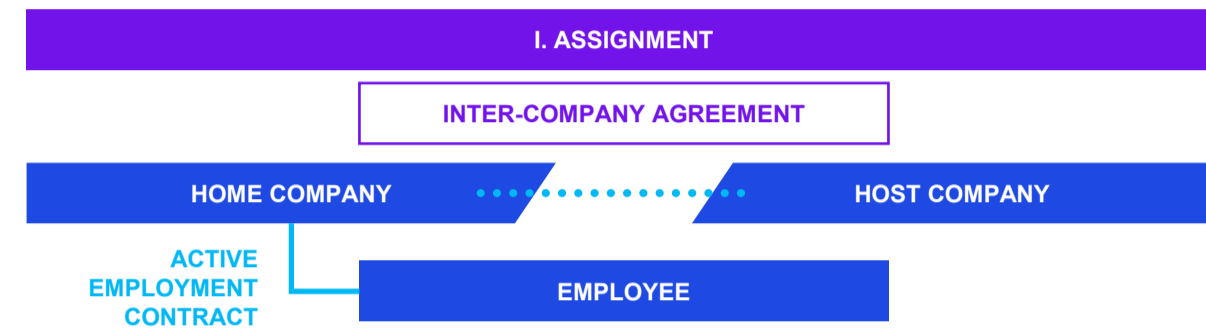


# Contractual structures for international employee secondments

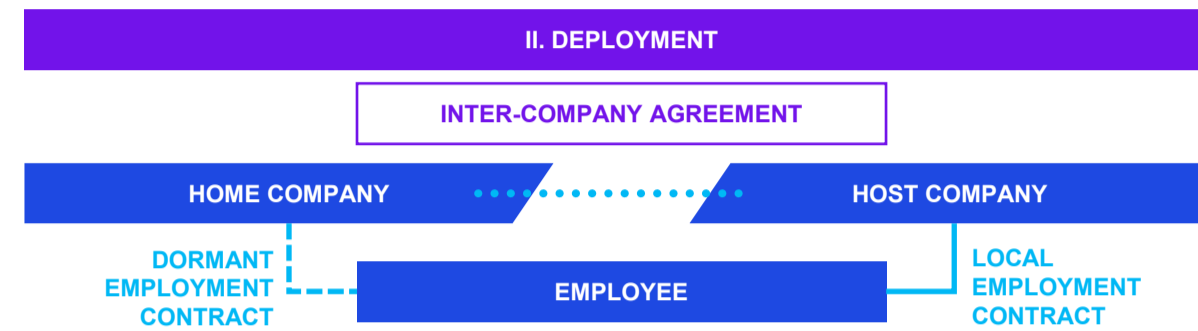


## Description of the contractual structure

- The existing Employment Contract in the Home Country is amended by an Assignment Agreement for the term and the purpose of the assignment abroad. The Employee renders his services on the basis of an active Employment with the Home Company (two physical documents, but one legal relationship).
- No local Employment Contract is concluded with the Host Company. Therefore, no contractual relationship between the Employee and the Host Company is established.

## Further comments:

- As the Host Company is not the contractual Employer, it should not be obligated in the Assignment Agreement (e.g., payment of the entire remuneration/allowances/by the Home Company). Split payments are possible.
- To avoid that the Host Company becomes de facto an Employer, a demarcation agreement between the Host Company and the Employee (stipulating that no employment relationship exists) might be necessary in some jurisdictions.
- Be aware that local laws might provide restrictions concerning leasing of Employees, especially in the event of a deployment outside of group companies, e.g., to joint ventures.

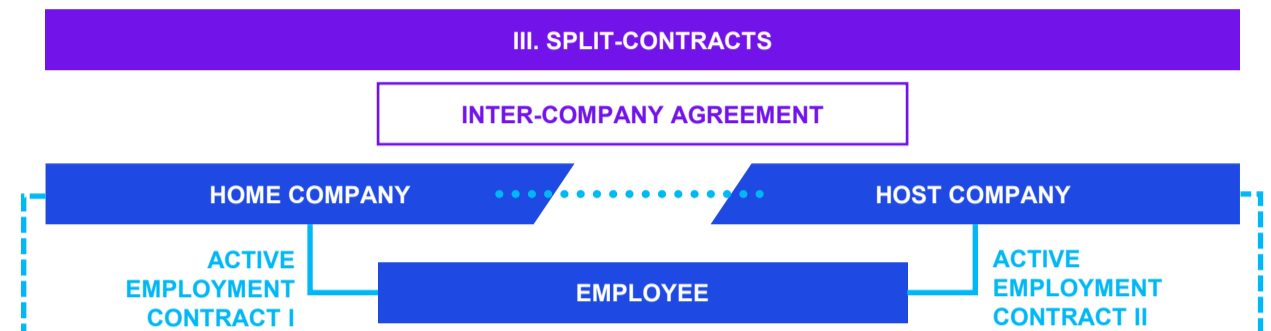


## Description of the contractual structure

- The existing Employment Contract with the Home Company is suspended (Dormancy Agreement). Alternatively, especially in the event that the local law in the Home Country does not know the concept of a dormant Employment, it is terminated with a guarantee of reemployment.
- The Employee renders his services on the basis of a local Employment with the Host Company.

## Further comments:

- Please note that the local Employment Contract - is governed by local law of the Host Country, - contains all remuneration, including assignment-related benefits and allowances.
- Due to maintaining the (dormant) employment relationship with the Home Company, accessory obligations such as, e.g., the duty of loyalty and the duty of care may remain.
- An Inter-Company Agreement is often not concluded as no recharge of costs is necessary.



## ADJUSTMENT OF (PART TIME) EMPLOYMENT CONTRACTS REGARDING WORKING CONDITIONS

## Description of the contractual structure

- Two or more regular active (part-time) Employment Contracts are concluded. The existing Employment Contract with the Home Company is adjusted respectively.
- The Employee renders his services on the basis of a local Employment Contract with each company.

## Further comments:

- A thorough allocation of contractual rights and obligations (e.g., remuneration, working time, holidays, sick leave) is necessary.
- Stipulation of prevalence in case of conflicting contractual regulations.
- Contract as legal representative (e.g., managing director) without remuneration possible. They are often concluded to determine the extent of responsibility and duties of a managing director and to limit his liability.

## CHECKLIST ASSIGNMENT AGREEMENT

- Preamble describing the background of the assignment
- Destination (place of work abroad) and purpose of assignment
- Term of the assignment (duration, start and end date, procedure for prolongation)
- Responsibilities for visa, residence and work permits and required medical examinations
- Position and reporting line (right to give instructions)
- Working hours (duration and allocation) and sick leave
- Vacation and public holidays
- Remuneration (e.g., currency, exchange rate protection, split-payment, bonus regulation)
- Assignment related allowances (COLA, housing, relocation expenses, trips home, schooling, car, settling-in etc.)
- Behavioural clause (duty to comply with applicable laws and – especially religious – customs abroad)
- Cultural training, security training and language course
- Taxation (e.g., tax protection or tax equalization, duty to cooperate with selected tax adviser, costs)
- Social security
- Insurances (e.g., international health insurance, accident insurance)
- Pensions (company pension scheme)
- Possibility of premature termination
- Re-entry conditions
- Reference to assignment policy
- Choice of law and place of jurisdiction

## CHECKLIST DORMANCY AGREEMENT

- Preamble describing the background of the deployment
- Suspension of the employment relationship (no exchange of services and remuneration – whilst maintaining the contractual framework)
- Term of the agreement (duration, start and end date, procedure for prolongation)
- Responsibilities for visa, residence and work permits and required medical examinations
- Remaining obligations of Employee towards Home Company (e.g., remaining reporting line, specific confidentiality requirements)
- Remaining obligations of the Home Company towards the Employee (e.g., specific payments, company car for spousal use)
- Linkage to local Employment Contract (e.g. impact of termination of local employment on contract with Home Company)
- Adjustment of the remuneration in the Home Country in accordance with regular remuneration increases
- Social security
- Pension (remaining in Home Country pension scheme)
- Possibility of premature termination (sufficient notice period, obligation of the Employee to terminate his local employment)
- Handling of mandatory severance payments in Host Country (e.g., remaining with Employee, waiver of payment, reimbursement)
- Re-entry conditions
- Choice of law and place of jurisdiction

## CHECKLIST INTER-COMPANY AGREEMENT

- Obligation of the Home Company to assign the Employee(s) – explicitly named or specified by required qualifications – to the Host Company
- Obligation of the Host Company to occupy the Employee(s) in agreed position and provide him with required work place and equipment
- Transfer of the right to give instructions to the Employee to the Host Company
- Reimbursement of costs (e.g., fixed and variable remuneration, social security contributions, allowances, additional assignment related costs)
- Charging of mark-up (consider Transfer Pricing aspects)
- Billing details (e.g., recipient, due date, invoice format)
- Limitation of liability of the Home Company for the services of the Employee(s)
- Term of the agreement (duration, start and end date, procedure for prolongation, link to the continuity of Assignment Agreement)
- Termination rights
- Choice of law and place of jurisdiction

IMPORTANT: The Inter-Company Agreement needs to reflect the conditions of the Assignment Agreement.

## IV. TRIPARTITE AGREEMENT



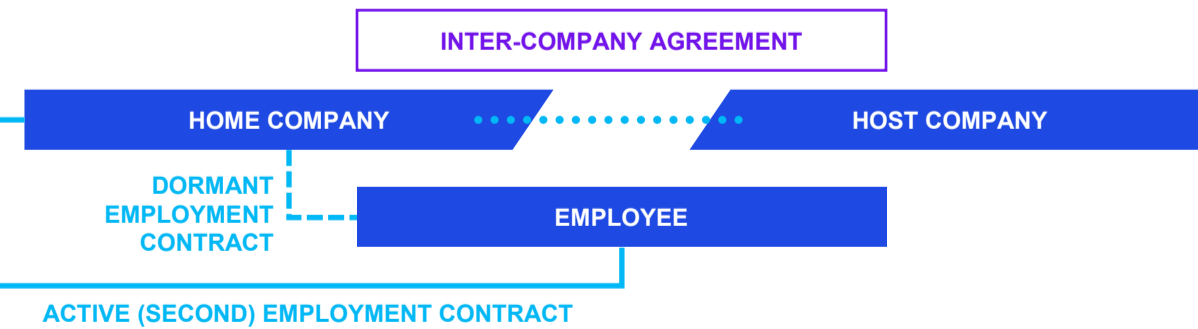
## Description of the contractual structure

- The Home and the Host Company are both contractual parties. Depending on the content of the agreement, both parties may jointly be considered as Employer.
- The existing Employment Contract with the Home Company is temporarily modified, e.g., suspended or terminated with a guarantee of reemployment.

## Further comments:

- The role of each contractual party shall be thoroughly described, especially determining who is the contractual Employer.
- The respective rights and duties need to be expressly allocated to the contracting parties (e.g., salary payments, allowances, recharge of costs, termination rights, benefit of work).
- Ways of termination and modifications of the contract need to be specified.

## V. ASSIGNMENT WITH TWO CONTRACTS



## Description of the contractual structure

- The existing Employment Contract with the Home Company is suspended (Dormancy Agreement) or terminated with a guarantee of reemployment. The latter option especially in the event that the local law in the Home Country does not know the concept of a dormant Employment Contract.
- The same parties (Employee and Home Company) agree on another (second) – fixed-term – active Employment Contract (Assignment Agreement) for the purpose of the assignment abroad.
- No local Employment Contract is concluded a guarantee of reemployment.

## Further comments:

- It should be assessed whether local laws - allow a second Employment Contract with the same Employer and - contain restrictions on fixed-term contracts.
- For further information, please refer to 1. (Assignment).

## A FEW GOLDEN RULES

### TERMINOLOGY, A FALSE FRIEND – CAUTION SHOULD BE EXERCISED!

There is a broad variety of different terms for seconding Employees abroad. Before using a term (and making decisions based on it) its content should be thoroughly assessed.

### ROLE OF EMPLOYMENT LAW – FORM FOLLOWS FUNCTION!

Contracts are documenting an Employer-Employee relationship. Employment law rarely provides the guiding principles for the structure of an international Employee Deployment. It may rather be considered as road mark and road boundary.

### EMPLOYMENT LAW – THE PHASED APPROACH!

When considering Employment Law aspects use a two phased approach: (1) Be certain about the contractual structure and then (2) start agreeing on material working conditions.

## IMMIGRATION – A QUICK LOOK AHEAD!

Take a quick look ahead at an early stage and check whether mandatory provisions of local Immigration law require a local contract in the Host country.

### CONTRACTING PARTIES – TO SIGN OR NOT TO SIGN: THAT IS THE QUESTION!

Be aware of the contracting parties. It is not just important who will sign the contract. It is also important to be absolutely clear about who shall not be contracting party (and shall hence not sign the contract).

### CONTRACTUAL RELATIONSHIPS – DIFFERENT LEVELS!

Be aware that in case of international Employee Secondments two levels of contractual relationships have to be differentiated: (1) contractual relationship Employee – Employer (employment relationship) regulating the rights and obligations of the Home and/or Host Company towards the Employee and vice versa and (2) contractual relationship Home Company – Host Company (Inter Company relationship) regulating the mutual rights and obligations of the two companies towards each other (e.g., allocation of costs).

## Contact

KPMG Law  
Rechtsanwaltsgesellschaft mbH  
Klingelhöferstraße 18  
10785 Berlin



**Dr. Thomas Wolf**  
Attorney-at-Law  
Specialised Labour Lawyer  
T +49 30 530199-300  
F +49 30 530199-111  
M +49 172 3016459  
twolf@kpmg-law.com



[kpmg-law.de](https://www.kpmg-law.de)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Legal services may not be offered to certain audit clients or where otherwise prohibited by law.

© 2023 KPMG Law Rechtsanwaltsgesellschaft mbH, associated with KPMG AG Wirtschaftsprüfungsgesellschaft, a corporation under German law and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.