Introduction

- Objective: outline key considerations in establishing and maintaining international activities

- Caveat: application of issues may vary, depending on type and extent of activity, and laws and practices of foreign jurisdiction

- No discussion of labor/employment, accounting, audit issues
Due Diligence
- Prospective partner, principals, affiliates
  - References
  - Background check
  - Financial due diligence
- Corruption: may shape due diligence, controls
- Restrictions
  - Embargoes, sanctions programs, anti-boycott laws
  - Specially Designated Nationals list
  - License requirements under export laws
- Other laws – USA Patriot Act, laws issued by Departments of State, Commerce and Treasury

Corporate Form
- Will UC directly engage in the activity, or form an entity under local law?
  - UC has few foreign (and domestic) entities
    - Africa: Tanzania
    - Asia: Hong Kong, Singapore
    - Europe: UK, France
    - North America: Mexico

Tax Considerations
- Tax status
  - Taxable in foreign jurisdiction?
  - Is tax exempt status available?
- Financial impact to the University
  - Tax implications of the corporate form, activity, fund flow – e.g., income, sales, VAT, property, payroll
  - Impact on business plan
- Tax issues affecting expats
Governance/Management
- Corporate formalities: books, records, meetings
- Day-to-day operations
- Power of attorney
  - Scope
  - Controls re transfer of property, debt

Cash Management
- Funds to and from the US
  - Process for sending funds
  - Taxes on inbound or outbound funds
  - Registration of inbound funds; process; timing
  - Process and timing for repatriating funds
- Currency: USD or local?
  - Process for obtaining local currency
  - Costs of converting currency
  - Currency fluctuations

Local Office
- Acquire or lease? Who will hold title?
- Costs of building out space: office vs. research
- Compliance
  - Local building codes
  - UC policies (e.g., seismic)
- Management of facilities
- Personal property: purchase or lease?
Other Issues

- Retention of service providers (counsel, accountants, tax preparers, auditors, payroll)
- IP matters: registration of trademarks?
- US laws: FCPA
- Other local laws: freedom of expression, personal data
- Dispute resolution: court or arbitration, venue
- Exit: what happens to UC assets?

UC Policies – Approval of Activity

- Foreign Entities
  - Participations generally require Regental approval under Standing Order 100.4(oo)
  - 2002: Regents authorized President to approve certain foreign entities
  - 2005: Administrative Guidelines; Provost approval
    - Nonprofit, UC employee as CEO, majority of board UC employees, assets dedicated to UC
- Foreign Operations
  - 2005 Guidelines: Provost approval
  - Requires compliance with parameters in Guidelines
  - Sponsor responsible for ensuring controls and processes

Issues to Consider for International Research
Ethical Oversight, Protections

- Human Subject Research
  - Review by both US IRB and local ethical review board (local context)
  - Obtaining consent in international settings
    - Communication, regulatory, cultural differences, vulnerable populations
  - US Law (HHS, FDA); Local laws (e.g., credentialing requirements for healthcare professionals; regulation of investigational drugs and clinical practice); International Guidelines (e.g., Declaration of Helsinki)
- Data Privacy – US laws (e.g., HIPAA - healthcare, FERPA - students); Local laws (e.g., EU Data Protection Privacy Directive -- very broad)
- Vertebrate Animal Research

Export Control Laws

- Export Administration Regulations (EAR). Dual Use items. Commerce Dept.
- Will the activity involve:
  (1) Transfer of controlled materials/items (e.g., certain computers, cameras, biological materials, technical/medical/scientific equipment) abroad?
  (2) Transferring technical info about controlled items to a foreign person?
  (3) Providing a “defense service”?
- If yes, and if no exclusion/exception applies, license may be needed.
  - Laptops; mobile phones. May qualify for Temporary Export-Tools of Trade or Baggage license exception under EAR
- Consider whether it is feasible/desirable to acquire certain equipment abroad rather than exporting it from U.S.

Economic Sanctions and Embargoes

- OFAC (Treasury Dept.) Country-specific sanctions programs
  - See: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
- Cuba, Iran, Iraq, North Korea, Sudan, and Syria; Somalia; Balkans; Burma; Belarus; Ivory Coast; Democratic Republic of Congo; Lebanon; Liberia; Libya; Yemen; Zimbabwe
- License may be needed for travel; financial transactions; provision of services.
Economic Sanctions and Embargoes

- **US Anti-Boycott laws** (Commerce Dept.) Primarily re: Arab League’s economic boycott of Israel.
  - See [http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm](http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm)
  - U.S. institutions may not agree to:
    - Refuse to do business with Israeli or companies blacklisted under foreign boycott agreement;
    - Provide information about business relationships with Israel
    - Discriminate or provide info about race, religion, sex or national origin of another person
  - Must report requests to comply with unsanctioned boycott; and re: operations in boycotting country (Tax Reform Act)

Anti-Terrorism and Anti-Corruption

- **U.S. Anti-terrorism Laws** (prohibit providing material support to terrorists). E.g., PATRIOT Act; Exec. Order 13224
  - Screen against government lists (e.g., Specially Designated Nationals; Foreign Terrorist Organizations; BIS lists)
  - Tools: Subscription databases like Visual Compliance (check with campus SPO and/or compliance offices)

- **Foreign Corrupt Practices Act**: Bans payments to foreign officials (broadly defined - may include employees of state-owned or publicly controlled universities/entities) to improperly influence them in order to obtain business benefit.

- **Foreign Jurisdiction Anti-Bribery Laws** (e.g., U.K. Bribery Act of 2010)

Obtaining Samples/Specimens

- **Ownership of specimens**
- **Return of Research Results/ Benefits of Research**
- **Local Rules** (e.g., Kenya requires permits to take biological samples in/out of country)
- **Developing Countries – Licensing Considerations**
  - UC Licensing Guidelines urge consideration of patenting and licensing strategies that promote access to essential and agricultural innovations in developing countries (not only an issue in research conducted abroad)
**Compliance with U.S. Federal Grant Requirements (If Applicable)**

- **OMB Circular A-21**: Cost principles: cost accounting, unallowable costs (e.g., some sponsors consider foreign VAT taxes to be unallowable charges; currency exchange losses as unallowable)
- **Flowdown of terms to foreign subawardees**
- **Subrecipient monitoring/oversight by U.S. prime awardee**
- **Other sponsor restrictions**
  - e.g., human/sex trafficking (USAID); international air travel

**Other Considerations**

- **Political considerations**
- **Research personnel**
  - Housing; transportation; liability; taxes; health insurance; visas; licensing requirements; employment/labor issues; safety (register with UC TRIPS – insure life, travel, kidnap, evacuation)
- **Facilities** – leasing, liability, insurance
- **Finance, accounting, controls**
- **Intellectual Property** (Foreign jurisdictions may have different rules pertaining to patents and copyright)

**Other Considerations**

- **Important roles for multiple institutional offices**
  - Offices of Research; Research Compliance; Sponsored Programs (Contracts & Grants); Technology Transfer; Risk Management; Counsel
Considerations When Employing US and Local Personnel Abroad

Considerations of Employment Abroad
- Every country has its own rules and regulations, don't assume U.S. rules and concepts apply
- UC policies and procedures may not always align with host country employment rules and regulations
- Conduct due diligence up front

Foreign Assignees – Immigration
- Visa Requirements
  - Length of stay
  - Type of work
- Work Permits
  - Generally required to work compliantly in another country irrespective of the anticipated stay
  - Local Sponsor
  - Foreign expert status
Foreign Assignees – Taxes
- Income Tax
  - U.S. - host country income tax conventions
  - Exemptions for professors / teaching experts
  - Relief from double taxation
  - 183 day rule
    - Income tax exemption if certain conditions are met
    - Variations in how the 183 days is calculated
    - Rule is based on residence in country not duration of assignment

Foreign Assignees – Taxes
- Social Security Tax
  - Local Exemptions
  - Totalization Agreements
  - Other possible local taxes
  - Payroll options when required

Foreign Assignees – Policies
- Compensation package
  - Allowances
  - Relocation
  - Travel
- Health coverage while abroad
- UC Business Travel Accident
Employing Local Nationals

- Hiring Arrangements
  - Direct Hire
  - Host institution support
  - Secondment
  - Agency or other third party
- Employment Contract vs. Service Provider
  - Many countries apply similar employment classification concepts such as the U.S. control test
  - Contractors who are misclassified can claim an employment relationship
  - Engage local legal counsel or consultant to draft contracts

- Employment terms and conditions
  - Employment-at-will is a US concept only
  - Governed by local regulations and possibly collective agreements
  - Employment practice may become entitlement (‘acquired rights’)
  - Be aware of local benefits (and total cost of employment)

- Compensation
  - Benchmark local market
  - Review applicable CBA’s
  - Be aware of issues with transitional arrangements – hiring independent contractor that transitions to employee

- Payroll
  - Engage local accountant or payroll service
  - Ensure checks and balances if small office
General International Compliance

- Global Policies
- Data Privacy
- Global Code of Conduct