

STROOCK SPECIAL BULLETIN

Going International – A Primer for the Global Economy in Ten Questions

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The global economy has created an increasingly challenging phenomenon of cross-border enforcement. By way of recent example, how does Brazil fine U.S.-based Facebook \$33 million for supposed failure to produce documents from the U.S. in Brazil? Whether a form of economic (competitive) ring-fencing, revenue generation (tax or otherwise) or an international regulatory impulse to adopt the long-used, but often criticized, U.S. “effects” test for long-arm jurisdiction, the risk of a finding that a business is at home in more than one place creates a powerful incentive to plan before launching an international market expansion.

This **Stroock Special Bulletin** is intended to assist entrepreneurs and the in-house lawyers who advise them in minimizing long-term costs through advanced planning. Indeed, being aware of and planning a path through a common set of issues outside our own borders is effective cost and risk management. What follows is a checklist to assist in planning for market expansion through risk recognition and management.

1. **Can we do business here?** Whether buying, selling or manufacturing, first ask what are the requirements for doing business in a particular country. Are there corporate structural or capital requirements? Are there restrictions on advertising or a state prerogative in a particular industry sector precluding doing business at all, ownership or ownership above 49%? Is a special purpose entity helpful or even mandatory?
2. **Expatriating profits:** Are there local laws that inhibit expatriating profits or treaties with U.S. or third-countries that impact structural decisions?
3. **Listing/license:** Does the business you create in country have to have a license or be listed publicly on a local exchange to qualify to do business or any other aspect of the business objective?
4. **Competition laws:** Do local competition laws create opportunity or risk in market entry? Do they create a local preference?
5. **IP/IT:** Do local laws allow your business to protect its intellectual property? If you access through the cloud in country, do you provide access to all data in your system worldwide?
6. **Privacy law:** Does the country allow the exporting of privacy data? For human resources, think about benefits of centralized salary and health insurance decisions that can

be lost. How do such laws limit business reporting or create litigation risk in the corporate home jurisdiction? Can the IT department conduct a centralized or cloud-based security risk function?

7. **Labor:** Perhaps the most overlooked but often most complicating factor in market entry. Here are some of the ways they can impact:
 - Can expats enter the market at all? Is there a local preference or visa limit for foreigners?
 - Are there unions or workers councils to negotiate with?
 - Do the pension laws create a lifetime pension obligation after a short period of time (*e.g.* six months in some countries) to employees or even what U.S. laws would consider independent contractors?
 - Are non-compete and other restrictive covenants enforceable locally?
 - How do local non-discrimination and harassment laws impact the workforce and U.S.-mandated disciplinary processes?
 - Do the local laws allow internal, would-be whistleblowers to report anonymously?
8. **Taxes:** What are the local tax issues such as VAT, income, real estate, employee pension, export and import? What is the triggering point for permanent establishment and taxability? Do the local tax laws impact transfer pricing?
9. **Choice of law/dispute resolution:** Can you choose governing law other than local law? Can you designate non-local courts or arbitration for dispute resolution? What is the impact of doing business with the government or a state-owned enterprise on these choices?
10. **Security:** Though listed last here, security is arguably an over-arching concern of the first order. In addition to the security of one's IP

(including trade secrets) & IT (local and system-wide access), security questions impact facilities and personnel planning. Are the work places and workforce safe and how does one obtain adequate **insurance** in the event of an event?

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