Managing Risks and Compliance with International Programs
High Street Partners

- Specializes in supporting universities and non-profits with international programs and activities
- Support 50 top research universities and non-profits with activities worldwide

Bob Lammey – Sr. Director of Higher Education

- Leads higher education practice at HSP
- Prior to joining HSP, Bob was Director of Global Business Compliance at Harvard University
- A CPA, began his career at Ernst & Young
International Risks

...are hiding in many places

- Legal risk
- Reputational risk
- Financial risk
- Human capital risk
Why do we need to think differently?

- Outside the “safe haven” of home campus....
  - No legal structure already established
  - No financial controls
  - Unfamiliar laws
  - Changing business landscapes
  - Health and Safety considerations different
  - Different time zones, different languages
  - Little to no governance to monitor changes in program risks
Topics of Interest...

- Trends with international activities in higher education
- International program structures
- Why should we be worried?
- Which activities may be a risk?
- Deep dive on issues
- What should you do?
- Structure on home campus
- Policies and processes
- Other supporting resources
Trends with International Programs in Higher Education
Trends in study abroad

Driven by....

✓ Student expectations
✓ Market competition
✓ Revenue opportunity
## Study abroad destinations by region

<table>
<thead>
<tr>
<th>Host Region of US students*</th>
<th>2008/09</th>
<th></th>
<th>2009/10</th>
<th></th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>%</td>
<td>Total</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Europe</td>
<td>141,955</td>
<td>54.5</td>
<td>144,840</td>
<td>53.5</td>
<td>2</td>
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<tr>
<td>Latin America</td>
<td>40,044</td>
<td>15.4</td>
<td>40,649</td>
<td>15</td>
<td>1.5</td>
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<tr>
<td>Asia</td>
<td>29,737</td>
<td>11.4</td>
<td>32,340</td>
<td>12</td>
<td>8.8</td>
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<tr>
<td>Africa</td>
<td>13,681</td>
<td>5.3</td>
<td>14,738</td>
<td>5.5</td>
<td>7.7</td>
</tr>
<tr>
<td>Oceania</td>
<td>14,261</td>
<td>5.5</td>
<td>13,566</td>
<td>5</td>
<td>-4.9</td>
</tr>
<tr>
<td>Middle East</td>
<td>3,670</td>
<td>1.4</td>
<td>4,959</td>
<td>1.8</td>
<td>35.1</td>
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<tr>
<td>North America</td>
<td>1,355</td>
<td>0.5</td>
<td>1,899</td>
<td>0.7</td>
<td>40.1</td>
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<td>Antarctica</td>
<td>60</td>
<td>0</td>
<td>65</td>
<td>0</td>
<td>8.3</td>
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<tr>
<td>Multiple</td>
<td>15,564</td>
<td>6</td>
<td>17,548</td>
<td>6.5</td>
<td>12.7</td>
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<tr>
<td>Total</td>
<td>260,327</td>
<td>100</td>
<td>270,604</td>
<td>100</td>
<td>3.9</td>
</tr>
</tbody>
</table>

* Cyprus and Turkey are included in Europe; Mexico is included in Latin America
"Go-it-alone" map

Blue tag – home campus
Red pin – campus abroad
Overall Spending on Global Health Research
Ranking of countries benefitting from grant awards
2004 to 2009

1. India
2. Nigeria
3. Tanzania
4. Ethiopia
5. Kenya
6. Uganda
7. South Africa
8. Mozambique
9. Zambia
10. China

Detect a trend????
Program structures and how they relate to risk
Study Abroad Models

- Third party “outsource” - Send students to foreign university – under full control of partner institution

- “Hybrid” model - shares resources with foreign partner organization

- “Go-it-alone” – own campus or facility abroad
Variations with Hybrid model

- Home campus faculty travel abroad to teach
- Admitting local students into program (for which U.S. university receives tuition income)
- U.S. university rents or otherwise obtains own facilities abroad
- U.S. university engages “own people” locally to assist with program
  - Greeting or supervising students
  - Building relationships locally
  - Teaching assistants
  - Facilitating other complimentary programs (internships, summer school, etc.)
Comparing models

Control over program vs. Administrative effort and costs

Outsource, Hybrid, Go-it-alone
## Comparing risks of models

<table>
<thead>
<tr>
<th>Outsource</th>
<th>Hybrid</th>
<th>Go it alone</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Student risk management</td>
<td>• Program “ignorance”</td>
<td>• Academic/Accreditation approvals</td>
</tr>
<tr>
<td>• Academic</td>
<td>• Legal presence</td>
<td>• Financial modeling</td>
</tr>
<tr>
<td>• Partner vetting</td>
<td>• Employment laws</td>
<td>• Faculty support</td>
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</tbody>
</table>
Why should we be worried?
- Prominent non-profit debarred in Dec 2010, must pay over $5.5 million in fines
  - Debarred due to...”defects in internal controls and that certain subcontractors may have engaged in corruption and other wrongful activities.”
  - USAID debarred 39 contractors in 2010, up from 18 in 2009

- Foreign governments implementing or enforcing strict registration requirements
  - 16 foreign organizations banned in Ecuador in August 2011 for “failure to meet disclosure requirements”
  - New registration rules in Cambodia
  - Bahrain, Iran, Sudan and Venezuela “tightened grip” on non-profits recently for registration requirements
Independent contractors come forward in EU claiming to be employees
- Fines to university in excess of $500,000 per employee
- 2 cases in last few months

University facing multi-million dollar liability for study abroad partner’s lack of registration and improperly hiring employees

Organization and employees banned from Canada
- 2 employees working there without proper visas and not paying taxes
- Employees banned for 5 years
- Organization banned for 5 years
- “Shamed” on public website
Why the shakedown?

- U.S. Federal agencies under increased scrutiny by press and public for how federal monies being spent

- U.S. and foreign governments facing daunting budget constraints – looking for revenue

- Countries creating “whistleblower” laws to encourage contractors to come forward
How do we know which activities may be of greatest risk?

Important section alert!!!
Apply the 5-tier test

(legal and financial compliance risk only!)

**Level 1** – Reputable University partner in their home country

**Level 2** – Outsourcing to third party study abroad provider or research organization outside their home country

**Level 3** – Engaging individuals directly in foreign country

**Level 4** – Engaging individuals in EU and/or paying for facilities

**Level 5** – Income-producing activities
  (local students, certificate programs, “advising” for income)
Sponsored research – other risk considerations

- Internal controls, particularly for federal awards
  - Financial
  - HR
  - Procurement
  - Segregation of duties
  - Time reporting
- Subcontractor selection and oversight
  - Not typically subject to A-133
  - Internal controls
- Local research laws and clinical requirements
- Safety concerns - especially if students are participating
- Adequate budgeting for legal and financial compliance during pre-award
- Document management – how would you stand up to an audit of your foreign projects?
As an employer......

- Those being paid qualify as employee, not contractor

- Required withholdings
- Required tax payments
- Required statutory benefits

Options (vary by country):
- PEO
- NRE
- Entity

As an entity......

- Activities qualify as fixed place of business (permanent establishment)

- Required registration
- Required tax filings
- Required entity filings

Options (vary by country):
- Subsidiary
- Branch
- Representative office
**Myth #1:** “We don’t have compliance issues...We just do study abroad.”

- Most common compliance issues:
  - “Partner” or subcontractor acts as agent, but doesn’t have proper registration in-country
  - Contractors being paid by partner are really employees of university
  - Income received by university (even through netting arrangements) gives rise to registration requirements (degree, certificate, or advisory)
  - U.S. employees working in foreign country for more than “a few weeks”
  - Data privacy non-compliance (laws can be more strict than in U.S.)
2. Non-profit status in U.S. automatically applies in a foreign country

3. Educational or research activities don’t require registration

4. Our foreign “contractors” would never turn on us

5. Compliance issues with international programs are someone else’s issue at the university to deal with
If educational partner......
or research partner......

• Is carrying out educational activities on your behalf with local students
• Has “local people” in the foreign country
• Is collecting money on your behalf in the foreign country
• Is paying someone on your behalf
• Is collecting or maintaining student information

.....they *almost always* would need a registration in-country, and it may be your liability too

Ask them about it!
Engaging individuals in a foreign country

- Employee vs contractor - #1 compliance issue today
- Assumption that foreign laws not as strict as U.S.
- An agreement that person is a contractor is not enough!

- Options for engaging someone abroad:
  - Independent contractor (if compliant with local labor laws)
  - Hire through partner organization (make sure they are doing so legally though!)
  - Hire through PEO (Professional Employment Organization)
  - Non-resident employer (NRE) registration
  - Branch or entity registration
Let’s go deep on some of these issues....

- Legal
- Financial
- HR
- Collaborations
Permanent Establishment

- Defined in tax treaties (65 of them)
- If no tax treaty, then in local tax law
- Income generating activities most common trigger
- Other contributing factors
  - Office or working space
  - Employment
  - Delegating decisions to employees or contractors
Pros and Cons of Registration

Pros
✓ In compliance with laws
✓ Protect use of university name
✓ Defend against lawsuits in local courts
✓ Cash movement in/out of country
✓ Enter into contracts/Hire employees
✓ Tax deductible donations
✓ Liability protection for University in U.S. (typically subsidiaries only)

Cons
✓ Cost
✓ Administration
A-133 definition

- Transactions are properly recorded and accounted for
- Transactions are executed in compliance with laws and the grant agreement
- Funds and assets are safeguarded from unauthorized use

In Layman’s Terms:

- Follow university policies
- Approval of transactions
- Segregation of duties
- Documentation is readily available for inspection
  - Invoices, PO’s, receiving
  - Timecards
  - Employment agreements
  - Job descriptions
Internal Controls 101
Common Control Issues

Cash Handling
- Disbursement authorization not documented
- Bank accounts not being reconciled
- Petty cash – lack of physical security

Procurement
- Improper vendor selection process
- No authorization for large purchases
- No documentation of competitive bids and POs

Payroll / HR
- Timesheets not approved; Overtime not justified
- Approved timesheets not kept in central files
- Missing employment agreements and job descriptions

Expenses
- Travel and hosting – no business purpose
- No review and approval by higher level
- Improper allocation of costs
U.S. Tax and Reporting Requirements

- IRS Form 990-Schedule F
- Form TDF 90-22.1 (FBAR)
- IRS Form 5713 (Int’l Boycott Report)
- Federal Funding Accountability and Transparency Act (FFATA)
U.S. Laws and Regulations

- Foreign Corrupt Practices Act
- U.S. Export Control Act
- Anti-Boycott Laws
- OFAC (Office of Foreign Asset Control)
- Cleary Act

Paying for student facilities or classrooms with study abroad?
Faculty and staff working abroad

- “Cash in a suitcase”
- Personal bank accounts
- Safety concerns
- Individual tax liability
- Immigration
- U.S. compliance
- U.S. expats and TCN’s
  - 183 day “rule of thumb”
  - Work and residence permits
  - Paying taxes in what country?
  - FBAR reporting (already mentioned)
Faculty and staff abroad

Human capital risks:
- Employees unknowingly putting university at risk
- Faculty work not supported
- Personal safety
- Personal income tax implications

How to remediate:
- Central admin needs to be engaged with schools
  - Global mobility policies and process to support
- Outside professional assistance
- Minimize personal risks
  - Client trust accounts
  - Prepaid and reloadable cards
  - Bank transfer
Engaging Independent Contractors

- Decisions **not** from an employee vs contractor analysis
- Assumption that foreign laws not as strict as U.S.

- Take steps to reduce risks
  - Education and tips for employees
  - Policies/Agreement in writing
  - Hire through 3\textsuperscript{rd} party (PEO or “partner”)
  - Require contractor to obtain certificate from local tax authority

- Withholding and year end reporting requirements
## Tips on hiring a contractor

<table>
<thead>
<tr>
<th>Don’t do this</th>
<th>Do this!</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Pay for time worked</td>
<td>Pay for milestone or task</td>
</tr>
<tr>
<td>✓ Give them tools</td>
<td>Worker provides own tools</td>
</tr>
<tr>
<td>✓ Worker self-employed</td>
<td>Works for company (3 or more)</td>
</tr>
<tr>
<td>✓ Paid leave (vacation)</td>
<td>No “employee” benefits</td>
</tr>
<tr>
<td>✓ Supervise and direct daily</td>
<td>Flexibility to set own hours</td>
</tr>
<tr>
<td>✓ Nothing in writing</td>
<td>Contract stating terms</td>
</tr>
<tr>
<td>✓ Require contractor to perform all work</td>
<td>Work can be performed by others</td>
</tr>
<tr>
<td>✓ Executing contracts or making decisions</td>
<td>at worker’s discretion</td>
</tr>
<tr>
<td></td>
<td>No decision making on behalf of</td>
</tr>
<tr>
<td></td>
<td>university!</td>
</tr>
</tbody>
</table>
Risk factors with collaborations

- Research protocol – Human subjects
- Use of name
- Difficulty of terminating arrangement
- Reputational exposure if partner does not fulfill its obligations
- Domestic compliance
  - (e.g., OFAC, Export controls, Foreign Corrupt Practices Act)
- Local country requirements
  - (e.g., statutory filings, tax returns, etc.)
What should you do?
Role of Central Administration

- Supports schools with key functional areas such as legal, compliance and risk management, HR, and cash management

- Oversight of activities to reduce financial and reputational risks to the institution

- Set policy and procedural guidance

- Provide strategic direction

- Maintain list of activities
Support and Oversight
“Touch Points”

- Wire transfers
- Cash receipts
- Cash advances to employees
- Addition of employees to payroll
“International program alert!”

General Counsel’s Office

External Professional help

Raise issues when you see them...
Engaging the Sponsored Research Office

Risks and requirements should be addressed in Pre-award/Proposal stage!

- Foreign country registration and compliance requirements
- Budgeting of costs
- Document management
- Foreign subcontractor background checks
- Understand local research laws
Steering Clear of Trouble

- Strong communication between departments, schools and central administration

- Recognize potential issues in advance

- Close relationship with general counsel’s office

- External advisors just a call away
Get to know your Partners or Subcontractors!

**Organizational**
- Organizational structure of this institution
- Total annual budget relative to overall institution
- Previous collaborations with US institutions?

**Personnel/HR**
- Hiring and documentation practices (contracts, job description)
- Termination policies; required severance
- Status (position, tenure, etc.) of the personnel with whom you wish to collaborate

**Financial/Administrative**
- Infrastructure for administrative, financial, and legal matters
- Do they have a manual of administrative and financial policies?
- Up to date on filings and other local compliance requirements?
- Cash disbursements and receipt practices
- Banking relationships
- Procurement practices

**Physical infrastructure and Assets**
- Condition of facilities
- Compliance with Safety codes
- IT systems; Technology infrastructure
- Business continuity/disaster recovery plan
What’s the right international support structure?
Finally! With visibility over activities, strategic and long-term planning can now occur.
- What types of activities benefit our schools the most?
  - Study abroad
  - Research
  - Own campus abroad
  - Clinical
  - Internships
  - Joint degree programs

- What types of programs do your students demand?

- What regions do we want our students to have academic experiences in?

- Where do we want to have a footprint? In 1 year? 5 years? 10 years?

- How do we want to organize and commit our resources to support this?
  - Development
  - Administration
  - Recruitment of faculty and staff
Requests or issues from schools, Provost and other offices

- General Counsel
- Sponsored Programs
- Financial Accounting
- Other Central Admin
- Cash Management
- Risk Management
- Human Resources
- External Support

Designated international contact at university
Process for Dealing with International Issues

1. Issue or requirement identified

2. Routed to appropriate owner

3. Information to satisfy issue or requirement obtained

4. Follow up or issue/requirement resolved
Policies and Processes
Control Elements to Establish

- Monitoring
- Risk Assessment
- Professional Expertise
- Approval and Setup
- Personnel and Training
- Cash Management
- Systems and Reporting
- International Education and Research
Examples of Policies Typically Drafted for Home Campus Already

- Code of conduct (e.g., Conflict of interest, Discrimination)
- Transaction authority (cash disbursements)
- Signing contracts/Obligating the university
- Use of institutional property
- Gift receipts
- Travel
- Data privacy
Policies Which Often Need to Be Written Specifically for International

- Opening and maintaining bank accounts
- Procurement
- Hiring of independent contractors abroad
- Leasing or purchasing office space
- Global mobility (incl. hiring of employees abroad)
- Compliance with Export controls, OFAC and Foreign Corrupt Practices Act
Key Procedural Areas

- Cash management
  - Taking cash abroad
  - Opening bank accounts
- Pre-award process for sponsored research
- Engaging collaborators/partners
- Obtaining insurance
- Hiring of foreign employees/Sending employees abroad
- Legal entity registration outside U.S.
Other Examples of Processes to Define

- Review and approval of activities
- Coordinating and contacting external resources
- Posting activities on website
- Monitoring academic activity
- Emergency procedures for students and employees
Protocol for Collaborations and Subcontractors

- Evaluation criteria
- Background checks
  - References
  - Financial stability
- Registered to do business?
- Written agreements
- Metrics of success
Making Resources Available

- Website for students (outbound)
  - Opportunities for study abroad and fellowships
  - Forms, waivers, school contacts
  - Links to U.S. State Dept, CDC (health, vaccinations info)
  - Emergency procedures

- Website for faculty and staff
  - Policies and procedural docs or links
  - Activities by country
  - School and central admin contacts
Building a Database

- Leverage single point of contact at school
- Many benefits of database
  - Strategic planning (Where are we now? Where do we want to be?)
  - Financial reporting (990 reporting, FBAR, etc.)
  - Risk Management (Insurance and health and safety)
  - Encourage synergies between schools
- “Keeping it real”
  - Annual updates probably enough
  - Leverage provost office for existing sources of info
Cash management

Issues:
- “Cash in a suitcase”
- Personal bank accounts
- Safety concerns
- Tax implications for employees

Solutions:
- Client trust accounts
- Prepaid and reloadable cards
- Third party or partner account
- Bank transfer
Establish cash management protocol

<table>
<thead>
<tr>
<th>Best option(s)</th>
<th>Next option(s)</th>
<th>Non-recommended options</th>
</tr>
</thead>
</table>
| **Travel expenses** | 1. University card*  
2. Expense Reimb. | 1. Direct Bill  
(typically air travel only)  
2. Wire from home country | Cash advance |
| **Program expenses**  
(no univ bank account) | 1. Wire from home country bank account | 1. Third party  
“partner”  
2. University card* | Cash advance |
| **Program expenses**  
(with local univ account) | 1. Paid by local entity via check or wire | 1. Wire from home country bank account | Cash payments* |

* - “University card” may include a corporate credit card, reloadable bank card, or prepaid card

1 - Cash payments for small incidentals or in cash-based economy will often be most practical method of payment
NACUBO Resources for International Activities

- International Resource Center (IRC)
- International Webcast Series (available on www.nacubo.org)