

KEY QUESTIONS TO ASK YOURSELF AS YOU PLAN FOR INTENTIONAL GROWTH

Global Expansion Checklist

US-based companies planning an international expansion face an array of concerns around managing risks while growing with intentionality. Once you identify a jurisdiction as a target market for growth, here are some questions to ask yourself, in several key risk areas, as you begin to scale your business.

Phase 1: Business plan self-assessment

- What activities will you conduct in the jurisdiction?
- Do you plan on seeking investment from overseas? Are you fundraising abroad? Will you have significant investment from foreign entities, individuals, or government entities?
- What is your business model for the new jurisdiction? Are there already existing agreements that support that new business model?
- If you are selling your products and/or services in the jurisdiction, describe your go-to market strategy. How will you market and sell your products and/or services?
- Will there be differences between your products and services or your sales practices for the new jurisdiction and your existing markets?
- Will you engage any business partners to help with your go-to-market strategy? For example, do you plan on engaging distributors, sales agents, and/or other third parties in the jurisdiction or elsewhere?
- Describe the revenue you anticipate generating in that jurisdiction within the next (i) 1 year; (ii) 3 years; (iii) 5 years.
- Is there a possibility that consulting or implementation services would be delivered onsite to a customer in that jurisdiction?
- Do you anticipate engaging any employees in the jurisdiction within the next (i) 1 year; (ii) 3 years; (iii) 5 years? If so, how many and for what roles?
- Do you anticipate engaging any third-party services, manpower employees or independent contractors in that jurisdiction within the next (i) 1 year; (ii) 3 years; (iii) 5 years? If so, how many and for what roles?
- Will you engage any individuals who are not citizens of the new jurisdiction?
- Does your business involve manufacturing and/or supply chains? How well do you understand this process? For instance, where are your parts sourced and manufactured, how is your product made and by whom?
- Are there any national security concerns related to your business? For example, do your employees or personnel require security clearances? Do your transactions require national security review? Does the company possess confidential data and/or third-party data, particularly data related to any government?
- Do any of your customers, suppliers, business partners, and/or other third parties engage with government entities, including state-owned or state-controlled businesses?

- Are your sales and marketing plans compliant with relevant competition, antitrust, and/or unfair competition laws in the jurisdiction? Do you know your market share or potential market share for any particular market?
- Consider your in-house compliance programs. How does the company ensure it is not illegally obtaining or retaining business through bribes and/or other improper conduct from its sales and marketing teams, distributors, and/or others acting on its behalf? Is the company acting in compliance with local anti-bribery laws as well as the US Foreign Corrupt Practices Act and UK Bribery Act?

Phase 2: Issues to consider and legal assessment

Corporate set-up and governance

- Is a local corporate presence required for the activities in question?
- If so, is a subsidiary required, or would a branch or representative office be sufficient?
- Is a local bank account required?
- Which type of entity form should be used (ie, CTB considerations)?
- What are the minimum capital requirements?
- What are the local registered address requirements?
- What is the timeline for forming a subsidiary, branch, or representative office in the new jurisdiction?
- What are the ongoing corporate governance requirements in the jurisdiction?
- How many directors are required for the entity?
- Are there any local resident director requirements? If not, is a resident or local agent required?
- Must any director or shareholder meetings be convened in the local jurisdiction?
- Must there be more than one shareholder for the proposed entity?

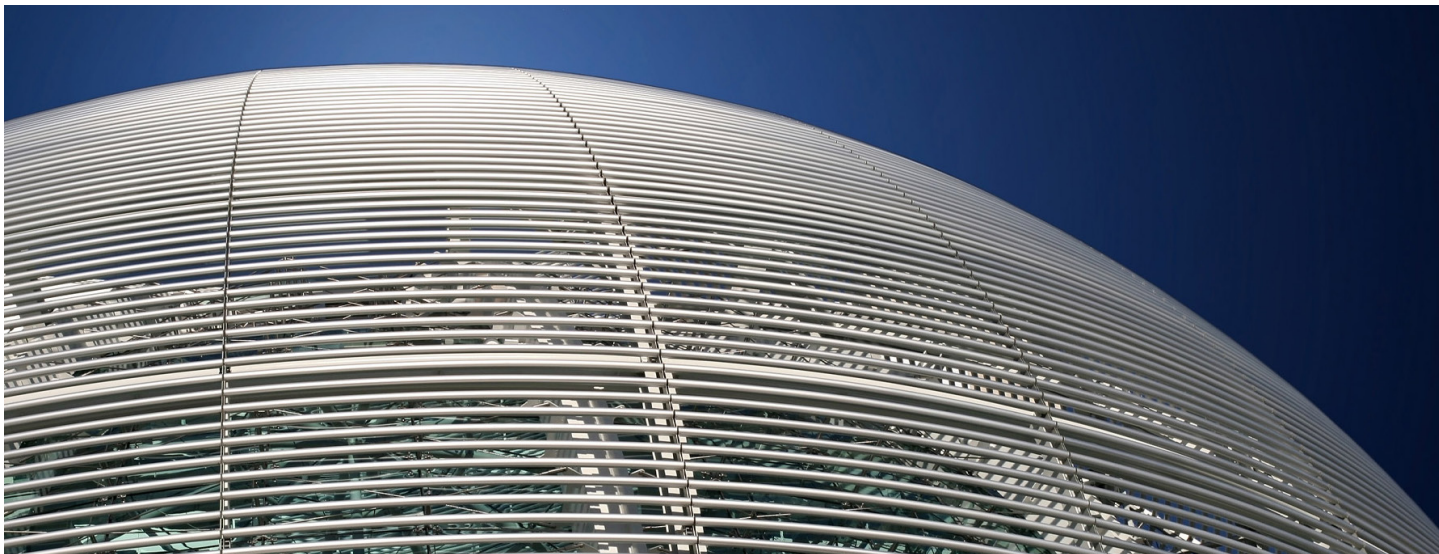
Commercial, regulatory compliance, and disputes

- Does the new jurisdiction regulate your products or services with specific legislation?
- Are there any permits, licenses, and/or regulatory approvals required for you to market and/or sell the product and/or service in the jurisdiction?
- Will you or any third party you hire interact with government officials to conduct business in the jurisdiction? For example, this may happen when obtaining permits and approvals or getting products through customs.

- Are there any regulatory bodies, associations, and/or other standard setting bodies or committees that oversee the products and/or services provided in your industry? Are there any required or recommended memberships?
- What happens if your product is defective, does not work as stated, and/or injures its customer, consumer, and/or another third-party in the market you are entering? Does the injured party have a claim against the company? Does the market have class or collective relief for these parties? Can consumer organizations bring claims on behalf of consumers? Would regulatory authorities get involved and/or investigate the company?
- If the company is sued for product and/or service-related issues, in what jurisdiction and under what law would the claim be brought? Is this choice of law favorable for the company, or is there a choice of law that could be better for the company?
- Is this a new jurisdiction designated as high risk due to U.S. or international sanctions (e.g., Cuba, Iran, North Korea, Syria)?
- Are export licenses required in order to “ship” the technology and/or products to this new jurisdiction?
- Are import/customs licenses required in order for the technology and/or products to be received by customers in the new jurisdiction?

Tax

- What are the tax implications of different entity form alternatives (e.g., subsidiary, branch, rep office)? Would one entity form provide a more favorable tax result than others?
- Which operational model would be most appropriate in this jurisdiction from the business, transfer pricing and tax perspectives?
- Which operational guidelines/ best practices in this jurisdiction could mitigate a taxable presence/permanent establishment risk for any other affiliate entity in this jurisdiction, as well as a taxable presence / permanent establishment risk in any other foreign jurisdiction?
- What are the tax (corporate income tax, VAT/GST), transfer pricing, and financial accounts reporting requirements in this jurisdiction, and their associated deadlines?
- Are there any withholding tax concerns?
- Are there transactions between different companies in the group, creating the need for intercompany legal agreements and transfer pricing considerations?
- Do the activities create US tax issues under either the direct taxation rules or anti-deferral rules?
- What are the tax implications of any funding related considerations - e.g., interest deductibility, future repatriation?



Employment

- Is a local corporate presence required to engage in the jurisdiction?
- How do you plan to engage the individuals you hire: (i) as employees (either of a local entity you will set up or through another entity where possible?); (ii) as independent contractors; or (iii) through a third party (such as a manpower agency or professional employer organization (PEO)?
- If you plan to engage as an employee, have you identified a local payroll provider to withhold income tax and social charges where required?
- What benefits need to be set up to engage in the jurisdiction? Does the social security system cover any required benefits?
- Are there mandatory collective bargaining agreements? Are there works councils or unions?
- Do you understand the employment law landscape and your legal obligations towards employees in the jurisdictions?
- What is your employment exit strategy - how difficult will it be to terminate employment?
- If you will engage independent contractors, are these true independent contractor roles? What is the exposure for misclassification? Are there any sales agent laws granting additional protection?
- If you engage third-party services employees (e.g., through a PEO) do you have a competent local provider? Are there any legal restrictions (time limitations or type of engagement) on the engagement of third-party services employees in the jurisdiction?
- What types of work permits are available for any hires who are not local nationals?

Global equity

- What types of equity / stock awards will you be granting in the jurisdiction, and what is the anticipated headcount of awardees by entity?
- Are there any unusual plan designs or goals associated with the anticipated grant of equity / stock awards?
- Are there any securities laws that restrict or trigger affirmative requirements (e.g., disclosures, registrations, notifications) to apply to the grant of stock awards?
- Are there any foreign exchange or exchange controls laws that restrict or trigger affirmative requirements (e.g., fund remittance limits, reporting, repatriation requirements)?
- Are there any labor or employment laws that restrict or trigger affirmative requirements?
- Are there any data privacy laws that restrict or trigger affirmative requirements?
- Are there unusual tax consequences that impact the stock awards? Are tax-qualified or preferred treatments available?
- Are there any particular documentation requirements associated with the grant of awards in terms of sub-plans, award agreements, local country tax descriptions or other country-specific elements?

Data privacy and information law

- Will you collect employee data from employees in that jurisdiction? If so, what type, and where will it be transferred?
- Will you collect customer data from customers in that jurisdiction? If so, what type and where will it be transferred?
- Are there any data privacy registration or notification requirements?
- Will we need to appoint a privacy or compliance officer for that jurisdiction?

- Will the data flow trigger any data transfer obligations (e.g., signing the EU Standard Contractual Clauses)?
- Are there any data localization or data sovereignty requirements?
- Are there any customer/employee notification requirements?
- Are there any requirements regarding contracting with third party service providers?
- Are there any requirements due to any monitoring (e.g., CCTV, electronic monitoring and acceptable use, computer)?
- Are there any privacy policy (internal/external) requirements?
- Are there any requirements due to payment obligations?
- Are there any limitations on the use of third-party technologies by subsidiaries or affiliated companies?
- Are there any limitations or restrictions on importing or using certain technologies (e.g., encryption)?
- To what extent does local law permit the company to limit liability in its contracts?
- Must the company enter into contracts translated in local language?
- How does the company plan to manage its contracts across multiple jurisdictions?

Intellectual property and technology, contract considerations

- What do local laws require to have valid and enforceable intellectual property assignments by employees?
- Can employees assign IP in their employment agreement or an IP assignment agreement?
- What do local laws require in order for an intellectual property assignment by an independent contractor to be valid and enforceable?
- Should the company's trademarks be registered in the new jurisdictions?
- Has the company filed for any patents in the new jurisdictions? Has the company taken any steps with respect to its US filings that may affect their ability to file foreign patents and vice versa?
- What does the local jurisdiction require for effective trade secret protection? What steps will be taken to ensure that local employees understand the company's trade secret policies.
- Does the company plan on or currently have significant business trade secrets, confidential data, third-party data (e.g., client or customer data) and/or otherwise valuable intellectual property residing overseas or on laptops or other mobile devices or storage units? If so, what steps has the company taken to secure such data from third-party access (e.g., confiscation from foreign authorities, unauthorized access, data breach)
- Are appropriate intercompany agreements in place to permit the use of relevant intellectual property by newly formed subsidiaries and affiliated companies?
- Does the local jurisdiction have specific AI regulations, or does it regulate AI through industry specific or generally applicable laws? Do they apply to the company's use of AI?
- Are there prohibited use of AI in the local jurisdiction? Is the company currently engaged in these uses?
- Are there uses of AI that are considered "high risk" or are subject to strict compliance requirements? Is the company currently engaged in these uses? If so, what are these requirements?
- Does the jurisdiction require that users be informed they are interacting with AI, or their data is being processed by AI? Can this be achieved in terms of use or does it require technical measures to be implemented?
- Do AI systems have to be registered in the local jurisdiction? What is the process? With which regulators do the AI systems need registered?
- Are there local requirements requiring disclosure of the contents of data sets?
- Are there standards for data quality? Are they required to be tested and verified?
- Does the local jurisdiction assign different obligations if the company is developing and/or deploying AI? What are these obligations?
- Has the local jurisdiction established measures, such as regulatory sandboxes, to assist compliant use of AI? If so, what are they? How can the company leverage them?

Artificial intelligence considerations

Find out more

First, learn more about meeting the practical legal challenges of global expansion by consulting our Guides to Going Global. This useful, complimentary series, updated annually, reviews business-related corporate, employment, equity, intellectual property and technology, and tax laws in key jurisdictions worldwide.

Next, to find out more about the process of global expansion, and to talk about anything covered in this checklist, please contact:

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