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# OVERSEAS VENTURES AND ventures

**Your company's** senior vice president-international asks to meet with you over coffee to discuss how to handle a situation that has arisen in South America. As you enjoy your second almond latte, the VP relates the following:

Your company, Global Worldwide, Inc., which has been very successful in US and European sales of an advanced-technology carbon fiber material for sports equipment, decided last year to expand into Latin America. One of the first countries targeted was Brazil, due to the size of its population and its healthy economy. Under the VP's instruction, Global's international department established a Brazilian subsidiary and hired a general manager. The VP retained a small law firm in Sao Paolo to assist Global and its subsidiary with local legal matters. The lawyer who has been representing Global speaks some English. The VP is fluent in Spanish, but is unfamiliar with Portuguese.

With the local lawyer's help, the VP has been negotiating a joint venture with a Brazilian company to market Global's carbon fiber product in Brazil, Uruguay, Chile, and Venezuela. The business plan calls for the product to be exported from the United States to Brazil and then shipped to the other countries. The VP mentions a term sheet that describes the basic terms that will govern the venture, and that it has been signed by both parties.

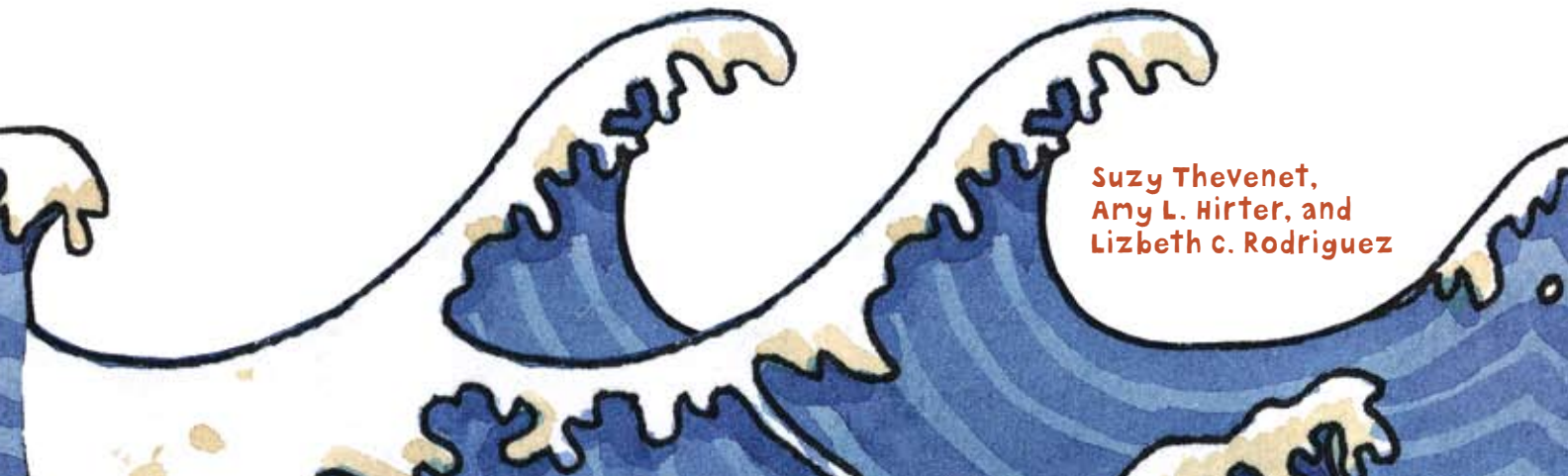
Global's international department also retained an agent to assist with customs clearance and to recruit a sales force. The agent negotiated for his compensation to be paid in US dollars by wire transfer to a Cayman Islands account.

Brazilian counsel called the VP yesterday to tell him that the agent, claiming breach of contract for failure to pay his commission, has sued Global and its Brazilian subsidiary in Brazil. Local counsel said that Global has little hope of prevailing, due partly to the fact that the agent is the former Minister of Foreign Investment and still has strong ties within

the government. The VP tells you he believes that Global should have a good defense to the suit because the agent was unsuccessful in obtaining import licenses for the product.

An article this morning in the leading US financial paper about executives of another public company being jailed for improper foreign business practices has reminded the VP to consult you for advice. Where do you start?

**Suzy Thevenet,  
Amy L. Hirter, and  
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## Foreign Subsidiary as an Investment Vehicle

Begin making a list of issues to discuss with Global's Brazilian counsel. The first thing you need to determine is whether the *subsidiary is a pass-through entity or a permanent establishment?* This is to check on the type of entity that was used, its tax treatment for US and Brazilian purposes, and whether its business constitutes a permanent establishment that subjects the subsidiary to taxation in Brazil. You would have to work with Brazilian counsel to make this determination.

Your next step is to start a separate list of questions for the VP to include issues regarding the subsidiary's *board of directors and executives, and the manager's employment contract.* You make a note to remember to find out who is managing the subsidiary and whether Brazilian law requires directors and executives to be residents or citizens of Brazil. In Latin countries, custom often calls for written employment contracts with executives, so for the moment you assume that one exists. Once that question has been answered, if necessary, explore with local counsel whether Brazil recognizes at-will employment relationships and whether there are mandatory employee benefits and provisions requiring compensation on termination of the employee.

While you are thinking of it, send an email to the VP instructing him not to do any more hiring in Brazil until you sort out with Brazilian counsel the laws that govern hiring and firing of employees. The last thing Global needs is a lawsuit by a disgruntled foreign employee.

## Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) prohibits corrupt payments or offers to pay foreign government officials and politicians with the purpose of inducing the official or politician to use his or her influence to secure a business advantage. The prohibition extends to US persons and entities, their subsidiaries, and their agents. Global's Code of Conduct contains a comprehensive section on compliance with the FCPA. You do not find any indication that any Global employee has been directly involved in negotiations with Brazilian government officials, although you need to investigate dealings by the Brazilian agent, as described in more detail later in this article.



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## Disclosures and Securities Law Issues

You have just finished reading the business section of the Sunday newspaper and notice that *Transparency International* places Brazil number eight on its list of the World's Top Ten Bribe Payers. In addition to prohibiting bribery of foreign officials, the FCPA requires public companies such as Global to comply with certain accounting requirements of the Securities and Exchange Commission (SEC). The FCPA's accounting provisions require public companies and their subsidiaries to establish and maintain accurate books and records and sufficient internal controls and to comply with the provisions of the Sarbanes-Oxley Act of 2002 (SOX). SOX, in turn, imposes additional disclosure and reporting obligations on public companies.

Under SOX, Global's CEO and CFO must certify the accuracy of the company's financial reports and the sufficiency of its internal controls. The CEO and CFO are subject to heavy criminal penalties if the certifications are false when made. A violation of the FCPA would likely point to a material weakness in internal controls, as well as a failure to maintain procedures that ensure timely disclosure of Global's financial condition. If the payment to the Brazilian agent was not properly accounted for, there must be a statement in Global's SEC reports identifying any material weakness that affects the internal controls, including findings of suspicious and illegal transactions. Although your client is Global, rather than its officers, it is in Global's best interests for the officers to be properly counseled in their official duties. Add to your "to do" list: *Discuss officers' certifications with CEO and CFO.*

Global complies with the SOX requirement to disclose in its Form 10K annual report each year whether it has a Code of Ethics for its senior financial officers and CEO. Global is listed on the New York Stock Exchange (NYSE), whose listing rules require Global to have a Code of Conduct and Ethics governing the official conduct of its officers, directors, and employees, and to place the code on its website and disclose such fact in its annual report or proxy statement. The NYSE rules state that the code should address, among other things, procedures to ensure compliance with all laws, rules and regulations, and encourage reporting of any illegal or unethical conduct to

## **Normally Global clears and registers its trademarks before licensing them, and contractually prohibits the licensee from registering the marks.**

appropriate personnel. The company has adopted a code of Business Conduct and Ethics that complies with the NYSE listing rules. In addition, the company has adopted Guidelines for International Integrity and Ethics in Worldwide Business Operations. Both the code and guidelines are published on the company's website. *You also make a note to review Code of Ethics provisions relating to disclosure of Code violations, Whistleblowers, and procedures for employee reporting of FCPA violations.*

Mentally review your professional obligations. If there is a possible FCPA violation, the whistleblower provisions of SOX—which require attorneys of public companies to report evidence of a material violation of the US securities laws, breaches of fiduciary duties, or similar violations by the company or any agent—may require you to “report up the ladder” to the Audit Committee or board of directors to determine how to address the violation, including recommending the hiring of outside counsel. You are the chief legal officer and if you determine that there is evidence of a FCPA violation, you must take affirmative steps to report this violation to the Audit Committee within a reasonable time.

If you have to report the violation to the Audit Committee or board, remind them that the SEC and Department of Justice will look at how the company responded to the improper activity. SEC and Justice may ask: Did Global take the necessary steps to strengthen its internal controls and create effective FCPA compliance programs? How did the company uncover the violation? How did it report and what steps did it take to prevent future violations? You find some comfort in the facts that Global's FCPA policy specifically prohibits bribery and that the company routinely trains all employees who are involved in foreign transactions in FCPA issues.

### **Joint Venture Issues**

The VP told you that Global and its joint venture have signed a term sheet for the venture, but have not entered into a formal joint venture agreement. That was followed closely by a sigh of relief on your part. However, in reviewing the file that the VP has now delivered to your office, there are many letters and emails discussing the terms of the venture and sending drafts back and forth. In the last couple of exchanges, it appears that only minor

issues remained to be resolved. In fact, a number of letters report the venture partner's efforts to establish markets in Uruguay, Chile, and Venezuela. The letters also describe the venture partner's description of existing non-written arrangements to sell Global's products in Brazil. In civil law jurisdictions, such as Brazil, a *de facto* contract can be deemed to exist without a signed document, particularly if all material terms have been agreed upon.

To remind you to ask Brazilian counsel whether Brazilian law deems a contract to be in effect already, you add to your list: *Does a joint venture contract exist?*

The term sheet and correspondence call for equal ownership and voting by the two venturers. Unfortunately no mechanism has been included to break deadlocks or to provide for one of the parties to exit the venture. Normally you include shotgun buy-sell provisions (under which one venture partner names a price per percentage interest in the venture at which it is willing to either buy or sell to the other venturer, and the other venturer elects to either buy or sell) and rights of first refusal in your joint venture agreements. You hope there is an opportunity to address those issues before the joint venture contract takes effect.

Since Brazil has not adopted the United Nations Convention on the International Sale of Goods (CISG), you omit reviewing the impact of the CISG from your “to do” list but make a note to ask US and Brazilian counsel whether any other treaties between Brazil and the United States that could affect Global's Brazilian investment, such as a bilateral investment treaty, are in effect.

The term sheet does not address whether product warranties will be given by Global or the joint venture. You add to your list for discussion with foreign counsel: *Are there any statutory warranties in Brazil and in the rest of the sales territory?*

Global has an outstanding reputation in the advanced carbon fiber product category, which makes its trade name and trademarks quite valuable. From the correspondence, you see that the Brazilian venture partner has included Global's trade name and trademarks in the venture's marketing materials. Global never permits use of its name or marks without a license, and whenever they are licensed, your department checks local laws for restrictions on exclusivity and term inability, withholding taxes on royalties, requirements to update the licensed technology, local

registration requirements, statutory royalty caps, requirements for government approval of the license agreement, and statutory damages payable on improper termination. Normally Global clears and registers its trademarks before licensing them, and contractually prohibits the licensee from registering the marks. You add to your list: *Check*

## Relying on and Supervising Foreign Counsel—A Delicate Balancing Act

You need responsive, competent foreign counsel to advise you in any cross-border transaction or dispute. Applying the “trust but verify” approach is key to a successful relationship. Here are some important considerations:

- Did your company’s outside counsel refer the foreign lawyer to you, or did you select him or her yourself from data bases or based on recommendations from friends? If you are not familiar with your foreign counsel, make sure she or he feels a high degree of responsibility to you or to someone else who is important to her.
- Distance may disguise the fact that your foreign colleague is an expert in customs and trade work, but has no experience with arbitration or contract negotiation. Do a thorough due diligence investigation of foreign counsel to understand his skills.
- Language barriers and incorrect legal or cultural assumptions often cause confusing communication with foreign counsel. Research her English language ability, cross-cultural experience, and expertise in representing clients from other countries before retaining her to represent your company.
- In most jurisdictions, there is no cause of action for malpractice, and the concept of conflict of interest may not exist. Factor those elements into your relationship and familiarize yourself with Brazil’s laws regarding these issues.
- Find out whether attorney-client privilege is recognized in the foreign jurisdiction. If it is, what is the scope? Take that into account in your communications with your foreign counsel.
- When dealing with a civil law jurisdiction, you need to know how civil law concepts compare to common law to understand the advice given by your foreign counsel.
- Remember to factor in national holidays, different working hours, and long vacation periods prevalent in some jurisdictions. Lawyers in other countries may not feel compelled to work holidays as some US lawyers do.

*Brazilian TM and trade name registration; TM/trade name license agreement; recording requirements; and check transfer pricing—accounting/tax.*

Put a note on your calendar to call your company’s CPA firm tomorrow morning to discuss whether there will be a transfer pricing issue for Global’s trade name and trademark license to the joint venture due to the transfer of intellectual property from a US parent company to a foreign affiliate. If a transfer pricing issue exists, Global’s CPA will need to provide his input on the license fee that will be deemed payable under US and foreign tax law.

Global’s in-house patent lawyer is on a sailing trip in the Virgin Islands for the next two weeks, so add to your list—*Call outside patent counsel, re: Brazil*—to find out whether Global has a patent or pending patent application that would cover Brazil and the other countries in which Global intends to market its carbon fiber product via the joint venture. A Brazilian lawyer you met at last year’s ACC Annual meeting mentioned that Brazilian Central Bank approval is required for any technology transfer in Brazil in order for the contract to be enforceable and royalties to be paid, so you will discuss those requirements with Brazilian counsel and patent counsel tomorrow and find out whether royalties can be paid in US dollars.

The term sheet calls for up to three representatives of the Brazilian venture partner to travel to Global’s US headquarters within the first 12 months after the agreement is signed, and thereafter once each year, for training in the manufacture, transportation, and use of the carbon fiber material. The manufacturing process has remained a closely guarded secret to this point. Add another notation to your list: *Trade secret protection—check Brazil.*

At this point, an extensive meeting with Brazilian counsel may be necessary, and that a reliable Portuguese translator will probably be needed.

## US Export Control Issues

Global has been conducting business internationally for years, and US companies that engage in cross-border business are subject to US export regulations. The US government controls with whom US companies conduct business, which US technology and products can be exported and to what destinations, and how US companies conduct international business. As you review Global’s export compliance management system, keep in mind that these issues can significantly affect the company.

The US government maintains several lists of individuals and entities that US companies are not allowed to conduct business without prior US government authorization. The US Treasury Department Office of Foreign Assets Controls and the US Commerce Department Bureau of Industry and Security maintain these lists. Global should

## ACC Extras on... International Business

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- 203: Preparing for Unexpected Challenges: Managing International Business Travel Risks; and
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### Program Materials

*US Employee Liability Outside the United States* (2006 Annual Meeting). This comprehensive discussion uses hypothetical scenarios to teach you how to counsel your staff about personal liability issues, how to set up legal safeguards to avoid those liabilities, and how to deal with ethical issues related to employees' personal liability issues vs. your duty as counsel to the company. [www.acc.com/resource/v8213](http://www.acc.com/resource/v8213)

### Quick References

- *Cross Border Checklist: Doing a Deal in Canada* (2007). Acquisition-minded businesses and their advisers should keep in mind that Canada can be a significantly different legal, business, and regulatory market when it comes to cross-border deals and transactions. [www.acc.com/resource/v6798](http://www.acc.com/resource/v6798)
- *Resource Guide for International Business Transactions*. Courtesy of Lex Mundi, this resource is a very selective list of publications, online databases, websites, and seminar materials that provide resources useful in the transaction of business on an international scale. The guide begins with materials that provide a broad overview of the law of international business transactions, moves to resources that provide more in-depth treatment of specific types of transactions and the law one may encounter in the context of an international business transaction, continues with resources that provide the text of the laws of specific countries, and concludes with a listing of agencies involved in international business transactions. Specific international and foreign laws and treaties are not identified, but references to resources are included to identify the laws and treaties that impact specific transactions. [www.acc.com/resource/v7185](http://www.acc.com/resource/v7185)

screen the names of its Brazilian subsidiary's employees, the Brazilian joint venture partner, and the venture partner's principals against the prohibited parties lists to prevent doing business with a restricted party. Although these screens are not required, they are considered best practices when conducting business with non-US parties to ensure compliance with US export laws and regulations.

Because US export laws also are concerned with the activities of US subsidiaries, Global also must implement a customer screening system at its Brazilian subsidiary to ensure its subsidiary does not conduct business with restricted parties. Screening should not be a problem because your company already has a screening system in place at US headquarters, which can be implemented by the Brazilian subsidiary by accessing web links to the prohibited parties lists from the US Commerce Department's Bureau of Industry and Security website. You begin a new list of potential export compliance issues with: *Screen Brazilian JV partner and its principals, Brazilian subsidiary's employees, and implement customer screening system at Brazilian subsidiary.*

Global's advanced technology carbon fiber material is a dual-use item, meaning that the material could be used for either commercial or military purposes. You previously have obtained an official export control classification number from the Bureau of Industry and Security indicating that the material is subject to licensing requirements for national security reasons. This means that a license will be required to export the material to most destinations.

You review the Export Administration Regulations and determine that Global needs a Commerce Department license to export the carbon fiber to Brazil, which may take several weeks or months to obtain. Global must begin compiling the required information to prepare the export license applications as soon as possible if sales in South America are to ramp up. There is no fast track system to obtain US export licenses, therefore, you make a note that export licensing processing time should be accounted for when budgeting transaction times.

Although the VP and Global are committed to complying with US export laws, you are not looking forward to explaining to the VP that Global cannot export the material to its Brazilian subsidiary without an approved export license from the Commerce Department. The joint venture's business plan probably will have to be delayed until the required licenses are obtained. You add to your "to do" list: *Discuss licenses for exports to Brazil with VP.*

The business plan calls for the re-export of the material from Brazil to Uruguay, Chile and Venezuela. The re-export of the material to those countries also will require a license from the Commerce Department. Make a note to explain to the VP that the licensing process has to be

built into the venture's business plan, and add to your "to do" list: *Additional licenses for re-export from Brazil.*

Any agreement to sell the material to a customer in those countries must be made contingent on the issuance of any required licenses to ensure the venture is not contractually required to export or re-export products in a manner that would violate US export laws and regulations. Review the sales agreements to ensure that condition is included. Make a note to stay on top of the political developments regarding Venezuela. The US government has imposed an arms embargo against Venezuela, which could be expanded to cover commercial items if the relationship between the countries deteriorates further. So, add to your "to do" list: *Review sales agreements to ensure license condition is included.*

The joint venture term sheet calls for representatives of the Brazilian venture partner to be trained on manufacturing, transportation and use techniques in the United States. Since the export of US-origin technology and know-how is controlled, confirm whether that transfer of knowledge, which is a "deemed export," requires a license. Add to your "to do" list: *License for deemed export of know-how?*

Because **US export laws** also are concerned with the activities of **US subsidiaries**, Global also must implement a **customer screening system** at its **Brazilian** subsidiary to ensure its subsidiary does not conduct business with **restricted parties**.

In addition, the carbon fiber may require a re-export license based on the expected end-use or end-user of the material. Global's Brazilian subsidiary must establish a procedure to determine if a prospective customer is engaged in nuclear, missile or chemical/biological activities or if the material will be used for a related end-use. These restrictions are solely based on the end-user and the expected end-use, and are separate from the product-specific export restric-

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You may write for the **ACC Top Ten** published on our website. Give us just two pages reflecting your top ten recommendations, practical steps, or items in-house counsel should know about. **Top Ten** lists can be "ripped from the headlines" or spring from matters of current interest (in-house and outside counsel authors), or be general practice tips (in-house counsel only). **Contact Nichole Opkins at [opkins@acc.com](mailto:opkins@acc.com) or 202.293.4103 ext. 361.**

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tions. Since Global already has a similar verification process in place at US headquarters, you do not consider this to be a stumbling block once the Brazilian employees are properly trained. Add to your list: *End-use/end-user certification and employee training and implementation in Brazil.*

Much of the responsibility for complying with export controls in this venture will fall on Global's Brazilian subsidiary. Since it will not be possible for you to oversee every re-export transaction that takes place from Brazil, you will have to explain to the VP the need for the Brazilian subsidiary to adopt an export compliance program and train its employees on US export compliance and the consequences of failing to comply. Current penalties under the Export Administration Regulations are \$50,000 per civil violation, and one transaction gone wrong could result in several violations. Willful violations may result in imprisonment for Global's executives. You begin to wonder where you can find an export control lawyer or consultant who speaks Portuguese and English fluently and make a note to begin your search.

## Summer Reading

For more information, see the following resources and websites.

- The prohibited parties lists can be found on the website of the US Commerce Department's Bureau of Industry and Security, at [www.bis.doc.gov/complianceandenforcement/liststocheck](http://www.bis.doc.gov/complianceandenforcement/liststocheck)
- The following websites can be helpful to your due diligence investigation of a prospective foreign intermediary: US Department of State ([www.usembassy.state.gov](http://www.usembassy.state.gov), which provides links to websites of US embassies, consulates, and diplomatic missions); US Department of Commerce ([www.commerce.gov](http://www.commerce.gov)); US Chamber of Commerce ([www.uschamber.org](http://www.uschamber.org)); and US Department of State ([www.state.gov](http://www.state.gov))
- *Dahl's Law Dictionary*, Henry Saint Dahl, Third Edition 1999
- Department of Commerce, Bureau of Industry and Security website [www.bis.doc.gov](http://www.bis.doc.gov)
- Department of Treasury, Office of Foreign Assets Controls [www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac)
- Department of Justice FCPA site [www.usdoj.gov/criminal/fraud/fcpa](http://www.usdoj.gov/criminal/fraud/fcpa)
- Export Administration Regulations [www.gpo.gov/bis/ear/ear\\_data](http://www.gpo.gov/bis/ear/ear_data)
- *Doing Business Internationally*, ACC InfoPAK 2006 [www.acc.com/resource/v6813](http://www.acc.com/resource/v6813)

## Agency Issues

Global's company policies require a due diligence investigation of prospective agents before the agent is retained. Normally you start by contacting Dun & Bradstreet, doing an internet search for press accounts about the proposed agent, calling the US Embassy of the agent's government, checking international company profiles prepared by the US Export Assistance Center of the US Department of Commerce, and having discussions with the US Chamber of Commerce and the US State Department desk officers for the agent's country. In the past, you have hired an outside investigator to perform background research on the proposed agent if the circumstances warrant it.

In addition to determining whether the agent is likely to be successful from a commercial standpoint, the due diligence review establishes whether there is a significant risk that the agent previously has violated (or caused its principal to violate) the FCPA and whether the agent holds a position or has family or business ties that make FCPA compliance a special concern. Foreign intermediaries that bribe government officials can create civil and criminal liability for their principals, and the fact that Global's Brazilian agent was unsuccessful in obtaining import licenses is not a defense to FCPA liability. Requests by Global's agent for payments to be made to a Cayman Islands account and his connections to the Brazilian government are red flags that require investigation and discussion with outside counsel who has expertise in FCPA compliance. You don't see anything in the file that indicates a due diligence investigation was done in this case. You note on your list: *Investigate Brazilian agent.*

Global's FCPA compliance program regarding foreign intermediaries is designed to identify and address any FCPA issues before Global becomes subject to criminal and civil penalties. It requires:

- A representation that the intermediary is not a foreign official or politician to whom payments are regulated by the FCPA.
- Consideration of how an agent's proposed compensation compares to that of similar agents in the same country.
- A representation in the contract that the agent understands the FCPA.
- The agent's agreement to refrain from making prohibited payments or offers and to report any requests for bribes immediately in writing to Global.
- A requirement for periodic certification regarding the intermediary's FCPA compliance.
- Global's contractual right to terminate the contract immediately for cause if the intermediary violates the FCPA or does not provide the required certifications.

Somewhat exasperated, you wonder why the VP did not follow the policy, and add to your list: *Organize company-wide training on foreign intermediaries on an expedited basis.*



The VP has given you a copy of an agency agreement in English, which states that there is a parallel Portuguese version. The English version does not specify which version governs in case of a conflict between the two. You note to yourself: *Check the Portuguese agency contract and Brazilian law—which version governs, and what are the registration requirements in Brazil?*

Tomorrow you will ask local counsel whether Brazilian law presumes that the Portuguese version controls, and whether the contract was required to be registered with local governmental authorities to be enforceable.

Agents normally are independent contractors, rather than employees, because the agent retains control over the performance of his or her duties to the principal. However, if Global has too much authority over the agent's performance, particularly in an exclusive relationship, the agent may be deemed to be Global's employee. Brazilian law will determine the degree of control that causes the intermediary to be treated as an employee. That could lead to unexpected difficulties for Global, including responsibility for employee benefits mandated by Brazilian law and difficulty terminating the agent, as well as expensive tax consequences. You cancel tomorrow's afternoon appointments to allow time to discuss those issues with Brazilian counsel.

Past experience tells you that foreign law often regulates Global's ability to terminate an agent and the compensation that must be paid to the agent on termination, usually based on the length of the term for which the agent represented Global, the amount of money the agent invested in developing the business, and the goodwill created for Global by the agent. There may be mandatory notice periods prior to termination becoming effective. The agent often cannot effectively waive those compensation and notice protections. Add to the questions to be discussed with Brazilian counsel: *Issues relating to termination of agent.*

### Governing Law and Dispute Resolution

Your department has a policy requiring all contracts relating to cross-border transactions to include an arbitration provision if the other party is a resident in a country that is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), such as Brazil. Global's standard arbitration clause provides:

- That all disputes must be settled by arbitration in the location agreed by the parties, and that the arbitration clause does not preclude either party from seeking interim and equitable relief such as injunctions.
- That UNCITRAL rules or American Arbitration Association international arbitration rules (whichever Global's in-house counsel considers the best choice in each situation) will govern the arbitration proceedings.

You seem to recall that **Brazil** has adopted the **Bustamante Code**, which requires suit to be brought in the **jurisdiction** of the **defendant's residence**.

- The method for choosing the arbitrators, and sometimes restrictions on their nationality.
- Deadlines for submission of evidence and for scheduling the arbitral hearing.
- That the proceedings and all evidence must be submitted in English (with the original foreign language document attached, in the case of documentary evidence).
- That either party has the right to have legal counsel and a translator present.

Unfortunately, you discover that Global's contract with its Brazilian agent does not contain a provision calling for settlement of disputes by arbitration even though Brazil is party to the New York Convention. To make matters worse, there is no choice of governing law in the contract. Send a privileged email to the VP requesting that he proceed no further with the negotiation of the joint venture documents until you have had an opportunity to discuss. You intend to make sure that you have input on the dispute resolution provisions in that contract.

You suspect that a Brazilian court is likely to apply Brazilian law to the dispute between Global and its agent, since the agent is a resident in Brazil, and most of the performance under the contract was to occur in Brazil. Global will not be able to raise a *forum non conveniens* defense to the jurisdiction of the Brazilian court because that concept is not recognized in civil law countries, such as Brazil. You seem to recall that Brazil has adopted the Bustamante Code, which requires suit to be brought in the jurisdiction of the defendant's residence. The agency agreement you have reviewed was not notarized in Brazil, possibly giving Global additional grounds for dismissal of the agent's claim. You add to your list of questions for local counsel: *Discuss jurisdiction of Brazilian court; move for dismissal?*

### Now What?

What a day! If the rest of the week continues like this you're going to need two associate general counsels, instead of the one you have been recruiting. Good help, that's what you need. 🚧

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