

DO YOU HAVE EMPLOYEES MOVING TO THE U.S.?
 Requirements: No U.S. Credit History, or Guaranteed
 SOURCE Required for a Vehicle Purchase

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Opening in a Foreign Country; be careful

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The world is getting smaller. Not in a geographical sense, but in a business sense. With the advent of e-mail, video teleconferencing, the Internet and e-commerce, businesses are no longer restricted to operations in a sole location. Improved trade, favorable tax rates, labor and centers of excellence have almost made it a necessity to have offices or strategic alliances in more than one country.

But how does one jump into the marketplace? The purpose of this article is to provide a framework of topics that is essential in doing business on the global level.

There is no replacement for having proper professional assistance in developing your global presence. This assistance will take the form of attorneys, accountants, consultants, etc. However, by doing the initial work themselves, businesses will be educated to the realities of the project, as well as reduce the number of billable hours to consultants and outside sources.

In making the final decision to expand globally, it is always a good rule of thumb to follow the old journalism axiom of the "5 W's and H": Who, What, Where, When, Why and, then finally, How? A more appropriate planning order and the questions associated with them might be:

- Why are we undertaking this operation?
- What are we going to do in this country?
- Where will it be located?
- Who needs to be involved in the planning and execution of this operation?
- When do we want this to be in place?
- How do we proceed to meet our objectives?

Once the questions have been answered, you have the infrastructure of your roadmap.

Early Planning

Prior to working through the issues of opening a business, there are three issues that need to be addressed as you prepare to go forward. First, what is the language spoken in the targeted country? Do they speak your language or will you need an interpreter? Requiring an interpreter will add expense to the transaction. Additionally, there is the matter of whether the interpreter understands what it is you are trying to get across in negotiations. There may be subtle nuances to language, or some things simply may not translate smoothly. So language, or choosing your translator, needs to be a topic of some concern.

The second issue is culture. Many a deal is blown due to one party not understanding the local cultures and ways of doing business. It may stem from something as simple as a handshake, to where business is transacted. Sending a female to conduct negotiations may doom a contract from its initial discussion. Not bringing a gift or bringing the wrong gift can be nearly as disastrous. Prior to going to the country, it is advisable to receive some instruction on cultural awareness to avoid most social faux pas.

The last issue, religion, may also be a part of the first two. Religion may play a part in when and where the discussions are held.

A brief lesson in local customs and practices is well worth the money to place negotiations on the right track from the onset.

Once you have your basic fundamentals in place, it is time to address the more pragmatic issues involved with developing a foreign entity.

Country Considerations

When selecting a country in which to do business, there are many considerations for the foreign investor. Has your country established diplomatic relations with the country?

The presence of diplomatic relations will generally be an indication that there are treaties in place for doing business. These treaties will have an effect on taxation, trade limitations, etc. It will also provide a local consulate or contact for the home country that can be used for making introductions, assisting in arranging meetings with certain government officials, and lend clout in the case of legal issues.

It is important to know whether there are any environmental regulations that will affect the way you do business. If you are opening a manufacturing facility, what are the restrictions on the disposal of solid and other wastes, air quality, etc.? Complying with local regulations may add more to the cost than you had planned. It may also require liability insurance for the company, and you as an individual for any violations.



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| CONFERENCE CITIES AND DATES | |
|-----------------------------|--------------------|
| Bellevue/Seattle metro | 29 March |
| San Francisco | Wednesday, 4 April |
| Mannheim, Germany | Thursday, 19 April |
| Copenhagen | Tuesday, 24 April |
| Phoenix | Thursday, 17 May |
| Atlanta | Tuesday, 22 May |
| New York | Tuesday, 12 June |
| Toronto | June 8 |
| Energy NorthAmerica, | 1 |
| Houston | November |
| Basel, Switzerland | 29 November |
| Paris | 04 December |

Does the country offer any incentives to you for doing business? Many times a country will offer a company tax incentives, reductions in fees for building permits, licensing, etc.

Is there a limitation on imports or exports? Depending on the site chosen and the relationship to your home country, the limitation on what you can and cannot export or import may have an adverse impact on your overall business plan.

If you are going to build a new facility, there are a number of concerns prior to breaking ground. The environmental issues mentioned above may play a part in the certificate process. Additionally, what permits and inspections are required?

A final note about preliminary research will include the requirements for product registration. Is the country in which you are about to begin doing business a party to any treaties that acknowledge intellectual property, trademarks and copyrights?

Implementation

Once you have your initial results from above, you are ready to begin the preliminary steps to open your business.

Company Structure

Working with a local law firm will be an essential step in registering your business. You will have to decide how to structure the company. Will it be a wholly owned subsidiary, will it be a division, or will it be a public or closed corporation? The structuring will have repercussions downstream, as it will affect how you structure your accounting, intra-company pricing, etc.

The structure of the entity may be driven by its overall purpose. For example, if you are opening a company in the UK, and you need to obtain what is known as a "List X" rating for defense work, the company will need to be a registered company in the UK.

Additionally, are there any restrictions to the makeup of the officers and senior staff? In certain countries, you are required to have a local citizen as the Managing Director or as a member of the Board.

Financial Systems

Generally, there is an order to the flow of opening a facility. Many of the required procedures will follow a certain order that proceed like dominoes. For example, you need a company registration number to obtain a tax number. You need both the registration number and the tax ID to open a bank account. Finally, to set up your payroll and pension schemes, you need all three prior steps.

You will also need to determine the pricing strategy for inter-company transfers of products and services. While most countries allow a discount for the exchange of goods and services, the tax and treaty structures may limit you to discounts similar to those you would provide to a valued customer.

Banking

It is always better to be referred into a financial institution. Talk to your local bank and see whom they would recommend in the country of choice. If there is already a working relationship between the banks, there may be a better fee structure for transfers, loans, lines of credit, etc.

If you are trying to set up any sort of special procedures, or lines of credit, it will sometimes be worth your while to go to the bank's main headquarters prior to visiting the local branch. Many times, if you are deviating from normal procedures, it has to be approved at the main office. The headquarters may not be in the same city where you are establishing your operation, but you will save time in the long run by gaining approval on your account structure, then having the headquarters refer you to the local offices. By going directly to the source of approval, you have eliminated one step.

Payroll

Many companies try to save costs by doing their international payroll in house. Unless your payroll department is conversant with the required Social Insurance contributions, pensions, taxes and other requirements of a foreign country, you are asking for trouble. Additionally, most U.S. payroll and HRIS systems cannot handle foreign data (addresses, currency differences, Social Insurance numbers, etc.).

Depending on the size of your operation, you may want to review the services of a payroll service or contact a local accounting firm that offers payroll as a part of its services. A service will contract to run the payroll, make the tax payments, bonus payouts, pension, and insurance withholding and contributions. They can also provide all year-end forms required for individuals to file their own taxes.

Insurance

A review of the country's requirements for insurance is very important to the overall cost of opening and operating an office. First of all, is the company required to carry insurance? Next, what types of insurance and risk must be covered?

Before contracting with new carriers, you need to review the international umbrellas your home country's insurance coverage provides. In some cases, you will be required to write the insurance in the new country. However, the more you can write under your current policies, the more cost effective it will be.

The same applies for your Director and Officer, Errors and Omissions, and Employment Practice Liability policies.

Taxation

Taxation is a key-planning component when planning the overseas operation. The company will need to be aware of how taxes are calculated, if there are federal and local taxes, and what the filing and payment requirements are. Is the tax year in the foreign country different from the tax year in the home country? Does the country require an audited statement at regular intervals from the company?

If your company's fiscal year is different from the date of incorporation in the foreign country, may you change the accounting year to match yours to maximize accounting practices, standardize reporting, and require one audit instead of several?

----- PAST CONFERENCES -----

| | |
|-----------------------------|------------|
| Brasil | Feb 2009 |
| London | Sep 2010 |
| Geneve | April 2011 |
| Rome | May 2011 |
| San Francisco | June 2011 |
| Vienna | Sep 2011 |
| Zuerich | Sep 2011 |
| Miami | 3 Oct |
| Houston | 9 Nov |
| WashingtonDC | Nov 2011 |
| New York | Nov 2011 |
| Paris | Dec 2011 |
| San Diego | 26 January |
| California's Silicon Valley | 1 February |
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From the operating standpoint, what allowances are there for depreciation and deductible items?

Is the country a party to any tax treaties that will guide your accounting and reporting structure? For example, where may business losses be deducted, in the home country or in the foreign country?

Human Resource Issues

The human resource function is one often overlooked until late in the process, yet it is one of the areas fraught with pitfalls for the unwary company. The issues of labor, employment, terminations, unions, benefits, social insurance, pension and compensation are heavily regulated. One of the best bits of advice to follow is to "stop thinking like a (fill in your country here)." A simple example of this is the offer letter. In the United States, most offer letters are one to two pages in length. They lay out the salient points of the offer, remind you that it is employment at will, and then close.

However, in many other countries, employment at will is not a reality, and there are statutory guidelines as to what has to be in the offer. There may be a requirement to provide each employee with a terms and conditions (T and C) letter that covers the entire employment relationship in some detail. The T and C's may run as few as three to four pages for rank and file employees, to more than 20 pages for senior management.

I am reminded of the manager from the United States who was interviewing a candidate for a position in their German subsidiary. The manager extolled the virtues of the company's benefits plan, the generous matching to the 401(k) retirement plan, the "generous" holiday plan, etc. At the end of the day, the individual was given the standard offer letter for managers in the company. He followed up with the Human Resources Department, asking what his benefits were, would he be paid monthly, from where would he be paid, did they know that German Statutory leave was greater than what they offered and, finally, where was his "real" offer letter.

Recruitment

After the question about the availability of labor has been reviewed, the next step is to recruit them. Recruiting methods will differ by country. Some areas of the globe do not have as ready access to the Internet as others.

When advertising in a foreign country, there are several considerations: the best day of the week to advertise, in what format should it be, and does it have to be in the local language.

In the U.S., the best day to advertise is Sunday. However, in different countries, there may be a different day for specific disciplines. For example, ads for computer professionals might run on Thursday, healthcare on Tuesday, and administrative professionals on Saturday. Working with your advertising agency should provide the best days for advertising.

The next issue is in what language the ad should run. If you are trying to hire for local sites, it should run in the local language. When having ads translated, you need to ensure that the message printed is the message you want, as some things do not translate well.

How and where will the responses be sent? Will you have a local repository or will they be sent to your home country? Remember, the resumes may arrive in the local language.

When and where will the interviews be held? Language may be an issue once again. Additionally, be aware of what questions you may and may not ask in that country. In the U.S., we are governed by strict guidelines as to the questions that may be asked. In various foreign countries, photos may be taken and any question is fair game, job related or not.

Notice periods also vary by country. In the U.S., we are accustomed to having our new hire begin employment within three to four weeks. Other countries have very stringent requirements as to the amount of notice required prior to leave taking. The notice period may be as little as 4 weeks, or as much as a year or more depending on statute and employment contract. In statutory cases, the employee may face civil fines for not providing the correct notice period. The waiting time for your new employee may have a direct impact on your new operation commencing operation.

Benefits

Benefits cover a wide scope of areas: time off, maternity leave, health and life insurance, and pensions. As illustrated in the example above, what appears to be a good plan for one country may not apply at all, or be well below the statutory minimum requirements in another country.

While a country may have a socialized medical system, many progressive companies are offering additional coverage to attract and retain employees. This practice used to be limited to management employees and above. However, in the increasingly tight market for technical talent, companies are offering extended benefits to the general employee population.

Health benefits will vary from country to country. A buy-up program allows an employee to be placed in a semi-private or private room over a ward. It may also offer the employee the choice of a treating physician, rather than who is on-call that particular day. In addition, in some places, they will receive preferential treatment, as the provider knows they will receive payment faster from a private insurer rather than the public plan.

Prior to making a foray into a new country, it is strongly advised that employers review the statutory benefits plans to assure the company will be in compliance with any contributions they are to make. It will also allow you to accrue the necessary expenses to cover various leaves of absence, illness and disability.

If the company is operating in more than one country, then global pooling might be attractive. Simply put, pooling allows a pooling of lives in more than one country to an aggregate number to receive a better pricing arrangement while providing the individual coverage required in each country.

Executives may also have an increased benefit package. Their fringes may include club memberships, drivers, cars, phones, computers, and topped up life, health, and pension contributions that are more tax advantageous than other forms of remuneration.

Compensation

One of the biggest mistakes a company can make is converting its local wages into the currency of the foreign location. Generally, it will translate very high or very low for the local market. Calculating salaries in a foreign country needs to be done in the same manner as at home: rank the job and analyze it in the local market based on requirements, education and years of experience.

Another pitfall is the number of months paid to an individual in a foreign country. Depending on the country, employees may receive between 13-17 months salary for 12 months work. The differences may be adjustments, bonuses, or just tradition. Many American human resources professionals have been caught short in salary negotiations because they did not realize until too late the number of months salary that was being negotiated.

Local surveys may be purchased from Human Resources organizations or international consulting groups.

In addition to base compensation, there may be other sums of money, or in kind options, that are more tax advantageous for the company to offer. For example, meal allowances, company cars, clothing allowances, or mobile phones might be included in the salary package. When you negotiate the base compensation, it is critical to know the full extent of the package.

One final note for multi-national companies is the location of payment. It has been a practice of some companies to spread the allocation of salaries for certain levels of management over a number of locations. For example, the executive is paid in U.S. dollars, French francs and Japanese yen. However, an initial review of the person may only reveal the pay in one of the countries. During salary negotiations with the new company, only the one country is discussed, the employee laments over how low paid he or she is, and the new company increases the pay commensurate with local ranges, while the employee still draws salary from the other sites. The moral of the story is to review all levels and locations of pay.

Stock plans, as part of compensation, will also vary from country to country. In some countries, the grant of options or stock may be taxable at grant, at exercise, at sale, or as a combination of all three.

When developing a global stock plan, the decision needs to be made as to which operating unit the stock will be granted. For example, the company is headquartered in the U.S. and opens a subsidiary in the UK – will the employees of the UK entity receive U.S. stock or will the UK entity issue its own stock?

Foreign stock may be granted in other countries; however, there may be issues with vesting (some countries do not allow for timed vesting). In a case where vesting in options is immediate, the U.S.- based company may want to modify the agreement to issue only the amount of options that would vest annually until the original grant number is reached.

Taxation may also be an issue to the issuing body. Prior to developing an entirely new plan, a full review of the parent plan should be done. In many cases, there is a provision to issue stock options to a foreign location. In such a case, all that is required is a modification of the parent plan exercising the clause to issue foreign stock.

The plan enrollment and grant documents will then need to be modified to include local rules and notifications. Local counsel should review the plan to ensure the proper format is followed and the tax implications are the most favorable for all parties.

Immigration

Immigration is an issue from many standpoints. It can delay the transfer of an individual by weeks or months, depending on the country and visa required. Immigration can also be an issue when moving a family where the spouse works. In some countries, a spouse may not work while accompanying the employee you have hired. The inability to work, in some cases, will lead to discontent and boredom at home, as well as financial hardships due to the reduction in a dual earning status.

The immigration timeline should be a major consideration in the overall business planning timeline.

Another consideration of immigration relates to third country nationals. You hire a national from Country A to work in Country B. However, part of the job duties requires entering Country C. Country C and Country B have treaties that allow free transit between borders, but Country A and Country C do not. Therefore, your employee may either not be able to enter Country C, or may have to apply for a visa, delaying the project.

Unions and Works Councils

The term Union has a very different connotation in the U.S. as compared to other countries. In most European countries, the employer will be working with either Works Councils or Trade Unions. The Unions, unlike in the U.S., are mandated by statute in most cases and play a major role in work determination, training, wage rates and redundancies.

I cannot emphasize enough the importance of working with the local Unions or Councils when opening an office. Failure to do so can result in fines, a lack of cooperation, and potential costly time delays until you begin to work through the proper channels.

Companies tend to underestimate the power of the Councils. A good example is in the case of data transfer of employee information. In Germany, even if the employee has signed a release to transfer the information, the local Works Council may override it and block the transfer of the data.

Data Privacy

Data privacy really came to the fore with the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data, and on the free movement of such data.

The Directive applies to the processing of personal data wholly or partly by automatic means, and to the processing other than by automatic means of personal data that form part of a filing system or are intended to form part of a filing system.

The Directive has been ratified in local forms for most of the member states. For example, the UK enacted the

Data Protection Act 1998 that required full compliance by October 23, 2001.

There are a number of safe harbor practices that will allow the transfer of data between the EU and other countries.

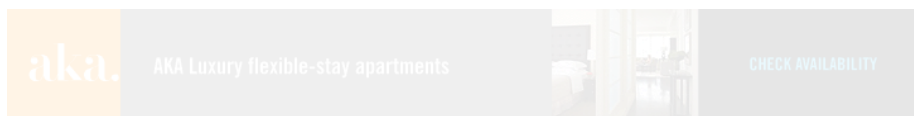
This rule, in particular, affects U.S.-based companies where the human resources department normally may keep copies of the international files, salary data, and other personal information for benefits purposes. Transfer of the data without the correct allowances and safe harbor conditions are a violation of law.

In some countries, the data a U.S. company may seek (dependents, etc.) may not even be kept on file by the company. For example, in Sweden, with its socialized approach to pay, benefits, pension, etc., the data normally collected in the U.S. is not kept on file and the requestor from the U.S. may get a terse response from the Swedish location on why such information is being requested. As mentioned above, a bit of cultural training can go a long way to establish positive relationships with the foreign office.

Conclusion

Proper planning, training and the right team will make the acquisition, merging, or opening of a foreign site much smoother. If the proper amount of time is placed into planning, research and execution, the number of unforeseen and unexpected issues will be minimal. They will still occur, but many will be non-issues, leaving time and the ability to deal with actual larger issues as they occur.

Mr. Darryl Weiss has been a frequent presenter to human resource organizations globally and has published on matters related to international human resources.



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