

Unlocking Global Growth: Navigating International Expansion 2024



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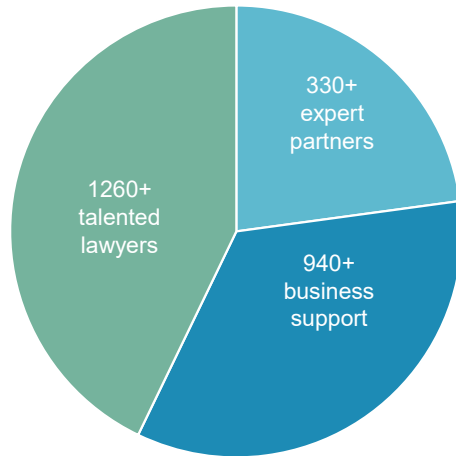
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About Osborne Clarke

2,545+

employees and
counting



26

international
locations*

Europe

- Belgium: Brussels
- France: Paris
- Germany: Berlin, Cologne, Hamburg, Munich
- Italy: Busto Arsizio, Milan, Rome
- The Netherlands: Amsterdam
- Poland: Warsaw
- Spain: Barcelona, Madrid, Zaragoza
- Sweden: Stockholm
- UK: Bristol, London, Reading

USA

- Miami, New York, San Francisco

Asia

- China: Shanghai
- India*: Bangalore, Mumbai, New Delhi
- Singapore



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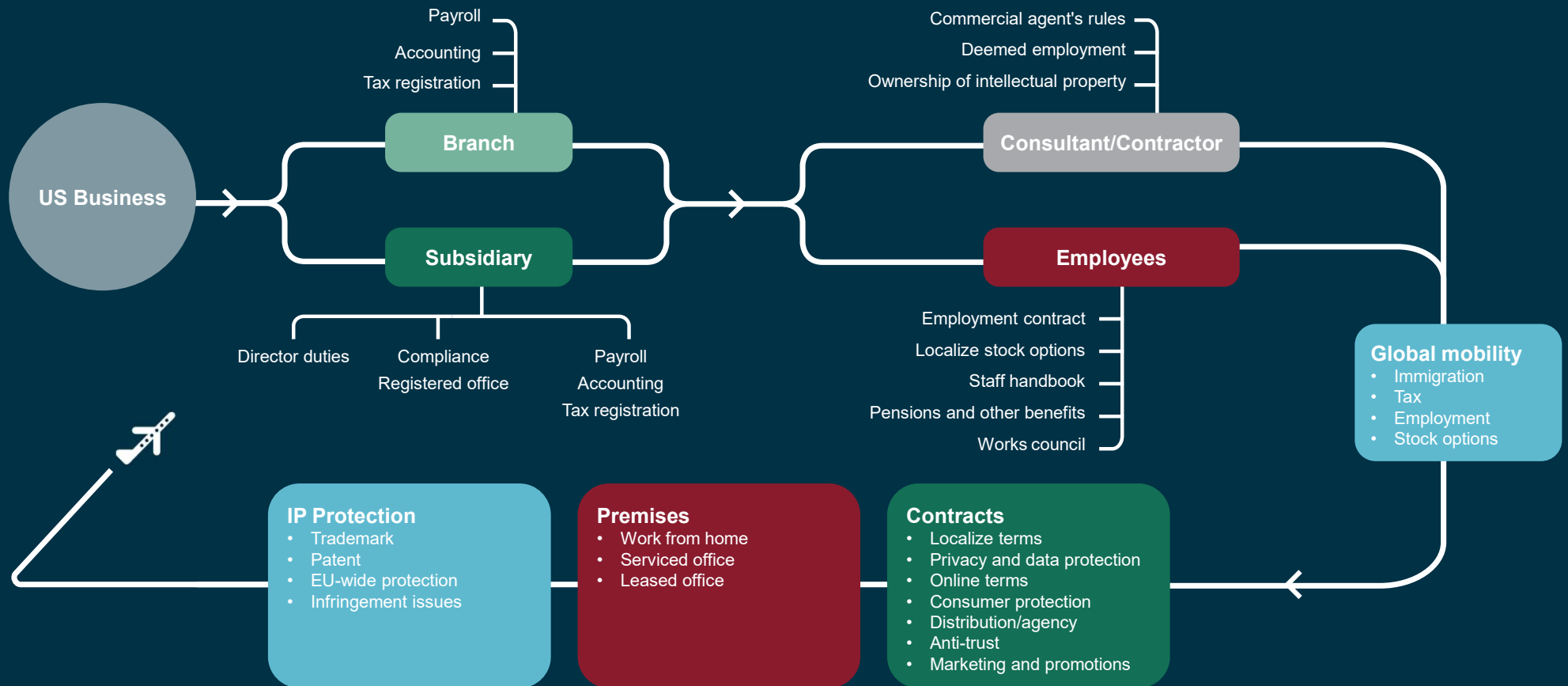
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Growing your business internationally

Key considerations for expanding your operations



Objectives for expanding internationally



Expansion strategies

Looking at different options (acquisition, JV, branch, new subsidiary)

Non-legal dimensions (market, customers, talent)

Objectives (business, talent, other)

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



Planning

Timelines

Regulatory framework (FDI, merger control)

Practical issues, such as apostilled PoA or proof of representation, a bank account/KYC, notary public requirements

Tax ID and Tax Structuring

The impact on the "new normal"



Role of in-house team

Identifying the internal team

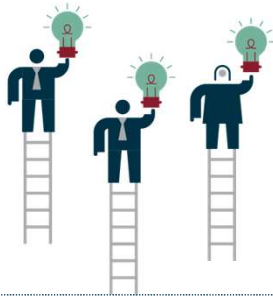
Project management

Appropriate capacity/resource

International mind-set

Identifying risks

Options for international growth



Overseas acquisitions

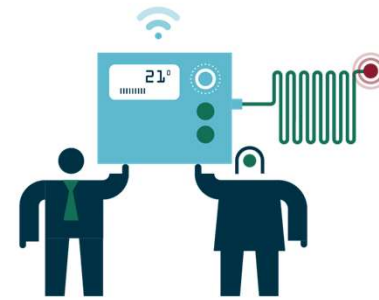
Due diligence: understanding the differences in the market

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

FDI rules and merger control

Note specific issues around share and asset deals

Other considerations: post-merger integration, employee transfers



Overseas joint ventures - JV

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

Termination considerations

Tax compliance

IP/reputation management

Entity formation

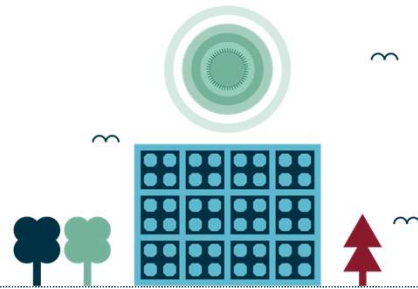


Don't be an "accidental tourist"

"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 or is main focus is sales and revenue generation



Branch vs. Subsidiary

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

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

Market reputation

Registrations, filings and disclosures (e.g. transparency register)



New Sub or Shelf Company

(Slightly) lower costs vs. saving time

In both alternatives:

- Notary public and commercial register
- Local registered address
- Bank account
- Local management

Building the team



Beware of consultants / contractors

Wider employment law and tax risks

1099 vs. W2 type classification

Protecting IP, enforcing post termination restrictions



Local hire vs. US expats

Local knowledge vs. company knowledge

Immigration rules

Cultural issues and local relationships

Understand market-standards, best-practices regarding salary and other benefits



Local employment laws apply

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

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

Apply local laws to terminations



Other issues

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

PEOs / EORs: Usually only temporary solution for small workforces

'Work from Anywhere' Models: key things to consider

Practical considerations

Consistent & fair treatment,
Supervision & training,
'Proximity bias'

Employment rights

Local employment rights
will apply, Policies required

Intellectual property

Consequences of IP creation
abroad, Protecting IP

Data protection & security

Personal data transfers,
Data security, Monitoring,
Storage

Employment related benefits

Legal requirements in local
country re benefits e.g. pension

Individual Tax & Corporate Permanent Establishment Risk

Local tax laws will apply –
review tax & social security
contributions, risk of PE

Health & Safety

Legal requirements in local
country re health & safety,
Review insurance policies &
working hours

Immigration

Consider need for visas,
Challenges since Brexit for
UK / EEA, Business visits

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

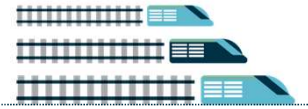


Differences in IP protection

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?

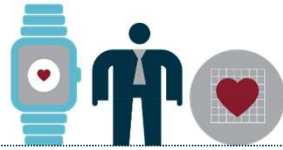
Contracts



US-style exclusions can invalidate contract

Slow sales/negotiation process

Unfair contract terms and difference between negotiated and un-negotiated terms.



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 vs. bespoke contract

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

GDPR style fines



Negotiation position

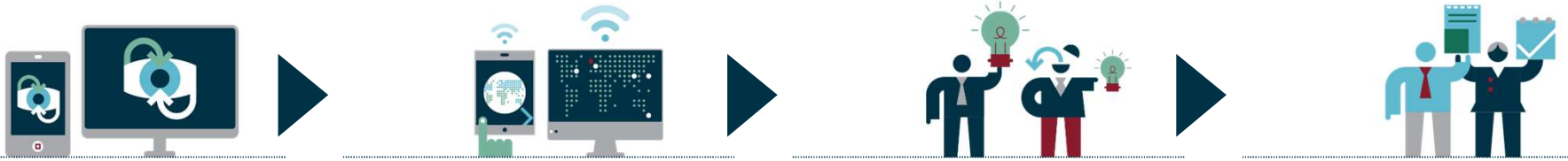
B2B: agreements under local law or your preferred law

Arbitration vs. litigation

Neutral law and/or venue for litigation

Consumers might be able to bring claims in their jurisdiction.

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

Guidance and training needed

Data subject access rights – particularly following termination



Questions?

