



Issue Spotting: International expansion for US
fast growth businesses

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Objectives for expanding internationally



Expansion strategies

Looking at different options

Non-legal dimensions (market, customers, talent)

Objectives and ROI?

Other considerations: business and regulatory environment, logistics, language, time zones, culture and tax



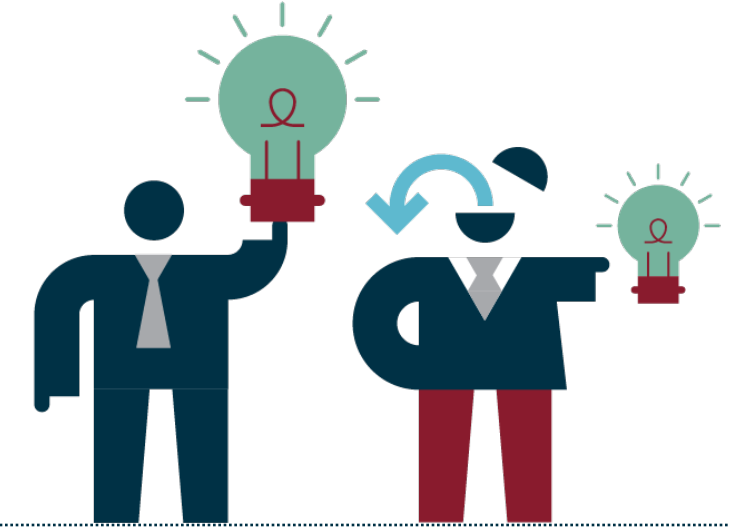
Planning

Timelines?

Practical issues, such as a bank account

Tax ID

Creating a roadmap



Internal team

Who is on the internal team?

Project management?

Use software and other tools

Options for international growth



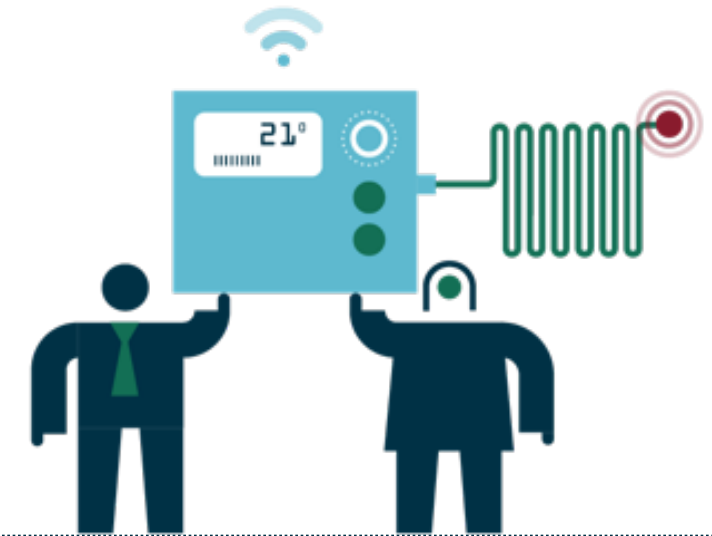
Overseas acquisitions

Due diligence: understanding the differences in the market.

M&A transactions, consider how the process, timeline, laws and deal structure differ from a typical US transaction.

Note specific issues around business and asset deals

Other considerations: post-merger integration, employee transfers (i.e. TUPE (Transfer of Undertakings (Protection of Employment) Regulations))



Overseas joint ventures

Identifying and evaluating a JV partner for overseas market entry

Structuring the JV agreement, best practices for aligning the two parties

On-going operations with an overseas JV partner

Entity formation

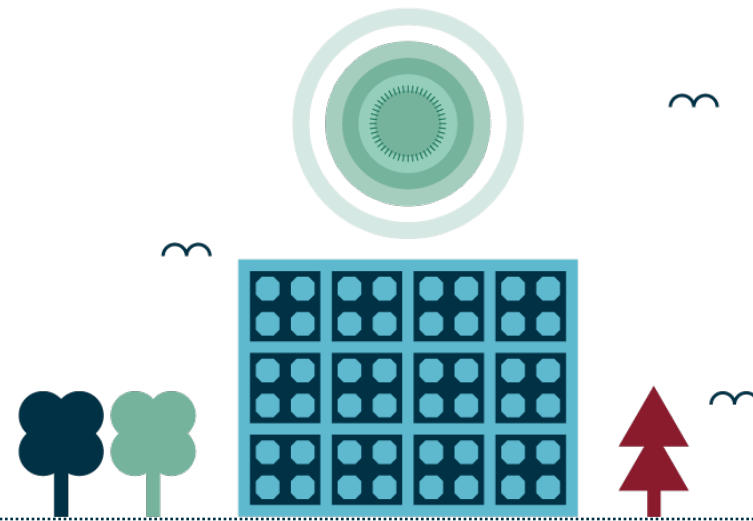


Don't be an "accidental tourist"

"Permanent establishment": it's easy to trigger corporate taxable presence in many countries

Based on actual operations

Likely if there is a fixed office or dependent agent/employee



De facto branch risk

Tax implications, liability for directors, required to disclose US company financial information

Ensure you appear on the radar when you decide to, not before



Branch vs. Subsidiary

Ease of establishment, "corporate veil" to protect US company, tax implications, timelines

Consider your future plans and how this fits into your wider international structure

Local ownership or director requirements

Registrations, filings and disclosures

Building the team



Beware of consultants

1099 v W2 type classification – new legislation in the UK – IR35

Wider employment law and tax risks

Protecting IP, enforcing post termination restrictions



Local hire vs. US migrants

Local knowledge vs. company knowledge

Immigration rules

Cultural issues and local relationships



Local employment laws **will** apply

No "at will" employment and each country will differ, use a local law employment contract

Apply local laws to terminations

Rules and market standard around language, notice periods, intellectual property, post termination restrictions, holiday, pensions and considering your benefits package



Other issues

Protecting your position, probationary periods, confidential information, post termination restrictions enforceability

Risks of using a PEO/EOR

Future of Work issues – return to office, hybrid working etc.

Intellectual property



Before going in: Research the market

Is the brand already in use?

Different meaning and cultural sensitivities



First impressions last

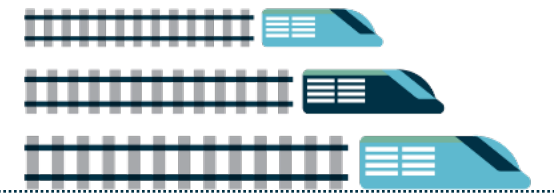
Challenge changing brand or trade name because of cyber-squatters or IP registration objections



Differences in IP protection

Patents vs. copyright

Trademarks – EU wide application? Separate UK TM is now needed post-Brexit



Enforcement rights across borders

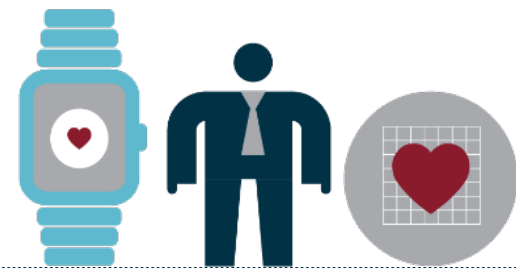
Rights enforceable across the EU and elsewhere?

Contracts



US-style exclusions can invalidate the contract

Slow sales/negotiation process



Product liability

Can't be excluded by agreement

CE and UKCE marks & other safety standards



Consumer protection laws

Certain provisions may be required: rights of return, consent, cookies.

Shrink wrap v bespoke contract

Do you need to translate to comply with local law and use a more appropriate style?

Upcoming overhaul of consumer laws (Omnibus Directive)



Negotiation position

B2B: agreements under local law or your preferred law?

Arbitration v litigation?

Neutral law and/or venue for litigation

GDPR, ePrivacy and security considerations



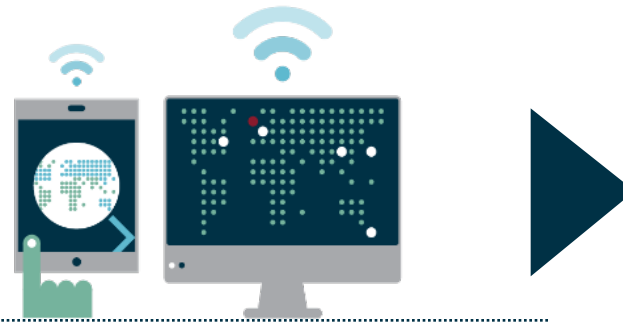
Are you collecting personal data?

GDPR in EU and UK GDPR

High fines and active enforcement by regulators

Consider privacy regulations in other jurisdictions and data localization requirements

Cyber security requirements may apply beyond just personal data



Applicability

Any activities in the UK or EU (offering goods or services to UK/EU individuals, or targeting UK/EU based individuals) even before establishing an entity

Any "processing" of Personal Data requires Controllers to comply with GDPR and flow down obligations to Processors

Broad application and principles based



Key Obligations

Transparency (notices, policies)

Lawful grounds of processing (consent is difficult, legitimate business interests, contract)

Data subject rights

Accountability (records, governance, representative, DPO, DPIA, Privacy by Default)

Challenges with transferring Personal Data outside EU/UK



Don't forget your employee data

Need for an internal-facing Staff Privacy Notice

Overlap with local employment laws

Guidance and training needed

Data subject access rights – particularly following termination

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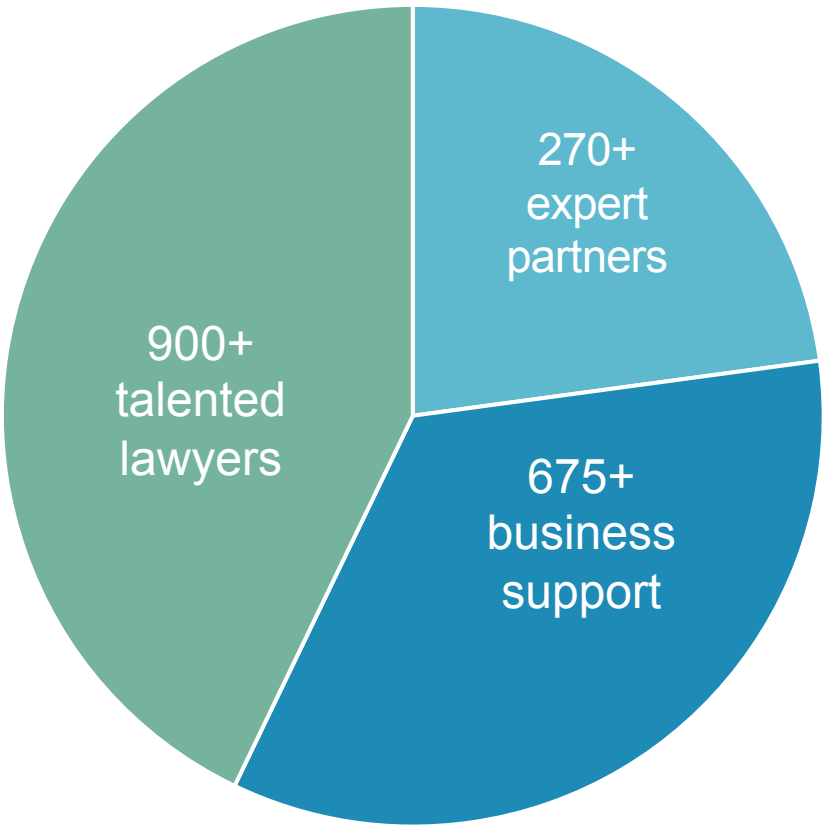
Rachael is based in Osborne Clarke's Silicon Valley and San Francisco offices and is a UK employment lawyer advising US clients on employment and incentives needs across Europe and Asia.



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