iGlobal Strategic Guidance Series 1: Recruitment

(3) Hiring Structures

A key decision in any recruitment process is the choice of the business structure for the hiring.

With continuing business globalisation and increasing engagement of mobile workers in remote locations, the need to understand the available hiring structures has become more important, either at the point of entering a new market or as part of a review of your workforce structure as business needs change.

Getting it wrong can be a costly mistake: you may suffer unnecessary operational costs, increased employment liabilities and, possibly, unplanned exposure to corporate and tax liabilities.

We outline below the main issues; the different types of hiring structures available; and provide a checklist to help get it right. Overleaf is a table highlighting the different types of hiring structures available in 17 major business jurisdictions.

Can you take a global approach to hiring structures?

It is unlikely that a single global approach to hiring will be the best route. A global business will have different workforce and business needs by jurisdiction. For example, it may have 5 employees in one country and 100 in another. Each location may have a different optimal hiring structure. Corporate and Tax considerations, which can vary significantly by jurisdiction, often have a big influence on the final decision. Finally, varying local laws can give rise to other material pros and cons of the different hiring options, which should be taken into account.

What are the different types of hiring structures?

Employing through a registered local corporate entity: Registering a local subsidiary is one of the most common approaches. It shows a commitment to doing business in the jurisdiction and gives substance and credibility to local business dealings. It offers greater security for local employees and can be very advantageous if the business plan is to stay and build a significant workforce. It can also ensure that employment liabilities are kept within that jurisdiction.

However, it is generally a more expensive route, with registration costs; on-going annual administration and publicity rules and charges; minimum capital requirements and more complex procedures and costs on closure. There are some jurisdictions where it is not possible to have a foreign owned subsidiary, for example, Saudi Arabia.

Employing through a foreign entity: This is less costly than setting up a local entity. It is a good way of starting an initial recruitment and business plan to ‘test the waters’ before committing more heavily. However, there may be a perception that the global business is not serious about expansion in that jurisdiction. It offers less security for employees (a foreign employer could be harder to sue or enforce a judgement against) and so may reduce the pool of applicants and it often involves less control over the local workers if the employer does not yet have a local management structure. Any liabilities that arise are liabilities directly of the foreign employer. In any event, some jurisdictions do not allow this approach, for example China and India.

Employing through a registered local branch office: This is a variation of the local registered corporate entity route above. It’s main advantage is that it can be less costly and more tax efficient (subject to local rules) and it is easier to close down. However, there are still administrative and publicity obligations in most countries and the employment risks and liabilities should be assessed first. For example, in Poland, it may be advantageous to set up a local Branch from an employment law perspective. If the foreign entity is the employer, when calculating headcount to see if collective redundancy consultation is triggered, the number of employees in the foreign entity’s head office are also included, thus increasing the risks. If the employees are directly employed through a locally registered Branch, the headcount is limited to the numbers in the local Branch Office in Poland.

Third party/local provider: In some jurisdictions there are local companies who are willing to hire the employees directly and take on all the employment liabilities and risks and charge the end user business a fee. The obvious advantage is that it reduces risks of exposure to local labour laws and the administrative time and cost of managing employees directly. However, downsides include loss of control over employees (although many providers work on the basis that the client can still issue instructions directly); and it may still work out to be more costly. In some jurisdictions this option is mandatory, for example, Saudi Arabia, where the employer can only hire through locally registered and approved providers.

Employing through a global or local recruitment agency: This is the well-known option of hiring workers through a local or global employment agency, many of whom now agree to hire the employees directly and take on the associated liabilities: though caution should be exercised, in some cases the liabilities are still passed on to the client. Typical global providers include companies such as Manpower and Adecco. Further advantages include taking on other aspects such as tax and payroll issues. The pros and cons are similar to the third party/local provider option above.

Contractor: Some employers opt for hiring on a contractor basis rather than that of ‘employee’. This has the obvious advantages of little or no cost; no tax or payroll issues; and no employment liabilities. The main disadvantages are loss of control and the risk that a contractor may subsequently claim an employment status.

It should also be noted that some jurisdictions only allow contractors in limited and prescribed circumstances. For example, in Spain, the contractor (known as an "autonomo") must be able to (a) carry out an economic or professional activity on their own accord; (b) manage the work themselves without the direction of another person; (c) show the work is profitable; and (d) choose whether or not to sub-contract the work.

iGlobal's view is that the global employer should first consider its business strategy in the specific jurisdiction and its local business needs. It can then decide on the best hiring structure to fit those needs.

Setting up or continuing to maintain a local entity is clearly a good option for employers with a significant business interest in the local jurisdiction. However, where it is entering for the first time, or the business interests are small compared to other jurisdictions, options like hiring through a foreign entity (where allowed) may be more appropriate.

If the global employer is less concerned about announcing its brand name in the local jurisdiction (or perhaps does not yet wish to do so) and just wants rather to "test the waters" to begin with, other options such as a third party provider or contractor may be more appropriate.

If the business objective is to sell volume products or manufacture a product in the local jurisdiction without the need for a local management structure, it may be that hiring through a third party, an employment agency or a contractor is the better option, particularly if "control" of the activity is less important. This approach may not suit a professional services company which needs to exercise strong control over how the work is done. Here a local management structure may be required and a direct employment relationship may be the only route, therefore narrowing the types of hiring options available.

The final decision on the hiring structure will also be influenced by non-employment law issues, primarily, tax and corporate/ regulatory issues.

Corporate, Tax and other considerations

The decision on whether or not to set up a local entity or branch needs to be reviewed by jurisdiction due to the potential corporate costs and administrative burden involved (from the initial set up, local filing requirements, through to any regulatory issues); as well as the potential tax liabilities and whether setting up a "permanent establishment" can be avoided. In broad terms, setting up a permanent establishment means the global employer is deemed to be conducting business in the relevant jurisdiction and may be liable for local corporation tax on its local activities. In many cases this is likely to be unavoidable if the employer in reality accepts that it is conducting business, but some hiring structures can be used to prevent this situation arising. This is dependent on more detailed tax advice in the relevant jurisdiction.

Other considerations include the local immigration rules which may dictate the type of hiring structure required (for example, in the UAE nearly all expat employees require a visa sponsored by a local entity). The availability of local Government incentives as grants, benefits and tax concessions may carry structural conditions.

Checklist of points to consider

Global business overview:

At a global level, the following are typical consideration or factors that arise in the decision making process:

- Are there brand reputation and ethical issues to consider : a desire to be seen to be entering into employment relationships with enhanced rights;
- Whether the business is centralised with a 'one business' culture or decentralised with a preference for local autonomy and diversity;
- What hiring structures have worked best for the business in the past;
- What are the key employment drivers for the global network: for example, cost efficiency and profit maximisation, risk management or employer brand?;
- In the light of the above does the business have (as a global policy) a preference for a particular hiring approach, subject to local considerations.

At local level:

At local level, the following are typical considerations:

- What is the local business plan and the timetable?;
- What are the specific roles to be hired for?;
- Consider what roles, if any, could be fulfilled by agency workers (sometimes the only option);
- Consider what roles, if any, could be fulfilled by contractors;
- If relevant, take care to understand the regulations, compliance procedures, costs and risks of agency/contractor use;
- Where direct employment is preferred or required, can this be through a foreign entity?;
- If not or your preference is for a local structure, make a comparison of the pros, cons, administrative/regulatory complexity and cost of a local subsidiary versus a local branch;
- In each case, understand the tax position.

Country	Local entity	Branch	Foreign entity	Contractor	Local agency provider
Australia	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Limited
Brazil	Yes	Yes, but difficult	No	Yes	Yes
China	Yes	No	No	No	Yes but increasingly regulated
France	Yes	Yes	Yes	Yes	Yes but strictly regulated
Germany	Yes	Yes	Yes	Yes	Yes but strictly regulated
India	Yes	No	No	Yes	Very common but increasingly regulated
Italy	Yes	Yes	Yes	Yes	Yes - very common
Japan	Yes	Yes	No	Yes	Very common but heavily regulated
Mexico	Yes	Yes	No	Yes	Only for non- core activities
Netherlands	Yes	Yes	Yes	Yes	Yes - common
Russia	Yes	No	No	Yes	Yes
Saudi Arabia	Yes	No	No	Saudi contractors only	Yes
Singapore	Yes	No	No with some exceptions	Yes	Yes
South Africa	Yes	No	No	Yes	Yes
Spain	Yes	Yes	Yes	Yes	Yes but limited
UK	Yes	Yes	Yes	Yes	Yes

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