

CHOHARIS | GLOBAL | SOLUTIONS

CORPORATE SOCIAL RESPONSIBILITY

DISCOVERING OPPORTUNITIES | PREVENTING PROBLEMS | PROVIDING SOLUTIONS

Companies doing business in foreign countries can boost their profits, improve management, enhance their reputations, promote community support, and engender customer and shareholder goodwill by adopting socially responsible practices and by instituting social development projects. Conversely, businesses operating overseas may face a host of labor, human rights, and environmental concerns as well as complex political and cultural challenges that can disrupt operations if they are not addressed.

CHOHARIS | GLOBAL | SOLUTIONS offers skill and sophistication developed from decades of living and working in emerging markets to help companies take advantage of opportunities and prevent or resolve complex problems. We offer companies a combination of legal, business, political, cultural, and technical expertise to help them realize the full value of their socially responsible activities—whether day-to-day business operations or specific social development projects. We also help companies navigate a complex and sometimes perilous business environment that has intensified in recent years as a result of anti-globalization activists, American and foreign plaintiffs' bars, and other interest groups. (The attached [Appendix](#) provides specific examples of some of the legal, economic, civil, and reputational challenges that companies doing business overseas confront—challenges that we specialize in overcoming.)

Our professionals have worked for multilateral organizations, non-governmental organizations (NGOs), and the private sector in a variety of foreign-related capacities. Our attorneys are leading practitioners in international law, including international human rights, expropriation, and diplomatic immunity. Indeed, one of our lawyers was the lead counsel in one of the most prominent Torture Victim Protection Act appeals ever brought on behalf of plaintiffs.

As a result, we are recognized legal experts and have sophisticated cross-cultural, political, and institutional expertise. We also have significant ties and credibility with NGOs, human rights, and other activist groups, and are well-positioned to protect our clients while building creative, enduring solutions.

Specifically, we offer clients a [three-prong strategy](#) of:

(1) [Identifying Socially Responsible Opportunities and Risks](#). We can help companies identify opportunities to adapt their business practices to comport with social responsibility standards. We can also help companies plan and implement projects that will improve the social, environmental, or labor conditions whether they operate while at the same time further their business goals. Conversely, we can examine the overseas practices of a company, its business partners, its suppliers, as well as its relations with a host government and local constituencies in order to spot risks before problems arise.

(2) [Developing Opportunities and Preventing Problems](#). We can work with relevant stakeholders—including indigenous populations, labor and other constituencies, government entities, and even non-governmental and multilateral organizations—to promote local support for overseas investments and activities and to structure relationships that will foster and maintain goodwill. As part of these efforts, we can help companies design and implement development projects that can be sustainable and replicable in order to maximize gains for both the company and the project beneficiaries.

(3) [Resolving Disputes](#). We can craft comprehensive, multidisciplinary strategies to limit or resolve disputes that may pose legal liability, threaten a client’s reputation, and disrupt business operations. (Our [International Dispute Resolution White Paper](#) describes in greater detail our dispute resolution experience and methodology.)

1. [Identifying Socially Responsible Opportunities and Risks](#)

[CHOHARIS | GLOBAL | SOLUTIONS](#) can help companies improve profitability and avoid liability from their overseas business activities by identifying opportunities to implement socially responsible practices and projects and by recognizing risks in order to avert disputes.

1.1 [Discovering Opportunities](#).

Our consultants can help companies plan and develop [Corporate Social Responsibility Projects](#) to benefit international businesses in the communities where they operate. [CSR Projects](#) can develop infrastructure; improve human capital; promote community involvement; and maintain local, regional, and national government support. Far from simple charitable donations with no economic benefit to the company, such projects can help a company pursue larger business goals. For example, they can (1) become part of a company’s market entry strategy, (2) help develop a favorable business climate, (3) contribute to employee training and improve the local labor pool, (4) develop needed infrastructure, (5) promote community goodwill, (6) expand the local consumer base, and (7) potentially provide a model for public-private partnerships that will aid the company’s

for-profit activities. Depending on the project, it may become self-sustaining or attract additional sponsors, thereby allowing the company to limit its capital outlay. And because some [CSR Projects](#) can be replicated in other places, they may help a company (8) pursue additional markets by making that company more attractive to other governments and communities. [CSR Projects](#) can also help a company (9) fend off overtures from officials that might implicate Foreign Corrupt Practices Act concerns.

Finally, [CSR Projects](#) may enhance a company's public image, respond to shareholder concerns, improve relations with NGOs and activist groups, and even contribute to employee recruitment and retention.

1.2 [Avoiding Risks.](#)

Our legal experts can help conduct a [Corporate Social Responsibility Risk Assessment](#) to help companies identify ways to comport with corporate social responsibility standards as set forth in international conventions, industry guidelines, and best practices. We can also help a company assess its relations with a wide range of stakeholders—local actors, government ministries and agencies, and international organizations—in order to prevent problems from erupting into full-blown disputes.

A [CSR Risk Assessment](#) may include reviewing a company's or its affiliates' (1) regulatory compliance; (2) labor and human rights performance; (3) environmental impact; (4) energy profile; (5) manufacturing and sales practices; (6) stakeholder relations, including indigenous populations, labor unions, NGOs, multilateral organizations, and other constituencies; (7) supplier and customer practices; (8) contractual and partnership agreements; (9) host government relations; and (10) philanthropic goals and activities. *It is critical that a [CSR Risk Assessment](#) be conducted by, or in conjunction with, legal counsel* in order to maintain available privileges and confidentiality. At least one U.S. court has found a corporation liable for its overseas conduct based primarily on a report prepared by the company's non-attorney consultant.

In addition to helping control risk and limit liability, a [CSR Risk Assessment](#) can be a valuable management tool. For example, companies can use them to review overseas operations, supplier activities, affiliate performance, compliance programs, government relations, and industry best practices. Companies can also use these assessments to help formulate strategic goals, simplify reporting, streamline operations, standardize functions, facilitate audits, develop employee training, and institute best practices.

After performing a [CSR Risk Assessment](#), we can work closely with the client to construct and implement risk reduction strategies, such as: (1) mitigation measures for specific risks; (2) creation of a monitoring, compliance, and reporting regime; (3)

development of metrics and goals for specific sectors; (4) an internally-developed code of conduct; or (5) adoption of an industry code of conduct or applicable best practices. We can also assist in crafting tailored strategies to address the concerns of specific stakeholders—be they indigenous populations, NGOs, the media, activists, or other groups.

2. Developing Opportunities and Preventing Problems

Our professionals have spent decades living and working in emerging market countries in Asia, Africa, and Latin America. In addition, we have represented foreign sovereign governments in a variety of international disputes, including investment disputes. We know how governments operate and how to influence decision makers. Our experience also includes working in the field, often in remote locations, not just in conference rooms in foreign capitals. As a result, we have substantial experience working with all levels of society—government and regulatory authorities as well as local stakeholders.

With our relief and development experience in Asia and Africa, we can help companies design social development projects, select technical partners to implement them, and monitor their impact on the community and the company's business goals. Our strategies may include assisting with local infrastructure or social projects, training and employing local workers, promoting local business partnerships, and coordinating with local as well as regional and national government authorities. They could also include engaging the media, opposition parties, and other stakeholders to advance a company's business goals and to preempt problems.

In short, our varied, cross-cultural experience enables us to develop deep and widespread support for foreign investments. We are creative at helping clients reach out to diverse constituencies and build effective working relationships that are necessary for a supportive business climate. And when problems do arise, these relationships can foster the kind of communication and trust that yield effective responses and enduring solutions.

3. Resolving Disputes

Should a full-blown dispute arise, [CHOHARIS | GLOBAL | SOLUTIONS](#) can provide sophisticated international arbitration and transnational litigation services. We are recognized experts in the international law of expropriation and can protect foreign investments from many kinds of government misfeasance or nonfeasance. But whenever possible, our goal is to resolve investment disputes quickly and efficiently, without having to resort to expensive, prolonged, uncertain, and public legal proceedings. We do so by drawing on our cross-cultural and international government relations expertise to promote negotiations and forge creative, lasting settlements.

This extra-legal capacity is also important when resolving disputes that have social, cultural, or political dimensions that are less subject to legal resolution. And it is especially relevant in traditional societies where formal legal protections may have limited reach.

Our approach differs in another significant respect. Unlike the vast majority of law firms, we do not simply rely on local counsel to resolve so-called “local” issues. Local counsel ensconced in a capital city may have limited ability to resolve a problem for a host of reasons, including unfamiliarity with outlying regions, membership in a rival clan or ethnic group, limited technical capacity, or affiliation with a rival political party. In addition, local counsel may not have access to an array of actors—foreign embassies, multilateral organizations, NGOs, media, opposition parties, and other sector leaders—who could be of assistance.

That is why we work directly with local counsel and others to help our clients develop comprehensive, multidisciplinary strategies to limit or resolve conflicts that can result in legal liability and threaten a client’s reputation or business operations. We employ some of the same kinds of strategies that are effective in preempting problems, such as outreach to relevant stakeholders, promoting effective negotiations, developing social support or infrastructure projects to benefit local communities, promoting local employment, improving cultural understanding among parties, and building coalitions, all in an effort to address grievances and resolve disputes efficiently. But whatever our specific strategy, we are always careful to protect our client’s legal rights should litigation or arbitration become necessary.

For more information about our experience and methodology for resolving international disputes, please consult our [International Dispute Resolution White Paper](#).

4. Conclusion

CHOHARIS | GLOBAL | SOLUTIONS offers multidisciplinary skills honed from decades of living and working in emerging market countries. In addition to our international legal expertise, we bring political, cross-cultural, and business acumen to help clients identify opportunities, preempt potential problems, and resolve disputes quickly and efficiently. We do so by offering a variety of options—from traditional litigation and arbitration to community-based solutions—that can be tailored to our client’s needs and specific challenges.

We invite you to learn more about us and our capabilities by visiting:

www.choharisglobalsolutions.com

APPENDIX

LITIGATION LIABILITY, CONSUMER BOYCOTTS, AND REPUTATIONAL INJURY

From local opponents to global activists, numerous groups are challenging the way that multinational corporations conduct business overseas. As a result, these companies face not only possible legal liability, but also threats to their operations, reputation, customer and employee support, and share prices. This Appendix describes the kinds of challenges that [CHOHARIS | GLOBAL | SOLUTIONS](#) can help resolve.

A.1 Civil Strife

Although most overseas business operations do not become embroiled in civil unrest, ethnic conflict, separatist movements, or widespread criminal activities, a few have. Two of the more prominent cases are Royal Dutch Shell's oil production activities in Nigeria's Delta region and Freeport-McMoran's operation of the Grasberg copper mine in West Papua, Indonesia.

Royal Dutch Shell in Nigeria. Nigeria accounts for nearly 12 percent of Royal Dutch Shell's (RDS) global oil and gas production. And for more than a decade, armed militants and criminal gangs have attacked company oil production facilities in the Niger Delta. Local communities have also disrupted production, demanding greater economic support from the company. Beyond the Niger Delta region, the company has had to contend with turbulent national political conditions. In November, 2007, RDS announced that it was negotiating the sale of its stake in two offshore oil licenses in Nigeria as well as restructuring all of its Nigerian units in part due to "an extremely difficult environment where levels of production have been severely curtailed by the security situation." Meanwhile, attacks by militants against RDS facilities continued into 2008.

Freeport-McMoRan in Indonesia. Freeport-McMoRan has invested \$4 billion in West Papua—Indonesia's half of the island of New Guinea and the home of 150,000 people who live and work near the company's copper and gold mines. Local community leaders and global activists have charged the company with polluting the environment, not sharing enough wealth with indigenous populations, and abetting the Indonesian military's suppression of a Papuan separatist movement. Despite the company's efforts to cultivate community support through development projects, human rights training, and other initiatives, in April, 2007, protesting workers disrupted output at the company's Grasberg copper mine, one of the largest in the world, causing copper prices to fall worldwide.

A.2 U.S. Federal Litigation

The Yahoo case described above is but one of a number of federal cases that have been brought against U.S. companies for alleged violations of the Alien Tort Claims Act (ATCA) or the Torture Victims Protection Act (TVPA), which hold persons liable for torts committed overseas in violation of international law. Although the specific facts and legal theories of these cases vary, at bottom they allege that a business's overseas conduct—either directly or indirectly through an affiliate—violated labor, human rights, or environmental standards recognized under international law.

To date, no corporation has been held liable under ATCA or TVPA, although at least one company settled an ATCA lawsuit. Cases continue to be filed, however, causing the U.S. business community to be rightly concerned about the costs of defending ATCA and TVPA lawsuits as well as the negative publicity associated with such suits. The following table summarizes some federal cases that have been brought under these two statutes against U.S. corporations:

Sample ATCA and TVPA Cases

Khulumani v. Barclays National Bank Ltd. Plaintiffs sought damages under ATCA against dozens of U.S. and foreign corporations for allegedly abetting and participating in the former South African Apartheid regime.

Sarei v. Rio Tinto, PLC. Papua New Guinea residents brought a class action under ATCA against a British and Australian mining group alleging that the defendants' mining operations destroyed their island's environment, harmed the health of its people, and incited a ten-year civil war.

Doe v. Exxon Mobil Corp. Indonesian villagers in Aceh brought a tort suit against an American oil company for injuries allegedly caused by company security force, which was comprised of members of the Indonesian military.

Aldana v. Del Monte Fresh Produce, N.A., Inc. Guatemalan labor unionists sued a Delaware corporation, the owner of a Guatemalan banana plantation, under ATCA and TVPA, alleging that the defendant participated in torture and other human rights violations.

Sinaltrainal v. Coca Cola Co. Survivors of a Colombian soft drink bottling plant employee killed by a paramilitary unit brought ATCA and TVPA claims against Coca Cola and its Colombian subsidiary in Florida.

Estate of Valmore v. Drummond Co. relatives and heirs of murdered Columbian trade union leaders brought ATCA and TVPA suit against Drummond, an Alabama corporation, and

others, alleging that the defendants were jointly and severally liable for murders committed by Columbian paramilitary units.

Presbyterian Church of Sudan v. Talisman Energy, Inc. Current and former residents of Sudan filed an ATCA class action alleging that Talisman, a Canadian energy company, collaborated with the Sudanese government in its policy of ethnically cleansing civilian populations to facilitate oil exploration activities.

Abdullahi v. Pfizer. Aliens who allegedly received an experimental antibiotic in Nigeria brought an ATCA suit in New York against the pharmaceutical company and Nigerian government for violating human rights and humanitarian law.

Flores v. Peru Copper Corp. Peruvian nationals brought personal injury claims under ATCA against Peru Copper, an American company, alleging, among other things, air pollution from the company's Peruvian mining operations.

Wiwa v. Royal Dutch Co. and Shell Trans. Trading Co. Nigerian émigrés sued two foreign holding companies, one incorporated in the Netherlands and one incorporated in the United Kingdom, under ATCA and other laws, alleging that the companies participated in human rights violations against them in retaliation for their political opposition to the companies' oil exploration activities in Nigeria. The case concerns the execution of Nigerian activist and writer Ken Saro-Wiwa, the torture and detention of his brother, and the shooting of a woman peacefully protesting Shell's planned pipeline in Nigeria.

Bano v. Union Carbide Corp. Survivors of a toxic gas disaster at chemical plant in India brought suit against the defendants, an American chemical company and its former chief executive officer, alleging that defendants' conduct leading up to the disaster violated various norms of international law, and sought relief under the ATCA.

Arias v. Dyncorp. A group of Ecuadorian farmers filed an ATCA suit against DynCorp charging that the company illegally sprayed a toxic fumigant over the Colombian border into Ecuador, causing serious health effects, crop and property damage, and death.

Doe v. Unocal Corp. Burmese villagers brought an ATCA action in California against defendants, an American oil company and others, alleging that the Burmese government committed international human rights violations in furtherance and for the benefit of Unocal's pipeline project pursuant to a joint venture-type relationship between Unocal and the Burmese military dictatorship.

Bowoto v. Chevron. Plaintiffs alleged human rights abuses associated with Chevron's oil production activities in the Niger Delta, including the shooting of peaceful protestors at the Chevron's Parabe offshore platform and destruction of two villages by soldiers in Chevron helicopters and boats.

A.3 U.S. State Law Cases

Although ATCA and TVPA cases have garnered the most attention from the press and business community, plaintiffs are also bringing claims against corporations based upon state law in state courts.

For example, in addition to claims brought under ATCA, plaintiffs sued Unocal in California state court under traditional state tort law for vicarious liability for the abuses of Burma's military during the construction of a Unocal pipeline. The plaintiffs alleged that Unocal and the Myanmar government were joint venture partners in the pipeline project, rendering Unocal vicariously liable for the acts of the Burmese military.

Another California case alleged that Nike's public relations campaign about the work conditions of its overseas suppliers constituted misleading advertising under California's unfair competition law. Plaintiffs alleged that, despite Nike's public statements to the contrary, the company's suppliers underpaid workers, operated factories in violation of local health and safety laws, and ran sweatshops in Southeast Asia when manufacturing Nike athletic shoes. The California Supreme Court upheld the plaintiff's cause of action and the U.S. Supreme Court dismissed Nike's appeal. The company then settled the case, agreeing to donate \$1.5 million to a non-governmental organization focusing on labor issues.

A.4 Overseas Litigation

U.S. plaintiff's lawyers are developing stronger contacts with their peers in foreign countries and the overseas plaintiffs' bar is becoming more aggressive in its own right. At the same time, developing countries are implementing legislation that provides greater consumer, worker, environmental and other protections. As a result, multinational corporations are increasingly facing lawsuits in foreign jurisdictions with fewer due process protections. Often, plaintiffs sue parent companies in addition to, or instead of, the subsidiaries directly involved in the overseas operations. In fact, parent companies are even facing liability for the activities of their subsidiaries that took place years ago.

For example, in May 2003, plaintiffs filed a \$1 billion lawsuit against ChevronTexaco in Ecuador alleging that its subsidiary dumped oil-contaminated water into unlined pits, rivers, and estuaries, thereby destroying sources of drinking water and causing serious health problems in the area. Plaintiffs filed this action after Texaco, which was acquired by Chevron in 2001, successfully obtained dismissal of related ATCA suits by consenting to be sued in Ecuador for its subsidiary's actions.

U.S. fruit and chemical companies faced lawsuits throughout Latin America and parts of Africa based upon the sale and use of a pesticide that had previously been banned in the

United States. U.S. pharmaceutical manufacturers faced potential liability in Hong Kong, Taiwan, Argentina and other foreign countries based upon the sale of HIV-tainted, blood-clotting drugs that infected thousands of hemophiliacs.

Non-U.S. corporations have also been targeted. In Great Britain, thousands of South African workers sued Cape PLC, a building-material firm headquartered in Britain, after they contracted asbestos-related illnesses while working in the company's South African subsidiary. The plaintiffs argued that they were exposed to asbestos thirty times the U.K. limit. Following debate in the House of Lords, the British courts agreed to hear the case, but the company settled for 21 million pounds (\$33 million.).

A.5 Market Threats: Boycotts and Negative Publicity

Companies also face financial and reputational risks from activist groups practicing market-based techniques.

A.5.1 Consumer Boycotts

Bolstered by a multinational anti-globalization network, activist groups are organizing boycotts and protests to publicize corporate behavior opposed these groups. For example, as part of Greenpeace's "Stop Esso" campaign, activists climbed onto the roof of ExxonMobil's UK headquarters to protest the company's international environmental policies. Other "Stop Esso" activists dressed as tigers chained themselves to gas pumps, forcing the closure of approximately 100 Esso stations.

In another example, those protesting low wages paid to workers harvesting tomatoes organized a boycott of Taco Bell. The company was targeted simply because the franchise is among the largest purchasers of tomatoes. A coalition of farmers groups also backed the boycott.

The Rainforest Action Network (RAN) has organized rallies and boycotts against Citigroup for what it claimed were anti-environmental lending policies. RAN has also repeatedly targeted the timber industry, both U.S. timber companies operating in South East Asia and Latin America, and corporations that have ties with the timber industry. For example, in May 2002, RAN floated a giant 120-foot dinosaur hot air balloon in Seattle, Washington, to protest Boise's (formerly Boise Cascade) destruction of forests as well as bring public recrimination against Boise's local customers—Microsoft, Eddie Bauer, the University of Washington, and the State of Washington.

A.5.2 Transparency and Reporting Initiatives

Recent years have seen a dramatic increase in the use of transparency and reporting initiatives to hold corporations accountable for their overseas activities. In some cases, the companies being targeted may not even be engaging directly in the challenged activities, but may simply be perceived as beneficiaries of the targeted practices. The following are two examples:

Chocolate manufacturers. Following press reports that U.S. chocolate products were being made from cocoa beans harvested by child slave labor, human rights advocacy groups sought U.S. legislation that would have required U.S. chocolate manufacturers to label their products to indicate that they may have been made from cocoa beans harvested by slave labor. This campaign focused on U.S. chocolate manufacturers, even though the companies were simply purchasing the beans from New York and London brokers.

Nike. At the annual World Economic Forum in January 2003, the International Right to Know Campaign presented a report charging Nike with “sacrificing health to make exercise gear.” The report charged Nike with operating “in numerous countries where labor rights abuses are widespread and not easily documented.” Even if true, this allegation would never lead to legal liability under U.S. or foreign law. Yet the report was clearly intended to undermine Nike’s reputation at an international forum.

A.5.3 Shareholder Initiatives and Financial Monitor Ratings

As in the Enron and WorldCom scandals where shareholders and investor groups pressured business leaders to impose sound financial and accounting practices, activists are pressuring companies to disclose information about human rights and labor practices, payments to foreign governments, and other corporate governance matters. For example, New York City’s public pension funds filed a shareholder resolution asking Freeport-McMoRan to disclose information about the relationship between the Indonesian military and its mining operations in West Papua, Indonesia.

Activist groups also purchase shares in companies to gain shareholder standing in order to directly challenge company practices. Friends of the Earth, for example, bought shares in 18 publicly held companies to alter the companies’ environmental practices.

A growing number of firms are providing investment rating services that evaluate corporate sustainability in the areas of the environment, human rights, and labor. There are also a growing number of U.S., European, and Japanese investment funds with an estimated \$2 trillion in holdings that select holdings based on corporate sustainability factors.

In sum, the kinds of challenges facing companies that conduct business overseas are quite varied, and require a global perspective; expertise that transcends traditional legal and consulting practices; and creative, multidisciplinary strategies.

You can learn more about us and our capabilities by visiting:

www.choharisglobalsolutions.com