

GOING GLOBAL

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ANALYSIS

GOING GLOBAL: A GUIDE TO BUILDING AN INTERNATIONAL BUSINESS

Online Program Series: Launching International Business Activities

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I. DESIGNING AND MANAGING GLOBAL ORGANIZATIONS

As companies expand their activities outside of the US and look to take advantage of available customers and resources in foreign markets they must carefully consider the best way to realign their overall organizational structures and modify their management processes to efficiently coordinate activities that are taking place in different time zones by persons speaking different languages and acting under diverse cultural norms. Each of the organizational structures suggested below for a global company illustrates a different strategy for combining and coordinating the activities of three essential parts—functional units, product divisions, and geographic or territorial entities. Functional units are well-known and require little additional description. Their focus is on specific functional activities such as research and development, manufacturing and sourcing, sales, marketing, finance, human resources, and government relations. The latter three activities—finance, human resources, and government relations—are sometimes separated from the other product-related activities and referred to as management resource and support services. Product divisions, which are sometimes organized and designated as business units, groups, sectors or subsidiaries, have responsibility for development, commercialization and overall management of groups of products that are related by technology and/or by the customers or markets to which the products are promoted. Geographic or territorial entities, often organized as subsidiaries, are responsible for local operations in a particular national, regional or continental area. In some cases, the scope of the activities of these entities is referred to as a “market” or “business”. Among the organizational structuring options that are available are the following:

- A function-focused approach, which includes a division and general manager for manufacturing, sales and marketing and research and development. The manufacturing division would have a business unit for the US and each major foreign market that would be responsible for manufacturing activities in that territory and the sales and marketing division would have a similar structure for geographic-specific sales and marketing activities.
- The international division approach, which includes a division and general manager for each of the company's products and a separate international division with its own general manager that would be selling all of the company's products outside of the US. The product divisions would have their own functional resources for marketing and manufacturing and would presumably be focusing exclusively on the US market and the activities of the international division would be divided up into geographical territories with their own managers reporting to the general manager of the division.
- The mixed international division approach, which includes a division and general manager for products A and B and a separate international division with its own general manager that would only be selling product A. In this case, international sales of product B would be handled in the product B division under the oversight of one or more country managers that report to the general manager of that division.
- A geography-focused approach, which includes a division and general manager for the US and a division and general manager for each major foreign market. Each division would have its own full complement of functional resources.
- A product-focused approach, which includes a division and general manager for each product line. Each product division would then be organized along the lines of the geography-focused approach (i.e., a business unit for the US and for each foreign market, each of which has its own full set of marketing and manufacturing resources).
- A matrix approach, which includes a division and general manager for products A and B and a division and general manager for areas A and B, and which is designed to coordinate the sales of product A in area A. Product division A would have a manager for the US and a manager for international activities, each of which would report to the general manager of the product division. Area division A would have general managers for each country in the area that would have managers for product A reporting to them. Management of country-specific sales efforts for product A would be a joint effort between the product manager in that country and the international manager in the product A division.

The options described above are confusing enough; however, the challenges for senior management of an international business are becoming even more daunting as competitive pressures begin to dictate that responsibility for key functional activities, such as research and development and/or manufacturing, be moved completely outside of the US to geographic locations in other parts of the world that have become recognized as the centers of excellence and innovation with respect to those activities and sources of competitive advantage.

II. PLANNING FOR GLOBAL EXPANSION

While companies are often heavily involved in a specific transaction or activity involving a foreign partner or assets and resources located outside of the US, it is always important to remember that the goals and objectives of the transaction or activity should be consistent with the company's overall international business plan and strategy. While companies, particularly small ones, can globalize their businesses without a formal plan, it is recommended that management invest the time and effort necessary to develop an international business plan. While all plans will differ depending on the company, its products and services, and the key purposes for conducting business outside of the US, an international business plan will typically include a comprehensive analysis of global competitive conditions and the current status of the company and then set out strategies for using foreign markets and resources as a way to improve performance across all the company's business functions and activities. The guiding principle in preparing an international business plan is recognizing that the markets and resources that the company needs in order for its business to be successful can be found, and must be pursued, all over the world. The planning process also has other important byproducts, including identification of potential export markets and customers and overseas investment opportunities and organization and presentation of information necessary to obtain capital from outside sources to expand foreign operations.

The structure and focus of the international business plan will be influenced by the type of business engaged in by the company and its stage of development in its traditional US markets. For example, for an established company, the international business plan will focus on identifying and penetrating foreign markets that are most likely to be quick adapters of the company's existing products and services. The plan for these companies is also more likely to include a search for opportunities in foreign countries to reduce costs of manufacturing and raw materials, while still concentrating sales activities on their home market. The international business plan for product-driven companies, such as consumer goods companies or software and computer manufacturers, will focus on identification and exploitation of new foreign markets for their products and sources of labor and materials. For these companies, effective competition will be based on rapid innovation, brand identity and development of local distribution capabilities. For a service-based business, the planning process should be used to determine whether there is sufficient potential demand for the services in the target foreign market and what changes will need to be made to the company's domestic service offerings in order to accommodate local conditions and cultural attitudes.

While there are a large number of books and articles available on how to write an effective business plan, relatively little is available on the preparation of a business plan that is global-focused, or

international. An international business plan is quite challenging to prepare and maintain because the following key differences always need to be carefully considered:

- While a domestic plan must acknowledge the need for market segmentation based on demographic differences within a single country, an international plan must account for the unique cultural and language differences in each of the countries designated as targets for products and services.
- Since countries have different regulatory policies with respect to foreign participation in the local economy, the plan must include entry strategies for each of the new target markets that will satisfy applicable local law requirements.
- An international business plan is inherently more risky due to problems in obtaining and analyzing information on local markets. As such, the company must explore different scenarios and attempt to anticipate a broader range of problems than if the company was active only in its local market.
- While a domestic-only business plan tends to be product and sales oriented (i.e., what products should be developed and how should they be sold within the domestic market), an international business plan should be broad enough to include acquisition of resources that can be exploited back in the domestic market. For example, a company's "business plan" with respect to a given country might be limited to acquiring low-cost manufacturing capacity or raw materials, as opposed to actually selling products in the country.

The following checklist from Going Global (2011 Edition) § 4:35 includes an extensive list of questions and information that should be answered and provided in order to prepare a comprehensive international business plan. In some cases, the items will overlap and the organization and emphasis will vary depending on the type of business and the purpose of the plan. However, working through these items should provide a good starting point. The drafter should allow sufficient time to thoughtfully answer each of the questions. In the plan itself, reference should always be made to independent research reports, as well as any other credible evidence to support the claims and strategies of the company.

I. Executive Summary

1. Briefly describe the company's business.
2. Describe the significant features of the company's products and services.
3. Describe the market potential for the company's products and services.

4. Describe the financial goals of the company (e.g., reaching \$2 million in sales in the new market in two years, profitability in three years, and specified levels of sales and after-tax profits within four years).

5. Describe the purpose of the plan and its relation to the attainment of the company's financial goals.

II. Company Description

1. Describe the company's principal line(s) of business.

2. For each line of business, describe the company's products and services.

3. For each line of business and related product or service, describe the actual or anticipated customer base and their specific needs with respect to the types of products and services offered by the company.

4. Describe the specific steps taken by the company to identify customer needs, including interviews, market surveys and research, or beta testing.

5. For each identified customer base for the company's products and services, describe the company's distinctive competence or competitive advantage (i.e., why will those customers purchase the products and services of the company as opposed to those offered by competitors or substitutes).

6. For each product or service, describe the profitability structure, including anticipated sales price, costs, and profit margins.

III. Industry Background and Market Analysis

1. Describe the industry or industries in which the company is active.
2. Describe the size of each industry and the anticipated growth patterns over the next five to ten years.
3. Identify the major industry segments that would have an interest in the company's products and services.
4. Describe the business types that will likely be the major customers for the company's products and services (e.g., Fortune 100, 500, or 1000 companies or small proprietorships).
5. Identify and describe any other major demographic or technological trends in the industry.
6. Describe the actual or potential impact of regulatory requirements on the company's products and services.

IV. Competition

1. Identify and briefly describe the major actual and potential competitors in each of the company's target markets.
2. Identify and describe the major factors of competition in each target market.
3. Candidly analyze how prospective customers will perceive the way that the company compares with competitors with respect to each of the aforementioned factors of competition.

4. Describe the steps that the company intends to take to exploit competitive advantages and/or reduce or eliminate competitive disadvantages.

5. Describe the anticipated response of major competitors to the steps enumerated in Item 4 above.

V. Marketing and Sales

1. Describe the company's overall marketing strategies and objectives (e.g., how is the company perceived in the market and what are its goals with respect to market share).

2. Describe the company's strategies with respect to distribution of its products and services (e.g., direct sales, independent sales representatives, distribution agreements with third parties, etc.).

3. Describe the company's promotion strategies.

4. Describe the company pricing strategies, including anticipated changes as brand acceptance develops.

5. Identify and describe the company's main "sales pitch" (i.e. the main messaging in its sales and promotion activities).

6. Describe the company's strategies with respect to service and support of customers and distributors.

7. Describe the company's sales strategies and activities (e.g., customer identification, sales staffing requirements and compensation, and sales goals and measures).

VI. Technology and R&D

1. Describe the key aspects of the technology required for the company to operate its business.
2. Describe the status of each element of the technology enumerated in Item 1 above (e.g., idea, prototype, small production runs, etc.).
3. Describe the company's ownership and/or usage rights with respect to each key element of its technology.
4. Describe the general status of technology in the company's main markets, including companies that have technology that is superior or equal to the company's technology.
5. Describe anticipated trends in relevant technology over the next five years, including specific new technologies that might become commercially viable during that period and factors that might restrict their development or acceptance.
6. Describe the company's key research and development activities and related milestones and risks.
7. Describe how the results of the company's research and development activities will be used in the company's business (e.g., new products, new production methods, updated versions of existing products that meet identified customer needs, etc.).
8. Describe the impact of regulatory approval requirements on the company's research and development activities.

VII. Manufacturing and Operations

1. Describe the company's manufacturing and operations activities and strategies.
2. Describe any significant agreements with third parties with respect to manufacturing.
3. Describe any competitive advantage or disadvantage of the company with respect to manufacturing activities and the steps the company intends to exploit/eliminate such advantages or disadvantages.

VIII. Management and Human Resources

1. Describe the management and organizational structure of the company, including all key foreign business units.
2. Describe the company's recruitment, training, and compensation policies.
3. Describe the company's internal information management structure.
4. In the case of a business plan used to raise capital, describe the skills and track record of the key managers and the company's plans for recruiting additional managers.

III. INTERNATIONAL OPERATIONS QUESTIONNAIRE

One of the first steps in designing and implementing an effective and relevant global compliance program is conducting an inventory of the company's existing international operations activities to determine where the company is currently active and which laws might be particularly applicable to the

company's activities. This form of international operations questionnaire, which appears in the Law & Compliance Practice Manual (2011 Edition) at § 18:17, can be used as a starting point in collecting and categorizing the relevant information. In addition to interviews with key personnel and review of material contracts the company should undertake specific due diligence in known compliance risk areas identified in the headings in the questionnaire including export activities, imports and customs and boycotts. As the company grows it may prepare additional questionnaires that elicit more detailed information on specific compliance issues such as anti-bribery laws, anti-boycott laws and export compliance.

1. Organizational Review and Risk Analysis

Identify key personnel in international operations (show name, qualifications, years with company), including:

- Manufacturing;
- Marketing;
- Taxation;
- Export and import licensing; and
- Technology licensing.

Describe the principal business risks (contract and legal system), economic risks (foreign exchange, inflation, and interest rate), and political risks (foreign government actions) in company's international operations.

Describe any tariff and non-tariff barriers which have a particular impact on company (e.g., taxes, quotas, import or export licenses, custom duties).

Provide copies of any government audit reports in last two (2) years relating to international operations, including but not limited to import and export licensing. Are there any pending government audits with respect to international operations?

Describe the major weaknesses and problems with the company's international operations.

Describe material changes and developments in international operations in last twelve (12) months, and any anticipated changes and developments in the future.

2. Contract and Compliance Review

Provide copies of the following to which the company is a party:

- International sales and purchase agreements;
- Foreign sales representative agreements;
- Foreign manufacturing and distribution agreements;
- Foreign technology transfer and licensing agreements;
- International joint venture agreements;
- Financing and construction agreements; and
- Any other material contract or agreement relating to the foreign activities of the company or any of its subsidiaries.

Describe the company's international manufacturing and marketing programs.

Describe the company's relations with foreign distributors, representatives, and other agents.

Describe the company's relations with foreign governments and regulators. Identify any agreements and commitments between the company and foreign governments pertaining to international operations.

Provide copies of applications for approval of inbound investments submitted to a foreign regulator over the last five (5) years.

Identify any foreign assets of the company which have otherwise been subjected to or threatened with governmental controls (other than expropriation or nationalization) in last two (2) years.

Describe cross-border transfers of company personnel to and from the United States. Is the company in compliance with all the requirements of domestic and all applicable foreign immigration laws?

Describe major foreign transactions under negotiation.

Describe the company's policies for complying with domestic laws and regulations relating to the activities of foreign agents (e.g., Foreign Corrupt Practices Act).

Identify foreign counsel engaged to provide services to the company regarding compliance with laws and regulations in local markets.

3. Import and Export Activities

List all countries in which company has annual sales of more than \$100,000 (estimate sales for each in last twelve (12) months).

List all exports and imports of products, services, and technical data over \$100,000 in last twelve (12) months. Show:

Shipment date;

Product, service, or data;

Value;

Contract no.; And

Export and import license, permit, or approval (type, no., And issuing agency).

List all planned future exports and imports of products, services, and technical data over \$100,000. Show:

Shipment date;

Product, service, or data;

Value;

Contract no.; And

Export and import license, permit, or approval (type, no., And issuing agency).

Describe any Eximbank (or equivalent) insurance on exports.

4. Import and Export Licenses

List any products or services whose export is reviewed, restricted, or prohibited by U.S. Departments of State, Commerce, or equivalent. With respect to such products and

services, obtain copies of sales orders and products to determine if legends reflecting export restrictions and prohibitions have been placed thereon.

Provide copies of outstanding export and import licenses, permits, and approvals, including one-time and continuing licenses and applications therefor.

Describe any imports or exports in last twelve (12) months as to which the import or export licensing was inadequate or questionable.

Describe the company's policies for complying with domestic export control laws and regulations.

5. Customs Compliance and Disputes

Describe all pending disputes over import and export duties and tariffs where the amount at issue is \$25,000 or more.

Describe the company's policies for complying with domestic and foreign customs laws and regulations.

6. Boycott Activities

Is company in compliance with domestic laws and regulations which prohibit American involvement, whether active or passive, in international boycotts and which requires reporting of requests for boycott information or compliance?

Has the company been blacklisted or boycotted by any countries?

7. Trade Law Disputes

Describe any anti-dumping proceedings in any country by or against company in last two (2) years.

Has the company or any of its domestic competitors been involved in any countervailing duty proceedings in the last two (2) years?

Has the company been involved in any other proceedings brought under domestic laws relating to unfair trading practices of foreign firms or governments?

8. Foreign Exchange Agreements

Provide copies of any foreign exchange agreements.

Describe any open sales and purchases as to which there is a material foreign exchange problem, either from a change in exchange rate or foreign currency restrictions.

9. Tax Reporting and Compliance

Provide copies of all income tax returns relating to foreign operations of the company or its subsidiaries over the last five (5) years.

Has the company established any foreign subsidiaries or branch operations?

Provide copies of any agreements, permits, approvals, and certificates pertaining to foreign taxation and exemption therefrom.

Describe any company policies with respect to compliance with withholding requirements in transactions with foreign parties.

Identify the person(s) responsible for the company's foreign taxation and accounting functions, as well as the company's outside accountants for international activities in the United States and in any foreign country.