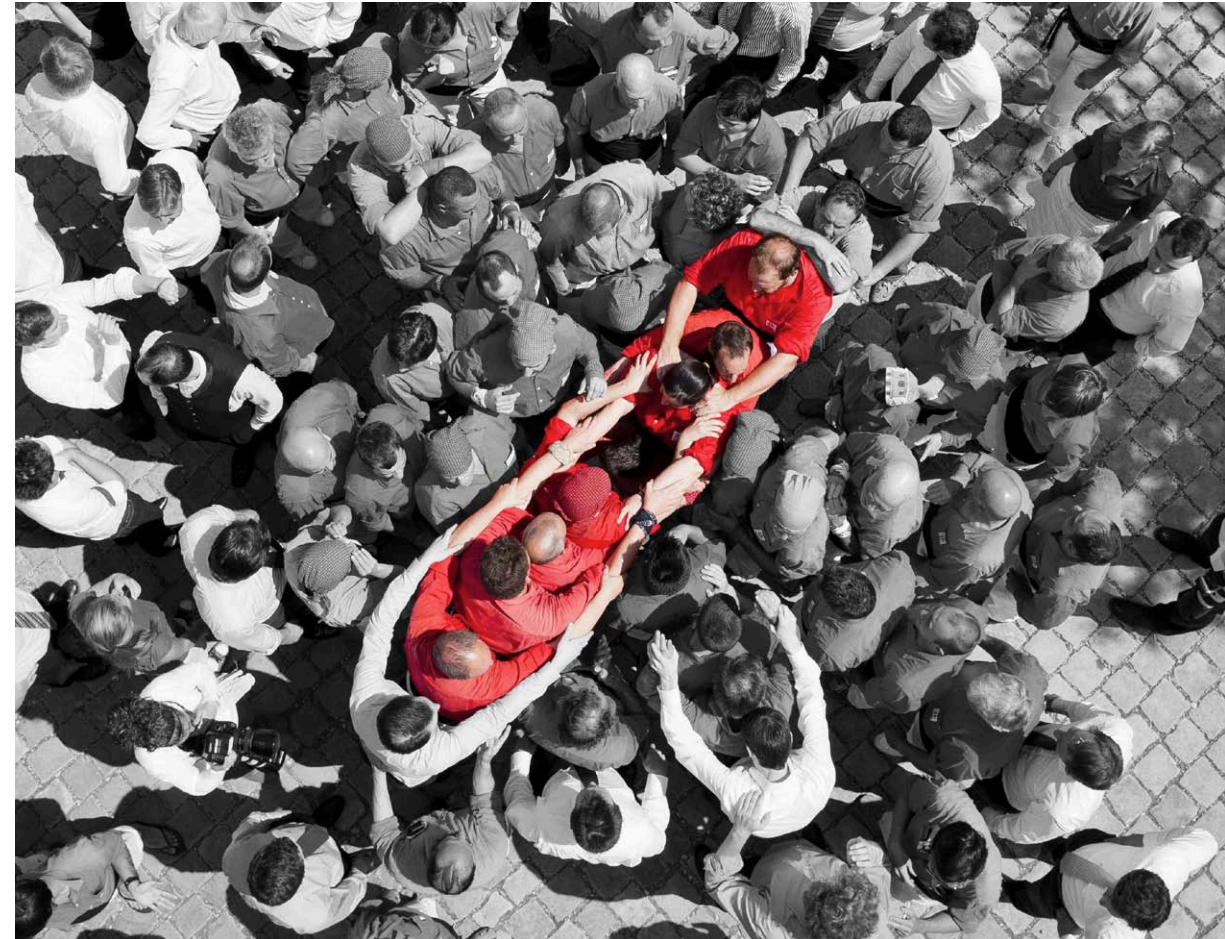


## Point 7

### Build up safety net for one's own cause

Sooner or later it's likely that fraudulent actions will be discovered. In order to avoid negative consequences, one should take measures in time to be prepared for such a situation:

- › Make your contact in the parent company susceptible to blackmail by proposing tricks in order to "save" tax or social contributions.
- › Propose to utilise the subsidiary in the home country for the purpose of saving tax.
- › Set up illegal cash box (e.g. using allowances for employees on supposed business trips).
- › Complicity in granting an advantage/bribery.
- › Double-employment in the company and the subsidiary/ensuring power of representation after dismissal as managing director.



### Recommendations:

- › Zero-tolerance policy for illegal cash box and bribery.
- › Clear guidelines and transparency at all levels and the corresponding documentary requirements.
- › Changes to improve tax situation only on the basis of the corresponding independent clearance certificates.



## Point 8

### Exploit own position

Starting from a stronger position after the above points, these should be used for one's own interest.

The following is possible:

- › Use of company assets for own purposes (machines, fuel, offices)
- › Founding of companies through front men who have a commercial relationship with the company
- › Settling of salaries and services via companies abroad
- › Off-the-record sales
- › Employment of family members/circle of friends
- › Creation of "ghosts"
- › Holiday as training/education
- › Demands for kick-backs in the contract award process, etc.
- › Impermissible granting of financial benefits
- › Involvement of "agents" (especially for the export business)
- › "Charity" to obtain public contracts
- › Purchase of company assets (e.g. land) at excessive prices
- › Setting up of own customer database (see golden exit)
- › Demand more financial support from business partner
- › Demand financing

### Note:

- › It is not only about direct gain, but also about compliance infringements which at first glance are of use to the company (setting up of an illegal cash box whose contents can be used for bribery payments to win orders) but which can damage the company considerably (e.g. exclusion from participation in public tenders).



### Recommendations:

- › The statement of the responsible person that he only acted in the interest of the company must be addressed in a preventive way through corresponding training and compliance regulations in writing.



## Point 9

### Continual defence

In the case of queries (“The earnings situation according to the books is excellent – but why is there a lack of liquidity and why do you continually need shareholder loans?”) or the case that there is mention of a clear suspicion of compliance infringements, one can argue as follows:

- > “This is the only way to do business in country X.”
- > “In country X everything is more complicated than in Germany.”
- > “If you want success, then you’ll have to let me do it my way.”
- > “You don’t understand it and you don’t want to understand it.”
- > “In country X you have to do it that way.” (should always be checked)





## Point 10

### The golden exit

If discovery is imminent, one should prepare to leave the company and in financial terms use this opportunity to once again get the most out of the company:

- > Build up threatening posture, see blackmail in point 7
- > Threaten bankruptcy; scandal; personal consequences for the responsible employee on the German side, if necessary threaten suicide
- > Assert claims for holidays allegedly not taken
- > Threaten regulatory investigations (occupational safety, etc.)
- > Demand high settlement
- > Exploit employment conditions (in a number of countries in the case that entitlements are not completely settled it is foreseen that payment of the salary is to be continued until all entitlements have been settled/set-offs with counterclaims of the company are not allowed).
- > Taking of personnel/knowledge/customers
- > Plundering of the illegal cash box
- > Block decisions if shareholder
- > Dispose of shareholding



In the hope that you have not yet contacted your corporate counsel or even the public prosecutor we would like to close this chapter. It was important for us to give you a different insight into business activity abroad – away from the point of view of the company management mostly in faraway Germany, and into the wide world of opportunities but also high-risk growth markets in foreign growth markets.

We would once again like to emphasise that the described courses of action and procedure and the inherent malicious intent of these actions at the cost of the German business partner – or while still maintaining the other point of view, i.e. the foreign operators furthering their own interests – do not at all represent the usual case. Individual incorrect behaviour can never be a benchmark for the assessment of the individual region or countries. There are black sheep everywhere and it is only important to be able to recognise the way they act, whereby in business life this is considerably more difficult than in a flock of sheep. This is because along with black and white there is a wide range of colours. In the next section we would like to be more precise and using real cases from the ASEAN countries, Baltic states, China, India, Russia, Czech Republic, Turkey and the Ukraine to show examples of problems in the management of subsidiary companies abroad. We will always begin with an oversimplified short overview of the relevant fiscal themes for the relevant country. Then we will continue with examples from the areas of auditing, tax, law, administration and then over to fraud and white-collar crime.

After the examples from the countries we have prepared examples from our international auditing practice.