

SOVEREIGN ENTERPRISE PARTNERSHIP WITH INDIAN TRIBES

FOUR THINGS EVERY TRIBE AND ITS PARTNERS CAN'T MISS.

There are 567 federally recognized Indian tribes in the United States. Only a fraction enjoy substantial economic success that allows the funding of the tribal fisc for governmental services, economic development, and tribal general welfare items such as health care and education. Even fewer tribes have sufficient funds for meaningful per capita payments to individual tribal members.

Many tribes have homelands in remote geographic locations and cannot rely upon gaming, tourism, or other economic development that depends upon a nearby urban hub. Further complicating matters for some tribes is the fact that they were only restored to federally recognized status in the last 10 to 20 years, having spent several generations as "terminated" tribes, whose political status was eliminated by the federal government (and with state urging) for the "good of the Indians" being urbanized or "mainstreamed." These restored tribes have little to no asset base, and some are even landless.

Tribes facing these circumstances are prime candidates for new, often esoteric, and high-risk economic development plays that often leverage tribal sovereignty and regulatory flexibility for the benefit of the

tribe and consumers or businesses seeking opportunity not available in surrounding states. While controversial to some, tribal governments are really only doing what Delaware or South Dakota did long ago to make themselves hospitable jurisdictions for corporations or certain types of trusts.

Recently, both trade and popular press have covered tribal ventures in cannabis, short-term online lending, resource development, and patent acquisitions and defense. Virtually all of this press coverage suggests that each of these ventures is a "sham" that trades cash for the hope that the tribe's sovereign immunity will shield the activity and related business partners from unwanted state regulations or vexatious lawsuits.

Truth be told, some of these ventures are truly awful, doing little more than renting tribal status for corporate gain. However, that is not the full story.

Some of these controversial tribal business ventures create meaningful tribal job opportunities in reservation offices and bring badly needed revenue while providing legitimate products and services in accordance with tribal jurisdiction and applicable laws.

Key legal and business factors separate these "sham" business arrangements from those that are meaningful tribal businesses that power economic development. Any business or tribal entity considering a business opportunity in a high-profile or potentially controversial market segment should heed the following principles.

ENSURE STRONG TRIBAL INSTITUTIONS CAN GOVERN AND MANAGE THE BUSINESS ACTIVITY

New tribal business ventures must be authorized by individual tribal legislative bodies. If tribal laws and regulations are essential to the business, these must be adopted and enacted before the business opens its

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doors. Tribal oversight of the business must be clear and proceed through the appointment of a specialized regulatory body or through more general enforcement and oversight, like the tribe's attorney general, who will represent them to consumers, contract counterparties, and outside auditors or governmental entities.

ESTABLISH PLANS AND BENCHMARKS FOR THE TRIBAL BUSINESS TO EVOLVE

Many highly remunerative tribal business opportunities depend on outside expertise and capital sources to get off the ground. Partners and tribal entities must both spend time seriously contemplating how tribal business operations and controls will grow over time. Business collaborators must be honest from day one about fading their involvement or shifting their role and economic arrangements as the business evolves. This process takes time and should be governed by mutually agreed upon operations and performance benchmarks.

ESTABLISH CLEAR COMMUNICATION CHANNELS AND GOOD GOVERNANCE PRACTICES

Outside investors pay close attention to whether tribal businesses have independent boards of directors that do not completely overlap with elected tribal leadership. These boards must exercise strong controls and governance of their businesses, with limited but appropriate accountability to tribal governments. Further, tribes and partner organizations alike must establish clear and regular channels of communication on daily operations, financing, legal agreements, and benchmarks of success. Any collaboration that involves one party carrying out a preponderance of the operations without transparency to the other party will encounter eventual legal and regulatory difficulties.



ACT LIKE A BUSINESS

A final catch-all principle that is essential: any new tribal business must actually act like one. This imperative depends on both tribal entities and outside collaborators. Legal documentation, financial records, annual audits, and compliance monitoring are all key business behaviors that must be curated regularly. In high-visibility market segments, there is no room for error. Investors and critics alike will look for evidence of strong business fundamentals regardless of how new the venture is. Promises to tackle these fundamentals after a business is launched rarely come to fruition, so they must be addressed up-front.

These guiding principles provide a foundation from which successful and meaningful tribal economic development opportunities can

flourish. The simple fact is that, if you want to prove the critics wrong, you must be exactly who you say you are. ●



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