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Chuck Johnson, *editor*  
Ryan Hanlon, *editor*  
Christie Renick, *editor*

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## Financial Ethics in Intercountry Adoption

### *Navigating Four Areas of Risk*

BY SARAH MRAZ

#### Editor's Note

National Council For Adoption asked Sarah Mraz to write this month's *Adoption Advocate* following her presentation at last year's NCFCA conference. When asked her to write this piece, NCFCA didn't realize the timing would coincide with changes in adoption service providers' (ASP) accreditation and financial reporting requirements. It's always a good time to ensure ASPs have ethical accounting practices—and now is a better time than ever for ASPs to ensure they fully understand their regulatory reporting requirements and accreditation practice standards on these issues.

**R**egulations and high expectations for professional service continue to increase in intercountry adoption, and licensed/accredited adoption service providers (ASPs) face ever-greater responsibility and accountability in how we oversee all aspects of our programs and services. For decades, the norm was that the U.S.-based agency held responsibility only for the services and work it performed in the United States. As adoption agencies, we formerly answered only to our state licensors, our bylaws, and our Boards, while



National Council  
For Adoption

225 N. Washington Street  
Alexandria, VA 22314  
(703) 299-6633  
[www.adoptioncouncil.org](http://www.adoptioncouncil.org)

the persons and entities who provided adoption services abroad were generally responsible for all the work occurring on foreign soil.

Agencies typically managed provider relationships with only the most basic of contracts, which were often grounded in verbal agreements. In practice, the ASP and the entity abroad (attorney, orphanage director, child welfare department, facilitator, private NGO) collaborated on behalf of their mutual “clients” (children in need of families, prospective adoptive parents, and sometimes birth parents) to complete adoptions in compliance with the laws and regulations of both countries.

While oversight requirements varied by country, the ASP’s primary responsibility was to comply with its state laws and the U.S. Citizenship and Immigration Services’ (USCIS) regulations. Compensation was paid to each party responsible for the fulfillment of services. Once an adoption was successfully completed, a child in need had a new family, and prospective parents had fulfilled their dream of adopting. From a compliance perspective, the adoption was seen as a good deed accomplished: a win-win for all parties.

Post 9/11, our world saw a shift of focus, with the U.S. government starting to scrutinize relationships between American and foreign charities for evidence of connections to international terrorism.<sup>1</sup> The Departments of Justice and State increased enforcement of the Foreign Corrupt Practices Act<sup>2</sup> on both for-profit and non-profit organizations—and, as a result, investigated suspicions of corruption and influence between adoption and child welfare organizations and government officials.

Implementation of the Hague Convention on the Protection of Children and Co-operation in Respect to Intercountry Adoption<sup>3</sup> in 2008 imposed extensive international and federal regulations on all ASPs for the first time. Most ASPs welcomed these new regulations, which fostered a more uniform standard of professional practice for intercountry adoption—something that state-based monitoring could not do. In 2012, with broad support from the professional adoption community, other regulatory steps were implemented to create a stronger system of protections, transparency, and oversight; most notably the passage of the Universal Accreditation Act, which required all U.S. ASPs to be accredited, even in those countries that had not implemented the Hague Convention on Intercountry Adoption.<sup>4</sup> Over the last few years, the U.S. Government

<sup>1</sup> <http://www.washingtoninstitute.org/policy-analysis/view/charitable-organizations-and-terrorist-financing-a-war-on-terror-status-che>

<sup>2</sup> <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>

<sup>3</sup> <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>

<sup>4</sup> [https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt\\_ref/universal-accreditation-act-of-2012-2.html](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/universal-accreditation-act-of-2012-2.html)

has tried to exercise even greater oversight over varying aspects of intercountry adoption—again, almost always with the broad support of the accredited professional adoption community. Other efforts to regulate failed, such as an attempt in late 2016 to institute comprehensive changes to the regulations for ASPs first implemented by the U.S. Department of State in 2008.<sup>5</sup> Even with the withdrawal of these proposed regulations, the federal agencies managed to increase scrutiny further by requiring even more information from ASPs. Under new interpretations of the Intercountry Adoption Act, ASPs can no longer simply defer responsibility for overseas operations to our partners abroad; we are required to demonstrate financial compliance and increased supervision of overseas staff and partners. The obligation to ask, learn, and understand “where the money goes” has become an essential element of every adoption placement. Properly understood and applied in the context of each country, this greater transparency is a positive step. Conversely, in the absence of recognizing unique nuances of the child welfare practices in every country or the provision of clear and timely guidance from Department of State or its accrediting entity(ies), such broad application of regulations can also be a recipe for disaster.

While many of the fees and payments required in any intercountry adoption process are easily identifiable (foreign central authority dossier review and processing, USCIS, visas, etc.), there are other financial components in adoption processes that are harder to understand and manage. These include gift giving, travel expenses, compensation of staff or fees for services, and accounting and processing of third-party fees.

If your organization is perplexed about how to manage any or all of the above, you are not alone. Here are four areas to evaluate, followed by four takeaways for ASPs.

## Gift Giving

Cultural norms and expectations for the giving and receiving of gifts between persons who collaborate in a working relationship are often different abroad than in the United States. While a smile and a verbal thank you will often suffice in our culture, many other cultures show thanks and appreciation through gifts of material items. It is important to learn and respect another culture’s norms, while being careful not to give gifts that could be construed as bribes in exchange for favors or advantages. Generally speaking, international and U.S. guidelines allow for tokens of appreciation to be exchanged between parties, as long as the gift is not influencing the recipient’s decision making.

## Editor’s Note

National Council For Adoption would argue that the 2016 proposed regulations failed, in part, because the Department of State developed the proposed regulations without input from the professional adoption community. In contrast, collaborative efforts to improve regulatory standards have been more successfully conceived and implemented.

<sup>5</sup> <https://www.federalregister.gov/documents/2017/04/04/2017-06558/intercountry-adoptions>

*Ask yourself:* Am I asking or expecting the recipient to provide a favor to me that is outside of their normal job responsibilities? Or am I simply thanking them for their dedication to advancing a child's best interests? How do you define a "token of appreciation"? Is it an iPhone or a Rolex watch, or a nice pen or agenda book with your ASP's logo on it? Consider giving useful/practical gifts with your agency's logo and/or items of nominal value.

In developing nations, it is not unusual for a citizen to make a material request of a foreign visitor. Anti-corruption policies and campaigns have minimized expectations around gift giving in many countries compared to previous decades, but it has not been eliminated. Prepare in advance what your response will be to an inappropriate request. Sometimes a vague but honest answer is the best, such as, "I'm so sorry but our agency policies/budget/government regulations/anti-corruption laws forbid us from gifting expensive items and funding unrelated to humanitarian orphan care projects." Communicate your agency's position to your adoptive families so that they are informed and also know how to respond to similar requests.

## Travel Expenses

Does your organization have policies and guidelines in place for travel expenses? Set expectations or policies in advance, so all staff are treated equally. If the expectation is for staff to travel in economy class, be sure there is a defined reason for any exception made.

Document and communicate, in advance, the requirements for accountability for any trip-related cash advance or per diem allowances, for both U.S.-based staff traveling abroad, as well as for international staff and partners who travel within their country.

Set requirements around the use of credit cards and how charges are verified. Employ common accounting practices such as writing the names of all persons attending the business dinner on the back of the restaurant receipt. Define what is acceptable if receipts are not available. Provide instructions on how to document acknowledgement/receipt of in-kind orphanage donations.

Consider following U.S. State Department's guidelines defining acceptable expenses for foreign partners and officials traveling to the United States and abroad. The Department of Justice also has guidance opinions issued regarding the Foreign Corrupt Practices Act that ASPs can follow.<sup>6</sup>

<sup>6</sup> <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/07/06/11-01.pdf>

## Salaried vs. Fee-for-Service Compensation

While the State Department has defined compensation since 2008, scrutiny of adoption service payments made abroad is now greater than ever. Compensation must be made in accordance with local standards where the services are provided. For example, how do you know if the attorney you have contracted with abroad is quoting you reasonable rates in accordance with “local standards”? Your agency representative is telling you that “all the other reps” she knows are given transportation allowances except her. You trust her, but how do you know if her impressions are accurate?

This area of our work is one where collaboration and sharing of information among other accredited ASPs is invaluable. We have found the members-only listserv offered by National Council For Adoption as an excellent resource to learn what other agencies are doing in similar situations. Take the initiative and educate yourself on local standards by checking in with colleagues here and abroad. Update your information regularly. Getting a variety of answers will help you evaluate and compare your compensation arrangements. Save your notes as a record for demonstrating your rationale for your policies.

## Accountability of Third-Party Payments

We are all likely to agree that the Hague Convention has helped increase transparency related to payments expected by foreign governments. Many Central Authorities (CAs) have set flat fees for their work and/or for the services for which they allow their supervised child-caring institutions to be compensated. While some CAs charge no fees, given that their government budget covers their work, many other countries have set standard fees for services for which they monitor. Again, collaboration among ASPs to encourage more of this transparency, especially in non-Hague countries, helps all of us develop similar, uniform practices.

If your organization handles the processing of payments of your clients’ third-party expenses, it is important to define the process guidelines and then demonstrate accountability in your practice and enforcement of them internally. Are you able to show the path that any “pass-through” fee has taken, from the moment it is received by your organization until it is sent and received by the third party? For instance, if you collect legal fees from prospective adoptive parents in order to pay a fee-for-service attorney in the country where the adoption takes place, the benefit is that the prospective adoptive parents don’t have to carry that cash, and the ASP can vouch that the attorney was paid. It is important that the ASP be

able to demonstrate that it received these funds; that they were stored in a deferred payment or third party account in its records; and that it be able to show proof of the wire transfer to an account owned by the attorney once the payment is made.

## Takeaways

Agencies and professionals have a duty and obligation to exercise oversight and know inside and out the laws and processes in every country in which they work. Intercountry adoption is a humanitarian service, but it is also a highly complex and professional service. Being an accredited ASP offering intercountry adoption services requires you to engage in a high level of due diligence—and we are all aware of the horrible price paid by waiting children and families when an ASP fails to know or follow the laws and established polices. In the ever-changing world of intercountry policy and practice, it's hard to sometimes know everything, yet it is the clear responsibility for an agency and contracted staff to follow the law in both spirit and letter, with no exceptions.

To accomplish this, we suggest staying informed and connected. We have found NCFA's National Adoption Conference to be one helpful way to do so. In fact, many of the things we write about in this article are from a presentation we did at NCFA's conference in 2017 which many agencies told us was very instructive to them. However you stay informed, it will involve asking lots of questions, even if you think you know the answer. Ask other trusted colleagues what they do; ask the Department of State or your accrediting entity for guidance; or ask NCFA, and they may ask questions on your behalf. It is also perfectly reasonable, even advisable, to request explanations from any government entity or individual. You can ask why they charge a certain fee, what work or services it covers, whether it is the same in all cases, what the guidelines are for exceptions, and under what circumstances, if any, refunds are provided. As the saying goes, there are no dumb questions, particularly when the consequences for operating under the wrong assumptions are high.

Document due diligence. Even when we struggle with the final decisions, documenting our efforts is the best defense for proving intention and practice. Being able to show due diligence, at the very minimum, shows that you made an effort to solve the problem or obtain the information. Document phone and in-person discussions you have with staff and partners overseas, even if not part of a formal training.

Share. Some of the best, most meaningful conversations I have had on best practice and ethics have taken place while on a long car ride to visit an orphanage or sitting in an airport awaiting a flight. Formal agreements and

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training are important, but there are also serendipitous opportunities to learn from each other's rich experiences in child welfare. Be open to those possibilities.

Listen to your gut...if it is telling you something is wrong, there is probably something wrong. When the adoptee asks his parents at age 6, or his search and reunion social worker at age 20, to tell him his story, we all need to be able to look him in the eye knowing we did our very best. As you make decisions, consider what is in the best interest of the child. Are we doing everything in our power to honor each child's story?

## ABOUT THE AUTHOR

As Director of International Programs for Wide Horizons For Children, Inc., Sarah Mraz oversees the agency's adoption programs in five countries and manages relations with international staff and foreign governments. She was instrumental in the development and compliance of programs in Africa and Latin America and is also responsible for the agency's program development efforts in both Hague Convention and non-Hague countries. A graduate of McGill University, she joined Wide Horizons in 1989 as a program coordinator with a passion for human rights and child welfare advocacy. Sarah lives in Massachusetts where she and her husband (step) parented four sons, now adults. She grew up in rural Vermont, has lived in Colombia, South America and in Montreal, Canada and is fluent in Spanish.

Wide Horizons For Children is a private, non-profit child welfare agency committed to family permanence for orphaned and at-risk children through adoption, orphan care and prevention and options counseling. Our priority is the best interest of the child and we are committed to the highest ethical practices in the U.S. and overseas.



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