



## GLOBAL MOBILITY COMPLIANCE

### Applying Compliance Considerations to Mobility Programs

## INTRODUCTION

The purpose of this white paper is to provide an insight into the compliance considerations that should be applied to international assignments. Compliance issues are always high on the agenda affecting all stakeholders from global mobility policy makers, HR functions and relocation providers through to the individuals being assigned overseas. The well-documented rise in the range and frequency of business travel coupled with a focus on duty of care legislation, primarily in westernised countries, highlights the importance of proper planning on behalf of the employer, to ensure areas of risk can be mitigated for all employees.

Transferees on short term business trips and those assigned to emerging markets where the organisation may not be familiar with business practices or indeed, not have a presence in, are an obvious challenge. Duty of care standards may unwittingly be breached exposing the assignee to avoidable risk and the organisation to a corporate liability claim.

As a pro-active provider of assignment management services, Sterling supports organisations in key compliance matters including; providing immigration services, policy design and review, documentation services (tenancy agreements, assignment letter and balance sheet preparation), settling-in services and end-to-end assignment management (tracking, alerts, expense management and year-end tax data collection). This white paper will highlight general cross-border compliance areas however many locations have specific requirements and so it is critical to engage local experts.

## COMPLIANCE - WHAT IS IT?

As defined by Oxford Dictionaries, compliance is 'the action or fact of complying with a wish or command.' While this sounds relatively straightforward, it is important to understand in detail the requirements of the host country and location, as well as to understand who is responsible. For international assignee matters, those responsible can include home and host HR, legal, payroll, pensions and corporate tax departments, the home and host line manager and, last but not least the employee. It is important that each of the stakeholders is made aware of the implications of non-compliance as the impact can be far-reaching for the company and often for the individual concerned.

The main compliance areas that impact global mobility are immigration, documentation, compensation and local legislation.

### Whose responsibility is it anyway?



#### Transferee

- Employee
- Employee's Family



#### Assignment

- Home Line Manager
- Host Line Manager



#### Company

- HR
- Legal
- Payroll
- Corporate Tax



## IMMIGRATION

Immigration compliance is vital to ensure that an individual is legally authorised to travel and work overseas to carry out the duties required by the organisation. Business travellers are at particular risk since, by the nature of their unplanned, high-frequency and often short duration project work, employees and managers can often not realise they need to obtain immigration clearance prior to travel.

Specific clearance criteria can include medical assessment, minimum level of education, minimum salary requirements, role specifics including the requirement to prove that local staff is not able to fulfil the role, notarised documentation and accompanying dependent requirements. To obtain clearance requires significant time and effort, as well as up-to-date knowledge of the ever-changing immigration regulations. For example, in Germany, new legislation has been passed forbidding

relocation benefits, such as a per diem, to be included in the minimum wage calculation.

Consequences of non-compliance can be harsh. The organisation can be banned from hiring overseas workers or doing business in that location in future. There may be financial penalties and, whatever the outcome, irreparable damage to the reputation and credibility of the organisation. For the individual the penalties can be equally severe – potentially banned from future travel to that location and, as an illegal alien, they can face immediate deportation.

Once clearance is obtained, immigration document expiry dates must be carefully monitored to avoid overstaying and to maintain validity of passports, visas and work permits for the employee and family members.

### CASE STUDY:

India's second-largest information technology services giant was investigated in early 2013 by U.S. authorities for relocating Indian nationals to work on their American-based clients' sites on only temporary visa status. Almost 2,000 cases of temporary B-1 visas were found to be used by employees who were involved in work including programming and systems coding which is prohibited under the visa legislation.

The company admitted to unintentional violation of American employment law but not to any deliberate intent to fraud or misuse the immigration system for illegal employment. According to the company, there appeared to be issues with the administration process for work authorisation and they assured the US Justice Department they will be more vigilant with their internal processes including record keeping and consular documentation. In view of this, the US Justice Department agreed to settle the dispute with the IT firm with a penalty charge of US\$ 34 million and a promise to ensure all systems and processes were aligned.

It might appear that the company escaped relatively unscathed; however the impact on the U.S. and Indian immigration legislation might have wider consequences for all service providers, especially those from Indian origin. The US authorities are looking at even tighter visa application processes especially those requiring temporary work authorisations. Experts in the technology sector identify cultural differences in attitudes to procedure and legislation and although infringement of the system is not intentional, some predict a more rigorous approach to immigration procedures from Indian based companies and also an increase in onsite hiring in the US to try to reduce the need for temporary workers.

(Sourced from: [www.Reuters.com/article/2013/11/08/us-infosys-settlement-idUSBRE9A70IC20131108](http://www.Reuters.com/article/2013/11/08/us-infosys-settlement-idUSBRE9A70IC20131108))

## DOCUMENTATION

Assigning employees overseas can create confusion as to the employing entity and accordingly, areas of employment law and protection that apply while on assignment. While a global policy is the recommended way to provide general guidance to the support that the organisation provides it is important to be clear which law applies during the assignment - home, host or other and should include reference to existing HR policies, for example, absence, maternity, emergency leave etc.

For the duration of an overseas assignment the employee's existing employment terms and conditions usually continue to apply however it is important to confirm in an assignment letter any changes to these or, indeed, any additional benefits that the company is providing as well as the period that these apply for. Any temporary uplifts in salary should be reflected as such to avoid issues on repatriation.

Most assignment letters are written in business English however there is a legal requirement for assignees from certain locations to have a local language version. It is advisable to have a legal review in the sending or receiving location for completeness. Incorrect terminology can change the legal context - an 'expatriation' for a French employee is very different from a 'détachement'. The assignment letter should be signed by employer and employee prior to the assignment starting.

Where required, a host country employment contract should be provided to the assignee however should be carefully reviewed since not all elements applicable to local employees would apply.

For permanent international transfers, who may receive additional benefits to local employees, it may be more appropriate to have these clarified in an addendum. By providing accurate and appropriate documentation the likelihood of reprisals can be minimised.

### CASE STUDY:

Brazil has significant employment protection legislation. Working with the client legal team in Brazil and HR it became apparent that many specific employment benefits needed to be maintained throughout the assignment and detailed in the assignment letter, as well as additional gross and net payments included on the balance sheet.

By working together to ensure the assignment letter reflected the protected benefits and the balance sheet correctly, deducted hypotax and social security from the guaranteed gross payments any employment law issues were eradicated.

The assignee concerned was senior and highly paid so higher stakes if provided with incorrect documentation. Ensuring that these variations from the standard were tracked meant that at salary review time it was straightforward to update the balance sheet and that the organisation remained compliant with Brazilian employment legislation.

## COMPENSATION

It is recommended when dealing with a new location, for compensation obligations to be clarified. Home country payments that may appear assignment-related may need to be maintained since they form part of the employee's compensation package, for example, shift rates specific to the home working pattern, company car allowance etc. The industry and level of trade union representation will affect the protection of such payment. Most global mobility policies use the balance sheet approach so that the assignee is no worse or no better off from an employment income perspective than had they remained in the home country.

Social security is an area of payroll compliance which is often not fully understood. While most assignees remain in the home social security system, many are subject to host country social tax and often after only a very short period of grace if there is no totalisation agreement between the home & host country. Payroll reports may need to include 'shadow' or 'mirror' transactions in the home or host country as well as actual transactions in the primary payroll location.

Tax is a key area of compliance and accounts for the highest cost of an assignment since, under a standard tax-equalised assignment, the organisation bears any dual liability, and benefits tend to be provided net-of-tax to the assignee. By requesting a cost projection upfront from Sterling, HR practitioners and line managers can be made aware of the anticipated costs of the assignment (including liabilities which may need to be funded at a later date) and ensure these are accrued for.

Global mobility practitioners need to work closely with their corporate tax team to ensure they are aware of the risk of creating a Permanent Establishment (PE) and implications on transfer pricing of cross charging assignment-related costs. The expatriate compensation data collection process at year-end, or ideally more frequently, can be a cumbersome but important task and Sterling can support this process, reducing time and cost for the organisation.

### CASE STUDY:

Sterling collated the line-by-line compensation data for a small but fast-growing client. The data included relocation-related costs where the client could not simply and easily locate the data and not in enough granularity for optimal tax savings to be made.

Sterling compiled data from a variety of sources, ensuring the correct level of detail so that the tax provider could claim the correct amount in respect of tax-deductible payments and thus ensure the best possible outcome financially for the organisation.

With no internal resources or know-how to gather this data quickly and efficiently, the client would have had to make cautious assumptions or, due to a lack of clarity with internal accounting data, look to their tax provider to painstakingly review their internal data, an exercise that would have been very costly. Sterling was able to reduce the cost of collation and improve accuracy thus increasing the cost savings in the client's tax reporting.

## LOCAL LEGISLATION

There are often additional requirements specific to the region/state/canton of a country and support can be needed for practical matters when relocating people and goods into a new country. Co-ordinating shipment arrival with immigration clearance is important as well as ensuring all relevant import documentation is complied with.

### CASE STUDY:

Following many illegal exports of pre-1945 artwork from Eastern Europe there are strict procedures relating to the identification and subsequent export of new or imported goods from Russia.

Sterling has been proactive in identifying failsafe procedures to ensure that ownership is clarified at the beginning of the assignment by including photographs in the import customs documentation, facilitating exportation of the same goods upon repatriation.

Where goods are purchased in-country, Sterling ensures these items are systematically presented to the Ministry of Culture specialists ensuring there

is no confusion between genuine antique icons and those that are permitted to be exported.

Anything that may have been unwittingly purchased as a souvenir (but produced pre- 1945 so banned from export) can then be given back to the assignee so that they have time to sell these items rather than risk confiscation (and potential prosecution for illegal export!).

This process is one of the many import and export processes that is proactively managed by Sterling minimising involvement from the assignee and ensuring minimal delays in shipping time.

One of the first things an expat will usually need to do shortly after landing in-country is to obtain a social security number. This procedure can still open the door bureaucratically to many activities however the process may not always be straightforward or the environment welcoming. Where local registration with the police is required this can be a simple presentation process or can require booking and the submittal of paperwork in advance. Local health clearance may be required prior to children being accepted into nursery and education settings.

Other elements not to be overlooked in respect of duty of care compliance include healthcare, safety & security, pension provision as well as more personal matters including will and family law etc. These may call for specialist support from the organisation or can be obtained separately by the employee. Permanent transferees are often unfamiliar with host country rules and regulations including healthcare provision and will benefit from internal or specialist advice and support to settle-in effectively and quickly.

### CASE STUDY:

Many major cities in Africa are renowned for their poor road infrastructure and heavy traffic and congestion and settling into a hardship location such as Lagos, Nigeria can be extremely challenging.

The location has additional challenges for personal safety and security, suitable schooling shortages and over demand for housing. Personal safety and security should always be a priority to companies and employees when relocating to Lagos.

Sterling arranged a car and driver while a recent assignee was settling-in giving time to the assignee to familiarise himself with the area, route to work as well as driving rules and expectations. Secure housing was located in a guarded and alarmed

compound and successfully negotiated the costs of security to be included in the rent.

The process to obtain social security and local government identification is a very daunting experience and Sterling facilitated the bureaucratic registration process, fast tracked the visa application enabling a representative of the employee to take documents requiring the Apostille stamp on their behalf to the authorities.

This was then couriered back to the assignee directly limiting his direct involvement in the process saving valuable work time and improving the overall assignee experience.

## SUMMARY

We have highlighted in this white paper the minimum considerations for organisational and employee compliance in global mobility matters.

It is vital that HR practitioners have compliance at the top of their priorities, highlighting requirements to line managers early in the assignment planning process. All too often compliance is overlooked in the quest to meet the business need quickly. We recommend proper planning so that all internal stakeholders, such as legal, corporate tax, payroll and pension teams, can be included in global mobility processes.

In particular, for new and challenging locations it is imperative to obtain local expert knowledge.

Your relocation provider should be able to support your documentation needs and have a robust tracking system in place to ensure all necessary stakeholders are kept aware of key dates and deadlines.

The level of practical in addition to financial support provided by the organisation for a move overseas can determine the success of the assignment from the assignee and family's perspective. It can influence the employee's willingness to relocate in future and is key to retaining top talent within the organisation.

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## ABOUT STERLING

Sterling is a provider of end-to-end global mobility solutions and one of the largest owner managed relocation networks in the world. We offer immigration services as part of our comprehensive suite of relocation and mobility services. Our immigration teams are involved in policy design and benchmarking services as well as documentation assistance.

Sterling's white papers are compiled by our in-house experts, and provide insight on topical issues with relevance to our clients. Through real-life case studies, we present the challenges to compliance for global mobility practitioners and highlight aspects to consider when preparing to move staff overseas.

Sterling is a wholly owned subsidiary of UniGroup and works together with the UniGroup Relocation Network; spanning more than 1,000 locations serving 180 countries across 6 continents.

If you require further information relating to this article or other immigration services, please contact us at: [immigration@sterlingrelocation.com](mailto:immigration@sterlingrelocation.com).

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