

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

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Going Global is a Major Trend

Vinson&Elkins 



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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"The Top Cross-Border Legal Issues"