




Expanding Your Nonprofit's Global Footprint: Practical Considerations and Key Developments

Venable Nonprofit Webinar Series



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Road Map

- **Form of Entity:** Scope of activities and associated impacts
- **Operational Considerations:** Foreign law, tax, data privacy, security, and employment issues
- **Corruption Risks:** Understanding your obligations under U.S. anti-corruption laws
- **Sanctions, Export Controls, and Other Considerations:** Restrictions pertaining to certain entities and exports of goods, services, and technology
- **Compliance Considerations:** How to protect yourself

Choosing Form of Entity/Operation Overseas?

- What are your overseas activities/goals?
 - Long term/short term?
 - Partner required or independent presence?
 - Activities
 - Short term: Disaster relief, one-off conferences and trade shows
 - Longer term: Social programs, membership organizations, fundraising, employees
- Answers may impact
 - Type of registration or license required, activities permitted by local governments based on public policies of national government
 - Whether a local partner is needed
 - Flow of funds

Organizational Options

Specific/isolated event vs. ongoing presence

- Host a one-time conference
- Use of association management company or employer of record
- Engage with local DAF
- Affiliation with a similarly situated association (i.e., a local entity)
- Joint venture
- Local office of a U.S. nonprofit
- Establish an “in-country branch”
- Establish a nonprofit entity under local law
- Establish a for-profit entity under local law

Generally, the more established the operations are, the greater the potential restrictions.

Key: How to transfer money to support the activities?

Foreign Law Considerations

Know the restrictions!

- What does a nonprofit structure look like?
 - Branch/separate entity; LLC
- Any foreign controls on currency flow?
 - License required?
 - Prohibitions on hard currency movement?
 - Limits on remittances or banking?
 - Practical challenges in collection of dues/revenue or repatriation of funds to U.S. nonprofit?

Data Privacy

International data privacy concerns

- Compliance with various international laws
 - What are the data rules and restrictions?
 - California CCPA, EU/UK GDPR, Brazil LGPD, etc.
- Can you share data across international borders?
 - Must have appropriate safeguards – Standard Contractual Clauses (SCC), Binding Corporate Rules (BCRs)
- Consent and transparency:
 - Privacy policies and notices must comply with local laws and be transparent about data use
- Security measures: Storage, sharing, incident response
- Ethical considerations:
 - Data about vulnerable individuals (refugees)
 - Politically sensitive data

Tax Implications

General rules:

- Certain types of cross-border payments by U.S. nonprofit organizations are subject to withholding tax.
- All cross-border payments by U.S. nonprofit organizations are subject to IRS documentation requirements.

Foreign country requirements: Many countries require registration or approval for foreign nonprofits to operate or receive tax benefits (e.g., deductible donations).

Branch vs. subsidiary: Operating as a branch vs. a legally separate subsidiary affects liability and tax obligations.

Value-added tax (VAT) or GST: Nonprofits may be subject to VAT or similar taxes on goods/services sold, even if they are tax-exempt at home.

Transfer pricing: Transactions between related entities in different countries must be priced fairly.

Employment Issues

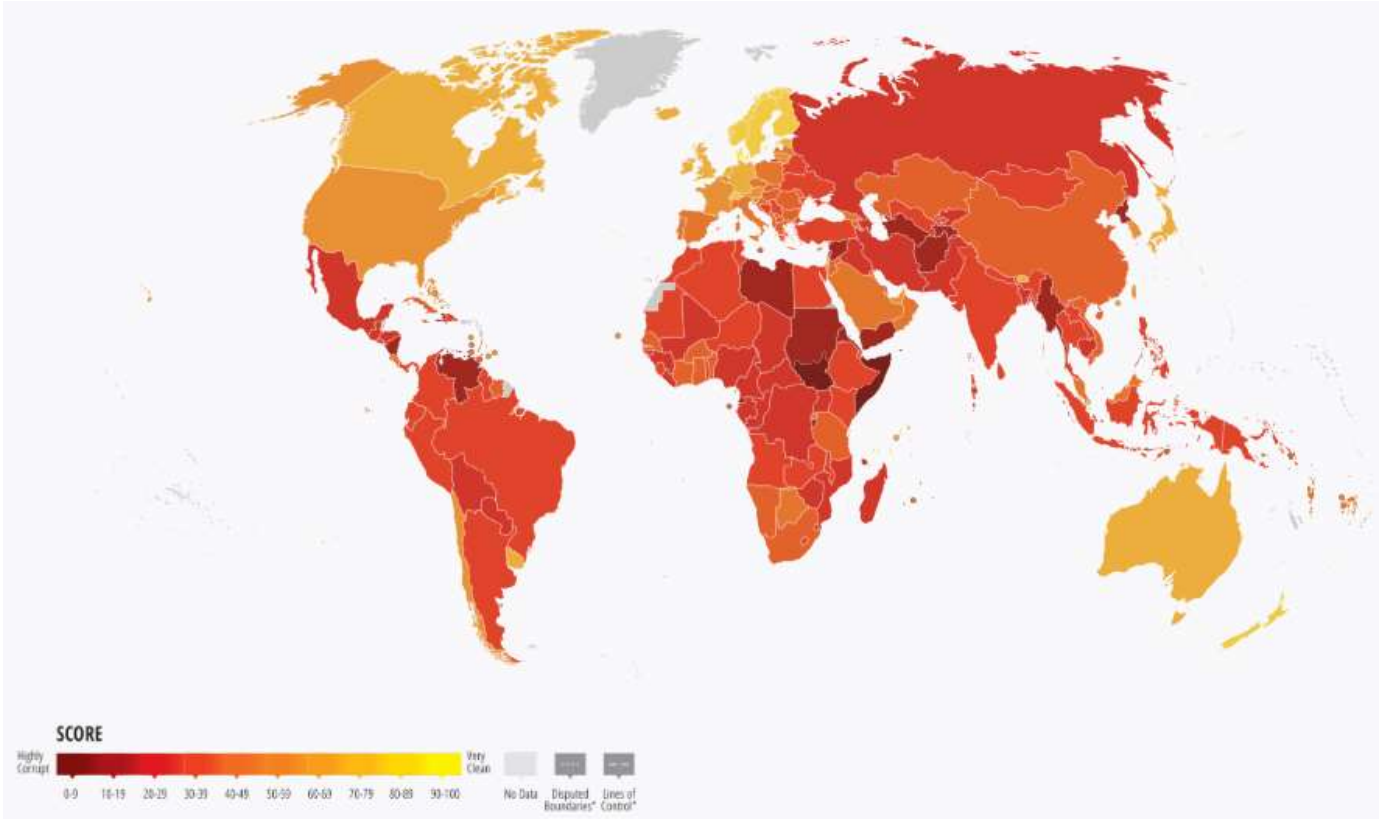
Secondment/Employer of Record Arrangements

- Example: U.S. nonprofit organization would like to employ in-country manager.
- Issue: In-country manager would like to retain certain U.S. benefits (retirement plan, medical benefits, etc.).
- Solution: In-country manager is employed by U.S. nonprofit organization, which enters into secondment/EOR arrangement with non-U.S. organization for a defined period of time.

Other Issues

- Employee is subject to foreign and local individual taxes
- Subject to both foreign country and U.S. employment laws
 - Consider hiring/firing requirements in each country
- Personal security/safeguarding

Corruption Heat Map



U.S. Foreign Corrupt Practices Act (FCPA)

- Enacted by Congress in 1977 to address rampant bribery of foreign government officials
 - Enforcement currently suspended by administration but recommend continued compliance since statute of limitations is five years and the law is still on the books. Continued risk of prosecution.
- Anti-Bribery Provisions
 - Prohibits the paying of, offering, promising to pay (or authorizing to pay or offering) money or “anything of value,”
 - With corrupt intent, directly or indirectly,
 - To a “foreign government official” or political party official,
 - For the purpose of: (i) influencing an official act or decision; (ii) causing the official to fail to perform his lawful duty; or (iii) obtaining or retaining business (including non-profit business) or to secure any improper advantage.

Understanding the FCPA

- Applicability of the FCPA:
 - Is the country at a high risk for corruption?
 - DOJ has specifically stated that nonprofits are not exempt.
 - Who is a “foreign government official”? Broad definition.
 - “Agency” relationship with partners abroad. U.S.-based nonprofit can be held liable for the acts of partners abroad under FCPA.
 - Beware of *quid pro quo* arrangements.
- Other national and international anti-bribery laws
 - UK Bribery Act (includes commercial bribery)
 - OECD (international recognition and implementation)

U.S. Sanctions and Export Controls

U.S. economic sanctions (OFAC)

- U.S. sanctions are constantly changing and may affect ability to do business in certain countries and with nationals or entities based in those countries.
 - Comprehensive sanctions: Iran, Cuba, N. Korea, Crimea/DNR/LNR in Ukraine
 - Other high-risk areas – Russia, Venezuela, Afghanistan, Sudan, etc.
- “Targeted” sanctions via SDN listings: Organizations, charities, banks, individuals, etc.
- Some “general licenses” for NGO activities, but narrow and need to be followed strictly.

U.S. Export Controls

- Controls on “exports” or releases of U.S.-origin goods, technology, and services to certain destinations, entities, and end users.
- Exports of computers, technology, samples, etc. in support of overseas operations may be affected.

Anti-boycott

- Back in focus these days.
- Prohibited activities include:
 - Refusals or agreements to refuse to do business with or in a boycotted country or with blacklisted companies
 - Discrimination or agreements to discriminate against a U.S. person based on race, religion, sex, or national origin
 - Furnishing information or agreements to furnish information about business relationships with or in a boycotted country or with blacklisted companies
 - Furnishing information or agreements to furnish information about the race, religion, sex, or national origin of a U.S. person
 - Implementation of letters of credit containing prohibited boycott terms or conditions
 - Taking actions with the intent to evade anti-boycott provisions
- Requests must be reported even if compliance is refused.

Compliance Considerations

- Essential provisions for protecting your interests:
 - Regulatory vs. contractual considerations
 - Careful review of any agreement between your U.S.-based nonprofit and any foreign person/entity is key
- A few essential provisions for agreements:
 - Dispute resolution: forum, place, and type (e.g., mediation, arbitration, litigation)
 - Compliance with laws: anti-corruption, export controls/sanctions, anti-boycott, etc.
 - Governing law: excluding a “conflicts of law provision”
 - Agency vs. “independent contractor”
 - IP, TM, and copyright language
 - Termination provisions
 - Always a country- and fact-specific analysis
 - Engagement with local counsel advisable



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