



# GOING GLOBAL

## Employment checklist



Expanding your business into a new part of the world is an exciting but often uncertain time. In this briefing, Part Four of our *Going Global Guide*, we explain the key questions you should consider and provide a quick checklist of things that an employer should think about when engaging individuals overseas. The next part of our *Going Global Guide* focuses on seconding an existing employee abroad.

### Who should the employer be?

Consider who the employer will be. In some jurisdictions, the employing entity may need to have its registered office in that country. There may be knock-on tax consequences: if you have an employee or agent in a country this can create a 'permanent establishment' for corporation tax purposes. You may need to register with local employment tax authorities and time should be factored in to do so. In each case, seek advice on the relevant local laws and any double taxation arrangements.

### Are there any immigration issues?

If the employee will not be a national of the country that you are employing them in, think about visa and immigration requirements. Take advice on whether there are any local restrictions on hiring or recruitment activity. Third party permission may be required before you can advertise and recruit for the post or you may need to notify local agencies. Some countries offer grants or incentives to employers who hire people with disabilities or young apprentices, for example, and depending on who you are planning to employ in that country, you may wish to look into the availability of this type of support.

### What might the employment contract look like?

In some countries, a written contract is mandatory and may need to include specified information or be drafted in the local language. Consider whether you want to use a standard contract in your business across all jurisdictions (with local variances) for greater consistency, or if it would be more appropriate for



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local lawyers to prepare a standard contract for each jurisdiction. Another key issue is choosing which law will apply to the contract and which country's courts should have jurisdiction bearing in mind that local laws may take precedence over the terms of any employment contract if there is a conflict. Part Two and Part Three of our Going Global Guide considered these points in detail.

### **Checklist of employment terms**

When employing in different jurisdictions think about the following points as different issues will arise depending on the country you have chosen to operate in.

#### **✓ Pay and benefits**

Consider the currency in which you are paying the employee and whether there are any logistical problems for your payroll in using that currency or paying into a foreign account. Think about the rate of pay and whether a minimum wage applies countrywide, or is dependent on factors such as region, age or industry. If there are discrepancies in wage levels between your home state and overseas consider whether to pay consistently with your home state or adopt local pay levels. In any case, research the local industry norms. You may also be expected or required to put in place benefits such as healthcare.

#### **✓ Pensions**

Investigate whether you need to contribute to a state run or other local mandatory pension scheme and if so, the minimum level of such contributions. Check your pension scheme rules to establish whether employees from overseas can participate in the scheme. Confirm whether such participation would have implications for the funding of the scheme and consider the tax implications of membership for both the employer and employee. Allow time to discuss international issues with your pension provider and to put in place any additional arrangements that may be required.

#### **✓ Share incentives**

If you operate a share incentive scheme that you would like the employee to participate in, check if the rules of that scheme need to be adjusted to take account of the particular requirements of the relevant jurisdiction. You should also assess whether any local registration or securities law issues arise.

#### **✓ Tax and deductions**

Take advice on the local tax position early on. Logistically, you may need to go through a process of registering as an employer for tax. You need to know how much tax the employer and employee is expected to pay and how this is deducted (for example, does the employer need to make deductions at source before paying salary). Check whether there are other contributions that you must make on behalf of employees, for example, social security payments. As explained above, even having one employee in a foreign country can create a tax presence and corporation tax liability for your business.

#### **✓ Working pattern**

Operating across multiple jurisdictions may involve navigating different time zones. Don't assume that 9 to 5 Monday to Friday will be the norm, for example, in the UAE the standard working week is Sunday to Thursday. There may be minimum



rights to rest breaks and legal caps on weekly working hours, particularly across many European countries.

#### ✓ **Leave entitlements**

Minimum annual leave entitlements can vary significantly. For example, in the USA employees often only take two weeks of holiday per year and may have no legal minimum entitlement. American employers may be surprised by the more generous annual leave entitlements across Europe where four weeks is the minimum with many member states, including the UK, offering more. Annual leave may also vary by industry, type of work being carried out and length of service of the employee. Public holidays may be set nationally or vary by region. You should check whether it is common for employees to work on public holidays and if so, whether this attracts a higher rate of pay. In some countries, it is common for certain sectors to shut for seasonal holidays in the summer or winter.

Sick leave and pay entitlements may also apply and you should check whether sick pay can be recovered from the government of the country in question.

Family-friendly leave and pay (such as maternity, paternity and parental leave) will also vary from country to country with some offering no leave, and others guaranteeing up-to a year. You may wish to compare local statutory provisions with any existing organisational policy and decide whether to extend your organisational policy to this employment contract, or to apply the local legislative requirements.

#### ✓ **Collective agreements**

In some countries, sector specific collective agreements are in place containing minimum employment terms. It is important to identify these from the outset to ensure that you meet any such requirements.

#### ✓ **Data protection and intellectual property**

Data protection law varies across jurisdictions so the employment contract should be drafted to enable you to process personal data and other information as necessary and comply with any other obligations you have. Employers should also give careful consideration to protecting their business by including appropriate confidentiality provisions, intellectual property protections and restrictive covenants.

### **How do you end the employment relationship?**

You should find out whether there are any country-specific requirements around ending the employment relationship, and what grounds you might be able to rely on to dismiss.

### **Are there any statutory requirements?**

You should check whether there are statutory minimum notice periods. Legislation governing employee protection from dismissal may also exist: in Italy, for example, certain types of employees are automatically protected from dismissal (apart from in exceptional circumstances) and you should check whether any such protections apply to the employment you are seeking to end. It is also important to check what procedural requirements may apply. For example, there may be rules governing how to communicate with the employee and any relevant third parties who may need to approve, or be given notice of, a dismissal decision. In some jurisdictions you will need to consider alternatives to dismissal.

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## Are any payments required to end the employment relationship?

In some cases, you may need to make a termination or severance payment, particularly if the employment is being terminated by reason of redundancy or without cause. There may be a mandatory procedure to follow to comply with local laws. Additionally, there may be other obligations on an employer once an employee has been dismissed: for example, French legislation requires an employer to notify the state to allow the employee to claim benefits.

## Summary

You may not wish, or need, to hire someone directly in a foreign jurisdiction in order to do business there. In the next part of our Going Global Guide we consider foreign secondments.

This briefing is Part Four of our six-part *Going Global Guide* to international employment issues. The complete guide includes:

- Part One: Territorial scope of UK employment law
- Part Two: Employment contracts
- Part Three: Restrictive covenants
- **Part Four: Employment checklist**
- Part Five: Secondments
- Part Six: International employees working in the UK

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This briefing contains a summary of general principles of law. It is not a substitute for specific legal advice.

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