DLA PIPER

GLOBAL EXPANSION CHECKLIST

PHASE I – BUSINESS PLAN SELF-ASSESSMENT

- Describe activities that you will engage in the jurisdiction.
- Describe the revenue you anticipate generating within the next (i) 1 year; (ii) 3 years; (iii) 5 years.
- What is your business model for the new jurisdiction? Are there already existing agreements that support that new business model?
- Is there a possibility that consulting or implementation services would be delivered onsite to a customer? Will any technology and/or products be "shipped" outside the U.S.?
- Do you anticipate engaging any employees in the jurisdiction within the next (i) 1 year; (ii) 3 years; (iii) 5 years? If so, how many and for what roles?
- Do you anticipate engaging any third party services, manpower employees or independent contractors within the next (i) 1 year; (ii) 3 years; (iii) 5 years? If so, how many and for what roles?
- Will you engage any individuals who are not local nationals?
- What types of equity / stock awards will you be granting and what is the anticipated headcount of awardees by entity?
- Are there are any unusual plan designs or goals associated with the anticipated grant of equity/ stock awards?
- Will you collect employee data? If so, what type and where will it be transferred?
- Will you collect customer data? If so, what type and where will it be transferred?
- Will you register any trademarks in the new jurisdiction? If so, list the approximate number of marks.
- Will you file for any patents in the new jurisdiction? If so, list the approximate number of patents.

PHASE II – ISSUES TO CONSIDER AND LEGAL ASSESSMENT

Corporate Set-up and Governance

- Is a local corporate presence required for the activities in question?
- If so, is a subsidiary required or would a branch or representative office be sufficient?
- What is the timeline for forming a subsidiary, branch or representative office?
- What are the ongoing corporate governance requirements in the jurisdiction?
  - How many directors are required for the entity?
  - Are there any local resident director requirements? If not, any resident/local agent required?
  - For any director or shareholder meetings, must they be convened in the local jurisdiction?
  - Must there be more than one shareholder for the proposed entity?

Regulatory

- Are export licenses required in order to "ship" the technology and/or products outside the US?
- Are import/customs licenses required in order for the technology and/or products to be received by the new entities?
- Are there any other regulatory issues?

Tax

- What are the tax implications of different entity form alternatives (e.g., subsidiary, branch, rep office, etc.)? Would one entity form provide a more favorable tax result than others?
- What would be the most appropriate operational model to be utilized in this jurisdiction from business, transfer pricing and tax perspectives?
- What would be the operational guidelines/ best practices in this jurisdiction to mitigate a taxable presence/permanent establishment risk for any other affiliate entity in this jurisdiction as well as taxable presence / permanent establishment risk in any other foreign jurisdiction?
- What are the tax (corporate income tax, VAT/GST, etc.), transfer pricing, financial accounts reporting requirements in this jurisdiction and their associated deadlines?
- Are there any withholding tax concerns?
- Are there transactions between different companies in the group creating the need for intercompany legal agreements and transfer pricing considerations?
- Do the activities create U.S. tax issues under either the direct taxation rules or anti-deferral rules?

Commercial and Compliance

- What type of training should the new employees undergo in the new entities/ countries on your policies regarding security, trade secrets, compliance, etc.?
- What are the local anti-bribery rules? How should the company ensure compliance with the U.S. FCPA and any such local rules?

Employment

- Is a local employment agreement required to engage in the jurisdiction?
- Is a local payroll provider required?
- What benefits need to be set up to engage in the jurisdiction?
- Are there mandatory collective bargaining agreements?
- What is the exit strategy, i.e., how difficult will it be to terminate employment?
- If you will engage independent contractors, are these true independent contractor roles? Are there any sales agent laws granting additional protections?
- If you will engage third party services employees, do you have a competent local provider? Are there any legal restrictions (time limitations or type of engagement) on the engagement of third party services employees in the jurisdiction?
- What types of work permits are available for any hires that are not local nationals?

Global Equity

- Are there are any securities laws that would restrict or cause affirmative requirements (e.g., disclosures, registrations, notifications) to apply to the grant of awards?
- Are there any foreign exchange or exchange controls laws (e.g., fund remittance limits, reporting, repatriation requirements) that would restrict or cause affirmative requirements to apply to the awards?
- Are there are any labor or employment laws that would restrict or cause affirmative requirements to apply to the awards?
- Are there are any data privacy laws that would restrict or cause affirmative requirements to apply to the awards?
- Are there unusual tax consequences that would impact the awards? Are tax-qualified or preferred treatments available.
- Are there any particular documentary requirements associated with the grant of awards in terms of sub-plans, award agreements, local country tax descriptions or other country-specific elements?

Data Privacy and Information Law

- Are there any data privacy registration requirements?
- Will the data flow trigger any data transfer obligations?
- Are there any customer/employee notification requirements?
- Are there any requirements regarding contracting with third party service providers?
- Are there any requirements due to any monitoring (CCTV, computer, etc.)?
- Are there any privacy policy (internal/ external) requirements?
- Are there any requirements due to payment obligations?

Intellectual Property and Technology

- What do local laws require to have valid and enforceable intellectual property assignments by employees?
- Can employees assign IP in their employment agreement or an IP assignment agreement?
- What do local laws require to have valid and enforceable intellectual property assignments by independent contractors ?
- Should the company's trademarks be registered in the new territories?
- Has the company filed for any patents in the new jurisdictions? Has the company taken any steps with respect to its US filings that may affect their ability to file foreign patents and vice versa?
- What does the local jurisdiction require for effective trade secret protection? What steps will be taken to ensure that local employees understand the company's trade secret policies.
- Are appropriate intercompany agreements in place to permit the use of relevant intellectual property by newly formed subsidiaries and affiliated companies?
- Are there any limitations on the use of third-party technologies by subsidiaries or affiliated companies?
- Are there any territorial restrictions on the use of third-party technologies outside the US?