



**Corporate Counsel Institute
Cross-Border Legal Issues for In-
House Counsel**

April 7, 2016 (Houston)
May 6, 2016 (Dallas)

"This presentation is offered for informational purposes only, and the content should not be construed as legal advice on any matter"

Going Global is a Major Trend Vinson&Elkins 



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A Common Scenario

GoGlobalQuick, Inc. is eager to sell products abroad in Europe, China and Brazil. It is planning to expand its business in these jurisdictions in the next 3-12 months, but already has some sales people on the ground in France, and an engineer in China. They are being paid through PayPal.



Some Issues to Consider

1. Corporate Set-up and Governance
2. Regulatory, Commercial and Compliance
3. Tax
4. Employment
5. Global Equity
6. Data Privacy
7. Intellectual Property and Technology
8. Dispute Resolution, Mediation, Arbitration, Enforcement of Awards

- Determine appropriate level of corporate “registration” in country
 - Subsidiary or branch? What are your plans for the future?
 - Representative office – limited in scope to marketing and non-sales activities
 - In practice, representative offices often do more than permitted scope
 - Just payroll registration (possible in most of Europe, not possible in Brazil or China)
- “Activities” in-country can trigger a taxable presence even if no entity or office created – e.g., a Permanent Establishment (“PE”)
 - PE is a grey area and is open to interpretation by different fiscal authorities in different countries
 - Typically, “preparatory” or non-revenue generating activities will not result in a PE whereas revenue-generating activities will
 - Understanding “triggers” allows for proactive management and compliance

Corporate Set-up and Governance: Branch versus Subsidiary

Branch Office

- A branch office is an *extension* of another company
- A branch office is *not* a separate legal entity - no legal liability protection
- Branch office of U.S. parent could subject parent to tax in branch country and expose it to legal liability (consider separate entity - e.g., a Delaware LLC - to employ foreign employees and retain contractors)

Subsidiary

- A subsidiary is a separate legal entity
- Provides a layer of protection between the parent company and the activities of the entity
- Generally a better vehicle to manage tax and legal liability risks



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First appeared as part of the conference materials for the
38th Annual Corporate Counsel Institute session
"The Top Cross-Border Legal Issues"