

# In-House Teams Eye Risks and Opportunities as Cross-Border Expansion Increases

Media Mentions

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A recent survey of 300 general counsel and legal compliance officers published in *General Counsel Barometer 2024* found that nearly two-thirds of multinational companies aim to grow their presence in a similar number of markets as they did in 2023, with a third planning to expand into additional territories over the year.

The associated benefits of expanding into additional territories are obvious. However, as Bracewell partner **Mark Hunting** explained to *IBA Global Insight*, there are a “myriad” of challenges to conducting business in new markets, and the risks of getting it wrong can be costly – in money, time and shareholder value.

Hunting said in-house lawyers will want to think about three key areas: understanding the jurisdiction and the risks it poses; building a compliance program that effectively manages these risks; and managing the specific risks posed by third parties.

An important first step for in-house lawyers assisting with new market entries is to understand the market and build a select group of advisors in advance of issues arising, said Hunting.

“We would generally recommend commissioning reports or advice that address key political, cultural, compliance and legal risks. These should cover the political system and key players, including incumbents and opponents. A short summary of regional history can help understand key internal civil or tribal issues too.”

Hunting added that understanding the legal system and key issues here can help legal teams navigate obvious initial challenges.

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“When considering advisers, in-house counsel will want to identify individuals with real life, practical experience on the ground in difficult jurisdictions.”

Once the new jurisdiction is well understood, Hunting said the best in-house lawyers will develop a compliance framework that matches the risks identified in the research. He added that there are some general compliance themes that often repeat: obtaining government licenses and approvals; moving people and goods across borders; dealing with local partners and local content requirements; and trade restrictions, such as controls and sanctions.

When dealing with government approvals and licensing, in-house counsel will want to think carefully about who should do that work.

“Often there is a tendency to use local partners who may know the individuals involved better,” said Hunting. “However, in higher-risk situations, you may want your own people in the room, even if only in a supporting role. This will assist with keeping such meetings compliant with the company’s other legal obligations and can normally be presented as demonstrating commitment to the new country.”

In these preliminary conversations it is important to set boundaries early, particularly in relation to the provision of gifts and entertainment (ensuring they will not be excessive), local investment, training and local content to name a few.

“Setting these boundaries early can help avoid aggressive rent seeking and other extortionist practices which might fall foul of legal obligations the company owes in other jurisdictions,” said Hunting.

He also suggested that in-house lawyers will want to keep a close eye on third-party risks as they enter new jurisdictions.

“Effective due diligence or screening to understand partners, employees, suppliers and service providers can help minimize legal, compliance and political risk,” Hunting said. “Where issues are identified, it may not be preferable (or even possible) to identify an alternative counterparty. In these situations, having a tool kit of mitigations and protections is important.”

Hunting advises in-house lawyers to consider having some kind of contractual protections that are ideally tied to some form of “penalty,” as well as to think about how the counterparty is to be remunerated – for example, using an hourly rate compared to success fees – and the conduct that might incentivize. Other issues, he said, include the robustness of the control systems belonging to counterparties, and how expectations in the relationship will be clearly set and monitored.