

**International Activities I:  
A Panel Discussion**  
2013 UC Compliance & Audit Symposium

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**Considerations for  
Establishing and Maintaining  
International Activities**

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**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

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## 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

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## 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

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## 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

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## Governance/Management

- Corporate formalities: books, records, meetings
- Day-to-day operations
- Power of attorney
  - Scope
  - Controls re transfer of property, debt

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## 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

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## 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?

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## 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?

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## UC Policies – Approval of Activity

- Foreign Entities
  - Participations generally require Regental approval under Standing Order 100.4(00)
  - 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

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## Issues to Consider for International Research

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## 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**

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## Export Control Laws

- **International Traffic in Arms Regulations (ITAR)**. Defense items. State Dept.
- **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.**

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## 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.**

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## 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>
- **U.S. institutions may not agree to:**
  - Refuse to do business with Israel 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)

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## 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
  - See: <http://www.justice.gov/criminal/fraud/fcpa/>
- **Foreign Jurisdiction Anti-Bribery Laws** (e.g., U.K. Bribery Act of 2010)

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## 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*)

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### 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

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### 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)

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### Other Considerations

- **Important roles for multiple institutional offices**
  - Offices of Research; Research Compliance; Sponsored Programs (Contracts & Grants); Technology Transfer; Risk Management; Counsel

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## Considerations When Employing US and Local Personnel Abroad

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## 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

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## 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

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## 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

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## Foreign Assignees – Taxes

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

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## Foreign Assignees – Policies

- Compensation package
  - Allowances
  - Relocation
  - Travel
- Health coverage while abroad
- UC Business Travel Accident

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## 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

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## Employing Local Nationals

- 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)

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## Employing Local Nationals

- Employment terms and conditions
  - 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

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General International Compliance

- Global Policies
  - Data Privacy
  - Global Code of Conduct

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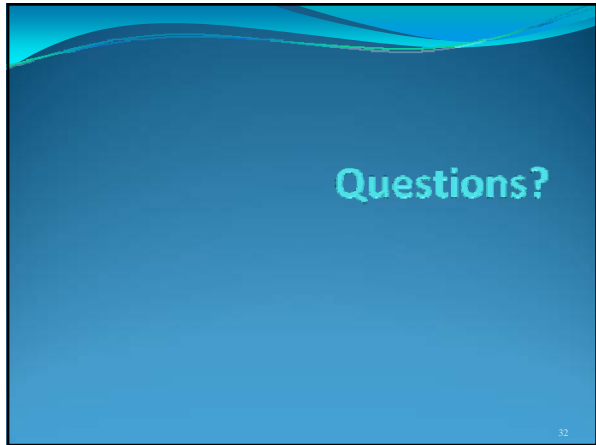
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Questions?

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