

A Practical Approach to International Business Expansion: Top 10 Tips!

Santa Barbara Corporate Counsel Roundtable

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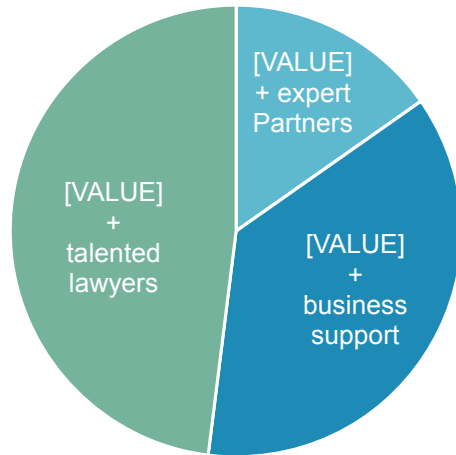
SONOS



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1,750

employees
and counting



26

international
locations

Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

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China: Shanghai

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India: Bangalore*, Mumbai*, New Delhi*

Singapore

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New York, San Francisco, Silicon Valley



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*Relationship firm

Tip 1: Understanding the market



Why and where are you going?

Where is your market/existing customers?

Where is the talent you need?

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



Researching the market to determine the best approach

How do other US companies enter and operate in the market?

Are there potential joint venture or M&A opportunities?

How does this fit into your wider international strategy and structure?

Could you build your own organic presence in the market?



Current affairs and politics

Risk assessment: governmental input or external analysis?

Brexit: timing, impact, extent of your market

US tariffs: impact on profits, logistics, planning medium term

Tip 2: Acquisitions and joint ventures

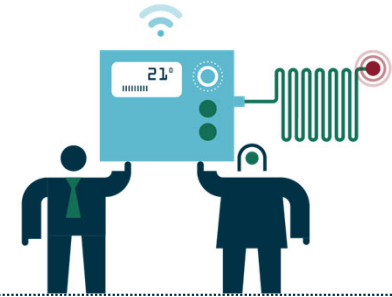


Overseas acquisitions

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.

Other considerations: post-merger integration, employee transfers



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

Tip 3: Preparing for international setup



Setting up an overseas company – know your metrics and timelines for success



Plan ahead

- Hiring lead times and obtaining visas
- Setting up entities and opening bank accounts
- Internal budgeting and expenditure



Do your own research

- Understand the jurisdiction you are working with
- Beware second hand advice



Be thorough

- Treat the local subsidiary the same way you'd treat the US company
- Take good advice!

Tip 4: Entity formation

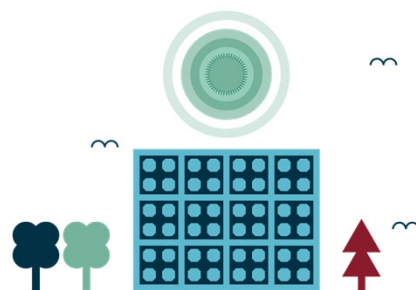


Don't be an "accidental tourist"

"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

Tip 5: Building the team



Beware of consultants

1099 v W2 type classification
Wider employment law and tax risks
Protecting IP, enforcing post termination restrictions
EU Commercial Agent Regulations



Local hire vs. US migrants

Local knowledge vs. company knowledge
Immigration rules



Local employment laws WILL apply

No "at will" employment and each country will differ, use a local law employment contract
Rules and market standard around language, notice periods, approved leave, holiday, pensions and considering your benefits package



Other issues

Protecting your position, probationary periods, post termination restrictions enforceability

Tip 6: Intellectual property



Before going in: research the market

Is the brand already in use?

Different meaning and cultural sensitivities



First impressions last

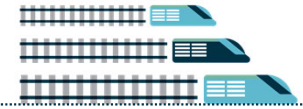
Challenge changing brand or trade name because of cyber-squatters or IP registration objections



Differences in IP protection

Patents vs. copyright

Trademarks – EU wide application?



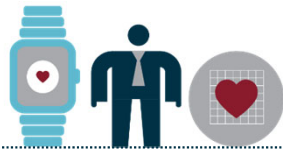
Enforcement rights across borders

Rights enforceable across the EU and elsewhere?

Tip 7: Contracts



US-style exclusions can invalidate the contract



Product liability

Can't be excluded by agreement
CE 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 and use an appropriate style?



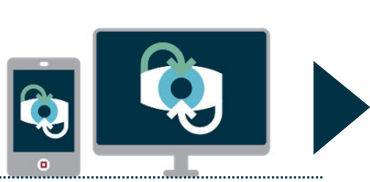
Negotiation position

B2B: agreements under local law or your preferred law?

Arbitration v litigation?

Neutral law

Tip 8: GDPR & privacy considerations



Are you collecting data?

GDPR in EU in effect as of May 2018.

Consider privacy regulations in other jurisdictions.



Applicability

Any activities in EU

Focus around 'controlling' or 'processing' of Personal Data

One of the key principles: no transfers from Europe

Brexit impact



Exceptions

Pro-active consent: not always practical

Privacy Shield: self certification for EU-US transfers



Don't forget your employee data

Overlap with local employment laws

Data subject access rights – particularly following termination

Tip 9: Operating globally



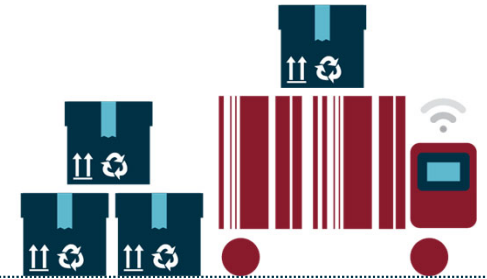
Real estate and office space considerations

- Shared workspace/community
- Pop-up/short term lease
- Longer term lease
- Warehousing
- Team dynamics: broker, lawyer, fees, tax



Dealing with international disputes: forum and governing law

- No easy answer
- Don't just swap governing law!
- Consider differences in common law and civil law



Industry specific regulation

- Life sciences
- Recruitment
- Environmental
- Tech

Tip 10: Cultural and practical issues



Every country has its own customs

- Language
- Holidays
- Religion
- Government
- Approach to US



Can cause offense without intending to

- Use of informal language or first name
- Punctuality, meeting dynamics
- Yes means no?



Can impact your business' success

- Building up sales relationships can take a long time – don't give up
- Using local employees/contracts?
- Careful of FCPA and Bribery Act

Questions and Contacts



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Thank you

