CHECKLIST FOR INTERNATIONAL EXPANSION

- Determine structure of new operation
  - Parent/subsidiary/worldwide structure
    - Agreements maintain operations between arms-length parties
  - Joint venture with foreign entity
  - Agency relationship with foreign entity
  - Structure should allow “spin off” of subsidiary or joint venture
    - Without need to rewrite or renegotiate company agreements
  - Structure of Board, Officers, ability to bind entity, formal limits on local signature authority, local Powers of Attorney
  - Expose assets of other entities in only the most limited circumstances
  - Capitalization - equity, debt, equipment, solvency over time
  - Keep the corporate formalities of the parent and subsidiary separate
    - Each entity should keep its own books and records
    - Loan payments and other intercompany debts should be repaid within terms
  - Requirements under Credit Facilities
  - Use of worldwide and local counsel, accountants

- Keys to Successful International Expansion
  - Pro-active strategy and business plan
  - Management
  - Country and competitor research
  - Due diligence on potential partners
  - Trademarks to protect brands
  - Sales and distribution, warehouse

- Tax and Accounting Issues
  - Choice of entity. Permanent Establishment triggered? Avoidance? Corporation, LLC, Branch or Representative office-type presence?
  - Consider Management or Services Agreement with fees to parent
  - Consider Trademark or other IP royalty payments to parent
  - Availability, use and timing of tax credits strategies. Timing of repatriation of income
  - Tax laws’ local registrations; VAT, GST, PST, etc. Any VAT not creditable?
  - Incentive tax credits and tax free zones
  - Transfer pricing
  - Research requirements for favorable tax treatment
    - Revenue-specific requirements
    - In-country employee requirements (personal tax issues)
    - Length of stay in the country
  - Make sure other tax requirements do not offset the favorable treatment

• Import taxes
  o Need a good local accountant. Audited Statements? Differences in accounting systems? Consolidation?
  o Duties. Free Trade Agreements. Country of Origin issues and marking
  o Cash/Currency management and exchange
• Intellectual Property Concerns
  o Registrations needed? Protection of patents, copyrights, trademarks and confidential information
  o Do laws and culture of the country respect intellectual property?
  o Existence of multilateral treaties, clear-cut registration policies and statutory protection
  o Existence of registration system
    ▪ Is it well defined?
    ▪ If no registration system, is it a member of a regional system?
  o License agreements for all technology, software, etc.
• Possible Necessary Documentation
  o Create services agreements if helpful
    ▪ Terms under which the parent will provide certain professional services
  o Distribution and Sales Representative form agreements
  o Supplier and customer form contracts
  o Form employment/independent contractor agreements
• Real Estate
  o Lease vs. Buy
  o Environmental
  o Necessary agreements
• Employment/Immigration Issues
  o Ensure labor laws do not transcend employment agreements. Understand mandatory bonus, vacation, termination payment laws
  o Does “at-will” employment exist
    ▪ If not, employer responsible for payment after employee termination
  o Must a training program be created and registered?
  o Native hiring
    ▪ Does the country have this requirement?
    ▪ How many citizens must be hired?
  o Are “noncompete” agreements recognized?
  o Employee inventions
    ▪ Level of employee right to ownership
  o Visa requirements for U.S. workers (personal tax ramifications)
  o Employment Agreements, policies, handbooks
  o Expatriate package, tax and estate planning, tax equalization
  o Mandatory profit sharing requiring the consideration of alternate structures?
• Regulatory Issues
  o Permits, licenses and certifications
    ▪ Are they required?
      ▪ Cost
    ▪ Industry standard for products
• Developed in country
• Imported into country
  o Cross-border transaction restrictions
    ▪ Restrictions that affect information sharing between parent/subsidiary
    ▪ Security, privacy, data protection restrictions
  o Privacy policies and the E.U. Directive
    ▪ Limitations of information sharing regarding citizens
    ▪ What information may a company use or share?
• Analysis of areas of potential legal liability
  o Identify legal issues related to the project
    ▪ Negotiating, drafting, and implementing agreements
    ▪ Project specific
    ▪ On-going
  o Identify a country with a stable legal system
    ▪ Existence of formal legal norms
    ▪ Enforcement infrastructure
    ▪ Informal and cultural norms of contract adherence
  o Periodically review legal climate of the country
    ▪ Ensure the laws remain favorable
• Foreign Corrupt Practices Act, RICO, and Unfair Trade Practices
  o Do U.S. laws conflict with the foreign country’s business community?
    ▪ Payments to government officials for permits, grants, release of cargo
  o Contract-specific issues
    ▪ Are traditional limitation of liability clauses in contracts valid?
      ▪ Must the liability limitations be freely negotiated?
      ▪ Are boiler plate limitations valid?
      ▪ What damages are excludable?
    ▪ Status of arbitration system
    ▪ Are choice of law provisions accepted?
      ▪ Will outside judgments receive comity/recognition?
    ▪ Validity of merger clauses
      ▪ Written terms of contract only?
      ▪ Are oral representations valid?
• Insurance
  o Determine availability of insurance, worldwide policies
  o What are the requirements for insurance?
• Formulate an exit strategy
  o Repatriation
  o Redemptions
  o Restrictions on transfer
• Implementation Plan
  o Create document checklist of legal documents required
    ▪ Formation documents
    ▪ Specific licenses
    ▪ Permits
    ▪ Visa applications
- Government registrations
- Insurance applications
- Bank account applications
  - Create due diligence process
- Creditors’ Rights
  - Solvency
    - Level of minimum capitalization required
    - Level required to be located in the country
  - Bankruptcy
    - Bankruptcy rules
    - Extent to which creditors control the timing of bankruptcy filing
    - Back up plan to repatriate the foreign operations