3. General Counsel Roundtable

Six Guidelines for Managing Legal Risk in AI Adoption,' Chantal Bernier, Dentons (July 21, 2025) (report)

'Global Mobility Management – A Primer for Chief Legal Officers and HR Executives,' Angelo A. Paparelli, Peter T. Schiron, Jr., and Mareza I. Estevez, Seyfarth Shaw (Oct 25, 2011)(report)

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Global Mobility Management – A Primer for Chief Legal Officers and HR Executives

By: Angelo A. Paparelli, Peter T. Schiron, Jr., and Mareza I. Estevez*

To expatriates and business visitors dispatched to far-flung locales by their corporate employers, the world can be an exhilarating, wondrous and fearsome place. The seconded worker's chance to gain new skills, colleagues and experiences through a foreign deputation, as well as familial opportunities for work, education and cultural enrichment, may be offset by the potential for failure to acclimatize, social isolation, and "out-of-sight/out-of-mind" career retrogression upon return to corporate headquarters.

For Chief Legal Officers (CLOs) and executives in Human Resources (HR), the management of global mobility – the movement of personnel and their family members to as many as 190 or more of the world's countries – presents a perhaps more desk-bound, but still quite daunting, set of opportunities and risks. Each nation of the globe has developed a body of (more or less complex) laws governing the admission, rights and duties of immigrants and sojourners. National immigration rules, moreover, do not operate in isolation, but are codified, decreed or judicially created against a backdrop of other national or regional laws dealing with labor, employment, taxation, privacy, intellectual-property protection, criminal sanctions, and local corporate registration requirements, among others. Adding to the complexity are concerns over cultural differences, immigrant integration, protection of domestic labor, sovereign instability, terrorism and organized crime. The globalized economy, after all, is no bed of daffodils.

This article will identify specific challenges and offer suggested strategies for CLOs and senior HR professionals when grappling with the legal and practical difficulties that arise in Global Mobility Management (GMM). Because there can be no one-size-fits-all solution, the authors have consulted with a variety of experienced and generous experts – in-house legal counsel, HR professionals, members of trade and bar associations, and immigration lawyers around the world – to benchmark best practices and identify avoidable stumbling blocks in the international movement of personnel. The article will touch on several key GMM considerations: national differences, alternative business models, legal compliance/risk mitigation, cost control, data management/integrity/privacy, quality assurance, and performance measurement.

While faint-hearted corporate officials or those with solely a domestic purview need proceed no further, others may find that GMM, when well conceived and overseen, offers many ways for multinational employers to help achieve business mission. Access to outstanding talent unavailable in the destination or home countries, expansion of commerce into mature and developing markets, more worldly and wise business leaders, culturally relevant branding and labor arbitrage – these are but a

few of GMM's benefits.

1. National Differences. The immigration rules in the world's nation states differ widely in detail; yet familiar patterns emerge. National immigration schemas tend to entice highly educated and accomplished employees, personnel whose talents are not available in the local labor market and wealthy investors willing and able to create jobs, while restricting the flow of unskilled workers or those professionals who are perceived by the host country as available domestically.

Concerns about labor-market protection, cultural integration, language fluency and increasingly strict punishments for immigration violations are likewise reflected in immigration requirements worldwide. A few examples illustrate the regulatory patterns.

Some degree of language fluency is required for employment-based immigration to Austria (German) and Italy (of course, Italian), while other countries require demonstrated efforts at integration. The Netherlands requires satisfaction after three-and-a-half years (five years in some cases) of the "Inburgeringscursus" examination, a test requiring knowledge of Dutch society and basic Dutch language skills.

Still, according to Dutch immigration lawyer, Sander Groen, encouragement of employment-based immigration is also growing in Holland:

With the planned introduction of the Modern Migration Policy (MMP) this year, The Netherlands will have the most facilitating corporate immigration program in the [European Union]. Companies will have access to speedy facilitated immigration procedures. Processing time will be two weeks and the residence card will be awaiting the foreign employee on arrival in the country. Companies, on the other hand, will have more responsibilities under the MMP, and can be fined if not compliant.

In the United Kingdom, the last eight months have seen major changes to employment based immigration, driven by the new coalition Government's aim to reduce net immigration. This has resulted in permanent immigration quotas for employers wanting to employ non-EU new hires as well as the closure of the highly skilled non-sponsored entry routes. Nick Rollason, a London based immigration lawyer, sees a shift in emphasis towards more temporary mobility:

> The Immigration limits have meant that it has been harder for UK employers to hire from outside the EU. Under the new annual limits in place from April 2011, employers will battle it out each month to see who is allocated enough points to obtain a Certificate of Sponsorship to hire these individuals. As the possibility of being granted a Certificate is based primarily on salary levels, we expect some wage inflation. Restrictions on the intra company transfer (ICT) route now means that those with salaries of less than £40,000 can only come for a maximum of 12 months and cannot then return as ICTs for a further 12 months, while those with higher salaries can stay for a maximum of five years with no possibility of obtaining permanent residence. Employers [must therefore] . . . rethink their global mobility policies.

In Mexico, although that country encourages foreign professional workers and foreign investment, particularly through exemptions from local hire requirements as in the IT sector, the general perception of risk, particularly that related to crime and lawlessness, greatly reduces the perceived value of incentives for work permits.

In Canada, according to Jacqueline Bart, an immigration attorney practicing in Toronto, the current governmental emphasis is on immigration penalties for out-of-compliance companies:

> Canada has become increasingly enforcement oriented. The Canadian government has introduced new legislation, effective April 1, 2011, which supplements previous enforcement legislation. These new

> measures place a substantial burden on employers to ensure compliance with all aspects of immigration law in Canada.

In India, the government has imposed additional controls on immigration, presumably in part because of the entry into the country and alleged participation in the Mumbai terrorist attack of a Pakistani-American (David Headley), as well as the large population of undocumented Chinese immigrants. Moreover, as explained by Poorvi Chothani, an immigration lawyer practicing in Mumbai, protection of local labor markets is the common theme:

> Increased interest in India has resulted in an unprecedented demand for Indian employment visas. India has . . . has introduced as of late 2010 a minimum salary requirement of US$ 25,000 for almost all foreign nationals who wish to work in India [and be exempted from other burdensome restrictions]. [These changes], along with [the fact that] employment visas [are] only issued to 'highly skilled or qualified professionals' and a ban [is in place] on the engagement of foreign nationals in routine, ordinary or secretarial/clerical jobs, are measures to protect the local work force. . . .[They reflect reactive] protectionist measures introduced in the UK, the requirement to pay a market salary and other restrictions on certain Australian visas and changes to the qualifying categories for certain Canadian visas. Protectionism seems to be the largest influence on countries' changing immigration and visa policies.

The varieties of national immigration laws thus require CLOs and HR executives to craft a GMM strategy that takes into account and adapts to these non-static differences, while still serving the needs of the global enterprise.

2. Alternative GMM Business Models. In many companies, GMM operating models have evolved in response to ad hoc needs. An executive or a team of employees (often of various nationalities) urgently needs to relocate to another country on a long-term secondment. Or, a commercial opportunity arises in a foreign state that will require the prolonged, if intermittent, presence of sales and technical personnel (with the group as a whole carrying a mix of national passports). The ***ad hoc* or decentralized approach** typically involves the enlistment of local HR personnel or the hectic search for an immigration lawyer or firm in the country of destination. The pattern is then repeated in different countries with each new secondment or series of business visits. The decentralized model carries with it substantial risks. Officials at corporate headquarters may lack the ability to gather and track information such as visa expiration dates, manage tax and other business risks, assure host-country legal compliance, maintain a consistent level of quality, control costs, or explain to the soon-to-be expatriate the immigration process and rules in the foreign destination.

At the other end of the spectrum, experienced multinationals have adopted elaborate arrangements for **centralized control** of the migration process from corporate headquarters or within major regions of the world. Few companies, however, have the capacity and expertise to devote resources for in-house preparation of visa and work permit applications in multiple foreign jurisdictions. Hence, even under the centralized model, global companies must identify and manage outsourced relationships with a bevy of widely dispersed immigration lawyers, law-firm alliances, registered migration agents (in companies such as Japan and Australia where such status is recognized), relocation companies and other types of vendors providing outbound migration services.

Typically, providers are required to enter into Service Level Agreements (SLAs) offering high-volume work with fixed legal fees but requiring assured response times for the delivery of an array of immigration legal services in a host of foreign countries. Under the usual SLA, providers must take responsibility for capturing and protecting or encrypting sensitive personal information to be used in visa applications and immigration petitions, tracking passport, visa and status expirations, responding with prescribed promptness to questions from expatriates, HR or the legal department, reporting changes in local immigration rules, and complying with the corporation's ethics code and national laws.

In between the *ad hoc* and centralized models, another approach has emerged, that of a **single project manager**, usually an American or European law or accounting firm, to which the bulk of responsibility for GMM is fully outsourced. In this arrangement, for a negotiated fee, the project manager, on behalf of the global company, performs all or some of the migration work itself, negotiates individual SLAs with destination providers, maintains an integrated immigration case management database, monitors performance and issues a single monthly or periodic invoice to the client.

To determine the optimal GMM organizational structure, the CLO and HR executives must consider a variety of factors. These include the number of home- and host-country locations and related business and tax law implications; the mix of nationalities represented in the global enterprise's employee population; the capabilities and bandwidth within the organization of such supporting functions as finance, payroll, travel, HR and legal; the inclination of senior management to support or limit the outsourcing of mobility services; the level of support the enterprise is prepared to deliver on a consistent basis to its mobile population (concierge service is of course more expensive and burdensome than "traveler-you're-on-your-own" policies); the relative simplicity or complexity of corporate policies involving out-of-country assignments; the corporation's level of risk tolerance; and the degree to which line managers in the particular organization are authorized or able to overrule process or policy decisions involving GMM.

3. Legal Compliance/Risk Mitigation. As noted, GMM mandates not merely scrupulous compliance with a vast array of foreign countries' immigration laws. The global assignment of

personnel also requires adherence to many categories of national laws that intersect with host-country immigration rules. These areas of concern extend to taxation, trade, business, and employment laws, employee benefits, anti-bribery legislation, conflicts of law, as well as national and European Union regulations relating to privacy and electronic-data transmission.

Furthermore, violation of immigration and other laws routinely trigger negative publicity that may originate in one country but result in brand damage and impaired relationships with foreign consumers, business partners and governments elsewhere. Securing consistently high-quality legal representation and counsel in multiple foreign countries with expertise in these disparate fields of law is challenging under any of the business models discussed above, but extremely difficult with the decentralized approach. Irrespective of the particular model chosen, however, CLOs and HR executives should not wholly abdicate responsibility for global law compliance and risk mitigation through an outsourcing or project management arrangement.

One particularly vexing and recurrent problem involves the potential for breach of legal rules governing the entry and activities in the host country of sojourners who are variously dubbed "business commuters" or "stealth visitors." The exigencies of business, for some, lead to a stretching of the envelope and the masking of activities requiring a work permit under the guise of a routine business visit. Stealth visitors place the global enterprise at serious risk, and efforts to deal responsibly with the problem admit of few foolproof solutions.

Many large multi-national companies are severely challenged when attempting to monitor systematically the extensive foreign travel and return to home base of all personnel. Thus, corporate headquarters may have no way of knowing where their people are situated at any given moment or what possible fabrication or embellishment of facts may have been made to receiving countries' border inspectors and immigration officers. Once the business commuter makes entry to a foreign country, the activities in which the individual is engaged may trigger tax liability (e.g., the creation of a permanent establishment for tax purposes), violate local employment and immigration laws, impair intellectual property rights, and possibly result in incarceration and substantial fines. One solution, albeit difficult to implement, is the integration of the travel

department with the GMM function. Under this approach, which must be supported by automated technology with periodic auditing, the travel department will not authorize air or rail tickets, rental cars or foreign lodging unless the employee presents proof of a required work visa, work permit or residency status in the destination country, or, presents evidence of intended activities abroad that are clearly permitted as a business visitor under the particular country's laws.

4. Performance Measurement, Quality Assurance and Cost Control. These areas of GMM must be maintained on a consistent basis. GMM accountability requires nearly-constant vigilance, perpetual fine-tuning and comparative benchmarking of like companies because, over time, foreign laws and procedures are prone to change, existing providers may flag in performance, alternate providers may surface, or the fundamental needs of the global enterprise may morph. In addition to consistent reporting and monitoring, regular auditing is a key accountability tool; thus, the development of expertise – whether internal or through an outside advisor/partner – is elemental. Increasingly, global companies are using stakeholder satisfaction surveys, negotiated fee arrangements for fixed periods, SLAs, audits of fees/costs and law compliance, and periodic provider reviews to confirm that quality and performance, as well as law compliance and risk mitigation, are at high levels and costs are contained without diminution in service levels.

In addition, multinational companies regularly adapt business-process-improvement strategies such as "Six Sigma" and "Lean Services" that have long enjoyed popularity elsewhere within the enterprise. Six Sigma is a metrics-based improvement strategy that strives, through "voice of the client" exercises intended to ascertain optimal service-delivery standards, business-process mapping, and error-identification and error-correction strategies, to reduce transaction errors to a targeted minimal level (no more than six errors in every one million transactions). Lean Services focuses upon the acceleration of cycle time and the elimination of waste in all its forms, and may be better suited in the GMM service-provider setting than pure Six Sigma strategies (which originated in industries primarily involved in the manufacturing of goods, machinery and equipment).

CLOs and HR executives should therefore (a) maintain flexibility in the terms and duration of engagement agreements with service providers or a project manager, (b) enlist only those providers who themselves maintain current knowledge of local legal requirements, consistently meet SLA requirements, and employ sophisticated technology and advanced business-improvement methods, and (c) "drill down" on the project manager's in-country providers to ensure that there are adequate options for back-up, alternative or substitute subcontractors who are enlisted or readily available.

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Most importantly, CLOs, in the final analysis, have ultimate responsibility for law compliance. They must therefore communicate clearly to all stakeholders in the GMM process chain that the legal department "owns and controls" global mobility, even if other corporate functions, such as HR, or other internal or external participants, support the CLO in fulfilling that business-critical responsibility. This undertaking requires substantial effort and achievement, sometimes of Shakespearean proportions – for, as the Bard reminds us: "An enterprise, when fairly once begun, should not be left till all that ought is won."

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Six guidelines for managing legal risk in AI adoption

DENTONS

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Every artificial intelligence (AI) system has legal implications—if it processes personal data, as it so often does, it engages privacy laws; if it involves using copyright-protected works, it may infringe intellectual property rights; if it materially displaces or replaces staff functions, employment law may come into play; and if it makes decisions autonomously, it may raise liability issues. We could go on. The point is, with or without dedicated AI laws, the rule of law applies to AI. Where there are no dedicated AI laws, managing AI legal risk requires a corporate AI management program. The main AI-specific norms to guide us on AI risk management come from the International Standards Organization (ISO) and the National Institute of Standards and Technology (NIST). These emerging standards on AI are the guideposts to manage legal risk in developing or adopting AI.

Reflecting the decision flow of corporate management, we have condensed the AI legal risk management process in six steps.

1. Visioning

It may be the most important section of ISO 42001 on AI systems management[1]: section 4, “Context of the organization.”

Each organization has a different role in relation to AI (developer, supplier or user) and, within these roles, a different business model or core mission. The legally compliant use of AI starts with aligning the organization’s adoption of AI with its core business and context.

ISO 42001 states the relevant contextual considerations:

- What are the applicable legal requirements, including prohibited uses of AI?
- What policies, guidelines and decisions from regulators are relevant to the development and use of AI systems?
- What are the incentives, such as administrative efficiencies, or consequences, such as safety risk, associated with the intended purpose and the use of AI systems?
- How would the intended use of AI play in the culture, traditions, values, norms and ethics of the organization’s commercial environment?
- What are the competitive landscape and trends for new products and services using AI systems?
- What is the impact on the stakeholders, whether users, customers, employees or partners?

Internal context is also relevant to ensure legal compliance, including:

- The organization's governance structures, objectives, policies and procedures;
- Contractual obligations;
- The intended purpose of the specific AI system to be developed or used;
- The categories of data involved, such as personal data, intellectual product, other protected data, publicly available data;
- In relation to personal information, the role of the organization as a controller or processor.

This visioning exercise is the first step in aligning the organization's management of AI with its legal environment and grounding the exercise in its legal obligations.

2. Defining

We learn from experience the importance of providing a clear definition of AI throughout the organization as a precondition of compliance. Even the Organization for Economic Co-operation and Development (OECD) AI Policy Observatory concedes that the distinction between AI and non-AI machine-based systems is "elusive." [2] If it is to experts, it will be even more elusive to staff as they envisage technological solutions to support the organization's business. The OECD's updated definition is authoritative and accessible: [3]

> "*An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment*."

The OECD Explanatory Memorandum of this updated version [4] draws out three main characteristics of AI:

- Machine learning: the system forms its own understanding of the input it receives to generate its own outputs.
- Inferences: the outputs result from inferences, by the system.
- Autonomy: the system infers from its own logic.

Having a clear understanding of what constitutes AI, the next step in assessing legal compliance is obtaining a clear description of the AI system envisaged:

- What are the scope and features of the AI system to identify its legal implications and applicable laws?
- On that basis, what are the acceptable and non-acceptable AI system's uses?
- What are the organization's acceptable and non-acceptable risks?

More often than not, this step involves lawyers from each applicable or potentially applicable law to map out legal risk.

3. Planning

Having defined the legal implications of the envisaged AI system, the organization must develop the internal governance framework to ensure accountability for compliance. ISO/IEC 38507 on IT Governance[5] identifies the three characteristics of AI that impact compliance assurance:

- Decision automation: AI can make decisions at unprecedented speed, making them a powerful tool calling for

commensurate oversight.

- Data-driven problem solving: The large amounts of data processed by AI creates both high potential and increased data governance challenges.
- Adaptive systems: AI systems retrain, learning from their learning. This adaptiveness, or "continual learning," may circumvent its initial objectives and controls. Oversight for legal compliance must therefore also be continual.

On that basis, ISO/IEC 38507 calls for the "governing body of the organization" to ensure that:

- Policies are in place on appropriate use of AI.
- Roles and responsibilities are assigned.
- Adequate human oversight and controls apply to all steps of AI use.
- All AI users have proper training and authority on AI policies.

As a north star, ISO/IEC 38507 lists the objectives organizations should aim for, corresponding to those identified by the NIST Artificial Intelligence Risk Management Framework (NIST Framework)[6] as well as by national AI strategies:

- Accountability, through a proper AI governance program.
- Reputation and trust, built on the culture, traditions, values, norms and ethics of the organization's environment, identified through the visioning exercise.
- Duty of care, based on the legal implications assessment.
- Safety, encompassing all risks of harm to develop legally required mitigation.
- Security and privacy of systems, covering cybersecurity with a specific concern for meeting privacy law requirements on security of personal data.
- Data protection and integrity, referring to all privacy rights and managing legal risk of biased outputs.
- Transparency of decision-making on AI, as well as of the logic involved, to ensure explainability as required by privacy law. [7]

Section 5 of ISO 42001 states the essential elements of an organizational AI policy:

- Roles, responsibilities and authorities.
- Framework for setting AI objectives.
- Specific requirements for AI adoption.
- Commitment to the articulated vision.
- Commitment to continual improvement of the AI management system.
- Reference to other relevant corporate policies to incorporate the AI policy in the organization's policy framework.
- Risks and opportunities assessment process.
- AI risk criteria that support:

- Distinguishing acceptable from non-acceptable risks;
- Performing AI risk assessments including privacy impact assessments;
- Conducting AI risk treatment; and
- Assessing AI risk impacts.
- Control objectives and mechanisms.

This AI policy must be available throughout the organization as well as to interested parties, and be integrated to all other policies of the organization.

Legally, it is key to demonstrating accountability.

4. Implementing

Risk assessment stands out as the preliminary phase of implementation of AI systems.. ISO /IEC 23894[8] and the NIST Framework [9] provide guidance.

Echoing and referring to ISO standards, NIST identifies seven outcomes against which to assess AI risk including legal risk:

- Validation and reliability, meaning the "*confirmation, through the provision of objective evidence, that the requirements for a specific intended use or application have been fulfilled*" (source: ISO 9000:2015).
- Safety, meaning AI systems should "*not, under defined conditions, lead to a state in which human life, health, property, or the environment is endangered*" (source: ISO/IEC TS 5723:2022).
- Security and resilience, meaning the AI system "*can withstand unexpected adverse events or unexpected changes in their environment or use*" (adapted from: ISO/IEC TS 5723:2022).
- Accountability and transparency, the latter as a precondition of the former, which entails that meaningful information is made available about the use of AI systems.
- Expansibility and interpretability, which refer to the transparency of the actual AI system.
- Privacy enhancement, which requires the assessment of all privacy impacts of the AI system in terms of data collection, use and outputs.
- Fairness, referring to the risk management of harmful bias.

In relation to each objective, the organization must identify risk, measure it, determine its risk tolerance and prioritize risk management to be effective.

5. Controlling

AI legal risk management is a dynamic process. ISO 42001 control standards may be articulated around three phases:

- Prevention through adequate support: ISO stresses the importance of allocating sufficient financial and human resources to the responsible management of AI systems, identifying the necessary skills and expertise, assuring

broad awareness through effective communication and producing documented information.

- Safe operation through proper planning, risk assessment and risk treatment, based on a clear AI system impact assessment process.
- Ongoing evaluation, with performance monitoring, internal audits and management review.

Documentation of support, planning and evaluation is key to demonstrating due diligence, and therefore lowering legal risk.

6. Improving

This quote from Ronan Davy, Anthropic Associate General Counsel, at the May 2025 International Association of Privacy Professionals Dublin AI Summit[10], brings to life the key message of ISO 42001 on management of AI systems—it is an iterative process:

" There is going to be ambiguity, and that's OK. Know that the compliance program you build for day one is going to continuously reiterate and evolve."

Based on ongoing evaluation, the organization must identify non-conformity issues, determine their cause, their scope and the risk of repeated occurrence, apply corrective action and verify its effectiveness.

Conclusion

Throughout AI system management, legal risk mitigation requires clear, well-established processes and thorough documentation.

And when all this is done, the organization must go back to its vision to ensure it is still aligned with its legal environment, reassess legal implications against evolving regulatory frameworks, review its planning accordingly, implement necessary changes, control them and continuously improve to maintain legal compliance. AI legal risk management is a continual process.

For more information on this topic, please reach out to the author, **Chantal Bernier**.

To learn more about how we can help you address your specific AI queries or challenges, please visit our **AI: Global Solutions Hub**.

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1. ISO/IEC Information technology — Artificial intelligence — Management system. ISO standards are copyrigh protected.↩
2. **What is AI? Can you make a clear distinction between AI and non-AI systems?**↩
3. **Explanatory memorandum on the updated OECD definition of an AI system**↩
4. Op.cit.↩
5. ISO / IEC 38507 Information technology – Governance of IT – Governance implications of the use of artificial intelligence by organizations↩
6. **Artificial Intelligence Risk Management Framework (AI RMF 1.0), National Institute of Standards and Technology**↩
7. Among other texts, the General Data Protection Regulation (GDPR), at Article 13, requires that Information provided where personal data are collected from the data subject include "*the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the*

data subject.", and the Canada, Québec *Act respecting the protection of personal information in the private sector,* at section 12.1 creates the right for an individual who has been the object of a decision exclusively by automated processing to obtain upon request information on "*the reasons and the principal factors and parameters that led to the decision".* ↩

8. ISO /IEC 23894 Information technology – Artificial intelligence – Guidance on risk management↩
9. Op.cit. at 6.↩
10. **IAPP AI Governance Global 2025 (AIGG EU), Dublin**↩

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