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International Partnerships - a Legal Guide for UK Universities

UK Higher Education International Unit
in association with Eversheds LLP

Third Edition

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Foreword to the third edition

This is the third edition of the International Unit's Legal Guide which continues to be a valuable resource for UK university staff to inform their international activities, and provides an understanding of the legal implications of international collaborations.

This edition also sees an update of the Country Profiles for Singapore, South Africa, Taiwan and South Korea.

The authors, Eversheds, have sub-headed this Guide in the Executive Summary with *International Partnerships - continuing growth, regulatory uncertainty*. This encapsulates well the past year in UK higher education. Universities continue to foster overseas collaborations and find value in such relationships but domestic challenges have impacted on international activities.

Most notably, there have been a number of important legal changes since the second edition around immigration rules for staff and students. We believe this Guide has captured these changes in a way which ensures universities understand the implications on international collaborations and such changes are not seen as a barrier to increased activity.

Addressing risk is an important part of this third edition; complacency is not an option as UK universities are 'increasingly drawn to consider collaboration in countries which may present considerable operational difficulties'. But again, as with the immigration changes, risk should continue to inform and guide universities' overseas activities. That it remains such an important factor only serves to highlight the importance of this Legal Guide, coupled with professional advice and thorough due diligence.

We hope you will once again find the Legal Guide a valuable tool in your work. A gentle reminder to all our readers that, while this Guide acknowledges the different legal jurisdictions within the UK, it is not a substitute for legal advice and should not be used as such.

The Eversheds team, led by Glynne Stanfield and Nick Saunders, has once again done an exceptional job in updating the Guide and we encourage universities to contact either the International Unit or Eversheds with feedback so that it remains as up-to-date as possible.



Dr Joanna Newman
Director, UK Higher Education International Unit

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Disclaimer

This publication takes account of the law of England and Wales as in force on 27 November 2012. The information provided is for guidance purposes only and should not be regarded as a substitute for taking legal advice.

Note on terminology

In places this publication refers to 'United Kingdom law' and 'UK legal requirements'. This terminology is used for convenience when contrasting the law normally applicable to the UK university with that applicable to the proposed overseas collaborative institution. This avoids repeated references to the laws of England and Wales/Scotland/Northern Ireland. However, it should be noted that although many areas of statute-based law (such as employment, tax and company law) apply across the United Kingdom there are significant differences between the laws of the UK domestic jurisdictions, for example in relation to land law, charity law and partnership law and also the procedures of the courts in the different countries. The pressure on space precludes detailed consideration of these differences and readers in universities based outside England and Wales will need to consult other sources for detailed discussion of these matters.

As explained in Chapter 1, it will generally not be appropriate for an international higher education collaboration to take the form of a legal partnership as defined by the Partnership Acts. Nevertheless, the phrase 'international partnership' is in such common use within the education sector that it is considered impracticable not to use it in this publication. It is therefore used to encompass a wide variety of different legal forms of collaboration, including those involving the use of companies incorporated under the Companies Acts as well as collaborations based on a legally binding contract, even though most of these forms do not involve a partnership in the legal sense of the term.

UK HIGHER EDUCATION INTERNATIONAL UNIT IN ASSOCIATION WITH EVERSLEDS LLP

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Executive summary

KEY THEMES

1. **International Partnerships - continuing growth, regulatory uncertainty**

In the twelve months since the second edition of this book was published the context in which UK universities operate internationally has continued to be subject to rapid and dramatic developments. Recovery from economic recession in the West has been slow and uncertain and the sovereign debt crisis in a number of European countries continues to cause serious concern. South East Asian economies have continued to grow and, despite some slowdown in that growth, governments in the region have demonstrated their commitment to investing in their higher education systems, as can be seen by the improvement in standing of many South East Asian universities in the international league tables. These developments in themselves would have been enough to put increased pressure on UK universities seeking to recruit students from the Far East and Middle East to their UK campuses. However, the strict enforcement by UKBA of institutions' obligations as Highly Trusted Sponsors, leading to the suspension and, in one case, revocation, of their licences, has been perceived in some Asian countries as an indicator that their students are not welcome in the UK.

Such developments have led many UK universities to place increased emphasis on expanding their international partnerships so that international students can be taught in part or, increasingly, wholly in their home country. As this book illustrates, international partnerships are not free of risk, however the sector seems to have an increasingly sophisticated awareness of the extent of risk, which can be counter-intuitive. Despite its chequered reputation in the past, franchising may well be less risky than validation, where the validating institution may have little or no involvement with students and have fewer opportunities to control the learning experience. (There remain issues where a UK franchisor has to end a franchise, perhaps for quality reasons, and students may subsequently have problems in completing their courses.) Indeed the problems with validation at one institution, mentioned in the introduction to the second edition of this book, were so extensive that the university was forced to abandon validation activities altogether. It is therefore unsurprising that, in issuing a new UK Quality Code for Higher Education, the QAA published for consultation in August 2012 an updated version of the section (B10) concerned with the management of collaborative arrangements. Indicator 5 of the draft updated section stresses the need not only to assess the risks of each collaborative arrangement but also to review them subsequently on a periodic basis.

As discussed in chapter three, such due diligence exercises will need to take account not only of academic matters but also of legal and financial ones. In relation to financial due diligence, a report by John Fielden of CHEMS is due to be published by the International Unit shortly. Finally, the Ministry of Justice has, since the publication of the second edition of this guide, issued its guidance on compliance with the UK Bribery Act. To help the sector address the issues posed by the Act and guidance, the International Unit commissioned Eversheds to write a legal guide to UK anti-bribery and corruption law, published in late 2012.

Despite, or perhaps because of these continuing problems with more traditional types of collaboration, an increasing number of institutions are developing or planning branch campuses. The global spread of such campuses has been documented by the Observatory on Borderless Higher Education, whose fourth survey report was issued in January 2012. It says much for the care with which UK universities have embarked on such ventures that no UK branch campus has to date closed, whereas a number of branch campuses of non-UK universities have done so, for example

through misjudgement as to the level of demand. However, there is no room for complacency as UK universities are increasingly drawn to consider collaboration in countries which may present significant operational difficulties.

2. The Importance of International Strategy

The guide is intended to help universities decide whether a particular proposal is right and, if so, how to go about establishing it and running it successfully. But whether a particular partnership is ‘right’ will depend on its fit with the university’s own international strategy. By now every university wishing to be involved in international partnerships (which is virtually every UK university) should have such a strategy. The guide does not attempt to tell a university what that strategy should be, or how to go about establishing one; there are many other sources of help for this purpose, some of which are listed in the Annex on sources of further information. Moreover, the strategy should be a living and working document and should be revised periodically in the light of experience with particular international partnerships.

3. Assessing Risks and Opportunities: The Importance of Process

International partnerships raise very starkly the need to assess risk and balance it against opportunity. Such risk/opportunity assessments should not be regarded as ‘one off’. While an initial risk assessment prior to commitment of the university to a partnership is essential, if a partnership goes ahead the identified risks should be managed appropriately, particularly through proper documentation of the partnership through at least one and possibly more legally binding agreements. There should also be periodic reviews of the operation of the partnership, culminating in a final review geared to the decision as to whether the partnership should be terminated or extended. The lifecycle of a typical international partnership is illustrated in diagrammatic form in Annex 3 to the guide.

4. Responsibilities and Structures

Given the increasing complexity of international partnerships it is vital that the university establishes clear lines of responsibility for the various tasks involved in establishing and running them. While those responsible for this Guide would not dictate any particular structure (that must be for each university to decide) it is becoming increasingly difficult to see how international partnerships can be run on any scale if a university does not have a central unit for which international partnerships are a main responsibility. Typically this will be an international office, although there are other possible structures. In addition, it is important that the university uses the right skill sets for the task in hand having regard to the particular contribution that may be made by:

- the governing body - in terms of settling the international strategy, receiving reports on its implementation and making key decisions, for example as to whether to get involved in a partnership in a particularly hazardous area of the world
- academic staff and key committees such as senate/academic board and university sub-committees
- the university’s quality assurance committee or similar body
- the sponsoring department, school or faculty to which the necessary budget may be devolved
- central administration, including the relevant senior management team member responsible for external affairs, finance director or nominee etc.

- legal advisers, in-house lawyers (if available), external legal adviser (UK and where necessary overseas).
- Using good people for the wrong task, and/or failing to use appropriate professionals (whether internal or external) can lead to costly and avoidable mistakes.

5.

Conclusion

International partnerships have to date been a success story for UK universities. However, they are now in competition for partnerships with overseas universities, not only with other English speaking countries but also with, for example those in Continental Europe, which are increasingly providing courses in English. Countries in Asia such as China and Japan are looking ultimately to become net exporters of higher education. UK universities will have to constantly raise their game and use more sophisticated business tools, as well as continuing to provide partnerships of high academic standing in areas attractive to potential students and research collaborators. This Guide is now reviewed annually in order to keep track with such developments. To make the Guide more user friendly, the complete text is now only held on the International Unit's website, with just an executive summary being printed in hard copy. The following Country Profiles have been updated for the Third Edition:

- Singapore
- South Africa
- Taiwan
- South Korea

If readers would find profiles on additional countries helpful, would they please contact the International Unit to indicate this. Regular feedback to the International Unit and/or Eversheds will help to ensure that the Guide continues to be a helpful tool for the sector.

It must, however, be stressed that the Guide does not claim to provide encyclopaedic coverage of the subject. It can only provide general information and legal advice should be taken on the particular issues raised by an individual partnership proposal. Finally, the Guide assumes that those responsible for international partnerships have an up-to-date and realistic assessment of their institution's appetite for capacity to manage risks; it is vital to follow the maxim 'know thyself'.

DOS AND DON'TS

Introduction

Do

- Think why you would like to collaborate - revenue is probably not a good enough reason.
- Ensure that the right team or person is empowered to carefully plan a collaboration.
- Get the right advice, on academic, administrative, legal, financial and tax issues.
- Check that there are no legal or regulatory bars to a collaboration.
- Consider which structure and legal entities will work best for your collaboration.

Don't

- Allow staff to enter into collaborations without institutional approval.
- Underestimate the time, commitment and costs needed to make a collaboration successful.
- Be afraid not to collaborate - it will harm an institution less than an unsuccessful collaboration.

Planning

Do

By the end of this stage the UK institution should have done the following:

- satisfied itself that the proposed partnership is consistent with its international strategy.
- established with confidence that a joint venture rather than a solo project is appropriate for delivering the planned operations, clarified the outcomes which the operations are to achieve and the timescales involved, and have identified a short list of potentially suitable partners.
- completed an initial risk assessment confirming that there are no aspects of delivery of the proposed partnership in the country concerned and with the likely partner or partners provisionally identified, which would be either wholly impracticable or manageable only at disproportionate expense.
- produced a plan setting out the steps still to be taken to establish the partnership with timescales, responsibilities and resource implications clearly identified.

Don't

- Simply accept the assurances of any individual in the institution, however senior, that the proposed collaboration should go ahead without further investigation
- Allow yourself to be swayed by the apparently enticing prospect of working with a high profile partner institution, or of producing substantial income for the institution, or of delivering a project which has government backing either within the UK or overseas.
- Proceed at such speed that an initial risk assessment has not been undertaken or that proper investigation and documentation of what will be involved, as discussed in Chapters 3 and 4, will not be practicable.

Due diligence

Do

- Start the Due Diligence exercise as soon as your institution is seriously considering a collaboration with an overseas partner. Results may have an impact on the feasibility, structure and content of your partnership.
- Ensure that the results of the academic, financial and legal Due Diligence are translated into formal binding partnership arrangements. Communicate them to the colleagues and/or legal advisers drafting the partnership arrangements.

Don't

- Rely solely on the word of your potential collaborative partner but carry out your own background checks. Your potential partner may not be aware of all local rules which may have an adverse effect on the partnership.
- Hesitate to get lawyers involved, if in doubt. Only overseas lawyers can give you the necessary comfort regarding applicable regulations and background checks on your proposed partner.

Documentation

Do

- Use a Memorandum of Understanding document to map a collaboration before significant costs are incurred.
- Consider using Agreements to prevent a partner breaching confidentiality, poaching staff or entering into similar collaborations.
- Discuss with your legal adviser which legal agreements you need. One size does not fit all.
- Decide which partner will draft documents, then task a manager and a lawyer to do this together.
- Be careful whom you contract with. A weak subsidiary may require guarantees from a parent to make it a safer legal bet.

Don't

- Use the same Agreement as last time, irrespective of whether or not it is appropriate.
- Expect a manager to deal with legal risks or a lawyer to deal with management risks.
- Lose sight of the basics. With whom are we contracting? To do what? Who pays? For how long? How can we get out of this?
- Assume that an overseas partner will automatically comply with United Kingdom legal requirements.
- Consider legal documents as side issues. An Agreement should envisage the risks discussed in the other chapters of this Guide.

Staffing

Do

- Establish what the employee's employment rights and obligations will be as regards contractual issues and statutory rights.
- Establish what local laws will apply and may affect the employee.
- Ensure the employment contract covers all relevant issues specific both to the move overseas and any eventual return home.
- Ensure risk assessments are carried out to protect the employees' health and safety.
- Ensure that all immigration requirements and obligations are complied with.
- Check the taxation position and ensure appropriate arrangements are in place.
- Check the pensions position.
- Check that all relevant insurance is in place.
- Ensure that no data protection principles are breached.

Don't

- Assume that the UK law will be the relevant law.
- Rely on an existing contract of employment. The contract will need to be tailored to cover the work overseas.
- Underestimate the support required by the employee.

Students

Do

In order to ensure that the institution/student relationship is managed effectively, the UK university should:

- identify precisely at the outset what legal and regulatory obligations each university will owe to which institution's students under which state's laws.
- identify whether it will have a contract with students of the overseas university even where the UK university's obligations to those students will be limited (for example, in relation simply to the awarding of degrees).
- ensure that students with whom it will have a contract are informed at the outset with which institution(s) they will need to register and will have a contract.
- ensure that it documents succinctly and disseminates from the outset the respective entitlements and obligations of each party to each other: UK university, overseas university and students.

Don't

- Enter into contractual arrangements with an overseas partner which hinder or prevent the UK university partner from discharging its legal and regulatory obligations to students.
- Omit to carry out appropriate risk assessments of the activities and environments in which students will engage or be placed, particularly in respect of students on placement or based at the overseas university; students out of sight should never be out of mind.
- Omit to inform students from the outset which institution's procedures apply to them and when (for example, in respect of discipline, fitness to practise, complaints and academic appeals).

Managing partnerships**Do**

In order to manage international partnerships effectively the UK university should:

- adopt a proactive and holistic approach to monitoring the operation of international partnerships, putting in place a systematic process for regular review of the operation of the partnership during its lifetime and not waiting until close to the expected date of termination. This process should involve not only the academic lead department but also central departments of the university concerned with academic quality, finance and legal advice. Effective sharing of information across the university is therefore essential.
- be constantly on the lookout for opportunities to extend successful partnerships so as to maximise the return on what is likely to be substantial investment by the UK university.
- ensure that issues identified by the regular monitoring process are properly addressed and opportunities for developing the partnership appropriately planned and taken forward.
- ensure that there is a fundamental review of the partnership in good time before the expected termination date, in conjunction with the international partner but also the university's own departments, and with the benefit of relevant external sources of information and advice (for example, any report from the QAA or relevant professional or other accrediting bodies).

Don't

- Assume that once the partnership agreement has been signed the operation of the partnership can be left to the academic department which instigated it.
- Allow partnership agreements to roll on from year to year without periodic systematic review of the whole of their operation and not just the financial schedule.
- Regard the involvement of legal advisers (whether from the institution's internal legal office or suitably experienced external advisers) as a defensive or negative step, since advice delivered promptly in response to a request for guidance in the early days of a potential problem (or opportunity) may save the institution considerable time and money.

When things go wrong

Do

- Check the contractual documentation which exists: what dispute resolution mechanisms have been agreed, what are the timeframes for bringing a claim?
- Establish what jurisdiction/arbitration provisions are likely to apply.
- Establish what governing law is likely to apply to the dispute (this may be established by agreement or by operation of law - see below for further information).
- Consider whether emergency steps (for example, injunction/preservation order) need to be taken to preserve the status quo.
- Notify insurers.
- Collate and preserve relevant documentation and ensure that all those involved in the matter understand the need to preserve relevant documentation and not to create unnecessary/prejudicial documentation in relation to the dispute, which might later have to be disclosed.
- Consider whether staff and/or students are involved or likely to be affected by the dispute, and what communications need to be put in place to keep them informed.
- Consider whether any third party contractors/partners or any other interests of the institution are likely to be involved or affected.
- Take account of any wider reputational issues and consider whether it is appropriate to communicate to the press.
- Take legal advice at an early stage of the dispute.

Don't

- Act in haste. In particular, be prepared to spend a good deal of time working through the consequences of termination before any action is taken: careful planning is crucial to developing an appropriate strategy for dealing with individual problems.
- Allow satellite disputes to arise, for example, as to whether there is a 'Dispute' which triggers the dispute resolution provisions under the agreement. Hopefully the provisions will be clear, but if not, try escalating the issue to senior management to try to reach agreement on the way this particular issue will be dealt with.
- Become entrenched in a particular strategy. This can be a particular problem where individuals within the organisation may feel morally aggrieved by what has happened. It should be clear from the points made above that there are many different factors which should influence your choice of strategy for a particular dispute and some of these points may only come to light during the course of the dispute.
- Take anything for granted: expect the unexpected, especially where there are cultural differences involved. Don't assume you understand why your international partner has suddenly become uncooperative. There may be very complex political or financial motivations which are worthy of further investigation.
- Assume that settlement at any cost is desirable; in reality if the fundamental issues are not resolved, this may be storing up problems for another day. This could place the institution in a worse position if, in the meantime, further costs have been incurred and/or students' reasonable expectations have not been met.

Ending partnerships and beginning again

Do

- Be clear which of the various grounds for termination the university concerned is going to rely on and make it clear to the other party.
- Use the termination procedures set out in the collaboration agreement properly, giving the 'party in breach' the appropriate period of notice of the decision to terminate which has been made by the authorised individual or committee within the 'innocent' university.
- Put together an implementation plan, if possible agreed between the partners.
- Ensure the termination process is managed in such a way that potentially prejudicial effects on students are avoided or minimised, that students are kept informed of developments and that every effort is made to assist students to complete their programmes.
- Provide in secondment agreements for the eventuality that staff of the UK university may have to return to the UK on termination of the agreement.
- Undertake the necessary consultations where employees may become redundant following termination of the agreement, or where staff are to be transferred to another employer.
- Ensure that appropriate thought is given when negotiating the partnership arrangements as to the treatment of information and records following termination of the agreement, in order to preserve confidentiality and comply with data protection requirements on the one hand, but also meet expectations of quality assurance and accrediting bodies regarding reasonable transparency.
- Ensure the final review of the partnership agreement is considered by the central university body with responsibility for international partnerships, in order to assess the lessons for the university arising from the partnership. Be prepared to share those lessons more widely with the sector where possible.

Don't

- Regard termination of an international partnership as a fate worse than death: not all partnerships can last forever.
- Allow your institution to be wrong-footed, even though the other party is more in the wrong, by making procedural mistakes in ending a partnership.
- Allow the termination process to deteriorate into an unseemly squabble which is likely to discredit the name of both universities and of UK higher education.
- Forget the over-riding responsibilities of both partners to protect the position of students and staff.
- Forget to keep quality assurance and accrediting bodies, both in the UK and the overseas country concerned, informed of developments.
- Allow your partner to appropriate valuable intellectual property belonging to your university through failure adequately to protect such rights through the partnership documentation, or through failing to enforce rights protected by that documentation.
- Fail to ensure adequate arrangements for preservation of information and records following termination.
- Refuse to talk about terminated partnerships, provided confidentiality obligations are complied with. The collective knowledge and experience of international partnerships can only increase if institutions are willing to share their less happy experience of partnerships as well as their successes.

1 Introduction

1. THE LAW

1.1 Why take heed of legal issues?

Gone are the days when the terms of an international collaboration could be agreed between Vice-Chancellors on no more than a handshake. Universities now, quite rightly, see themselves as sophisticated international collaborators and academic and commercial partners. As such, universities which collaborate abroad are increasingly taking account of legal issues when collaborating. But before we go on to discuss the legal issues surrounding international collaborations, we should stop to ask ourselves: why let the law encroach on what are essentially academic matters?

The scope and scale of international collaborations is rapidly increasing. A study in 2007 by the Department for Innovation, Universities and Skills (DIUS)¹ found that 65% of UK Universities engage in some kind of international collaboration, comprising over 1,500 courses and more than a quarter of a million students². This growth has been coupled with a recognition that international collaborations must be managed in a sustainable manner. Rather than the revenue-focused one-off collaborations which were the norm, it is now common for UK universities to approach collaboration in a collegiate manner, treating a partner as either an equal or as something approaching a mentee. So with more and deeper international collaborations than ever before, the need to reduce legal risk has never been greater.

Some institutions believe that when considering legal risk they 'have nothing to fear but fear itself'. Indeed one institution, when considering the risks surrounding a significant international collaboration, could think of only one such risk: legal fees. It is true that researching and carefully documenting an international collaboration will result in some legal expenses and/or management time costs. Hopefully though, this guide will help to show that time spent planning a collaboration is time well spent.

The first point to note is that much of the contents of this guide has little to do with technical legal issues. The suggestions to carry out research on a collaborative partner and to document the terms of a relationship are common sense ones. These two steps alone will go a long way to ensuring that an institution attains the outcome it requires from a given collaboration. The reason for taking note of the issues in this guide is simply to make sure that any institution entering into an international collaboration does so aware of what it must do to maximise its returns from the venture.

Taking account of the issues in this guide will help not only to ensure that things go well for a collaboration, but will also help to make sure that things do not go wrong. If things do go wrong with a collaboration, the guide goes on to explain what steps an institution should take. Over recent years, many institutions have found themselves involved in failing collaborations. For some, this may mean no more than a small financial liability. Other institutions have found themselves subject to significant ongoing liabilities over a number of years. There have been a number of lurid headlines giving bad publicity to some institutions, whilst for others failures in international collaborations have meant adverse audits from the Quality Assurance Agency for Higher Education (QAA).

1 See also UUK, *Universities and Development* November 2010.

2 Drew, McCaig et al (2007) *Trans-national Education and Higher Education Institutions* ('Trans-national Education'). DIUS Research Report.

Examples of the types of issues that can arise with international partnerships, drawn from the authors' experience, are set out in Annex 5.

1.2 Powers to collaborate

All higher education institutions have limits on their powers in one way or another. Chartered corporations may have wide powers, but they will at least be limited to achieving the objects of the institution and some chartered corporations do not have the power to award joint degrees, as is discussed at 3.6 below. Statutory corporations will have the powers which are set out in the statute which incorporates them, or often in other documents referred to in that statute. For post-1992 institutions, these restrictions can be significant. Institutions which are companies limited by either guarantee or shares are limited by the terms of the Memorandum of Association and Articles of Association.

1.3 Charitable considerations and corporation tax

The majority of UK universities are exempt charities³, meaning that they have a charitable nature and are generally subject to restrictions relating to charities but do not have to comply with filing requirements imposed by the Charity Commission.

Being a charity can affect international collaborations in a number of ways. In some instances, as mentioned below, questions will arise as to whether or not VAT should be charged on course fees. Where an institution seeks to charge fees for a course at a high though commercial rate, questions may arise as to whether this activity falls outside the scope of primary purpose trading by a charitable institution, so that corporation tax is payable on any surpluses generated. It is even in principle possible that in such a case the charitable status of the university could be affected.

Other institutions may see an international collaboration as a way of enhancing a university's charitable character. For example, delivering courses at low fees in developing countries may help a university to show that it is genuinely concerned in enhancing education and learning. Even in this scenario legal issues may arise: could delivering such a course in fact be for the relief of poverty and so outside the charitable objectives of the educational institution unless some educational benefit can be shown?

1.4 Tax considerations - Value Added Tax

We have mentioned the importance of considering the corporation tax implications surrounding any form of collaborative arrangement. In addition, Value Added Tax issues must be taken into account when considering the structure of the proposed partnership. A hidden VAT cost can arise in a number of ways. All UK higher education institutions, whether charitable or for profit, benefit from a VAT exemption applicable to fees for the direct provision of educational courses. However, this is not given where, for example, a profit-making entity provides educational courses on behalf of the collaborative partners, or where a non-UK institution provides the courses (in part or in their entirety) to international students studying within the UK/ EU. Care must be taken when structuring the arrangements to ensure that, where required, the VAT exemption is achieved.

³ Since June 2010, all Welsh higher education institutions have been required to register with the Charity Commission.

Furthermore, VAT costs may arise for either partner in respect of services provided within the EU between the parties, or where services are procured within the EU by either partner from a third party provider. This can include IP use and transfer, agency services, teaching and validation. Once again, if structured with careful thought, the VAT costs can be minimised.

The partners must also be aware that VAT is a pan-EU tax, and that similar sales taxes may apply in non-EU jurisdictions. The partners must ensure that such issues are considered on an international basis.

1.5

Quality assurance and funding

All publicly funded higher education institutions in the UK are subject to obligations to their respective funding councils and to the QAA. When collaborating abroad, and when considering such a collaboration, institutions should take account of the QAA's UK Quality Code for Higher Education (in this book referred to as the QAA Quality Code).

Institutions must ensure that no money received either directly or indirectly from a funding council should be used towards the costs of an international collaboration.

The QAA carries out audits not only of institutions within the UK, but also of UK institutions which are delivering courses overseas. This means that an institution's risk management procedures should not come to an end once a collaboration begins; attention should be paid to the sections later in this guide which detail how a collaboration should be managed.

1.6

International considerations

As we will go on to explain throughout this guide, it is not only legal issues in the United Kingdom which the institution must consider. An international collaboration entails international legal issues.

In Chapter 3 we will explain the need for due diligence to be carried out on an international partner and in Chapter 4 we explain how any contract may not invariably be subject to the law of England and Wales (or Scotland or Northern Ireland as appropriate).

By their nature, international issues will depend upon the jurisdiction in question and will normally require expert local legal advice. For example, did you know that when contracting with a public body in some jurisdictions it may be impossible to take legal action against that body if it fails to fulfil its obligations? In other jurisdictions an academic award from the United Kingdom may not be recognised, meaning that post-graduate collaborations could be compromised.

2.

WHY DO INSTITUTIONS COLLABORATE?

2.1

Teaching

There is a myriad of reasons why universities in the UK choose to collaborate with international partners. This guide concentrates on the most common reason for collaboration: teaching students overseas. Some of the other drivers for collaboration are briefly looked at in this section.

Most of the advice contained in this guide is valid for all kinds of international collaboration. For instance, the need to carefully document a partnership is equally valid for collaborations which are designed to facilitate research.

2.2

Research

Collaborations between UK universities to carry out research are very common. In an increasingly international environment, there are signs that cross-border research collaborations are becoming more popular.

Research collaborations are frequently conceived and driven by academics on the basis of trust. For this reason, it is particularly important to ensure that legal risks are considered and addressed as appropriate.

The use and creation of intellectual property is often of particular importance in research collaborations. Do all partners have the right to use the intellectual property they need to carry out research? Who will own any intellectual property used in the research? Who owns any intellectual property created by the research? How will any intellectual property which is created be dealt with: will it be sold, licensed or published?

A research collaboration will be based on the academic standing of the partners. For this reason, some tactful enquiries as to the qualifications and background of all researchers will prove useful.

As with other forms of collaboration, the terms of the agreement between the institutions should be documented. What is the purpose of the research? Where will it be carried out? Who will pay for the costs of the research? What research methods will be used?

With research collaborations it is particularly important (and difficult) for administrators and legal advisers to provide an enabling framework for a collaboration rather than a straightjacket.

2.3

Marketing

With universities in the UK taking an increasingly international focus, many institutions are entering into marketing arrangements with overseas companies and agents. The QAA Quality Code requires that any such arrangement be documented in a written legally binding agreement. Some explanation of what such agreements need to cover is provided in Chapter 4 at section 3.9. These agreements are mentioned here because of the high risk they pose to universities.

Not all marketing companies and agents are reputable. Before engaging a company or agent to work on behalf of the university in a foreign territory, the institution should seek independent recognition that the company/agent works in an ethical and legal way (see Chapter 3). In particular, government licences are required in some countries for marketing agents. An institution may incur penalties for using unlicensed agents, which in some countries could be as severe as a complete ban on that institution operating in the territory.

Maintenance of academic standards is another important consideration when a recruiting agent is employed. The agent must be fully aware of the institution's standards and should not be financially incentivised to attract unsuitable entrants.

Some marketing agents work for more than one UK higher education institution and so could be faced by conflicts of interest.

When a third party is engaged to publicise a university, a risk opens up that the university's name or logo may be misused. For this reason, the terms of use of the university's name and logo must be carefully set out in the agreement.

If a partner institution is allowed to market the UK institution, the terms on which it may use the UK institution's name and intellectual property should be carefully set out in the partnership documentation. See Chapter 4.

Universities should also be aware of the potential liability for VAT of payments to agents, where those agents are outside the UK. With appropriate legal advice, it may be possible to mitigate this liability.

2.4 Work placements

In the same way as many institutions have links with UK companies for students to undertake a year in business as part of a degree programme, some institutions have set up similar links with international companies.

The crux of international work placement contracts is how risk is shared between the international company and the UK institution in relation to the student in question. What activities is the student allowed to do, and which is s/he not? Who will be the key contact in the company with responsibility for the student? What happens if the student harms someone? What happens if the student is harmed? Must the company hold any insurances?

It is essential that answers to such questions are agreed, not only between the partners but also with placement providers, and documented accordingly. Helpful guidance on assessing the risk of international as well as UK placements is available from ASET⁴.

2.5 Services

Universities currently procure almost all of their services from within the UK. There are occasions when a UK university will receive services from an international partner, such as some internet-hosting on an international collaboration, but as yet this is reasonably rare. It is not difficult to imagine that in the future some institutions, perhaps acting together, may wish to procure some back-office services from overseas.

The structuring of such agreements to minimise tax liabilities is likely to be key. The agreement should also clarify which services will be delivered, how and by whom.

3. THE TEACHING COLLABORATIONS COVERED BY THIS GUIDE

Trans-national Education⁵ envisages ten different forms of international teaching collaborations by UK universities. Of those ten forms of collaboration, three (being distance learning, blended delivery and partial credit) are variations on other forms of collaboration and so will not be individually considered in this guide. The seven remaining forms of international collaboration for teaching purposes are explained in the remainder of this section.

3.1 Flying faculty

In this model, a UK institution will deliver a programme itself in a foreign country. Strictly speaking, this is not a form of collaboration at all, as the UK institution does not need an overseas partner. However, an overseas partner is often involved in some way in such an arrangement and so for completeness we have included this form of collaboration.

⁴ ASET Health and Safety for Placements – Student Guidance 2009.

⁵ See footnote 1.

This form of collaboration often works best for delivery of small, discrete programmes at postgraduate level. An institution would agree to provide a course, perhaps to a company or a trade association. The institution then has the financial certainty to be able to lease premises in the overseas country and to arrange all of the legal requirements for its staff to teach.

The most common legal issues to arise with this form of collaboration are the requirements of carrying on business in the overseas jurisdiction. In some instances, it may be necessary or expedient to create a legal entity in that country. Local taxes in the overseas jurisdiction may also be an issue. These taxes may be on any fees paid to the university or on any monies transferred out of that country.

In most instances, an institution will require legal advice from lawyers in the jurisdiction in question. As those lawyers will be required to work closely with the institution's UK legal advisers, it is helpful if the overseas lawyers are from the same firm or group of firms as the UK advisers.

An institution may choose to employ an agent or consultant to help with the administration of the overseas course, in which case a legal agreement with that person or company will be required. If the institution prefers to employ its own member of staff in the overseas country, this may pose its own issues.

This method of collaboration is very effective for institutions which choose to have complete control of the delivery of a programme. Whilst this method undoubtedly creates more work for a UK institution, it does help to ensure that the institution controls its own risks.

3.2

On-campus provision

On-campus provision requires the UK institution to create its own overseas campus and to deliver programmes there. Given the complexity and extent of investment required of this model, it is likely always to involve some level of collaboration with a local partner.

Setting up an overseas campus will require a university to become heavily involved in the territory. Early involvement of both UK and overseas lawyers will be crucial to address issues such as setting up a legal entity, considering tax issues, employment regulations and in some cases even attaining accreditation from the local ministry of education.

The UK institution must consider a range of issues where it intends to open an overseas campus. Will this be part of an existing academic environment? Would the university prefer to purchase or to lease land? Will the UK institution or the local branch hold rights to the premises?

3.3

Validation

Validation arrangements come about when a UK institution reviews a programme at another institution and decides that the programme is of sufficient quality that the UK institution will give an award to students who successfully complete that programme.

International validation agreements have been popular for UK universities for some years. Validating overseas programmes can be a relatively easy way for an institution to widen its student base and potential income without incurring significant capital costs or staff time.

It is precisely the lack of detailed involvement by a UK institution in an international validation which makes it risky. As the overseas partner has relatively wide discretion over the delivery of the programme, it has the potential to affect the reputation and academic standing of the UK university.

For this reason, validation arrangements should ensure that the UK university has complete confidence in the overseas institution before a validation is agreed to. The validation agreement will then govern how the UK institution will maintain control over awards and limit the potential risks.

3.4

Articulation

Articulation arrangements, which are sometimes called advanced standing arrangements, are similar to validation arrangements, but have some of the characteristics of a foundation degree. Under an articulation arrangement, students who successfully complete a course at an overseas institution will be allowed automatically to enter onto a programme in the UK.

The issues around articulation arrangements are similar to validation agreements, although as students from the overseas institution will come to study at the UK university, the potential for harm to the UK university's academic standards is even greater, although the UK university does have greater control. Of course, as students will study both overseas and then in the UK, the potential for student fees is also greater.

3.5

Franchise

A franchise arrangement involves delivery by an overseas institution of a UK university's programme. This is similar to a validation arrangement, but with the materials and course scheme provided by the UK institution.

When a UK institution provides the materials and course scheme for an overseas programme, the risk that the course will not be of sufficient quality is reduced, but additional intellectual property risks open up that the UK institution's materials will be misused.

3.6

Joint award

In a joint award collaboration, students study at both the UK institution and the overseas institution, often for a period of two years at each. On successful completion of a programme, students are given one certificate jointly by the two institutions.

As is discussed at 1.2 above, the first issue to arise with joint awards is the capacity of the universities to make the award. Many UK institutions' constitutions (particularly those of chartered universities) in the past have simply not envisaged a power to make joint awards. If this is the case, the institution would need to apply to the Privy Council to amend the constitutional documents of the university. It should also not simply be assumed that the proposed overseas partner is able to make a joint award: their legal power to do so should be checked.

As two institutions will be delivering programmes to every student, careful consideration should be given to responsibility for the students at any given time. Which institution's regulations will apply? Will a student be allowed access to both institutions during the entire course of the programme? Will students be allowed to choose where to sit examinations? As the QAA has no remit to assess the quality of the overseas partner but only the quality of the UK university's input, this responsibility lies primarily with the UK institution.

3.7
Dual/double award

A dual or double award is essentially the same as a joint award, except that on successful completion of a course, students are given one award from each institution. The issues around dual awards are similar to those arising from a joint award, except that there should not be any questions over the capacity of the UK institution to make a dual award. The award itself should make clear that students have undertaken only one programme of study.

As the two elements of the programme do not need to be interdependent, the institutions should consider how links will be maintained and then document this in an agreement. For example, must a student successfully complete both parts of the course to receive either award?

4.
LEGAL STRUCTURES

Once the institutions have agreed on the kind of collaboration which they would like to enter into, a decision should be taken as to the legal structure of the collaboration. There are three common forms of legal structure for an international collaboration: the institutions may regulate the collaboration only by way of a contract; one or more of the institutions may set up a subsidiary company to enter into a contract with the other; or finally, the institutions may choose to set up some form of joint venture company.

4.1
Contractual collaboration

In its purest form, a contractual joint venture is no more than a contract between two or more parties, detailing their co-operation as independent contractors. The relationship depends solely on the contract without the background of established corporate procedures or laws. That contract will normally be concerned with the acts to be performed by each party in relation to the joint venture and the rights of the parties to the results of the venture. Joint ventures of this type can range from those being relatively informal and narrow in scope to more extensive types of collaboration; further details of the contents of a collaboration agreement are set out in Chapter 4.

Contractual joint ventures are the most popular form of collaboration for UK institutions, but as can be seen from the drawbacks detailed below, this number one billing may not be justified.

In a contractual joint venture, there will usually be no pooling of assets and no sharing of costs and there must be no sharing of revenues or profits to avoid the risk of the agreement being held to create a 'partnership' as defined by the Partnership Acts 1890 onwards. The institutions must avoid a legal partnership being deemed to have been made, or any liabilities of the partnership may be payable in full by either partner whether they were responsible for them or not.

A contractual collaboration has the advantage of simplicity in that both partners maintain their current identities and there are no issues around transferring staff, property or pensions. Each institution will remain financially independent, with no liability for any budget deficits of the other, and each will be responsible for tax on its share of any profits arising from the arrangement. A contractual collaboration is the easiest and least costly model to adopt and wind up.

However, a contractual collaboration has no independent legal status and will not have the capacity to act in its own right in relation to bidding for funding or contracting with third parties. It does not limit liability, save by limiting the obligations taken on by each party through the provisions in the contract. It can be hard to enforce a contract for breach of its terms.

4.2

Contractual collaboration using a subsidiary company



This option is similar to a contractual collaboration, but here the UK institution creates a wholly owned subsidiary company which would itself contract with partners.

This option has the advantage of maintaining a relatively simple corporate structure, with clear responsibility for collaboration with the new subsidiary of the UK institution.

As the UK institution would have limited liability for its subsidiary it would not expose its assets to any liabilities incurred in respect of the collaborations. The UK institution would appoint the board of directors of the subsidiary and can set the policy and strategy for the subsidiary. For this reason, the UK institution may choose to hold land and to employ staff through its subsidiary.

As the subsidiary company will not have degree awarding powers, certificates must be issued by the UK institution. It may be necessary to consult with the QAA in order to ensure that responsibilities for students are clearly set out.

Subject to compliance with the relevant legislation, the company can be charitable and attract charitable tax treatment on the basis that any surpluses it makes will be ploughed back into the company's operations and not distributed. The Companies Acts provide a detailed legal framework for the constitution and management of a company. A company provides a clear structure for internal accounting and reporting.

The subsidiary company could recruit its own staff, with the possibility of offering posts as Directors of a new body. Alternatively, the UK institution could second its staff to the subsidiary company. The subsidiary company could take on a life of its own in due course and could be conducted as an education institution.

However, there are a number of costs associated with setting up a company. Audit fees are also payable on an ongoing basis. Furthermore, information about a company is publicly available through inspection of records at Companies House, and if a charity, at the Charity Commission.

Liquidation of a company may be difficult to achieve in contentious circumstances. Even a member's voluntary liquidation tends to carry some stigma.

There are rules controlling how a director can act which could be contrary to the UK institution's interests.

The UK institution must be careful that it does not appear to exert control over its subsidiary. If the UK institution does control its subsidiary, then the UK institution's governing body may be deemed to be shadow directors of the subsidiary. This could lead to the members of the governing body being liable for the actions and liabilities of the subsidiary.

If the company is to employ staff, consideration would need to be given to benefits and pensions rights of those employees (staff of a subsidiary company may not be entitled to the same pension benefits as offered by the UK institution).

In some circumstances, such as where significant tax issues arise, it may be expedient for the UK institution to incorporate a subsidiary company overseas. If this is the case, then the institution will require legal advice from a local lawyer.

If a subsidiary is set up in the UK, then the institution should choose the legal form of that entity. Within the UK, the institution would be likely to set up a subsidiary in one of the following forms:

4.2.1

Company Limited by Guarantee

The most common form of corporate legal entity currently used for not for profit arrangements is a company limited by guarantee. Parties increasingly set up such companies for educational purposes including entering into collaboration arrangements with other charitable or public bodies, in order to achieve co-operation, specialisations and similar agreements. The Charity Commission and Companies House favour the use of these types of entities for such ventures.

A company limited by guarantee has no share capital. Any profits generated by the company will be paid to further the objects of the company. The members all agree that on dissolution they will each pay a nominal amount, commonly £1, by way of guarantee, i.e. the members will give an undertaking to contribute the nominal amount towards the winding up of the company in the event of a shortfall when the company is dissolved.

A company limited by guarantee is, unless charitable, subject to corporation tax on its profits in the same way as any other company. However, as such a company does not have a share capital, it cannot form part of a group for tax purposes; the tax implications of transferring assets or land will therefore need careful consideration.

If a non-charitable company has a surplus of funds, it has no mechanism, such as a dividend, to distribute that surplus to its members. Commonly, where members have charitable status the company may pass surplus funds to them via Gift Aid, subject to having the power to do so in its Articles of Association.

4.2.2

Company limited by shares

A company limited by shares is the most frequent entity used for profit-making joint ventures which

are not intended to be charitable. The main difference between a company limited by shares and a company limited by guarantee is that a company limited by shares has a share capital and will (generally) pay profits to its shareholders by way of dividends. Subject to relatively narrow exceptions, the legal liability of the shareholders will be limited to payment up of the share capital held by them in the joint venture company. A company limited by shares will be liable for corporation tax on its profits, although a subsidiary which is wholly owned by a UK charity will be able to reduce or eliminate taxable profits by making gift-aid payments to its parent.

4.2.3

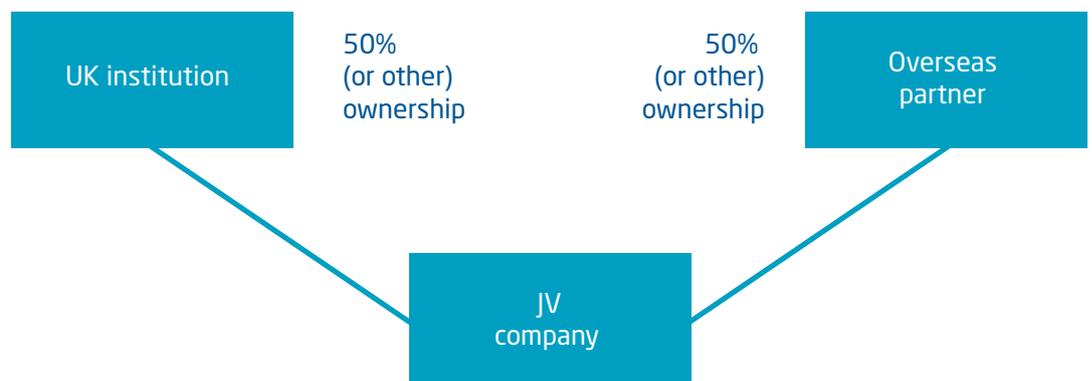
Charitable Incorporated Organisations

A Charitable Incorporated Organisation (CIO) structure was introduced by the Charities Act 2006. The Charity Commission completed a consultation on CIOs in December 2008, with secondary legislation making CIOs available due in late 2012. It is a new form of corporate charitable entity, which is similar to a company limited by guarantee but which will automatically have charitable status, and therefore will be afforded charitable tax treatment. Unlike a charitable company limited by guarantee, it will only require registration with the Charity Commission (as opposed to Companies House as well).

A CIO can only be set up for charitable objects and purposes and it must be for public benefit. Such purposes must fall within one of the thirteen heads of charity set out under the Charities Act 2011, which include ‘the advancement of education’. A CIO cannot be an exempt charity, and will have to be registered with the Charity Commission. This may restrict its use for education purposes as most universities in England (although not Wales) are exempt charities.

4.3

Joint Venture Company



This option involves both the UK institution and its partner (or partners) jointly participating in an entity which will provide services to both institutions. The ownership in the company could be equal or otherwise owned in agreed percentages. The company would be managed by a board that is appointed by representatives from both institutions. The institutions would decide how the board would be structured.

The institutions would enter into a members’ agreement between themselves and the company, agreeing what services the company will provide and how the relationship between all three would be regulated.

If elements of the business of each institution are transferred to the company, there may be a transfer of part, an undertaking which would mean that staff may be deemed to automatically transfer to the company.

If required, the joint venture company can take on a separate brand from the institutions.

Both institutions would retain their own independence and would not be subject to the control of the other. The institutions would be financially independent from each other and would therefore not have any responsibility in this regard.

However, a separate legal company would need to be run and administered by the institutions, which may be time consuming and costly. If the company is owned by the institutions on an equal basis, tensions may arise in the event of a deadlock at board or member level. Appropriate deadlock provisions will need to be included in the members' agreement. Other control issues may arise as to who would chair the board etc. A UK resident joint venture company would be liable for corporation tax on any taxable profits. The company would only be able to reduce taxable profits by way of gift-aid payments to the UK institution, as gift-aid payments can only be made to UK charities. Further the company is unlikely to form part of a group for direct tax or Stamp Duty Land Tax (SDLT) purposes and careful consideration would need to be given to the tax implications of the transfer of any assets or land.

Winding up a company can be time consuming and costly so it will be harder to dissolve this model than a contractual collaboration.

As with a subsidiary company, if the institutions decide to set up a joint legal entity in the overseas jurisdiction, then both institutions will require specialist local legal advice.

If the institutions choose to set up a joint subsidiary in the UK (which is unlikely, given that teaching will almost certainly be in the foreign jurisdiction) then any of the legal entities mentioned above as subsidiary companies could be used for the joint venture company. In addition, the following are some other legal forms which may be used:

4.3.1 *Partnerships*

In many ways, the partnership structure represents a mid-point between a corporate vehicle and a collaboration agreement. A legal partnership does not involve the establishment of a separate legal entity as such (although it can sue and be sued in the partnership name). A partnership has an added benefit that the partners, and not the partnership, are liable to tax on their share of the partnership profits; this may be useful if the partners have differing tax status or are based in different jurisdictions. A partnership does not have the benefit of limited liability and each of the partners will be jointly and separately fully liable for the partnership's activities.

4.3.2 *Limited Liability Partnership*

The Limited Liability Partnership (LLP) is a form of legal entity which was established under the Limited Liability Partnership Act 2000 and which is similar to a partnership, but with limited liability for the partners. As an LLP must be carried on with a view to profit, it is unlikely to be relevant here.

4.3.3 *Industrial and provident societies*

An industrial and provident society is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community, and which is registered under the Industrial and Provident Societies Act 1965. It is a separate legal entity which can contract and there is no personal liability on directors and other officers.

Although the rules in relation to Industrial and Provident Societies have lately been relaxed, they give no real advantage over the corporate structures reviewed above and until recently have been far less well-recognised. The Coalition Government has, however, given some encouragement to their use as possible vehicles for “Big Society” projects, including education projects.

We have outlined in Appendix 2 some further legal structures which may be used if the institutions wish to collaborate internationally within Europe.

5.

DOS AND DON'TS

Do

- Think why you would like to collaborate: revenue is probably not a good enough reason.
- Ensure that the right team or person is empowered to plan a collaboration.
- Get the right advice on academic, administrative, legal, financial and tax issues.
- Check that there are no legal or regulatory bars to a collaboration.
- Consider which structure and legal entities will work best for your collaboration.

Don't

- Allow staff to enter into collaborations without institutional approval.
- Underestimate the time, commitment and costs needed to make a collaboration successful.
- Be afraid not to collaborate - it will harm an institution less than an unsuccessful collaboration.

2 Planning a Partnership

1. PARTNERSHIP STRATEGY

In the past, many - perhaps most - academic partnerships, with institutions both within the UK and internationally, have come about as a result of successful working relationships being established between key individuals in the institutions concerned. These may have resulted from encounters at conferences where senior academics have met others sharing a common interest, from staff joining the institution from elsewhere bringing with them knowledge of similar activity occurring elsewhere, or many other fortuitous reasons. Serendipity will always have a part to play in institutional development. However, a key theme of this book is that both the opportunities and risks involved in international partnerships have now become too significant to be left to chance⁶. The investment of time and resources required to ensure that international partnerships are successful means that the activity cannot be left solely to enthusiastic individuals. Rather it must be part of the institution's strategy for academic and business development, with the international dimension being an essential part of its wider institutional mission.

The rationales adopted by institutions in developing their international strategies are many and varied. A research report for Million +⁷ identified seven broad rationales, namely (i) broaden and diversify the sources of faculty and students; (ii) create an international profile and reputation; (iii) strengthen research and knowledge capacity and production; (iv) promote curriculum development and innovation; (v) increase student and faculty international knowledge and inter-cultural understanding; (vi) contribute to academic quality; (vii) diversify income generation⁸.

It is not part of the remit of this book to suggest to institutions what should drive their international strategies; this must be a matter for each institution to decide for itself. None of the rationales identified by Million + are in themselves inappropriate; it must be for the institution to determine which of these rationales is most relevant to them in their particular circumstances. Nor will this book venture on the wider debate as to the possible need for over-arching strategies to be adopted by the UK higher education sector or, beyond that, by UK government. Nevertheless, it behoves all UK higher education institutions to ensure that their activities do not in any way have implications that would detract from the good name of UK higher education, the integrity of which is a major selling point for any individual UK HE institution operating internationally. Similarly, it would be unwise for UK higher education institutions to venture on activities which clearly run counter to UK governmental foreign policy, not least because UK institutions have much to gain from UK governmental activities designed to promote the attractiveness of UK higher education to governments, institutions and individuals in other countries.

Accordingly, this book will take as its starting point the assumption that the institution has developed an overall international strategy which, at the very least, identifies the institution's general approach to the following aspects:

- in which countries collaboration is to be actively sought, and any countries where collaboration is to be avoided, for example because it is regarded as being too high risk

6 On risk management generally, see Summers E, Boothroyd K (2009) *Getting to Grips with Risk: Resources for Governors of UK Universities and Higher Education Colleges*. Higher Education Leadership Foundation for Committee of University Chairs.

7 Soodfield S, Middlehurst R (2009) *Universities and International Higher Education Partnerships: Making a Difference*, Million +.

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- a clearly established process for identifying and investigating possible partnerships, documenting them and resourcing them in such a way as not to draw on funding received by the institution from public or other sources and which cannot be used to subsidise these activities
- a clear process for monitoring the operation of partnerships, ensuring the institution derives the maximum benefit from them, such that they become a learning experience and not just a source of generating income.

2. PARTNERSHIP TACTICS

2.1 Why partner?

When considering any possible joint venture, whether the proposed partner is based within the UK or elsewhere, it is always important to consider whether a partnership is necessary or desirable or whether it would be preferable either for the institution to go it alone (securing additional resources if necessary) or, if this is not feasible, whether the proposed project should be abandoned. Any partnership will involve a degree of compromise and loss of control. Effective partnership working is always time consuming and therefore costly. In some cases institutions might find it more cost effective to consider mounting their own overseas operation, although this is likely to involve considerable investment and probably only worthwhile if the institution wishes to establish a considerable long-term presence in the country concerned.

2.2 For what purposes?

Some possible rationales for international partnerships were suggested above and institutions may have a number of additional purposes. In many cases particular partnerships will involve a range of purposes. It is important that these are consistent and, crucially, are consistent with those of the proposed partner. Each partner can only be sure of this if the initial dialogue between the two institutions has been at an appropriately senior level and as open as is possible within the prevailing cultures. In some cultures, the process of exploring potential collaboration and sharing information about each other's aims and objectives can be a slow process requiring great sensitivity and patience. In rare cases, it may be that it will not prove feasible to be sufficiently satisfied that the two institutions' aims and objectives are mutually compatible, in which case serious questions must be asked within the initial risk assessment (see below) as to whether the proposed partnership is viable.

2.3 For how long?

In the past most institutional collaborations have tended to assume a life span related to the institution's usual period for validation, such as 3 or 5 years. As the range of purposes for which institutions collaborate becomes increasingly extended, so should institutions also become increasingly flexible in their approaches to the timescale for partnerships. For example, the institution may wish to mount an exploratory partnership if it has had little or no previous dealings with the proposed partner, if the proposed partnership activity is a novel one, or if the country in which the partner is based is one in which the UK institution has no experience. This might suggest a shorter term of perhaps only 1 or 2 years. Conversely, if the institutions are well known to each other, both have a long established track record in relation to the proposed partnership activity, and the country-specific issues are limited, then a period longer than 3 or 5 years may be appropriate, particularly if

substantial investment of resources by the partners will be involved. Longer partnerships of course can (and generally should) involve arrangements for interim reviews to identify potential problems as well as opportunities for new partnership activities.

2.4

With whom?

'Knowing your partner' is essential to the success of any partnership, whether within the UK or internationally. Once the preferred partner is identified, an extensive investigation as to possible issues - 'due diligence' - will be involved; see Chapter 3. However, even in the earlier planning stage it is important that an institution is circumspect in identifying one or more possible partners. It is highly unusual for prospective partners to be invited to express an interest in any formal way, along the lines of procurement exercises with which institutions will be familiar in the context of purchasing goods and services.

In many cases, the lead figures within the UK institution will have identified a potential partner as a result of their involvement with them in other academic activities, knowledge of their general academic standing and so on. While such personal connections and knowledge can be invaluable, they should never be the institution's sole source of information: further details and views should also be sought from senior colleagues within the institution and appropriate external sources. These may include the British Council (especially if it has an office in the country concerned) the local UK embassy and possibly the QAA. The QAA will be aware if a UK university has previously had a relationship with the proposed partner which has been terminated, provided that the UK university has complied with the requirements of the Quality Code and notified the QAA of termination (see Chapter 9). A check should also be made of any QAA reports of audits of collaborative provision involving the proposed partner. In any event, the identification of the preferred partner should not be approved until after the satisfactory completion of the initial risk assessment, discussed below.

In addition to an academic partnership, some collaborative programmes will involve a placement element or other work experience, which will mean the UK institution working with a third organisation which may be a commercial or industrial body. Where such work placements are offered in the overseas country, it will be important that the organisation which is to provide them should be properly checked. Again, UK government departments may be able to provide valuable information, although in England (but not in Scotland) a charge is likely to be made for this. When work placements are to be provided in the UK to students of the overseas institution, the UK placement providers must expect the overseas institution to make similar checks on them.

2.5

Know thyself

While a genuine passion to develop international links is essential to the success of any international partnership, such commitment must be balanced by a realistic acknowledgement of the UK institution's position. That awareness will only come about if realistic answers are given to questions such as:

- What experience, if any, does the UK institution have of the type of collaboration suggested, and of this part of the world in particular?
- Have the lessons of previous similar collaborations been truly learned?
- Does the UK institution have the infrastructure (in terms of identified staff and procedures etc. - see Chapter 7) needed to run any significant international partnership successfully?

- Where an institution has developed an extensive network of international collaborations, have the necessary resources - both academic and administrative - been developed to match the scale and complexity of the programmes concerned?
- Are you confident that the UK institution is able to see connections between programmes (for example, between programmes offered in different schools or departments but involving the same overseas partner)? Failure to spot such connections may mean that similar issues are treated inconsistently and opportunities for further development are missed.

3. INITIAL RISK ASSESSMENT

3.1 Introduction

The purpose of the initial risk assessment process is to question:

- whether the UK partner can safely participate in the proposed partnership at all
- whether the proposed partnership, although feasible, presents such a range of substantial risks to the UK partner that these risks are either not manageable or manageable only at costs which are disproportionate to the benefit which the partnership will bring.

The rest of the section identifies a number of issues which may either prevent a partnership going ahead or make the proposed partnership wholly undesirable.

3.2 Licensing

In a number of countries (including several countries covered by the country guides that accompany this book, such as India and China) foreign higher education institutions are only allowed to operate if they are licensed by that country's Ministry of Education or similar governmental or other regulatory body. Licences may be imposed subject to conditions, for example subject to collaboration with types of institution within the overseas country approved by the government concerned (as in India) or licences may be required in order to provide certain types of courses (as in Russia). It may be difficult to obtain reliable information on licensing requirements. Initial information may be available via the British Council or British Embassy. In borderline cases it may be necessary to take legal advice from lawyers based in, or otherwise familiar with, the law of the country concerned. The UK partners should never take at face value an assurance by the prospective overseas partner that a licence is not required, or is required, but has not been obtained.

3.3 Taxation

Where the UK university expects to make surpluses on operations carried out in the overseas country, it is likely that such surpluses will be liable for overseas tax. Withholding taxes are common in most countries where UK universities will want to operate. Again, general information can be obtained from the sources referred to above but specific information as to the potential tax liability of running a particular course in a particular location should be obtained from lawyers or accountants familiar with the tax regimes of the country concerned. As above, no reliance should be placed on assurances by the proposed partner institution that the proposed partnership activity would not be liable to local tax.

3.4 Exchange control

In many countries where UK universities will wish to establish partnerships, governments operate extensive systems of exchange control which will restrict in part - or occasionally altogether (as in China) - the ability to remit funds earned in the overseas country back to the UK. According to the purposes which the UK university has for the project, this may or may not be a factor which will deter them from proceeding with the proposed partnership. Again, enquiries will need to be made as indicated above, not relying on the proposed partner institution for information.

3.5 Prevention of corruption

Whilst it is commonplace in developed countries for there to be legal regimes in place to prevent corrupt practices such as the giving of bribes in order to secure contracts for the provision of services (which might include educational partnerships) in some developing regions of the world such practices are found in some types of business practice. In such regions a UK university may encounter encouragement or even pressure to smooth the path of a proposed educational collaboration by the promise of special favours or benefits. Such pressures expose the UK university to risks at a number of different levels:

- the risk of prosecution, possibly of the institution or more likely of particular members of the institution, where the law of the overseas country makes provision for this
- similar risks of prosecution within the UK, given that UK law on prevention of corruption has a worldwide reach as the result of the Anti-Terrorism, Crime and Security Act 2001. The Bribery Act 2010 has introduced from 1 July 2011 a new corporate offence of negligently failing to prevent bribery. Universities will need to take careful heed of the guidance issued by the Ministry of Justice and put in place appropriate policies to prevent bribes being offered or accepted. The maximum sentence for bribery has been increased from seven to ten years⁹
- risk to the reputation of the UK university should an allegation of corruption be made, for example by a whistleblower, any such allegations being highly newsworthy both in the UK and overseas

3.6 Sovereign immunity

A considerable number of overseas collaborative partnerships may be initiated or encouraged in the country concerned by an institution which may turn out on close inspection to be a governmental or quasi-governmental body. This may not be immediately apparent from the name of the institution. For example, in those countries which have only recently moved from a communist or other totalitarian type of regime, the concept of a higher education institution with its own legal identity may be virtually unknown. A UK university considering collaborating with a newly created university in such a country should establish at the earliest opportunity the legal status of the body with which it is hoping to work. Should it turn out that the institution is in reality part of or closely connected to government, it is possible that should the partnership break down with the overseas partner being in breach of the agreement, any rights which the UK partner may have will be unenforceable because of the doctrine of sovereign immunity.

⁹ Ministry of Justice, Bribery Act 2010: Guidance about how commercial organisations prevent bribery. See also UCEA Update 11:068 - Employment Policy and Law - Bribery Act 2010 and Offshore Staffing, also A Legal Guide to UK Anti-Bribery and Corruption, UK Higher Education Unit in association with Eversheds LLP, forthcoming.

3.7 Recognition of qualifications

In many countries, the cachet of a UK higher education qualification will be one of the main attractions motivating the overseas institution considering a possible partnership with a UK university. However, it is important that both the UK and overseas institution are clear as to the type of student they wish to recruit and the acceptability of the qualification which is to be offered, assuming that most if not all of the students who will be undertaking the course in question wish to remain in or return to their home country. Further, while qualifications awarded by the UK university for courses provided jointly by the partners may in theory be capable of recognition in the overseas country concerned, such recognition in the overseas country concerned, such recognition may be dependent upon satisfying the requirements of the academic quality assurance regime and/or professional or regulatory body in that country, as well as the UK's QAA and relevant professional, statutory or regulatory bodies. In such a case, it will be important that both partners are aware of what is involved in satisfying such requirements and are confident that the partnership will be capable of meeting those demands within the planned timescale and within the resources the partners are prepared to make available.

In particular, it should be noted that the laws of some countries¹⁰ make no provision for the granting of joint awards by an institution with degree awarding powers in that country and another institution based overseas with power to award degrees in its home country. In such circumstances, students successfully completing a jointly provided course of study would need to be granted separate awards by the institutions concerned.

Where the UK university's own award is accredited by a professional or statutory regulating body, the institution should check whether such accreditation will also be extended to the programme when provided jointly with an international partner, if such accreditation is to be relevant when the programme is marketed in the country concerned. The QAA Quality Code requires UK universities to inform professional, statutory and regulatory bodies if they intend to offer a programme currently accredited within the UK abroad. It is possible that the professional body will not recognise the award when offered outside the UK, or may insist on the programme being offered under a different title.

4. LIFECYCLE OF AN INTERNATIONAL PARTNERSHIP

For a diagrammatic representation of the lifecycle of an international partnership following the approach described in this chapter, see Annex 3.

5. DOS AND DON'TS

By the end of this stage the UK institution should have done the following:

- satisfied itself that the proposed partnership is consistent with its international strategy
- established with confidence that a joint venture rather than a solo project is appropriate for delivering the planned operations, clarified the outcomes which the operations are to achieve and the timescales involved, and have identified a short list of potentially suitable partners

¹⁰ See *Tauch C. Rauhvargers A (2002) Survey on Master Degrees and Joint Degrees in Europe*. European University Association, identifying legal issues regarding the grant of joint degrees in Austria, Bulgaria, Cyprus, Greece, Hungary and Lithuania. However, national laws are changed regularly and up-to-date legal advice should be taken on this issue.

- completed an initial risk assessment confirming that there are no aspects of delivery of the proposed partnership in the country concerned, and with the likely partner or partners provisionally identified, which would be either wholly impracticable or manageable only at disproportionate expense
- produced a plan setting out the steps still to be taken to establish the partnership with timescales, responsibilities and resource implications clearly identified.

The UK university should not have:

- simply accepted the assurances of any individual in the partner institution, however senior, that the proposed collaboration should go ahead without further investigation
- allowed itself to be swayed by the apparently enticing prospect of working with a high profile partner institution, or of producing substantial income for the institution, or of delivering a project which has government backing either within the UK or overseas
- proceeded at such speed that an initial risk assessment has not been undertaken, or that proper investigation and documentation of what will be involved, as discussed in Chapters 3 and 4, will not be practicable.

3 Knowing your partner - Due Diligence

1. WHY CARRY OUT DUE DILIGENCE?

Due Diligence involves the gathering of information, review of that information, possibly collation in a Due Diligence report, and consideration at an appropriate level within the university of the findings in the report. In the context of international partnerships, the UK institution will want to investigate not only the regulatory and statutory environment of the territories in which the partnership will operate, but also its foreign partner's circumstances. Gone are the days where a few visits of members of faculty at the overseas institution sufficed to establish whether/how an international partnership should go ahead. The scope and extent of the Due Diligence exercise will not only depend on the scale and nature of the planned partnership, but also on the location and the status of the suggested partner institution. A provisional risk assessment of your proposed partner and collaboration should be part of the initial planning (see Chapter 2) and it will allow you to set the frame for the Due Diligence exercise.

Due Diligence is usually a mutual exercise: be prepared for your international partner to ask for similar information from you as part of their own Due Diligence process. Although overseas institutions are often happy to rely on the strong reputation of potential UK partners and on the information which they may gather during visits to the UK and discussions with UK academics and staff, they have become increasingly aware of UK Due Diligence exercises and may insist on collecting similar information from your institution. As a result, depending on the frequency and scope of your international partnerships, you may find it worth while putting together an initial Due Diligence bundle which you can hand out to potential partners, provided that (i) such partners have first signed a confidentiality agreement and (ii) all personal information is anonymised or the consent of the individuals concerned ('data subjects') has been previously obtained. Each UK university needs to gather and deliver any information which has been requested by its potential overseas partner in accordance with its own internal rules and procedures. Staff responsible for taking forward the proposed partnership should check with the heads of the institution's relevant offices or departments (such as the finance director) whether such information can be released to a third party. If in doubt, senior administrative representatives should be consulted.

From a legal point of view, the purposes of a Due Diligence exercise are twofold: (i) getting to know your partner and (ii) providing contractual remedies if the partnership is unsuccessful. The first aim of Due Diligence will be made clearer later in this Chapter. The second aim of Due Diligence is often overlooked by the parties initially, as it only comes into play if a partnership fails or encounters serious problems. Usually contractual partnership arrangements will contain warranty provisions under which both parties state to each other that the information which they provided to each other as part of their Due Diligence exercise is true, complete, accurate and up to date. In the event that the partnership fails, and if it turns out that the Due Diligence information which the overseas partner provided to the UK institution prior to entering into the collaboration was misleading or false, such breach of warranty may give rise to a claim for damages against the overseas partner provided that the UK institution can show it suffered a loss from such breach of warranty. A claim for breach of warranties can be brought in addition to any other claims which the UK institution may have against its overseas partner. Further information regarding this function of the Due Diligence can be found in Chapter 8.

Due Diligence may appear an unnecessarily time-consuming and expensive exercise at the start of a promising partnership, but it will help you to avoid entering into binding legal commitments which can generate substantial ongoing costs if they are not properly conceived, structured and documented. Consequently, Due Diligence is in the best interest of both parties. Prevention is the best cure!

2. WHEN TO CARRY OUT DUE DILIGENCE?

Due Diligence should be seen as one of the first steps (after negotiation of the main terms of the partnership) in the process of making partnership arrangements. The earlier Due Diligence is started the better. The legal Due Diligence should be started as soon as possible, as the overseas partners may find it difficult to gather quickly the information which they need to provide. They should also be allowed enough time to get their legal advisers involved if they do not wish to handle the legal Due Diligence themselves. The intermediate or final results will allow the parties to shape their partnership and fully understand and evaluate the related risks. Often the parties only commence their Due Diligence exercise once (non-binding) Heads of Agreement have been entered into to formalise their commitment. In that case, the Heads of Agreement should contain a binding clause obliging the parties to cooperate promptly in Due Diligence matters and keep any information provided as part of such exercise confidential (see Chapter 4).

UK universities are sometimes afraid that starting a formal Due Diligence exercise may be regarded as inappropriate in certain countries and may upset a potential partner, thus leading to a break up of negotiations which were progressing well. Whilst this is an understandable fear, it should not put off UK institutions from carrying out a thorough Due Diligence in a timely manner. More often than not, the reluctance of a foreign partner to participate in Due Diligence is less due to deeply engrained cultural sensitivities than to anticipated logistical problems (which can be overcome with sufficient notice or practical assistance) or fear that the UK institution may try to renegotiate the terms of the partnership, or even walk away from it if all the requested information is disclosed. The latter consequences are indeed sometimes the result of a thorough Due Diligence exercise and the UK university must be prepared to make such decisions where called for.

The following 'points of reassurance' may be provided to overseas partners who are unfamiliar with Due Diligence:

- it is a requirement of the institution's quality assurance body (QAA)
- in return the UK university will fully participate in the potential partner's own Due Diligence investigations
- it will allow the partners to fully understand each other, avoid misunderstandings and manage their collaboration in the best possible way.

It may also be helpful to refer overseas partners to *A Guide to Partnerships with UK Universities* produced by Universities UK¹¹.

Although Due Diligence is one of the first steps in partnership collaborations, it should not be considered finished once the legal partnership arrangements have been put into place and a collaboration agreement has been signed. Due Diligence is an ongoing exercise throughout the duration of the partnership¹². You need to make sure that those key areas of the Due Diligence which are subject to change over time remain under periodic review. Moreover, the partnership arrangements should specify that the overseas partner is under the obligation to provide updates as soon as any changes occur to key areas. However the UK institution should not rely only on

11 Universities UK, *A Guide to UK Higher Education and Partnerships for Overseas Universities*, July 2011.

12 See the version of section B10 of the QAA Quality Code issued for consultation in July 2012, Indicators 5 and 6.

its partner to provide updates: regular visits overseas will help the UK institution to keep the collaboration partner under constant review. The partnership arrangements should also be drafted in a way which allows the parties to regularly review their agreement and update it as and when necessary (see Chapter 7). The UK institution should also reserve the right to withdraw from the agreement or terminate it early without incurring any liabilities if the ongoing Due Diligence exercise reveals that the overseas institution is no longer an appropriate partner (see Chapters 8 and 9).

3. DIFFERENT TYPES OF DUE DILIGENCE

A Due Diligence exercise should deliver as complete a picture of the potential partner as possible. The scope and depth of the Due Diligence will of course vary depending on the nature of the planned partnership. In any event, the Due Diligence should encompass the following three areas: academic, financial and legal.

3.1 Academic Due Diligence

What does Academic Due Diligence cover?

Academic Due Diligence will allow you to examine the academic quality and reputation, degree awarding powers, and the teaching and research resources or capacity of the department(s) and postholder(s) to be involved in the collaboration. This is a crucial part of the Due Diligence exercise as it cuts to the very core of your activities and the feasibility or benefits of a potential collaboration.

The academic Due Diligence needs to be tailored to the nature of the suggested partnership, but at a minimum it should cover the following points:

- accreditation requirements in the territory relevant to the potential partnership
- number, qualifications, expertise and capacity of key academic, administrative and support staff for operating the partnership, and arrangements for recruiting additional staff where required
- number, qualifications, expertise and capacity of academic staff for carrying out marketing/student recruitment/teaching/research according to the envisaged partnership arrangements
- availability and quality of facilities and materials (research, laboratories, teaching venues, library access, accommodation, IT facilities for students and employees, student welfare)
- recruitment process and selection criteria of participating students (if any)
- academic standards and assessment and examination criteria and procedures
- language qualifications of key members of faculty, employees and students
- quality assurance arrangements
- previous experience of the proposed partner of partnerships with other UK universities and availability of independent academic references.

Who carries out the Academic Due Diligence?

Academic Due Diligence is often carried out directly by members of faculty or administrative officers and/or the quality assurance office of the UK institution in close collaboration with their counterparts at the overseas institution. There is usually a certain overlap between the academic and the legal Due Diligence exercises and, in order to maximise efficiency, they should not be carried out in

isolation from each other. If legal advisers have been instructed to assist with the legal Due Diligence, they should be consulted regarding the exact scope of the academic Due Diligence, as it may vary depending on the regulatory and statutory environment in which the potential foreign partner operates. Legal advisers should also be briefed on the results of the academic Due Diligence which relate to such regulatory or statutory environments. If you have any doubts regarding the results of the academic Due Diligence or any local particularities flagged up by your potential partner, your legal advisers should be able to help to source foreign legal advice as and when necessary.

How to carry out Academic Due Diligence

The academic Due Diligence process should ideally be a mixture of a paper-based exercise and site visits. Members of faculty and/or administrative staff of the UK institution should at least visit the prospective partner institution, as site visits provide an invaluable understanding of and insight into such partner's operations and practices. In addition, the potential partner should be asked to provide a written report on the points set out above with supporting documents as and when appropriate.

3.2

Financial Due Diligence

What does Financial Due Diligence cover?

The scope and depth of financial Due Diligence will need to be adapted to the nature and content of the planned partnership and your provisional risk assessment¹³. If a UK university merely wishes to instruct a foreign partner to market its programmes abroad and to recruit students, and the parties agree to the university paying the overseas partner as and when invoiced for materials and services if certain targets have been achieved, then the university's financial exposure under the arrangements is relatively small. It will only need to ensure that the overseas partner has the financial means to carry out its obligations under partnership arrangements. However, if the envisaged partnership requires both partners to make a substantial capital investment in infrastructure or people in order to allow the partnership to become fully operative, then the UK university will of course need reassurance that its overseas partner is able to take on such financial obligations before it starts disbursing its own funds.

As a minimum, the financial Due Diligence usually includes reviewing an institution's audited financial accounts, balance sheet and directors'/governors' reports for the last 3 to 5 financial years. It may also include, if relevant, a review of other major financial commitments of the partner institution (outstanding loans, guarantees and indemnities), mortgages granted over its property, and exchange controls or other restrictions which might prevent the UK institution from transferring funds received overseas to the UK. Financial Due Diligence may also touch on the tax regime of the overseas partner and the potential impact of such regime on the planned partnership.

In practice, the UK institution may find that such financial information may, wholly or partly, be publicly available overseas. For instance, the potential collaborative partner may be under the legal obligation to publish their accounts on an annual basis and you might be able to access them online or through the help of the overseas government authorities or British diplomatic missions abroad.

¹³ See on financial issues generally "A Guide to financial issues in offshore activities", by John Fielden, UK Higher Education International Unit, forthcoming 2012.

Depending on the results of the financial Due Diligence, the UK institution may require its overseas partner to provide guarantees from third parties (such as a bank, or the relevant foreign government, or a parent company of a private sector institution) prior to formalising a partnership.

Who carries out the Financial Due Diligence?

Although financial Due Diligence can be initiated and carried out by the university's finance department, education institutions often find it appropriate to get separate financial advice from auditors or financial advisers (whether based in the UK or in the territory where the foreign partner is based), depending on their potential financial exposure under the planned partnership. The major UK accountancy practices are able to provide services in several jurisdictions through their affiliate offices. Again, the financial Due Diligence should not be carried out in isolation from the legal Due Diligence, as it needs to be carried out in the context of the applicable foreign laws and regulations. The results of the financial Due Diligence may also need to be reflected in the partnership documentation (see Chapter 4).

How to carry out Financial Due Diligence

Financial Due Diligence is generally entirely paper based. The UK university or its advisers send a financial Due Diligence questionnaire to the foreign institution setting out the type of information and documents which they would like to receive, which the overseas partner then sends to the university.

3.3

Legal Due Diligence

Introduction

In practice, universities are usually quite thorough in carrying out the academic Due Diligence, shy to ask for financial Due Diligence information and either relatively confused regarding the legal Due Diligence or keen to avoid legal costs. This should not be the case as legal Due Diligence is the basis for creating a legally enforceable and fair partnership which minimises the risks incurred by the UK university. A thorough legal Due Diligence will help you to avoid the issues described in the case studies set out in Annex 5.

What to ask

You will find in Annex 4 a standard short form Due Diligence questionnaire, which may be tailored to your specific partnership plans, in particular if the partnership involves exchange or recruitment of employees or students. Additional questions may need to be addressed as and when the initial responses are collected but it provides a good starting point to legal Due Diligence.

The results of legal Due Diligence will help you to answer the following questions:

- who is the collaborating institution and does it have the powers/permits and licences to collaborate with you and carry out the activities contemplated by the partnership (for example, to participate in the round of a joint degree)?
- are any local third party consents required? if so, what are the procedures and timescales for obtaining them?

- is the collaborating institution compliant with all applicable laws? Is it solvent and well funded? Is any litigation pending against it?
- does the collaborating institution own the necessary intellectual property or should licences be obtained from third parties?
- what are the applicable local data protection rules?
- are there any double taxation treaties in place between the UK and the country of your partner's incorporation? Are there any restrictions on the cross border transfer of currencies?
- what insurance policies does your partner suggest putting into place?

How to carry out Legal Due Diligence and who to ask - using overseas lawyers

Legal Due Diligence is usually started off by the UK university sending a copy of its standard Due Diligence questionnaire to their potential overseas partner, asking it to provide the required information as soon as possible. If the foreign partner has instructed legal advisers or employs an in-house legal team, it is advisable to make sure that a copy of the questionnaire is addressed to the foreign lawyers. In any event, we would recommend that the foreign partner be asked to send at least a copy of the incoming responses directly to the UK university's legal advisers in order to allow them to review the information and flag up any additional requests or abnormalities as soon as possible. The most convenient and effective way for you to handle the Due Diligence exercise, especially in relatively complex partnerships, is to ask your lawyers to liaise directly with your future partner and to carry out the Due Diligence independently, while providing you with regular updates.

As illustrated by the case studies in Annex 5, international partnerships generally touch on foreign laws and regulations. One of the main questions which the Due Diligence has to answer is whether the potential collaborative partner is academically able, financially sound, trustworthy and in broad terms not involved in any illegal or immoral activities which would affect the UK university's reputation and make a collaboration impossible. In order to evaluate the compliance of an overseas partner with applicable laws, overseas lawyers inevitably need to get involved, as they alone have the necessary legal expertise and understanding of local business practices. Universities tend to be concerned that obtaining foreign legal advice will substantially increase the legal fees, but (a) this is a crucial investment to make the legal Due Diligence a fruitful exercise and (b) in most emerging markets which are of interest to UK institutions, legal services come at lower rates than in the UK. Some law firms may be able to draw on overseas branches to procure advice.

Reviewing results of inquiries

Legal Due Diligence results are usually fed back to your legal advisers in the form of various documents and items of information, which your legal advisers will then review (together with their foreign colleagues if and when necessary). Your lawyers will then report the results of the Due Diligence to you. Depending on the scope of the Due Diligence you may instruct your lawyers to:

- (a) carry out a light touch review of the information provided and highlight on a case by case basis (as and when the information is collected) high risk or major issues which would have a material impact on your partnership negotiations and arrangements
- (b) provide a key issues report setting out all the main issues which they have identified in one comprehensive document, detailing the potential effect and risk factor of such issues and suggesting solutions

- (c) provide, in addition to the key issues report, a detailed Due Diligence report setting out in summary all the information which has been provided as part of the legal Due Diligence exercise and substantial legal background information.

The review of the initial Due Diligence responses often reveals a need for further analysis of some of the issues raised. This in turn often requires advice or clarification from the foreign lawyers. As a result, it is important to start the Due Diligence exercise as early as possible, as it can become a rather time consuming process (in particular if language barriers exist and English translations need to be obtained).

4. **INCORPORATING DUE DILIGENCE RESULTS INTO THE PARTNERSHIP ARRANGEMENTS**

Apart from getting to know your partner, the Due Diligence exercise will allow you to enter into well-tailored and carefully structured and drafted partnership arrangements.

For instance, if the results of the Due Diligence exercise show that:

- (a) the consent of the foreign Ministry of Education is required before the planned partnership can start operating overseas
- (b) the foreign partner was only established six months ago as a subsidiary company of its internationally well known parent organisation and has not yet entered into any other income generating agreements
- (c) under foreign law all intellectual property generated under the partnership would belong to your overseas partner unless otherwise agreed in writing between the parties
- (d) the insurance policies which your overseas partner has in place for the planned collaboration, although compliant with all applicable local laws, provide only a fraction of the maximum cover which you have in place in the UK

then you should consider taking, as a minimum, the following measures:

- (a) make the coming into force of the substantive provisions of your partnership arrangements conditional upon such consent being obtained and oblige your overseas partner to take the lead in obtaining such consent
- (b) require that the well known and financially sound parent organisation becomes a party to your partnership arrangements with the parent as a guarantor of (all or part of) the subsidiary's obligations
- (c) enter into a written agreement with your partner expressly governing the ownership and licensing arrangements regarding all intellectual property generated by the partnership
- (d) urge your partner to make additional insurance arrangements overseas or offer to do so yourself in the UK, if necessary, on a cost sharing basis

For a discussion of the drafting of the partnership documentation see Chapter 4.

The Due Diligence results could have an impact on the structure of the partnership itself. Whereas in certain jurisdictions a collaboration agreement is the most efficient and effective legal structure for a certain collaboration, in other jurisdictions it might be more appropriate for the UK university to operate through a subsidiary company for tax or other reasons (see Chapter 2).

Consequently, partnership arrangements will be best structured and drafted if your lawyers are involved or kept fully up to date in the Due Diligence exercise. Moreover it is highly recommend to run such decisions regarding structure and content of international partnership past the foreign lawyers who have assisted with the Due Diligence exercise, as they will be best placed to make sure that the arrangements are made in compliance with all local laws and in view of protecting all your interests.

As previously mentioned, the foreign partner should also be asked to provide warranties under the partnership arrangements to the effect that all Due Diligence information was accurate, complete and up to date at the day the arrangements were formally made, so that the UK university could claim damages from its overseas partner for breach of warranties at a later stage if the warranty proved to be untrue and the university suffered a loss as a result (see Chapter 8).

Finally, the partnership arrangements should entitle the UK university to keep its initial Due Diligence up to date and to review or terminate such arrangements if the foreign partner ceases to comply with the university's Due Diligence requirements or quality standards (see Chapter 9).

5.

DOS AND DON'TS

Do

- Start the Due Diligence exercise as soon as your institution is seriously considering a collaboration with an overseas partner. Results may have an impact on the feasibility, structure and content of your partnership.
- Ensure that the results of the academic, financial and legal Due Diligence are translated into formal binding partnership arrangements. Communicate them to your colleagues and/or legal advisers drafting the partnership arrangements.

Don't

- Rely solely on the word of your potential collaborative partner but carry out your own background checks. Your potential partner may not be aware of all local rules which may have an adverse effect on the partnership.
- Hesitate to get lawyers involved, in case of doubt. Only overseas lawyers can give you the necessary comfort regarding applicable regulations and background checks on your proposed partner.

4 Documenting the partnership

Aware of the risks of entering into an international venture, having carefully planned the partnership and carried out extensive and focussed due diligence, it is now time for you (or more probably your lawyer), to draft some agreements. Tempting though it may be to sit down and put pen to paper on one document which sets out the agreement between the institutions (referred to here as a Collaboration Agreement), international collaborations are rarely that straightforward. All but the simplest of collaborations require more than one document. Setting up an overseas campus could require dozens. This chapter should give you an idea of the documents which will be required for a given collaboration and a feel for what should go in them. This should help university staff responsible for taking the partnership proposal forward to brief the person actually drafting the documentation.

The parties to the Collaboration will need to decide who is to have primary responsibility for drafting each document. International collaborations can be complex transactions and careful preparation of the legal documentation can make an important contribution to the foundation of the joint venture. A suitable timetable should be agreed upon and a document list circulated between all parties to the Collaboration, including their respective legal and financial advisers.

1. PRE-CONTRACTUAL AGREEMENTS

An international collaboration may typically involve up to three short agreements before the main Collaboration Agreement is entered into. These agreements are a Memorandum of Understanding, a Confidentiality Agreement and an Exclusivity Agreement. A Memorandum of Understanding (which is sometimes also called Heads of Terms) is a document setting out the parties' broad understanding of the essential elements which will later be agreed. A Confidentiality Agreement will ensure that neither party may disclose sensitive information about the proposed collaboration without the other party's agreement. An Exclusivity Agreement prevents the parties from entering into negotiations with any other institution over a collaboration such as the one which is under discussion.

Not every collaboration requires all three agreements to be entered into. In many cases the three agreements can be incorporated into one document, although if this option is chosen, the institutions should be clear as to which parts of the Agreement will have legal force and which will not.

1.1 Memorandum of Understanding

Once the institutions know the basic framework for the proposed collaboration, this should be set out in a Memorandum of Understanding. This document may or may not be legally binding, as the parties wish, although you should note our explanation below of how such a document may inadvertently become binding. This document helps to ensure at an early stage that the institutions both require the same outcome for the collaboration and that any potential deal-breaking difficulties are raised as soon as possible.

A Memorandum of Understanding has no set form and it is a matter of both preference and practicality as to whether it contains details of the parties' proposals or whether it simply contains the main points necessary to move the negotiations forward. As a general rule, the Memorandum of Understanding should at the very least cover the key terms of the transaction. Drafting issues can be debated further down the line and should be avoided at this early stage.

A Memorandum of Understanding is not designed to set out the finer details of a collaboration. For this reason, it is never appropriate to rely only on a Memorandum of Understanding. As soon as a Memorandum of Understanding has been agreed, it is important to use this positive momentum to

agree a more detailed Collaboration Agreement. A collaboration based only on a Memorandum of Understanding will not adequately cover potential risks.

1.1.1

Is a Memorandum of Understanding necessary?

Although there is always an argument for not having a Memorandum of Understanding and to proceed with negotiating the Collaboration Agreement straight away in order to avoid time and expense, experience shows that international collaborations often take time to negotiate and that the legal documents supporting the collaboration can often become complex, and even more so when the parties are unclear of their obligations under the collaboration. It is often tempting for the parties to draw up a Memorandum of Understanding themselves on the basis that it details the commercial reality, and not the legal practicality of the transaction, but this could be a costly mistake and proper advice should be sought.

The Memorandum of Understanding is the cornerstone on which the parties can negotiate, and ultimately sign, the Collaboration Agreement. It also acts as a checklist in ensuring that all the key terms have been incorporated into the Collaboration Agreement. By considering difficult or controversial aspects of an agreement from the outset, the parties can ensure that they are working to the same end and that lengthy legal arguments may be avoided at a later stage.

A Memorandum of Understanding can be used to set a timetable for the transaction, giving the parties a definite steer as to what needs to be done and when. The document will also prove useful as a basis for administrative preparation for the collaboration, such as being used as the basis for tax clearance submissions.

1.1.2

Is a Memorandum of Understanding legally binding?

It is commonly the case that the Memorandum of Understanding is not intended to be legally binding, with the exception of certain clauses, such as choice of law (see section 2.31). If exclusivity and confidentiality obligations are included in the Memorandum of Understanding, rather than as separate documents, then they should also be legally binding.

The legal decision by a court as to whether or not a Memorandum of Understanding has legal force will not rely solely on the title of the document. Simply because the document is not called a 'contract' does not necessarily mean that it is not legally binding. This is another reason why some form of legal advice at this stage is useful.

There is a need to distinguish those clauses that are intended to be binding and non-binding. It is possible, particularly in some civil code jurisdictions, to enter unwittingly into a binding pre-agreement, so proper legal advice should be sought before signing off a Memorandum of Understanding.

Although many provisions of the Memorandum of Understanding will not be legally binding, it should be clear that the document is intended to have moral force. There would be little advantage for the parties in agreeing a way forward if neither intended to commit to that path. 'Moral force' cannot be relied upon in court, but in a collaboration where the parties' academic standing is heavily relied upon to generate goodwill, it does provide some comfort. In short, if a party refuses to abide by a Memorandum of Understanding then it risks damaging its reputation in the sector.

It is of course open to the parties to enter into a legally binding Memorandum of Understanding. The advantage of this approach is that it gives greater legal certainty, and so can be beneficial where significant time and money would need to be spent in negotiating a collaboration.

1.2**Confidentiality Agreement**

In an international collaboration between two higher education providers, it is advisable for the parties to negotiate a Confidentiality Agreement prior to entering into any formal discussions.

Again, it is arguable what weight a Confidentiality Agreement carries as they can be difficult to enforce, but experience tells that a Confidentiality Agreement can help to focus the minds of the parties in having proper procedures in place to protect the confidential information that will be divulged to each other during the Due Diligence procedure. In addition to preventing the other party from disclosing any confidential information, the agreement should seek to set minimum standards for ensuring that information is kept secure. It may also seek to prevent either institution from publicly discussing the collaboration or from making any announcements about it without the consent of the other party.

Finally, some Confidentiality Agreements are used to reduce the possibility of either party poaching key personnel from the other. If a long Due Diligence process will be entered into, both institutions could receive information on key staff of the other. The Confidentiality Agreement may be used to ensure that one party does not offer employment to key, named personnel of the other. Such an agreement cannot be used to prevent the staff themselves from moving (this would be both a restraint of trade and run contrary to principles of academic freedom), although the parties may limit each other from actively approaching those staff.

1.3**Exclusivity agreement**

Another subject to consider at the onset of entering into an international collaboration is whether an exclusivity or lock-out agreement is essential to the transaction. An exclusivity agreement seeks to ensure that the other party does not enter into any negotiations with other parties which could impact upon the transaction.

Whether or not an exclusivity agreement can be negotiated depends on the bargaining strength of the parties to the transaction. If the UK university has the stronger bargaining position, then they should seek to ensure that the other party signs up to an exclusivity agreement as this will provide them with added security.

An exclusivity agreement will require careful drafting in order to be legally binding. For example, whilst an agreement not to negotiate with others should be binding if its terms are definite enough, an agreement to negotiate is unlikely to bind the parties.

You should also remember that the remedy for breach of an exclusivity agreement is likely to be damages for wasted costs, rather than loss of profit caused by the joint venture not proceeding. So, if a party breaches an exclusivity agreement, the likely award to the injured party is unlikely to be large.

2.**COLLABORATION AGREEMENT**

The Collaboration Agreement identifies the key terms and obligations of the parties. It is the document which regulates the collaboration. The Memorandum of Understanding is typically used as the basis for drafting the Collaboration Agreement.

One of the keys to drafting a successful Collaboration Agreement lies in ensuring that there are good levels of co-operation between the lawyer drafting the Agreement and the manager in charge of the collaboration. There are a number of risks which a lawyer can mitigate without any need for input from the institution, but it remains the case that the Collaboration Agreement will be most effective

if it is drafted with this specific collaboration in mind. For this reason, it is almost never appropriate to use an off-the-shelf agreement for an international collaboration.

There is a plethora of issues which will need to be addressed in the Collaboration Agreement. Highlighted below is a non-exhaustive list of issues that should be considered. Each collaboration will have its own peculiarities and so its own inherent risks. For this reason, any or all of the issues below could expose the institutions to significant liability. The following issues will always be of paramount importance:

- With whom are you contracting?
- How and how quickly can you terminate the agreement early if necessary?
- Who is doing what?
- Who is paying what?
- What standards (such as academic, health and safety, regulatory and legal) must the parties meet and can the agreement be terminated if they are not met?

2.1

Parties

The Agreement will bind only the parties who sign up to it. For this reason, the Agreement must be made between all parties who are to have obligations under it. This does not mean that all parties who will be involved in a project need to sign the same document, as sometimes parties may not have obligations to all other partners in a collaboration. However, it is imperative that all parties who will be bound by each document must sign up to it.

It is not always clear exactly which parties must sign an agreement. Many institutions and private partners have a group structure with a number of subsidiary companies. Before entering into an agreement, an institution should content itself (through a process of Due Diligence) that it is contracting with the correct part of a group. For example, an institution may not wish to contract with a small subsidiary company if that subsidiary has no value. Alternatively, if contracting with a financially weak subsidiary company, a partner may require guarantees from that company's parent (see Chapter 3).

2.2

Background

This part of the Agreement sets out why the parties are contracting and any existing relationship which they have. There is no set information which must be included in the background, it is designed to help a reader to understand the context of a collaboration and the Agreement.

Whilst a background section should not impose any obligations on the parties, it should still be carefully worded as it can have legal effect in describing the understandings on which the agreement is made.

2.3

Definitions and interpretation

This section will give definitions of the important terms of the contract, and ones whose meaning may not be immediately obvious.

There may also be some explanation as to how the Agreement should be understood, for example that a reference to an Act or Statute should be deemed to mean that Act or Statute as it may be

amended from time to time.

Where an Agreement may be translated, it is common to explain which language version takes precedence. An institution based in the United Kingdom should press for the English language version to prevail.

2.4 Conditions precedent

A condition precedent is an event or circumstance which must come into effect before the Agreement will take effect. This is useful if there is some task which absolutely must be carried out before a collaboration may take place. For example, in an international collaboration, the parties may choose to make it a condition precedent of the Agreement that all necessary permissions for the partners to operate in the territory are received.

2.5 Warranties

A warranty is a statement of fact by one of the parties which may be relied on by the other(s). For example, 'X university warrants that it is a Higher Education Corporation capable of awarding degrees in the United Kingdom.'

If any of the warranties in the Agreement subsequently turn out to be false, the party which relied on that warranty may be entitled to damages (see Chapter 3).

2.6 Term

How long will the collaboration last? Will there be any set procedure for extending the partnership?

This clause should be closely linked to the termination provisions.

2.7 Services

This part of the Agreement requires the most input from the manager in charge of the collaboration. This section sets out the detail of exactly what each of the parties must do. Depending on the nature of the Agreement, the scope of this section could be very wide ranging. For example, some UK universities may prefer to have an over-arching collaboration agreement supplemented by specific agreements dealing with particular programmes, others will prefer individual agreements to cover a number of courses.

At the very least in an educational collaboration, this section will detail which parties will undertake what teaching and/or research. The Services often also contain provisions as to marketing, materials, travel, provision of accommodation, territory of the Services, awards which will be made and methods of research.

Services are commonly defined in a Schedule to the Agreement. This allows for the scope of the Services to be amended when necessary. If this approach is adopted, the method for variation of the Services should be carefully considered.

2.8 Money

At its simplest, this section sets out who will pay what and to whom. There are of course many ways

in which payments may be made in a collaboration, such as one up-front payment, monthly or weekly payments, payments per student or payment dependent on certain circumstances such as attainment of awards by students or successful marketisation of research.

This section should also set out how payments should be made. Should it be in advance or arrears? Must an invoice be issued? May either party set off any money it is owed by the other?

Taxation issues are often central to a collaboration. The parties and their financial and legal advisers should carefully consider if any tax will be payable in a local territory and whether an overseas institution will be able to extract any profit from a foreign jurisdiction. It is often the case that an institution cannot bring any profits from an overseas collaboration back to the United Kingdom (see Chapters 2 and 3).

As with Services, financial matters are often contained in a Schedule to the main Agreement, which may then be amended when necessary.

2.9

Quality

This section will set out the standards which the partners will maintain. As a minimum, teaching collaborations should reference the QAA Quality Code.

2.10

Review

It is undoubtedly the case that proper management is the key to a successful joint venture. It will help focus the joint venture and give it business direction, as well as help to reduce the risk of inter-party conflicts later down the line. The parties will need to decide the parameters within which the management team shall operate. An annual business plan, budget and regular meetings agreed from the outset in the Collaboration Agreement will assist in establishing a successful enterprise. An important part of that task will be to decide which issues require the consent of all parties and there should be provision for clear communication and reporting.

We comment on planning the partnership in Chapter 2 and managing the partnership in Chapter 7. The issues which are highlighted in these chapters should be carefully documented in the Agreement.

2.11

Premises

Where will the collaboration take place? Who is responsible for providing those premises? How are premises to be maintained and which party will be financially responsible for this?

Many collaborations will require separate provision to be made for premises, involving a lease or licence, or their foreign equivalent.

2.12

Staff

We discuss staff issues in Chapter 5. These issues should be carefully reflected in the “Staff” section of any Collaboration Agreement.

As we explain elsewhere in this Chapter and in Chapter 5, the Collaboration Agreement cannot be used to restrict the movement of staff between institutions.

2.13 Students

We discuss student issues in Chapter 6. These issues should be carefully reflected in the “Student” section of any Collaboration Agreement.”

2.14 Graduation

As a potentially sensitive subject for students, this should not be overlooked. Where will graduation take place? How will certificates be handled and stored? Who will produce the certificates? A partner should be obliged to store and maintain certificates in a secure and responsible manner.

2.15 Website

The use and maintenance of a website will almost always be relevant with an international collaboration, but never more so than when that collaboration concerns distance learning.

The agreement may document what a website will be used for and which party must design and maintain it. Consideration must be given to the legal framework of the country hosting the website along with technical issues such as a procedure if the website goes down. Website provisions will necessarily be closely tied to provisions on maintenance of data and data protection.

2.16 Publicity and trademarks

All of the parties to the collaboration have goodwill in their name and will wish to protect their reputation. Many institutions regard reputational risk as the most significant one in an international collaboration, and so the Collaboration Agreement should cover this risk as far as possible.

The Collaboration Agreement may detail what use of each collaborative partner’s name is permitted and what publicity statements may be made.

2.17 Data protection

This clause will be closely linked to any clauses on websites and storage of data. As a minimum, the parties should be obliged to comply with relevant legislation and to help each other to comply. This will involve compliance with the law in both the United Kingdom and the partner’s jurisdiction.

2.18 Freedom of information

This will be similar to the Data Protection clause, but aimed at risks posed by freedom of information legislation. Collaborators must comply with the law in both the United Kingdom and (if applicable) the overseas jurisdiction.

2.19 Intellectual Property (IP)

As discussed in Chapter 1, it is becoming increasingly common for universities to maximise business opportunities, especially in technological and scientific areas. The invention or other IP and its marketing, exploitation and development will need to be adequately protected in the Collaboration Agreement and care will need to be taken to determine what rights will be contributed by each party and how both existing rights and new rights will be safeguarded. Key considerations include:

- Who will own the IP rights? Will the non-owner be granted a licence to use them for the purpose of the collaboration?
- What warranties will be needed to protect the parties from infringement of those rights?
- What value should be attributed to the rights?
- How should new technology be protected?
- How will infringements by third parties be dealt with?
- Will the new technology be exploited by any joint venture vehicle or by the partners?

The Intellectual Property Office publishes the 'Lambert Toolkit' for Collaborative Research, which suggests a number of useful model-form contracts. As with any model document though, you should carefully consider whether these generic documents meet your specific needs.

It is our experience that institutions can be keen to 'share' ownership of any intellectual property which is generated. This is a bad idea, leading often to later disputes as to ownership.

2.20

Record keeping

How will records relating to the partnership, including student records, be stored? How long will records be kept for? Chapter 5 on Staff issues, Chapter 6 on Student issues and Chapter 8 on What to do if things go wrong, explain further some issues around record keeping.

This clause should be drafted to comply with clauses on the website, data protection and freedom of information.

2.21

Health and safety

This section will set out how health and safety issues will be considered. There may be some standards which must be met, or actions to be carried out by one of the parties. It is often the case that one party offers another an indemnity for any costs suffered by that party for breaches of health and safety legislation by the other.

2.22

Discrimination

All universities in the United Kingdom are subject to strict anti-discrimination obligations. If a collaborative partner breaches these requirements when acting on behalf of an institution from the United Kingdom, the UK institution may still find itself liable for any breach. For this reason, it is often the case that collaborative partners are contractually bound to abide by legal requirements. By requiring partners to comply with the legal provisions in the United Kingdom, an institution can help to ensure that it does not itself breach these requirements or at any rate that it is able to claim compensation for any losses it suffers as a result.

2.23

Anti-corruption

As explained in Chapter 2, the Bribery Act 2010 has highlighted the importance of universities having robust measures in place to prevent corruption. The Collaboration Agreement should require the parties to comply with UK and local anti-corruption law so that a serious breach would enable the innocent party to withdraw from the collaboration.

2.24**Insurance**

One of the most important reasons for a Collaboration Agreement is to decide how risk will be apportioned between the parties. One of the best ways of addressing this issue is through insurance. Any of the parties may be obliged by the Agreement to maintain insurance to any level which is appropriate. UK universities' insurance policies will not however normally cover operations outside the UK unless expressly agreed with the insurer (see Chapters 3, 5 and 6).

2.25**Restrictive covenants**

This section will explain what the parties agree NOT to do. This will most likely involve an obligation not to carry out similar activities to the subject of the collaboration in the relevant territory. As clauses such as this may easily fall foul of competition law requirements in either the United Kingdom or Europe as a whole, legal advice must be sought before one is considered.

2.26**Indemnities**

An indemnity is a promise by one party to pay a given amount to another party if a set circumstance arises. These are the bluntest legal instruments available to apportion risk. Negotiation of indemnities can be a highly emotive task, often with all parties expecting to receive them, but to give none. In education collaborations where a collaborative spirit and reliance on the other party's standing is key, indemnities are often not used for fear of commencing a partnership on a defensive note.

The significance of an indemnity is often overplayed, especially when one party indemnifies another for something for which they are liable in any event. The real effect of 'X shall indemnify Y for any loss suffered by Y as a result of breach of this agreement by X' is small. In this example, X would be liable to Y for a breach of contract anyway. For this reason sensible legal advice can be used to minimise the need for indemnities, but to use them where appropriate.

2.27**Limitation of liability**

It can be possible for the parties to expressly limit their liability under the Collaboration Agreement to each other. This can often be linked to the amount of insurance which each institution will hold.

As it is easy for limitations of liability to be incorrectly drafted and so have no effect, such a provision will always require some legal input.

2.28**Dispute resolution**

At the outset of a collaboration, consideration of possible disputes can be a taboo subject. It should not be though. It is rarely the case that two partners have objectives which are completely aligned. By envisaging a procedure for considering disputes, the parties may save considerable management time, distress and expenditure in the future.

The most effective way of solving a dispute is by considering it in the correct form so, for example, a minor dispute should not become the subject of international litigation. To this end, most Collaboration Agreements contain a procedure for escalating disputes through senior members of each partner.

If internal consideration of a dispute is not successful, it is still possible to avoid taking a matter to court. An independent person may be appointed to either seek a fair outcome (through mediation) or

to impose one (through arbitration). Such mechanisms of alternative dispute resolution are becoming increasingly popular, allowing as they do for quicker and more cost-effective and more private resolution of disputes.

There is more information on resolution of disputes in Chapter 8.

2.29**Termination**

In what circumstances will a party have the right to end the collaboration? In some cases, either party may be allowed to terminate the relationship for any reason, provided that sufficient notice is given. It is common for either party to be allowed to terminate the agreement if the other becomes insolvent. Provisions whereby one party may terminate if the other breaches a significant term of the Agreement are also common.

We discuss ending a collaboration in more detail in Chapter 9.

2.30**Consequences of termination**

International collaborations may rarely be terminated with immediate effect. In teaching collaborations, either party may have legal obligations to students. In such circumstances, the parties should be obliged to continue to provide the collaboration until all students who have enrolled on the course complete it.

For a research collaboration, the parties may wish for termination not to be possible until completion of a given stage of research.

See generally Chapter 9.

2.31**Law and jurisdiction**

The applicable law to which the collaboration will be subject is negotiable between the parties. It is common for the applicable law to be that of the United Kingdom, as our legal system is widely recognised and well developed. However, not all agreements will be subject to the laws of the United Kingdom. Some partners, particularly those in the United States, or where the bulk of the collaboration will be performed overseas, will not accept anything other than their local law. If there is a chance that a collaboration could be agreed to be subject to any law other than United Kingdom law, local legal advice should be sought.

As with the applicable law, the applicable jurisdiction for the hearing of disputes may be decided between the parties. Again, the jurisdiction of the Courts of England and Wales is very commonly chosen. If a dispute resolution procedure has been carefully drafted, the jurisdiction for any disputes should be of lesser importance.

Of course, if the institutions choose to include a clause referring disputes to arbitration, then this will be the forum in which disputes are heard.

It is now also possible for parties to an Agreement within the European Union to choose a jurisdiction for non-contractual claims related to the Agreement. As this would provide some certainty, such a clause should be sought wherever possible.

There is more information on resolution of disputes in Chapter 8.

2.32**Force majeure**

'Force majeure' refers to an event outside the parties' control which makes performance of the agreement impossible.

For example, what happens if an earthquake destroys one of the collaborating partners' buildings? Will a party be obliged to continue to provide the collaborative services if there has been a serious terrorist incident?

It is common for a Collaborative Agreement to waive a party's obligations if there has been a force majeure event (or an act of God). If this is the case, it is imperative that the party relying on such a clause is obliged to minimise loss and disruption to the other party.

2.33**Boilerplate**

There is a host of other common clauses which may be included in an Agreement. One could argue that only lawyers will ever read these, but each of them serves a purpose. These standard clauses are known as the boilerplate of an Agreement. Some such common terms are:

- Details as to how notices may be served
- If and how a party may assign its rights under the Agreement
- Whether third parties have any rights under the Agreement
- Which documents constitute the Agreement between the parties
- A statement that the parties do not intend to create a partnership or agency
- How the Collaboration Agreement may be varied
- Recognition that if one clause becomes illegal or unenforceable, this will not affect the remaining provisions of the Collaboration Agreement
- A statement that the Agreement may be signed as two separate documents, with one for each party.

2.34**Agreed documents**

In a collaboration, it is common for the parties to agree in advance some of the documentation which will be used in the partnership. These documents may include:

- Publicity documents
- Offer letters to students
- Applicable rules and regulations
- Senior staff contracts of service.

3.**ANCILLARY DOCUMENTS**

Depending on the context of the collaboration and the legal structure adopted, certain ancillary agreements may be needed to support the Collaboration, some of which are required by law, and others through the choice and needs of the parties. These ancillary documents often take the form of the following:

3.1 Constitutional documents

If a new legal entity is to be created, then that entity's constitution will need consideration. We discuss in Chapter 1 the merits of creating a new legal entity.

3.2 Service Agreements

Agreements with staff employed in respect of the collaboration require consideration and are discussed in Chapter 5.

3.3 Intellectual Property Agreements

Where intellectual property is not considered in the Collaboration Agreement, or where it is of paramount importance, a stand-alone document relating only to this may be used.

3.4 Property Agreements

If any party to the Collaboration is taking or giving any right in any property, then this should be carefully considered and documented according to local law.

3.5 Secondment Agreements

Both staff and students may be seconded between partners. If this is the case, the terms of this should be set out. Responsibility for the relevant person will be of paramount importance here. See Chapter 6.

3.6 Management Services Agreement

If one party is providing the majority of the management and administration of a collaboration, then this may be documented in a Management Services Agreement.

3.7 Supply Agreements

Where one partner supplies goods or services to the other, this should always be reflected in a Supply Agreement.

3.8 Guarantees

As we have discussed above, where one party does not have significant financial reserves, other collaborators may require a guarantee for that party's obligations from a more robust entity.

3.9 Agency Agreements

Where the UK university requires help with the recruitment of students, either to attend the University's courses in England or to attend courses to be run as part of a collaboration with an overseas partner, the arrangement needs to be properly documented. The QAA Quality Code requires there to be a legally binding written agreement with the agent.

The British Council may be able to provide a list of reputable agents. It should be borne in mind that UKBA require UK universities to report to them if they have used an agent to recruit migrant students. Due Diligence on the proposed agent should also be undertaken.

Issues that will need to be considered include services which the agent will provide to the UK university and any others they may provide to the student; whether the agency is to be sole (so preventing the UK university from undertaking recruitment activity by itself), exclusive (so no other agent can be used by the university in that territory) or non-exclusive; mechanisms for calculation and payment of commission; prevention of bribery and corruption; and VAT. Many of the issues relevant to collaboration agreements (for example, data protection) will also apply to agency agreements.

4. DOS AND DON'TS

Do

- Use a Memorandum of Understanding document to map a collaboration before significant costs are incurred.
- Consider using Agreements to prevent a partner breaching confidentiality, poaching staff or entering into similar collaborations.
- Discuss with your legal adviser which legal agreements you need. One size does not fit all.
- Decide which partner will draft documents, then task a manager and a lawyer to do this together.
- Be careful whom you contract with. A weak subsidiary may require guarantees from a parent to make it a safer legal bet.

Don't

- Use the same Agreement as last time, irrespective of whether or not it is appropriate.
- Expect a manager to deal with legal risks or a lawyer to deal with management risks.
- Lose sight of the basics. With whom are we contracting? To do what? Who pays? For how long? How can we get out of this?
- Assume that an overseas partner will automatically comply with United Kingdom legal requirements.
- Consider legal documents as side issues. An Agreement should envisage the risks discussed in the other chapters of this Guide.

5 Staff Issues

1. INTRODUCTION

Involvement in international partnerships will inevitably have human resources implications. The UK university partner may need to:

- send workers abroad either temporarily or permanently
- recruit staff to work for it in a different jurisdiction
- recruit staff to work in the UK from a different jurisdiction
- act as host to workers from an international partner.

The focus of this section is on the implications of UK institutions sending employees abroad to work, as that is the most common scenario for UK universities. The other scenarios are therefore only referred to briefly.

2. EMPLOYMENT CONTRACT ISSUES

2.1 Employment status

It will be crucial, in dealing with staff issues arising from an international partnership, to first ascertain the nature of the employment relationship involved.

An employee is ‘an individual who has entered into or works under a contract of employment’. The wider definition of a worker is ‘an individual who has entered into or works under a contract of employment or any other contract ... whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual’.

Having the status of ‘employee’ is the passport to many statutory employment rights in the UK. Those who fall within the category of ‘worker’ enjoy comparatively fewer rights. Those who are truly in business on their own account fall within the category of ‘self-employed’ workers and enjoy fewer rights still. The university’s treatment of staff in the context of international partnerships will therefore be affected by their employment status. For the purposes of this chapter, we have focused on UK universities sending employees (as opposed to workers) overseas to work.

2.2 Potential scenarios

Employees of a UK university may be required to work abroad in a variety of situations. It may be, for example, that employees will be required to work for a collaborative partner or for a joint venture. Most commonly the employee will remain employed by the UK university, which will obviously have responsibilities and obligations in relation to its employee. This would still be the case, for example, if the employee was seconded to another employer for a period of time (see below). However, in some situations a change of employer may be involved (see below).

This chapter is mainly concerned with a situation in which the employee of a UK university goes abroad to work for a period of time, but remains the employee of the UK university. The particular issues associated with a change in employer and secondment agreements are dealt with separately (and briefly) below.

2.3

Selection

A requirement or a request

Can employees be required to work overseas or only requested to do so? The answer to this question depends upon the terms of the contract of employment, and in particular the job description and whether the contract contains a mobility clause. A mobility clause can effectively give an employer a contractual right to move an employee's place of work. Even where such a clause exists, however, it may not be wide enough to cover work abroad and, in any event, must be applied reasonably. Without a clause which expressly causes the particular risk in question, the employee's consent to the move would have to be obtained. In any event, it may not be in an institution's best interests to send an employee overseas if they do not want to go for one reason or another.

Qualifications

Qualifications may be a factor when selecting employees to work overseas. UK universities may need to consider whether or not employees' qualifications which are valid in the UK will be relevant in the UK, will be relevant or accepted overseas.

Territorial scope and jurisdiction

When an employee goes to work overseas there are inevitably issues as to what will be the applicable law and jurisdiction. Different tactics will be relevant in deciding whether, for example, the UK courts and tribunal can determine the matter. In some cases, the courts of another country may also be able to determine the matter in question.

Contract

It would be usual to state in the contract of employment of an employee going abroad to work that it is governed by, for example, English law and that any dispute arising from the contract should be heard in the English courts. There is, however, an important limitation on the scope of such a clause, as the Rome Convention provides that such a clause cannot prevent a country's 'mandatory rules' from applying. In other words, an employee working abroad would still benefit from a country's mandatory rules, if the contract stipulated a choice of UK law. By way of example, mandatory rules include statutory employment rights in the UK. How this works in practice is that the employee working abroad will benefit from the best protection available from either UK law (if that is the system of law chosen by the parties) or a mandatory rule of the country within which he or she works.

Where there is no choice of law expressly contained in a contract of employment, and one cannot be inferred, the contract will be governed by the law of the country with which it is most closely associated.

A jurisdiction clause can specify which country's or countries' courts will have jurisdiction to hear contractual disputes. The jurisdiction conferred by the contract can be exclusive or non-exclusive.

Non-exclusive jurisdiction would mean that a party could bring proceedings either in the courts of the specified country or any other country which would have jurisdiction. UK universities should be aware that a jurisdiction clause in an employment contract will only be valid if it is invoked by the employee or if it is entered into after a dispute has arisen. This greatly limits the impact of exclusive jurisdiction clauses in contracts of employment.

Statutory employment rights

In contrast with contractual issues, statutory employment rights such as unfair dismissal are determined by the scope of the relevant domestic legislation. The question of whether UK rights created by statute can still be enjoyed by employees working overseas is a complex one.

Rights such as the right not to be unfairly dismissed are contained in the Employment Rights Act 1996 which is silent about its territorial scope.

A House of Lords ruling has confirmed that in relation to peripatetic employees, the base of that employee should be treated as their place of employment. Expatriate employees, however are only able to claim unfair dismissal in exceptional circumstances. Examples of cases where they might be able to bring claims for unfair dismissal include:

- employees working for a British employer operating within what amounts to an extra-territorial political or social enclave in a foreign country
- employees posted abroad by a British employer for the purposes of a business carried on in Great Britain and
- employees with equally strong connections with Great Britain and British employment law

Similarly, the Equality Act 2010 does not contain any provisions concerning its territorial scope. It is likely that the above principles will apply, though there are some additional factors which may be taken into account, notably the need in some cases to give effect to directly effective rights under EU law.

By way of example, in one case a lecturer employed to work in Malaysia was unable to bring her claims of unfair dismissal and disability discrimination in the employment tribunals. Although she fell into the category of an expatriate employee, she was not primarily furthering the business of the British employer.

This is a very complex legal issue and specific advice should be sought.

Law of 'host' country

In some situations the law of the host country will apply. Basically, countries can be divided into two categories: those which are governed by civil law where cases involve courts following civil codes drawn up by the government (such as China, Poland, the Czech Republic and Egypt) and those governed by common law where judges rely heavily on decisions in previous cases when reaching judgment on how statutes should be interpreted (such as India, England and Wales). It is essential to seek specific legal advice in the country concerned.

Even if the law of the host country does not apply to the employment relationship, there will be laws of the land which must be obeyed. For example, Article 177 of the Penal Code of Dubai imposes imprisonment of up to 10 years on homosexual relations, which is regularly enforced. It is also forbidden to photograph women in Dubai.

Posted Workers Directive

Certain workers who are posted from one EU member state to another on a temporary basis are covered by the Posted Workers Directive. Such workers enjoy, by virtue of this Directive, the same ‘floor of employment rights’ as is available to workers employed in the host country. The terms and conditions which apply to posted workers include maximum working periods and minimum rest periods, holiday, minimum pay rates, health and safety, protective measures with regard to the terms of women who are pregnant or who have recently given birth, and equality of treatment, but not the right not to be unfairly dismissed (see above).

The Directive means that there will be some consistency of treatment for employees sent to another member state. However, if the country is a new member state it may not have implemented the European Law.

2.4

Drafting contract terms for employees working overseas

All employees are entitled to a written statement of terms and conditions of employment which must be provided not later than two months after employment begins and which must contain certain stipulated terms such as pay, notice and so on.

Where an employee is required to work outside the UK for more than a month, the UK university is under a statutory obligation to include in an employee’s contract of employment:

- the period for which the employee is to work outside the UK
- the currency in which the employee’s remuneration is to be paid while the employee is working outside the UK
- any additional remuneration and any benefits to be provided to or in respect of the employee as a result of the overseas assignment and
- any terms and conditions relating to the employee’s return to the UK.

These are minimum terms which the UK university employer is under a statutory obligation to provide.

There are a number of additional contractual considerations specific to employees going to work overseas for their employer. Consideration should be given to, and contracts of employment should therefore cover:

- the period of time the employee will be required to work abroad (and whether it is temporary or permanent)
- how the employee will be paid and in what currency. The employee may need to open a bank account in the host country. Will there be any additional remuneration or benefits for the employee as a result of the overseas work?
- how and when the posting will end. Is there a minimum period which will need to be worked? What if a conflict or political instability arises in the host country?
- job role and description
- supervision: it is crucial that the employee is adequately supervised and has a ‘base’ contact and that it is clear who will deal with any disciplinary or grievance issues
- what will happen at the end of the period overseas. Will the employee return to their ‘old’ job? What will be the terms and conditions under which the employee will work on return?

- what will happen if the employee becomes, for example, sick or pregnant during the period abroad. Will the employee be entitled to return home if sickness becomes long term, for example?
- whether employment will be continuous whilst the employee is abroad
- what travel costs will be paid. It would be usual for the UK university to fund the cost of economy class travel for the employee and his or her family at the start and end of the period abroad, but in some cases of long-term work overseas it may also be appropriate to pay for a number of trips back to the UK
- who will find and pay for accommodation and any related costs
- what removal costs and related insurance costs will be paid by the UK university to enable the employee to move possessions to the new place of work and return them at the end
- health and safety issues
- pensions
- whether there are any relevant Intellectual Property or confidentiality issues

It is possible that an employee is recruited knowing that he or she will be required to work abroad. In such circumstances, the contract can be drafted accordingly.

More commonly, however, the need to work abroad will arise during the employment relationship. In such a case, the UK university must provide the employee with a written statement containing particulars of the change at the earliest opportunity and in any event no later than:

- one month after the change was made to the terms or
- the date on which the employee departs overseas

2.5

HR issues

A move abroad can be a life-changing event. Support from the UK university could help to ensure the success of the project. Support might include customs and language training and post-move support.

2.6

Change of employer

An international collaboration may require an existing employee to change his employer, for example, if it is proposed that the employee is engaged by a collaborative partner or a joint venture. In such circumstances, the worker's consent to the change will be required unless there is an automatic transfer (see below) or there is an express power of assignment in the contract (which would be unusual in the employment context).

Automatic transfers

In the EU, the Acquired Rights Directive applies to safeguard employees' rights in the event of transfers of undertakings. It provides that there is a transfer of an undertaking or business (or part of an undertaking or business) where there is a transfer of an economic entity which retains its identity. This will usually occur where there is a significant transfer of personnel and/or assets. The Directive does not apply on share sales or on an asset sale.

Where the Directive applies, employees are automatically transferred to the acquiring entity on the same terms and conditions of employment with their statutory rights intact (such as period of continuous employment) by virtue of the Directive. Further, there are important notification and consultation obligations. Violations of the Directive may trigger criminal penalties and/or potential injunctions against the transaction as well as remedies for individual employees.

2.7

Secondment agreements

Under a secondment arrangement, the employee or worker remains engaged by his existing employer but is 'lent' to another employer for a period of time. However, the party to which the employee is seconded generally maintains the authority to direct the employee. Such an agreement will involve at least two contracts for the UK university, a contract of employment and a secondment agreement between the UK university and the 'host'.

The law of the hosting country may not permit the secondment of overseas staff. In the Gulf, for example, the worker has to be employed by the local organisation.

Issues for an employment contract include:

- the duration of the contract. Will it be for a fixed term or will a certain event (such as completion of a piece of work) trigger the end of the secondment?
- continuity of employment. This will be preserved if the employee remains employed by the UK university but broken if the host becomes the employer. This should therefore be specifically addressed
- restrictive covenants and confidentiality clauses, which should be checked to ensure they are appropriate.

Issues for the secondment agreement include:

- what secondment fee will be charged? This may attract VAT
- a non-poaching clause to prevent the host from seeking to employ the secondee
- intellectual property. IP created by a worker in the course of his employment usually rests with the employer. If the secondee is likely to be involved in the creation of intellectual property rights, the parties should address how ownership will be dealt with
- an appropriate indemnity regarding vicarious liability for the acts of the secondee, liability for which may remain with the UK university even if the secondee follows the instructions of the party for whom he is working
- an appropriate indemnity regarding health and safety, as courts are usually reluctant to accept that responsibility for the health and safety of a secondee has transferred to the party for whom he works

Collaborative partners hosting secondees should seek advice on the prospect of secondees obtaining rights against them rather than the employer. The extent of this risk is likely to vary depending on the jurisdictions and on the activities that the secondee is undertaking.

2.8

Recruiting local staff

If a UK university needs to employ staff locally, it will need an overview of the labour law provisions

that apply in the local jurisdiction together with advice on recruitment, appropriate contractual arrangements and any applicable mandatory provisions. By way of example, it will be essential for the UK university to ensure that it understands rules relating to tax and social security. The UK university will also have to consider who will manage and supervise the employees, for example, to monitor performance and deal with disciplinary and grievance issues.

It should be borne in mind that workers recruited locally may gain access to information about potentially generous terms and conditions that apply to colleagues working in a different jurisdiction through contact with the employer's principal workforce. This may be a cause of industrial relations difficulties and the source of discrimination risks.

3. DUTY OF CARE/HEALTH AND SAFETY INCLUDING MENTAL HEALTH

3.1 The Health and Safety at Work etc Act 1974 (HSWA)

HSWA states, 'it shall be the duty of every employer to ensure, so far as is reasonably practicable the health, safety and welfare at work of all his employees.' This includes the duty to maintain safe plant and systems of work and to provide such information, instruction, training and supervision as is necessary. These duties are supplemented by statutory obligations to carry out risk assessments. The obligations imposed by HSWA and the supplementary legislation do not apply to employees when working outside the UK. However, the planning by an organisation of trips abroad will be subject to the UK health and safety law, as far as that work takes place within the jurisdiction. In addition, once abroad, obligations and duties are likely to be imposed by local legislation.

3.2 Risk assessments

'Health and Safety Guidance when Working Overseas', issued jointly by UCEA and USHA¹⁵ is a code of practice which outlines steps which must be taken in order to manage staff working overseas in order to manage staff working overseas safely. It recommends that risk assessments should, wherever practicable, be completed before the visit and then reviewed upon arrival. Where, unavoidably, work activities are embarked upon without prior knowledge of the UK university, the code recommends that a retrospective risk assessment should be completed as soon as possible. The risks involved in both the travel and the actual work need to be assessed, as well as local geographical, climatic, health, seasonal, political, cultural and social conditions. Any training requirements should be identified and provided.

3.3 Stress

Stress is worthy of specific mention within this context as it can give rise to personal injury claims against UK universities. Sources of stress in this context may include accommodation problems, civil unrest, language and communication problems, lack of support and loneliness. Workers who suffer from stress, depression or nervous breakdown could claim that the UK university employer is in breach of its duty of care because it has failed to take reasonably practicable measures to keep them safe from harm. This potential liability emphasises the need for UK universities to ensure as a minimum that overseas workers are adequately supervised and that there is a designated contact to whom they can refer any issues.

15 www.ucea.ac.uk/filemanager/root/site_assets/publishing1176994185031.pdf

3.4 **The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA)**

The CMCHA does not apply to deaths occurring outside the jurisdiction. Deaths occurring outside the jurisdiction would be any occurring outside the UK (which includes for these purposes a UK aircraft, ship or oilrig or in UK waters).

3.5 **Fieldwork**

Guidance on Health and Safety in Fieldwork¹⁶ issued jointly by UCEA and USHA is a code of practice which outlines best practice when offsite visits and travel in the UK and overseas are taking place. Fieldwork is a key risk for UK universities and appropriate planning by the Head of School and/or the fieldwork leader is vital for trips to succeed.

4. **ENTRY INTO OVERSEAS COUNTRY**

The immigration requirements and obligations in each country vary with local legislation.

For the EU, in accordance with the principle of freedom of movement of workers, any EU national should be entitled to take up work in any member state. That being said, as regards the accession countries (both 2004 and 2007) it has been possible for member states to impose transitional arrangements. As such, in the UK the Worker Registration Scheme applies to the 2004 countries, although there are currently no immigration concessions to Romania and Bulgaria, which joined in 2007. There are likely to be other transitional provisions in other member states.

Outside the EU there is little consistency. By way of example, China is divided into 23 provinces, five autonomous regions and four municipalities and its immigration laws are implemented largely by provincial, regional and municipal agencies, with the oversight of several state Ministries. There are significant variations in each locality's immigration structure, so a foreign national's destination in China will determine the relevant regional and local authorities involved and the immigration requirements and process.

5. **REMUNERATION ISSUES**

The remuneration a worker is offered may be one of the incentives in accepting a period of work overseas. A UK university may want to consider whether reward packages are consistent with other local expatriates where applicable.

5.1 **Taxation**

Liability to UK tax is based on the key concepts of residence, ordinary residency and in some cases domicile. An individual's nationality is not an important factor when determining tax liability in the UK. The information contained in this section is correct at the time of writing, but UK universities should always check the up-to-date position in this specialist area. In particular, it should be noted that the UK Government is currently consulting on the introduction of the statutory residence test which will be implemented with effect from April 2013.

¹⁶ www.ucea.ac.uk/objects_store_guidance_on_health_and_safety_in_fieldwork

Residence

Residence (along with ordinary residence and domicile) is not defined in the tax legislation but is based on case law and HM Revenue and Customs (HMRC) guidance. HMRC considers that individuals are resident in the UK if they are in the UK for more than 183 days in a tax year, which runs from 6 April in one year to 5 April in the following year.

It is also possible for individuals to be resident in the UK if they are present in the UK for fewer than 183 days in a tax year. This depends on how often and how long they are here, the purpose and pattern of this presence and connections to the UK (which might include family, property, work life and social connections).

For UK tax purposes, it is possible to be resident in more than one country for a given tax year, or even not to be resident in any country at all.

Ordinary residence

Ordinary residence is different from 'residence'. An individual will be ordinarily resident in the UK if their residence in the UK is typical and not casual. For example, an individual may be ordinarily resident in the UK if their presence here has a settled purpose. This may be only for a limited period but has enough continuity to be properly described as settled. Business, employment and family can all provide a settled purpose. An individual can also be ordinarily resident in the UK if their presence in the UK forms part of the regular and habitual mode of their life for the time being.

Domicile

Domicile is a general legal concept and broadly equates to the country that an individual regards as their homeland and with which, irrespective of residence, they have the closest links.

Individuals leaving the UK to work overseas

If an employee of a UK university is resident, ordinarily resident and domiciled in the UK, they will be subject to UK income tax on their worldwide employment income, i.e. on the earnings they receive whilst working for an employer in the UK and also for any earnings they receive whilst working abroad.

Where, however, an employee leaves the UK to work full-time abroad under a contract of employment (even if the employer is the UK university) they are treated, by HMRC concession, as neither resident nor ordinarily resident from the date of their departure, providing all of the following conditions are met:

- their absence from the UK and employment abroad both last for at least a whole tax year and
- during their absence, any visits they make to the UK total less than 183 days in any tax year and average less than 91 days a tax year (taken over a rolling period of 4 years)

To demonstrate that the employee is working full-time abroad, HM Revenue and Customs would expect the employee not to also carry out duties in the UK, save where such duties are incidental to the employee's overseas duties. HM Revenue and Customs have indicated, in informal guidance, that working in the UK for fewer than ten days in a year will not by itself prevent this concession from applying.

If these conditions are satisfied, there will be no liability to UK income tax in respect of the duties performed outside the UK.

If the conditions are not satisfied, the employee will remain UK resident and ordinarily resident and will remain liable to UK income tax on the earnings they receive for their overseas duties. They may also be liable to tax on this income in the country in which they work. This double liability to tax may be avoided under the terms of a double taxation agreement if one has been negotiated.

Individuals coming from abroad to work in the UK

If an individual from outside of the UK comes to work for a UK university, they will be subject to UK income tax on their UK earnings from the day that they arrive in the UK.

In addition, depending on the intended and actual length of their stay in the UK, it is possible that any earnings they may have from their overseas employment may be brought into charge in the UK.

5.2

Social security

The national insurance position of an individual leaving or coming to the UK should also be considered. The position will broadly depend on whether the individual is going to or arriving from an EEA country, a country with which the UK has a bilateral Social Security Agreement covering national insurance contributions, or some other country.

Leaving the UK

If an individual is leaving the UK to work in another EEA country, the European Community Social Security Regulations will apply. The general rule is that the individual will be subject to the social security legislation of the country they work in.

However, if the employer sends the individual to work in another EEA country for not more than 12 months at the outset, both the employer and the individual will usually continue paying UK national insurance contributions and no liability should arise in the other EEA country.

If the work in the EEA country lasts longer than 12 months, even though it was not expected to, the above treatment will continue to apply for not more than another 12 months providing the social security authorities in the other EEA country agree.

There are also special arrangements which allow UK national insurance contributions to be paid for longer periods, but usually for no more than five years. Again, the social security authorities in the other country must agree to this.

If the individual leaves the UK to work in a country with which the UK has a bilateral social security agreement (eg Barbados, Israel, Japan and New Zealand) the position will be governed by the particular terms of that agreement. The general rule under these agreements is that the individual will be subject to the social security legislation of the country in which they work, although this is subject to exceptions and so it is still possible for UK national insurance contributions to be payable.

If the country does not have a bilateral social security agreement with the UK, the position will depend on the domestic rules of that country. However, it is possible that UK national insurance contributions will continue to be payable for the first 52 weeks of employment abroad (in addition to any liability in that other country) if the individual's employer continues to be the UK university or if the overseas employer has a place of business in the UK, and the individual is ordinarily resident in the UK and was resident in the UK immediately before starting to work abroad.

Coming to the UK

The general rule is that individuals arriving in the UK from abroad to take up employment with a UK employer are required to pay UK national insurance contributions. However, there are exceptions to this rule. For example, if an overseas employer in another EEA country sends an individual to work in the UK for up to 12 months, it should be possible for the individual to continue paying foreign social security contributions only. Further, if the individual is sent to work in the UK temporarily by an employer in a country with which the UK has a bilateral social security agreement covering national insurance contributions, the position will be covered by the terms of that agreement and may mean that social security contributions are only due in that other country.

5.3

Pensions

Following the post 'A Day' tax changes made by the Finance Act 2004, since 5 April 2006 membership of a UK registered pension scheme has technically been available to anyone, regardless of where they are resident or where their employer is resident. There is no restriction on the amount that can be contributed by an overseas resident individual or by an employer in respect of them. But relief from UK income tax may not be available, or may be restricted on such contributions in certain circumstances. That said, the rules of individual pension schemes may impose their own restrictions on overseas membership.

EU cross-border legislation

If an employee is working for a UK institution in another EU member state and is subject to the social and labour law of that EU state, it may be possible for the employee to remain in a UK pension scheme providing the scheme has applied for and obtained authorisation and approval in accordance with the cross-border pension scheme legislation. Since December 2005, such schemes have needed to apply for authorisation and approval to be able to accept contributions from employers employing members who are subject to the social and labour law of another EU state.

However, employees of a UK institution who are seconded to work overseas for a period in another EU member state are likely to remain subject to the UK's social and labour law, and so the cross-border legislation is unlikely to be relevant. From Pensions Regulator's perspective, the characteristics of a secondment are that:

- the employee is being sent to work overseas from the UK
- the employee will be providing services on behalf of a UK employer
- the employee is being sent to work for a limited period, for example a period that ends on a specified date or completion of a specified project
- there is an expectation either to return to the UK or to retire (in the UK or otherwise) at the end of that period.

If an overseas EU posting has these characteristics, it may be regarded as a secondment. However, an overseas posting which does not have these characteristics, for example an EU posting which is not expressed to be for a limited period, may not be regarded as secondment. In this scenario, the scheme would need to be authorised and approved as a cross-border pension scheme if the employee was to continue in active membership.

Postings outside the EU are not subject to the cross-border pension scheme legislation, but again, the rules of the pension scheme may impose membership restrictions.

In general terms, if an employee became permanently employed by an overseas employer then that overseas employer's ability to participate in the relevant UK pension scheme would need to be checked with the pension scheme. In reality, the ability of the new employer to participate in the original UK pension scheme is likely to hinge on issues such as the rules of the pension scheme, the new employer's connections with the respective UK institution and whether the employer is within or outside the EU.

Relevant scheme provisions

In terms of any overseas secondment, posting or employment, the pensions position should be checked with the relevant pension scheme. In terms of the main centralised pension schemes for the education sector, the Universities Superannuation Scheme allows for membership to continue whilst an employee is on an overseas secondment. However, the scheme is not authorised as an EU cross-border pension scheme and contains express provisions to prevent the scheme falling within the cross-border pension scheme legislation, for example by ending membership if an employee's secondment became a permanent posting to an EU member state.

Under the Teachers' Pension Scheme any period of secondment can be treated as pensionable if the person remains on the same terms and conditions with the same employer and embarks on the secondment with the intention of returning to their substantive post. If an employee became permanently employed by an overseas institution then (s)he could only remain in the Teachers' Pension Scheme if that institution was an accepted employer within the scheme; there are very few institutions in Europe which are accepted employers within the Teachers' Pension Scheme.

The Local Government Pension Scheme (LGPS) allows an employee to be away from his employment with employer permission for up to a maximum period of 36 months which would cover a secondment period. On a technical point, the LGPS regulations state that no sum may be taken into account in calculating pay unless income tax liability has been determined on it, although the regulations do not specify this has to be UK income tax. However, for a seconded employee, income tax may be charged in the UK in any event. If an employee became permanently employed by an overseas institution then he could only remain in the LGPS if that institution qualified as a scheme employer or admission body within the scheme. It is unlikely that an overseas institution would qualify on these grounds.

5.4

Dependants of staff working abroad

Often, if the period of work abroad is for an extended period of time or permanent, the UK university staff member will request to be accompanied by a spouse or partner and/or children. Although the UK university will have no obligations as regards the employee's dependants, it may be in their interests to assist in any necessary applications or processes. Such an employee may, for example, make it a condition of their acceptance of the job offer that they will be accompanied by their spouse and children. If the employee is going to work within the EU then there will not be a problem as a worker can automatically be accompanied by dependants. It is usual for immigration rules to allow dependants to accompany a secondee but processes vary from country to country, as does the definition of dependant. The definition may in some cases include only a spouse and children under 18, but in some countries is extended to an unmarried partner, older children and dependant parents. The position under local law would therefore need to be clarified.

6. STAFF OF OVERSEAS PARTNER - ENTRY INTO THE UK

6.1 The Immigration, Asylum and Nationality Act 2006

It is unlawful to employ someone who is not entitled to work in the UK. The Immigration, Asylum and Nationality Act 2006 introduced new liabilities where an individual is employed on or after 29 February 2008 who does not have permission to work in the UK, as follows:

- It is a criminal offence for an employer to 'knowingly' employ a person who is not entitled to work in the UK. Managers may be liable to a custodial sentence of up to two years and the employer may face an unlimited fine
- An employer that negligently employs someone who is not entitled to work in the UK is liable to a civil penalty (currently a fine of up to £10,000 in respect of each individual)

The Act provides an excuse to the civil penalty if a prescribed document checking process is carried out prior to the commencement of employment. UK universities are recommended to carry out these checks for all new employees prior to the commencement of employment, irrespective of nationality or perceived nationality.

EEA nationals

Workers who are nationals of any nation that is a member of the EU or the EEA are generally free to take employment in the UK. Nationals of the two countries that joined the EU on 1 January 2007 (Romania and Bulgaria, known as A2) must obtain specific authorisation from the UK Border Agency (in the form of work permits) before starting work in the UK, unless they are exempt.

Non-EEA nationals

In the past there have been several different routes of entry for individuals from outside the EEA wishing to take up employment in the UK. All these different routes of entry have now been brought under the 'Points Based System' which is made up of five different tiers. Individuals from outside the EEA are now required to obtain a visa or entry clearance under the relevant tier before coming to the UK.

UK universities which wish to take on workers from outside the EEA in the UK must ensure that potential recruits have leave to enter or remain in the UK under one of five tiers which include:

Highly skilled individuals/Post Study (Tier 1)

For example academics, doctors, engineers, innovators and entrepreneurs.

Please note that Tier 1 (General) and Tier 1 (Post Study Work) are now closed to new applicants.

Skilled individuals with a job offer (Tier 2)

Note that the employer is required to advertise the role to ensure that it cannot be filled by a resident worker.

Students (Tier 4)

For further information please see Chapter 6.

Temporary workers and Youth Mobility Scheme (Tier 5)

Applies to various types of temporary worker. Of most relevance to UK universities are:

- Youth mobility scheme. This sub-tier allows people between the ages of 19 and 30 to work and experience life in the UK for up to a maximum of 24 months, but is limited to nationals of countries recognised for this sub-tier by the UK Border Agency
- Government Authorised Exchange. In response to significant pressure from the sector, the UK Border Agency have extended this tier to sponsored researchers. UK universities are required to be a registered sponsor under Tier 5 for this purpose.

Visitors

The UK Border Agency has introduced a new set of rules applying to visitors, largely in order to overcome the uncertainty in the previous guidance as to what business and academic visitors are entitled to do in the UK and to achieve consistency with the new system. As such, a separate category of business visitors has been introduced which includes academic visitors. Academic visitors under this category may remain in the UK for up to twelve months, must be able to support themselves without recourse to public funds and have the ability to meet the cost of the return journey. Visa nationals will require advance entry clearance.

Greater clarity has been given on the activities that are permissible during a short-term business visit for academic purposes, which include:

- a person on sabbatical leave from an overseas academic institution who wishes to make use of their leave to carry out research in the UK
- academics, including doctors, taking part in formal exchange arrangements with UK counterparts
- groups of individuals who are engaging in business-like activities, but who are technically providing a service (for example, visiting professors accompanying students undertaking study abroad programmes)

The intention is to make a clearer distinction between genuine business visitors and those intending to engage in short or long term work-related (rather than business) activities. Lecturers coming to the UK to undertake a series of lectures for a fee will fall under Tier 2 or the paid engagements visitor route, whereas academics coming to take part in a single non-commercial event may qualify under the business visitor rules.

7.

INSURANCE

A UK university is obliged by law to maintain Employer's Liability insurance to cover its liability for injuries caused to employees whilst at work. Failure to provide cover for all its employees is a criminal offence.

Details of all secondments or arrangements under which employees are being transferred to work abroad should be disclosed to the insurers to ensure that there are no issues of non-disclosure under the policy. Non-disclosure may affect the validity of the insurance cover.

Where employees go abroad to work for a period of time, but remain employed by the UK university, the UK university should liaise with its insurers to ensure that cover is provided under its policy for any claims that may arise from those employees. If the insurers no longer deem them to be employees for the purposes of the insurance policy (which will not affect whether or not they remain employees for the purposes of their employment law rights) the UK institution should seek confirmation from the relevant international partner that they are covered under an equivalent employer's liability policy in the overseas jurisdiction.

If any employees of the international partner are transferred or seconded to the UK institution, the UK institution should liaise with its insurance advisor to establish whether cover is provided for them under its Employer's Liability insurance. If cover is not provided, the international partner should be informed.

8. DATA PROTECTION

8.1 Data Protection Act 1998

Information about staff members and/or job applicants is likely to be personal data if, on its own or with other information held, it allows the individuals concerned to be identified. This is the case whether the data is in electronic or hard copy form. Personal data is normally protected by legislation in the UK (the Data Protection Act 1998 (DPA)) and can only be used in accordance with special rules.

The DPA implements a European Union Directive on data protection. As a result of the Directive, each member state in the European Union has similar rules to protect personal data. This means that there is a 'safe zone' for the use of personal data within the European Union and by agreement this is extended to the other countries making up the EEA (Iceland, Norway and Liechtenstein).

Although many other countries around the world have some rules on protecting personal information, the rules differ widely and some countries have such different approaches that the European Commission does not believe that they provide adequate protection for personal information and the rights of the individuals concerned. Conversely, it is important to be aware that some lawful use of personal data in the UK would not be lawful elsewhere in Europe, so it should not be assumed that practices which are acceptable in the UK will be acceptable elsewhere.

A UK university will hold details of its staff and job applicants as a data controller because it will control how and why that information will be used. The university as a data controller must comply with the DPA and will be responsible for compliance to the individuals involved (data subjects) and to the regulator who enforces compliance (the Information Commissioner's Office (ICO)).

In partnering arrangements, one university may receive personal data from another university about its staff who are performing a service and use staff details on behalf of the first university. In those circumstances the first university acts as a data processor and has far more limited obligations under the data protection laws. The university which is the data controller is responsible for the use of that personal data by its data processor and this risk must be managed by the contract between the universities.

8.2 Disclosing staff details to a third party

The university must be able to identify whether the recipient will act as its data processor or an independent data controller. This is a factual issue which depends on whether the recipient can

decide on new uses for the data. If it will be a data processor, there must be written contract terms in place with the data processor to control the use of the personal data and ensure its security. The terms are the only means the university has of ensuring that the data processor does not place it in breach of data protection legislation and should at least:

- confirm who acts as data controller and who as data processor
- state that the data processor will only process the personal data concerned as instructed by the data controller
- ensure the data processor accepts the same security obligations for the personal data as apply to the data controller under the DPA
- ensure the data processor's use of the personal data can be checked by the data controller and compliance enforced
- impose other terms; for example, provisions for dealing with security, audits and breaches are highly recommended.

The data processor may use the personal data in the same way as the university is entitled to use the personal data, subject to the limits of the contract and the service being provided. In the UK neither the ICO nor individual data subjects need to be told that data processors may use personal data, although it is good practice to inform them and the ICD.

The ICD's data sharing code should be followed.

Where personal data is passed to a new data controller, the university cannot control onward use and the use may be expanded by the new data controller. In such cases, the university must ensure:

- the disclosure is legally justified
- it has told the ICO that it may share personal data with such new data controllers and
- it has told the individuals concerned that their data may be disclosed to such data controllers and why.

More care will be required where sensitive personal data is involved (such as sickness records or details about trade union membership, for example) or where loss of the personal data may cause damage or distress, such as financial data or other information which may facilitate identity theft.

8.3

Sending staff details abroad

Personal data can be transferred around within the safe zone of the EEA without specific compliance measures being taken, but care must be taken if personal data is to be sent to (or to become accessible from) outside the EEA. If personal data may be sent outside the UK, that must be made clear on the notification to the ICO.

If personal data is to be sent outside the EEA, the UK university must ensure that the recipient country offers an adequate level of protection for the personal data, unless within an exemption (see below). In addition, the transfer must be fair, which means that the individuals concerned may have to be notified that their personal data might be sent abroad, for example, to a country such as the USA, where data protection laws do not offer the same level of protection as in the EEA (and must be if sensitive personal data, for example sickness information, is expected under approved model terms).

Checking whether or not countries outside the EEA provide adequate protection is done for data controllers by the European Commission. A country may have been deemed safe by the European Commission, for example Switzerland, so this should be checked first. If not deemed safe it does not

provide adequate protection. In such cases the personal data to be transferred must be protected. For example in the case of the USA, it is possible for recipients to self-certify under the ‘safe harbour’ scheme, or the exporter and importer may complete and use the appropriate form of approved model terms or standard clauses, as pre-approved by the European Commission. The latter is the option most commonly used.

Alternatively, exemptions may be relevant, such as explicit and specific consent to transfer personal data outside the EEA, or where the transfer is necessary to perform a contract. For example, to book a hotel room in Australia, personal data must be sent to Australia.

8.4

Change of employer

How personal data is treated when there is a change of employer will depend upon whether there is a transfer of an undertaking (see below). If so, certain personal data must be disclosed to the transferee. However, that obligation is triggered at specific points in time and there may be issues if the personal data disclosed exceeds that required by the regulations at the time. Disclosures must be proportionate, minimised and on a “need to know” basis. Anonymised details should be used where possible and it is unlikely that sensitive personal data, for example of sickness, could be disclosed pre-transfer of the undertaking.

The new employer will be a data controller and may have to give its own fair notice of personal data use to its employees and comply with other data protection obligations, such as notification, depending upon the local laws where it is located.

Where the new employer is in a different jurisdiction, the university must comply with any additional obligations to ensure the personal data transferred is given adequate protection, such as implementing model terms.

8.5

Secondment

Where staff of an university are ‘lent’ to another employer body, that body will require personal data about the employees concerned and the university will continue to use personal data about the employees.

The secondment will involve a disclosure of personal data by the university to another entity which must be fair and justified. Where the entity is abroad, there will also be a transfer and the university must ensure that there are adequate safeguards for the personal data transferred.

The entity hosting the secondees may have a direct relationship with them during the period of secondment and may need records of personal data, for example, contact details, holiday or sickness records. The UK university and host will have to exchange personal data so that the UK university can update its records, for example, so it can calculate remaining holiday entitlement at the end of the secondment. The host will process their details as a data controller and again may have obligations under the local data protection laws, such as to provide fair notice to the secondees of proposed personal data use.

Where the university takes on secondees from another employer abroad, its use of their personal data in the UK must be in compliance with UK laws. It would be wise to obtain comfort that the employer has the lawful right to pass personal data to the university in the UK and that it is accurate and up to date. Provision should be made for transferring personal data to the employer lawfully.

8.6 Recruiting local staff

Where the university takes on staff locally it must do so in compliance with local laws on data protection. These may be triggered by the use of personal data in that jurisdiction even if a legal entity has not been set up there.

9. DOS AND DON'TS

This checklist lists some of the key issues which will need to be addressed by UK universities sending employees overseas.

UK universities should, as a minimum:

- establish what the employee's employment rights and obligations will be as regards contractual issues and statutory rights
- establish what local laws will apply and may affect the employee
- ensure the employment contract covers all relevant issues specific both to the move overseas and any eventual return home
- ensure risk assessments are carried out to protect the employee's health and safety
- ensure that all immigration requirements and obligations are complied with
- check the taxation position and ensure appropriate arrangements are in place
- check the pensions position
- check that all relevant insurance is in place and
- ensure that no data protection principles are breached.

UK universities should not:

- assume that the UK law will be the relevant law
- rely on an existing contract of employment. The contract will need to be tailored to cover the work overseas or
- underestimate the support required by the employee

Although there are many issues to consider, these should be put in the context of the very valuable experience obtained by both the employees and the education institutions involved.

6 Student Issues

1. THE INSTITUTION/STUDENT RELATIONSHIP

It is commonly accepted that the relationship which universities have with each of their students is, as a matter of English law, contractual. Moreover, students are commonly regarded as consumers of the educational and other services with which they are provided by their institutions and the 'student contract' will accordingly be interpreted in the light of consumer legislation and subject to the potential scrutiny of the Office of Fair Trading (OFT).

The student contract is likely to come into existence at the point in time when the student accepts an offer by the institution of a place on a course, even though registration by the student with the university may not follow until some time thereafter.

In addition, the institution/student relationship will be interpreted with reference to a number of other legal rules, such as common law duties of care and common law confidentiality, as well as legislation including the Health and Safety at Work Act 1974, the Data Protection Act 1998, the Human Rights Act 1998 and the Equality Act 2010.

The regulation of the institution/student relationship is also subject also, crucially, to the principles of natural justice, at least where the institution is in receipt of public funds.

It is important to bear in mind that the institution/student relationship is an evolving one and is subject to development through its scrutiny not only by the courts but also by bodies such as the Office of the Independent Adjudicator for Higher Education (OIA), the OFT and the Quality Assurance Agency for Higher Education (QAA).

2. WITH WHICH PARTNER WILL STUDENTS HAVE A CONTRACT?

Against the above background, a key question which arises at an early stage in any discussions between a university and its prospective overseas partners is whose students will the students subject to the collaborations be; in other words, with which partner institution(s) will students have a contract? In practice, contracts may commonly exist between students and both the UK and overseas university, even where the extent of the relationship between a particular institution and students is limited (as where, for example, the only function of the UK university is to award degrees to students of the overseas university). At the outset of negotiations, each institution should carefully examine the nature of the obligations it is proposed it will owe to students of the partner institution, in order to determine with certainty whether a contract between it and those students will be created. For further information in this regard, see section 3 which discusses the contents of the student contract.

The position may be influenced by the domestic law of the state in which the overseas partner institution is based. As a matter of English law, the relationship between the UK university and its students will be contractual. Whether and when a contractual relationship arises between an overseas partner institution and a student will in part depend on the law of the home state of the partner institution.

In addition, the position will be determined by the nature of the intended collaborations (whether the partner institutions have in mind, for example, a flying faculty or franchise model, the establishment of joint or dual/double awards or the establishment of on-campus provision in the overseas jurisdiction, on which see Chapter 1 Introduction).

It is crucial that before entering into any partnership, each partner institution is clear as to which institutions students will be registered with, and have investigated the existence of contractual and other legal and regulatory obligations which will undoubtedly flow from those particular relationships.

The home university and its overseas partners should identify the precise legal and regulatory obligations which they respectively will owe to students and make provision accordingly, not only in the student contract but also in the overarching collaborative arrangements the institutions are intending to enter into. Bear in mind that legal and regulatory obligations may arise under both English law and the law of the home states of the overseas partner institutions.

It is equally important that students themselves are made aware, in advance of registration, of which partner institutions they are expected to register with, and of whether their relationship with those institutions will be contractual.

Where UK institutions are contracting with students from overseas, or are involved in collaboration with overseas partner institutions, the questions of (a) the laws of which states apply to the student contract and to the wider partnership contracts and (b) the courts of which states have jurisdiction to hear any disputes which arise, should be explicitly addressed in the various contracts, including the student contract. (For further comment regarding jurisdictional and related issues, see Chapters 4 and 8). There are some restrictions on how these questions are determined in the student contract, as it is regarded under English law as a consumer contract. This is an area on which institutions may wish to take legal advice.

3. CONTENTS OF THE STUDENT CONTRACT

The terms of the contract between a student and his or her university will specify the respective obligations and entitlements of the institution and the student.

The terms may or may not be recorded by the institution in a single document. The practices of UK universities vary in this regard. Even where a university has produced a set of standard terms and conditions applicable to students, the terms of the student contract may be contained also in documentation to which the standard terms and conditions refer, such as the university's student regulations. Where a university has not adopted a standard set of terms and conditions, the terms of the student contract may be found in a wide number of documents such as prospectuses, student handbooks, marketing literature, offer letters, course/faculty literature, internal policies and procedures (such as those relating to complaints, discipline and fitness to practise) and registration forms. The terms of the student contract may also include oral statements made by employees of the university, for example in interviews.

Where UK universities do not have a single document summarising the key terms of their student contracts, whether with home or overseas students, they may nonetheless find it useful to prepare a short document identifying the key entitlements and obligations of the university and those students who are based overseas, in order to seek to make their respective positions absolutely clear.

The QAA's expectations about collaborative arrangements which universities are required to meet are set out in Chapter B10 of its UK Quality Code for Higher Education (B10 : Management of collaborative arrangements) together with a series of indicators through which universities can demonstrate that they are meeting these expectations. These indicators include those relating to the nature of the minimum information to be provided by universities to prospective and registered students in respect of their rights and entitlements as students. Chapter B10 supercedes Section 2A (Collaborative provision and flexible and distributed learning (including e-learning)) of the Code

of practice for the assurance of academic quality and standards in higher education. Whilst an existing version of Chapter B10 can be found on QAA's website, a revised version is currently out for consultation. In addition, and as the Higher Education White Paper indicated, from September 2012 UK universities are expected to summarise the key expectations of the institution and its students in a Student Charter, to be reviewed annually. Whilst the Student Charter is not intended to be a detailed legally binding contract, it should not be assumed that it will have no legal effect.

Not every written or oral statement will be a term of the student contract. Such statements will need to be incorporated into the contract. This in practice will mean the institution bringing the statement to the attention of the student before he or she enters into the contract (typically, before the student accepts an offer of a place on a course). Terms may be incorporated by reference without setting out the particular statements in full; so an institution may, for example, seek to incorporate into the student contract its student code of conduct and disciplinary procedures by referring explicitly to the titles of the code and the procedures and explaining that students will be bound by them, as well as explaining where students may obtain full copies of those documents.

The terms of student contracts are generally not individually negotiated by institution and students. As students will be regarded by the English courts as consumers, universities in practice will need to ensure that students are informed in plain and clear language before they enter into the student contract what the terms of the contract are. The more unusual or onerous the term, the more the institution will need to do to draw it to the attention of students before the contract is entered into. Any terms purporting to limit or exclude the liability of the institution to the student will be interpreted by the courts (and potentially by the OFT and OIA) in light of the standards of fairness and reasonableness under consumer legislation, and the courts will not permit institutions to rely on terms which fail to meet those standards.

If the UK university does not deliver its educational and other services in the way described in the student contract, it will be exposed to potential student complaints through internal complaints procedures and complaints to the OIA, as well as potential claims in the courts by its students for breach of contract and/or misrepresentation. Failure by universities to follow their internal procedures or to act lawfully or fairly when managing the student relationship, or to reach lawful, fair and reasonable decisions, for example in disciplining students, may also expose universities to potential applications by students to the courts seeking judicial review of the universities' decisions.

It is therefore important for universities to undertake regular reviews of their regulations, policies and procedures, marketing literature and other such documentation, together with information posted on institution websites, in order to ensure that the student contract incorporates only those terms on which universities intend to rely in respect of their relationships with their students. From September 2012, UK universities have to provide a Key Information Set in a form agreed with government to ensure all potential undergraduate applicants (with only some exceptions) are able to compare key data from institutions to which they are considering applying. The contents of such documentation should be consistent and properly cross-referenced. Documents should be widely publicised and readily available to students and staff.

Institutions should also keep under review the manner in which their educational and other services are delivered, looking in particular at whether the quality and standard of provision meet those expected by the law and within the sector generally in terms of good practice, as well as ensuring they comply with external requirements such as those of the QAA and funding councils.

Many of the terms of the student contract will apply to all students regardless of whether they fall into a particular student cohort such as undergraduates, postgraduates, full-time or part-time, home or international. Some terms will, by contrast, apply only to specific groups or individual students such as in relation to the provision of support to students with disabilities or mental health problems or in relation to students whose courses contain a placement element.

Where students undertake course-related placements (for example, on NHS-funded courses or in industry) third parties (for example placement providers or employers) are introduced to the institution/student relationship. The nature of the resultant triangular relationship (university, student and third party) should be carefully examined by the UK university at the outset, in order to ensure that relevant aspects are incorporated into the student contract (for example, in relation to content, location, duration and outcomes of a placement and other aspects such as supervision, discipline, fitness to practise, health and safety and data protection). In addition, the UK university should consider whether the nature of the relationship it has with the third party is a contractual one: commonly, a contract is created. Distinctly, whether a contractual relationship exists between student and placement provider will depend on the precise facts and circumstances of individual instances, but a contract may exist where, for example, the student has the status of an employee of the third party.

As discussed in section 2, a contract may exist between the UK university and students of the overseas partner university even where the extent of the relationship between the UK university and the overseas students is limited as, for example, where the only function of the UK university is to award degrees. At the outset of the planned partnership, each university should carefully examine its proposed obligations to students, in order to determine with certainty whether a contract will be created. UK universities should identify which terms of the student contract will apply to students of the overseas university, for example in relation to the awarding of degrees, the provision of certificates, academic appeals and access to facilities.

Universities should ensure that the contractual arrangements into which they enter with overseas partner institutions reflect their obligations to students under their own student contracts and do not restrict their performance of such obligations.

4. DUTY OF CARE

A university will owe a duty of care to students in relation to the performance of its professional duties, for example in relation to its provision of teaching, and in respect of the safeguarding of students' welfare. If the university fails to meet the requisite standard of care, it could be held in English law to be negligent.

It is likely that the law of negligence imposes a duty of care upon university staff in respect of the wide-ranging aspects of their professional role, including the pastoral/welfare dimension. There may well be a duty, as both CVCP and AMOSSHE have stressed¹⁷, to attempt to identify students with mental health difficulties and refer them to relevant specialist services or agencies, or at least to advise them to seek help. Given the ethos of care and support, it is arguable that university staff have a duty to be proactive in trying to maintain regular contact with students in order to be able to detect any problems¹⁸.

17 Committee of Vice-Chancellors and Principals/Association of Managers of Student Services in Higher Education (2000), *Guidelines on Student Mental Health Policies and Procedures for Higher Education*. www.universitiesuk.ac.uk/Publications. These guidelines are currently under review.

18 See Harris, N Students, mental health and citizenship, *Legal Studies* Vol. 24 No. 3 June 2004 pp 349-385.

Universities should ensure that the contractual arrangements into which they enter with their overseas partner institutions reflect their duty of care to students and do not restrict their discharge of it including, for example, in relation to taking appropriate steps to identify those students or applicants who may have disabilities or mental health problems and carrying out appropriate steps, such as needs and risk assessments, to address them.

Special considerations may apply in relation to the standard of care which institutions will be expected to reach in discharging the duty of care where students are perceived in law to be vulnerable, for example where they have a disability or a mental health problem or are under the age of 18. For further discussion regarding duty of care and health (including mental health) issues, see Chapter 5 (Staff issues). In addition, where universities are involved with students who are vulnerable adults or under the age of 18, they should remain mindful of their specific safeguarding obligations, for example under the Safeguarding Vulnerable Groups Act (SVGA) 2006 as amended by the Protection of Freedoms Act 2012.

In seeking to discharge their duties of care, UK universities should ensure that they undertake appropriate and timely consideration of the different activities and environments in which students will engage or be placed, both at home and overseas. This will include undertaking risk assessments where appropriate, for example regarding placements which students will undertake in the UK, or exchange schemes which will take place overseas (including aspects such as where teaching will take place and where students may be accommodated). For further discussion of this area in the context of health and safety, see section 5 below.

Similarly, UK universities should ensure that students receive appropriate induction and orientation, whether in relation to students of the overseas institution pursuing their programmes of study in the UK or students of the UK university undertaking exchanges or programmes overseas with the partner institution. Induction or orientation may cover aspects such as assuring personal safety, understanding local cultures and obeying local laws (for example, in relation to dress, conduct or the use of alcohol or drugs). Again, for further discussion of this area in the context of health and safety, see section 5.

UK universities should ensure that they have in place robust arrangements for dealing with emergencies, whether they occur in the UK or overseas, including the central recording of contact details and appropriate provision for repatriation. For further detail see Chapter 8.

5. HEALTH AND SAFETY

Universities have a statutory duty under the Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the health, safety and welfare of non-employees such as students. The general duties under the Act are particularised in the wealth of health and safety regulations which can apply.

As stated elsewhere in this publication (Chapter 5 Staff issues) the university must do all that is reasonably practicable to care for students. This extends to the environment in which they learn (for example, are there asbestos considerations?) the activities in which they participate (for example, are chemistry degree students aware of risks?) and the social activities they enjoy (for example, do campus bars comply with fire safety regulations?). Risks should be assessed formally and appropriate systems put in place to control risk.

This duty will extend generally to students on placement or on overseas exchange programmes and potentially to the clients or users of the placement providers with which students are placed (for example, in the context of nursing or other medical-related placements, patients of the health providers). Institutions should give particular thought to issues such as the carrying out of risk assessments of proposed placements and exchange programmes, the induction and orientation of students in advance of embarking on such activities, obtaining relevant Criminal Records Bureau checks (or equivalent) of students, compliance with the Safeguarding of Vulnerable Groups Act 2006, the monitoring of the activities as they are undertaken and the collection of student feedback following completion of the activities. Institutions should also undertake appropriate inquiry into the local laws and customs of overseas jurisdictions, such as those relating to equality issues (in relation to equality duties generally, see section 6). Further information is available through the UK Council for International Student Affairs (see Annex 6).

6. EQUALITY DUTIES

The Equality Act 2010 prohibits institutions from discriminating against applicants/students in respect of the “protected characteristics” of age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. The Equality Act also contains a public sector equality duty applying to publicly-funded institutions and covering all of the protected characteristics, which consists of a general equality duty and a number of specific equality duties. The general equality duty came into force in England, Scotland and Wales on 5 April 2011 and its broad purpose is to integrate consideration of equality and good relations into the day-to-day business of public authorities and bodies carrying out public functions.

The specific duties are designed to help such organisations improve their performance on the general equality duty, by improving organisations’ focus and transparency. They do this by requiring those organisations prescribed in the legislation to publish equality information to demonstrate compliance with the general equality duty and publish equality objectives. The specific duties are created via secondary legislation and differ between England, Scotland and Wales. The Equality and Human Rights Commission has issued a series of non-statutory guides in this area¹⁹. There are separate arrangements in place in Northern Ireland.

In May 2012, the Government announced that it would be reviewing the public sector equality duty to establish whether it is operating as intended. However, no details of the scope or remit of the review have been published to date.

UK universities may, by their own mission statements and student charters, go further in their commitments to students to seek to prevent inequality of treatment.

UK universities involved in international partnerships should consider carefully how in practice they will comply with their equality obligations, including in respect of students undertaking placements or study overseas (where, for example, cultural and religious observances may be different from those in the UK) and in respect of students accessing distance-learning from overseas (in particular, where the UK university wishes to charge differential fees).

¹⁹ To view the guides go to <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

7. STUDENT DISCIPLINE, COMPLAINTS AND ACADEMIC ASSESSMENT, ETC

UK institutions engaged in partnerships which involve the exchange of home and overseas students should ensure that both their student contracts and their agreements with overseas partners are explicit as to which institution's or institutions' policies and procedures apply to students (for example those relating to student discipline, academic assessment, complaints and appeals). They should also ensure that this information is provided to students registered on partnership-related programmes as well as to prospective students, as expected by the QAA.

Such policies and procedures should be written in clear and intelligible language, be consistent, properly cross-referenced, transparent and well-publicised.

Where students are registered with the UK university, the OIA will have jurisdiction to deal with complaints raised by students where the rules of the OIA are met.

8. DATA PROTECTION

Institutions must take care as to how they process students' 'personal data' (meaning any information which, on its own or with other information, identifies any individual student and relates to that individual in personal or family life, business or profession) and be mindful of the obligations they owe to students under the common law of confidentiality and under the Data Protection Act 1998. The primary obligations under the latter are that all personal data must be collected, retained and otherwise used in a fair and lawful manner (i.e. only where justified in accordance with the Data Protection Act 1998). See Chapter 5 for further details of requirements which must be met.

Institutions should take particular care where their activities involve, or are likely to involve, the processing of students' sensitive personal data (meaning personal data relating to race, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life or details of actual or alleged criminal convictions or proceedings related thereto). Fair and lawful processing of such sensitive personal information will commonly require the student's express, explicit and informed consent. This is likely to be in addition to any general or implied consent to data processing which students may have been asked to give on registration, as this may not have covered sensitive personal data use in sufficient detail. Typically, this may cover learning difficulties and learning support.

Great care is needed in relation to using 'consent' as the basis for lawfully processing personal data. European regulatory guidance has clarified that this ground should be used where other grounds are not available and that consent must always be unambiguous (making it difficult to rely on implied, rather than express consent). Further, the guidance highlights that it is often challenging to ensure consent has the requisite 'voluntary' element, and reminds data controllers that consent can be withdrawn. It should be relied upon as a last option.

Further obligations are imposed upon institutions involved in international partnerships, affecting the manner in which such institutions may transfer and otherwise handle students' information overseas and the steps they must take to ensure the transfer is lawful. Where transfers are outside of the European Economic Area, specific contractual terms may need to be put in place between the institution and its overseas partner to safeguard the security of the personal data before the data can be lawfully transferred (see Chapter 5 for further details).

Again, the obligations are more onerous where the information to be transferred overseas is sensitive personal data. Such use, as aforementioned, would commonly require the student's express, explicit and informed consent in advance. This may be an issue on student exchanges or periods of work or

study abroad as part of a course. Sensitive personal data must be secured more than other details, for example it should not be emailed without appropriate security, such as encryption.

Prior to the collection of personal data from students, institutions should provide students with details setting out what information the institutions collect and retain on students, the purposes for which the information will be used and the parties with whom it may be shared and in what circumstances. Collection, retention, use and destruction of personal data must be strictly in accordance with the reasonable expectations of the individual students. Providing this information in advance is an important part of managing those expectations.

Institutions' arrangements for dealing with student-related information should be clearly documented in well-publicised and transparent policies. Policies should also set out the institutions' procedures for dealing with requests from students for the provision of their own personal data (known as 'subject access requests'), the amendment, correction or destruction of their personal data and document retention.

Institutions which do not comply with the law in relation to the handling of students' information may be subject to inquiry by the Information Commissioner's Office (ICO) which could culminate in the ICO taking enforcement action against an institution or imposing fines. Students who have suffered damage and/or distress as a result of an institution's failure to comply with the law may be entitled to unlimited damages from the institution.

9. INTELLECTUAL PROPERTY

Students are not generally employees of the university and so any intellectual property (IP) created by them will not have been created in the course of employment. As such the IP will belong to the student. Universities need to consider circumstances where it is appropriate for the university to have ownership or rights in a student's IP.

The work of certain students may be funded via studentships or other arrangements where third parties are providing funding. The university may have to contract with third parties and give commitments in relation to IP. In this case, it may well be seen as fair for the university to require the student to transfer the IP they create as part of that work to the university, but then share any revenue from the commercialisation of that IP with the student. Similar provisions may apply where the student's work is carried out in conjunction with employees of the university and the university sensibly needs to be able to control the IP created as a complete package in case it can be commercialised, or where the student has used the university's assets to create IP outside of his or her coursework.

Universities often need rights to use student IP, whether as a result of electronic submission and storage of students' work or checking for plagiarism. In addition it can be useful to have rights to use students' work to promote the university; examples might include using an excerpt from a student essay or a piece of artwork on the front cover of a programme. To do this a university should ensure it has a licence in the student contract to use student IP for educational, administrative and promotional purposes of the university.

10. INSURANCE

Institutions should ensure that relevant insurances are in place to cover the student-related risks arising from the scope of their international activities.

Institutions should liaise with their insurance advisors to ensure that all international activities are disclosed to their relevant insurers. Extensions or variations to the institutions' existing professional indemnity and public liability insurance may be required to ensure that potential risks, namely claims from students or other third parties arising out of international activities, are covered. Particular considerations may arise where students are deemed to be employees.

Institutions' legal expenses insurance may not cover legal costs for claims which are made in overseas courts. Again, institutions should liaise with their insurance advisors to establish what insurance cover is available to them.

Institutions should also seek confirmation that any overseas partners have adequate insurance to cover any liabilities they may have to students. An institution may expose itself to a claim if it arranges an overseas placement in the knowledge that the overseas institution has inadequate insurance. Overseas partners will need to seek their own independent advice in relation to what insurance they will need to obtain.

So far as possible, institutions should obtain indemnities from their overseas partners in relation to any claims which result from students which arise due to the actions of the overseas partners.

11. ENTRY INTO UK/OVERSEAS COUNTRY, INCLUDING WORK PLACEMENT ISSUES²⁰

International partnerships featuring a student exchange programme will need to consider how best to facilitate such exchanges from an immigration perspective. Whilst this may be relatively straightforward for ventures where all students are EEA nationals, it is more complicated for partnerships between a UK university and an institution outside the EEA, as the majority of students are likely to require visas.

Where a UK university wishes to send students abroad, it will require assistance from its partner to ensure local immigration requirements are met. The UK institution will need to understand the local requirements so it can explain these to students and manage their expectations. To ensure successful visa applications (where visas are required) the partner institution will normally have to act as the students' official sponsor/host.

The UK university's main concern will be any non-EEA nationals it is welcoming as part of the exchange scheme. In most cases, the UK university will need to be registered with the UK Border Agency (UKBA) as a sponsor under Tier 4 of the Points Based System. Since April 2012, all universities have had to obtain Highly Trusted Tier 4 status if they want to retain the ability to sponsor new international students (or, if a new sponsor, they must apply for Highly Trusted status once they have been on the sponsor register for 12 months). Details of how to register as a sponsor may be found on the UKBA's website: www.ukba.homeoffice.gov.uk

Tier 4 sponsors have specific obligations in respect of non EEA-students. Breaches of these obligations may result in the sponsorship licence being down-graded, or even suspended and possibly withdrawn. In particular, Tier 4 sponsors must ensure they:

- retain a copy of the student's passport showing evidence of their entitlement to study and the period for which they have permission to remain in the UK
- maintain an up-to-date record of the student's contact details (address and mobile number)

²⁰ This section is based on guidance issued by the UKBA, in July 2012 which may be subject to change.

- report to the UKBA within ten working days any student who fails to enrol, who defers or discontinues their studies, or who has missed ten expected contacts (two weeks of a course with daily registers, or ten expected interactions such as tutorials/coursework deadlines, although this requirement is more flexible for Highly Trusted sponsors).

Sponsoring universities use the sponsor management system to issue a Confirmation of Acceptance for Studies (CAS) to each potential student. Each CAS will cost the institution £10.

Issuing the CAS confirms that the course is at an acceptable level, and that the prospective student meets the required English language standards.

Joint ventures that include a student exchange for more than 6 months, or a work placement, will certainly need to have a UK partner who is registered as a Tier 4 sponsor. Furthermore, the course being offered must be Level 3 or above on the National Qualification Framework or Level B2 of the European Common Framework of Reference for Language.

Students apply for a 'General Student' visa under Tier 4 and will need to show they have 40 points under the points based system. 30 points are awarded for having CAS and an additional 10 points will be awarded if there is satisfactory evidence that the student meets maintenance requirements.

Different rules apply to the ability of Tier 4 General students to work in the UK:

- Students who used a CAS to apply for their Tier 4 visa before 4 July 2011 can work 20 hours a week during term time and without restriction (subject to the Working Time Regulations) during holidays if studying at NQF level 6 or above, and 10 hours a week during term time and without restriction (subject to the Working Time Regulations) during holidays if studying below NQF level 6.
- Students who used a CAS to apply for a Tier 4 visa on or after 4 July 2011 to study at a publicly funded higher education institution at NQF Level 6 or above, or students who are studying at an overseas higher education institution and are on a short-term study abroad programme in the UK under a Tier 4 General visa, can work for up to 20 hours per week during term time and without restriction (subject to the Working Time Regulations) during holidays.
- Students who used a CAS to apply for a Tier 4 visa on or after 4 July 2011 to study at a publicly funded higher education institution below NQF level 6 (or at a publically funded further education college at any level) can work 10 hours per week during term time and full time during vacations.
- Students who used a CAS to apply for a Tier 4 visa on or after 4 July 2011 to study at a privately funded institution are not permitted to work at all.

Generally, students can take courses that include work placements, as long as these make up no more than 33 per cent of the length of the course being studied in the UK (or 50 per cent where the course is at NQF level 6 or above at a publicly funded higher education institution, or where the course forms part of a study abroad programme). Where there is a statutory requirement for the course to contain a work placement which is an integral and assessed part of the course, it can be longer than either the 30 or 50 per cent limit. The Tier 4 sponsor remains responsible for the student whilst they undertake their placement. There are specific provisions that allow General Students to take up posts as Students' Unions Sabbatical Officers.

Where the student exchange is for less than 6 months, or is for study at a lower level, the requirements are less onerous. Institutions can welcome students aged over 18 for short courses of six months or less if they satisfy one (or more) of the following requirements:

- registered as a Tier 4 sponsor with UKBA
- accredited by a UKBA-approved accreditation body (for example, Accreditation UK or the British Accreditation Council) or inspected or audited by a UKBA-approved body (for example, the Quality Assurance Agency, or an overseas university holding their own national accreditation offering programmes equivalent to a UK degree (validated by NARIC) with only part of that programme being offered in the UK

Students will be granted a visa as a 'Student Visitor', provided they can produce evidence of acceptance onto such courses. Student Visitors are not allowed to work at all whilst in the UK therefore this route is unsuitable if the course includes any form of work placement.

Institutions may offer 'pre-sessional courses' to provide intensive English language tuition or to generally prepare students for their main course of study in the UK. These courses must meet the full requirements of Tier 4 (except they do not have to lead to a recognised qualification) or the student will have to enter as a Student Visitor or Child Visitor.

Institutions should be aware that non EEA-students coming to the UK to study certain sensitive subjects at postgraduate level may require an Academy Technology Approval Scheme (ATAS) clearance certificate. This is a scheme to stop the spread of knowledge and skills that could be used in the proliferation of weapons of mass destruction and their means of delivery. Further details may be found on the website of the Foreign and Commonwealth Office: www.fco.gov.uk/atas

12.

DOS AND DON'TS

In order to ensure that the institution/student relationship is managed effectively, the UK university should:

- identify precisely at the outset what legal and regulatory obligations each university will owe to which institution's students under which states' laws
- identify whether it will have a contract with students of the overseas university, even where the UK university's obligations to those students will be limited (for example, in relation simply to the awarding of degrees)
- ensure that students are informed at the outset with which institution(s) they will need to register and will have a contract
- ensure that from the outset it documents succinctly and intelligibly the respective entitlements and obligations of each party to each, and that such documents are disseminated to the UK University, overseas university and students.

The UK university should not:

- enter into contractual arrangements with overseas partners which hinder or prevent the UK university from discharging its legal and regulatory obligations to students
- omit to carry out appropriate risk assessments of the activities and environments in which students will engage or be placed, particularly in respect of students on placement or based overseas; nor should they fail to obtain appropriate insurance cover. Students out of sight should never be out of mind
- omit to inform students from the outset which institutions' procedures apply to them and when (for example, in respect of discipline, fitness to practise, complaints and academic appeals).

7 Governance and management of the partnership

1. DOES THE GOVERNING BODY HAVE A ROLE?

In practice, at least until recently, most international academic partnerships have not involved the creation of a company or other new legal entity. Most have been created by using contracts signed in the same way as any other legally binding commercial agreement. Unlike building projects, it is rare for an international academic partnership to involve the use of a deed which, under the constitutional documents of most universities, would need to be witnessed by two members of the governing body. As a result, the involvement of the governing body is rarely required as a matter of complying with institutions' internal constitutional arrangements.

Nevertheless, there is a strong case for saying that the governing bodies of universities should, at the very least, be made aware of their institution's major international partnerships and indeed to be asked to approve the most substantial and/or risky undertakings. This is because an international educational partnership can pose as much risk (as well as much benefit) to the institution as do major building projects. Any university undertaking a significant number of international projects should include such activities as a section in the institution's risk register. The governing body will accordingly wish to receive updates at least once a year and at any time when potential problems emerge which might put the resources and/or the reputation of the institution at risk.

Apart from such exceptional individual cases, the governing body should be involved only at the strategic level, in approving the institution's strategy for international partnerships and approving significant alterations to this (for example in relation to partnerships in countries where the institution has not previously operated and which, for political or other reasons, present particular risks to the institutions' staff and students). The governing body will look to the university's management and academic staff to operate such partnerships effectively and efficiently. The rest of this chapter is devoted to the examination of what such management may entail.

2. MONITORING THE OPERATION OF THE PARTNERSHIP

2.1 What to monitor

At its most basic an international academic collaboration is a contract like any other, which should be monitored appropriately to ensure that it operates efficiently and effectively to deliver its aims. However, in addition any academic partnership will also raise issues of quality and compliance with academic standards (both of the institution and external bodies) and given the international context there is always the possibility that important developments within the wider political and cultural situation could arise which will affect the partnership for good or ill. These different strands will be considered in turn.

2.1.1 *Contract management*

All universities will have a wide range of contracts with suppliers, academic partners, other external stakeholders and so on, quite apart from their contracts with students and staff. Responsibility for negotiating and overseeing the operation of contracts with external organisations will often be split. Some contracts may be overseen by the relevant support department (such as estates); commercial contracts may be the responsibility of a contracts office; academic partnerships may be overseen

by a central quality office or by staff within the office of the Registrar or Secretary. International partnerships are increasingly found to be the responsibility of a university's international office, although such offices are not yet universal.

For the purposes of this book it is not necessary or appropriate to suggest that any particular internal structure is the most appropriate in relation to international partnership agreements; what is crucial, however, is that responsibility for managing such partnerships is clearly identified and understood within the institution. In many cases there will be a division of responsibility, with academic quality offices having responsibility for oversight of academic standards issues, and the international office or, in some cases, the legal office (which may be within the remit of the Registrar/Secretary) having the responsibility for overseeing the business side. Such a division of responsibility can work well provided there is appropriate liaison between the various departments concerned.

However, where the university develops an extensive network of international partnerships it becomes increasingly likely that some central unit or other body will be needed to ensure that a consistent approach to the management of such partnerships is undertaken. Otherwise there will be, for example, dangers of inconsistent approaches being taken by different programmes, perhaps even though there is a common overseas partner institution. Some degree of centralisation is also highly desirable where a serious problem arises requiring an urgent response (see Chapter 8).

Finally, whatever structure is adopted, it is essential that there are structures and processes which do not depend upon any key individual, otherwise, should that person leave, arrangements for co-ordinating the partnership are likely to crumble.

2.2

Monitoring academic quality

It is key to the success of any academic collaboration that the standards set out in the partnership agreement are at least maintained and if possible surpassed. In accordance with the university's responsibility for oversight of academic quality, the management of issues will normally follow a standard process, usually set down in the quality handbook produced by the section within the university's administration concerned with quality assurance.

Typically this will involve that body receiving annual reports on all academic partnerships, including international partnerships, with comment from the academic department concerned. Academic departments should be encouraged to identify any teething problems and confirm the steps being taken to address them. There should also be provision for more fundamental review of the extent to which the partnership is achieving its academic objectives, perhaps at a mid point in the initial term of the partnership. That more a fundamental review may well involve a visit to the partner institution involving one or more members of the university's quality team and not just the academic department leading the collaboration.

Finally, the work of the academic quality committee itself should be checked through accountability to the Senate, the academic board or similar senior committee within the institution. This can ensure that where problems have been identified appropriate steps have been put in place to address the difficulties and that where improvement is not forthcoming action is being taken to review the whole future of the partnership (see chapter 8 for a discussion of the approach to be taken where an international partnership seems to be going seriously wrong).

2.3**Monitoring the Business of the Partnership**

Many potentially more serious problems can be avoided if a ‘good housekeeping’ approach to the partnership is taken by all concerned, including the lead academic department as well as the international office, the finance department and any other support departments involved.

The QAA Quality Code is in future likely to require UK institutions to update its due diligence on their partners periodically (see Chapter 3, section 2.4). In particular, it is important that the resources allocated to the partnership are clearly identified and the performance of the partnership against its financial targets closely observed. This will be particularly important in order to ensure that the annual review of the financial schedule or other document detailing the financial arrangements is as well informed as possible.

Further, it is important that all the relevant contractual documentation is kept in one place which is known to the senior staff responsible for the partnership and this documentation is monitored to ensure that it is kept up to date. Ideally the university will have a central record, probably on line, of its contractual commitments and the dates when these arrangements should be reviewed and fall to be renewed. If, despite such good management, difficulties develop into serious problems with the need for a fundamental review of a kind referred to above, the university will need to be able to refer to the contractual documentation and it will be vital that it is both up to date and complete.

2.4**Monitoring the wider context**

All academic partnerships operate within a wider political and financial context, largely dictated by the government of the day and relevant regulatory and funding bodies. In the international context significant developments in the wider scene in the country concerned should be monitored closely. This will obviously be more important where the international partner is based in a country which is undergoing a period of political instability; where there may be risks to the security of students and staff of both the partner institution and the UK university; or where there are possible problems for the health and safety of staff and students as a result of natural disasters, transport difficulties and so on. In many cases the UK university will have concluded as a result of its initial risk assessment that such major issues are either unlikely or can be managed, otherwise the partnership would not have gone ahead.

The extent to which such issues can be foreseen will vary, but the UK university must liaise closely with the international partner to ensure that at all times it has the best possible information on any changes in the political or educational context in the country concerned. It should not rely solely on its international partner for such information but should keep in contact with the British Council, UK Embassy, Foreign and Commonwealth Office and other sources of up-to-date information on the position in the country concerned.

In many cases the university will have a number of its own staff based with the international partner. It will be important to ensure they have the best possible means of communicating with the university, although in some parts of the world electronic communication may not be entirely reliable. Finally, it has to be accepted that even the proactive approach will not always guarantee that the UK university has good warning of impending serious problems. There is always the possibility that a crisis will arise with little or no advance warning, as illustrated by the “Arab Spring” in 2011. The steps required to manage such a crisis are discussed in the next chapter.

3. DEVELOPING THE PARTNERSHIP

3.1 The process of review

Taking the proactive approach to partnership management suggested above is not just a vital tool for managing risk it is also essential if the university is to identify opportunities for developing successful partnerships. As UK universities move into countries and regions where they have not previously been involved, it is likely that many partnerships will start at a modest level but with the hope of potential future growth. Such development can of course not always be planned for: some partnerships will be more and some less successful than expected. However, a systematic process of review should be adopted so that the university can effectively distinguish between partnerships which perform only at the level expected, those causing concern and those which actually out-perform their original aims.

In the last case it will be helpful if the enthusiasm of the academic department(s) concerned can be investigated by the relevant central departments of the university, with a view to encouraging the existing academic lead department, or perhaps other departments able to build on the initial partnership, to produce development plans. Such plans should be reviewed as systematically and rigorously as the original plan which initiated the partnership. In particular, any problem areas with the current partnership should be dealt with before the university gives a commitment to moving into the new areas identified by the development plan.

3.2 Renewing and extending partnerships

As suggested in Chapter 4, academic partnerships should provide a suitable mechanism for the partners to review how the agreement has gone well before the expected date for termination of the partnership agreement. This review process should provide an opportunity for the parties to reach an amicable agreement on whether the relationship should be renewed at all, if so whether it should be varied in some way in order to address problems, or whether it should be extended in a more significant way in light of the development plan referred to above.

Again, this discussion should not be the sole preserve of the university's lead academic department: approval from the quality or other relevant committee should be obtained before the partnership agreement is renewed and (in particular) if it is to be extended in a significant way to include new activities. This process, just as with the interim reviews conducted earlier in the life of the partnership, should involve not only the academic department leading the partnership but those responsible for the academic quality of partnerships, the finance office and, in any case where there could be legal repercussions, the university's in-house lawyer and/or external legal advisers. It is unfortunately quite common for issues to arise during the life of an international partnership which may lead to the university wishing to invoke provisions in the partnership agreement, but where no legal advice is obtained until it is clear that matters have gone seriously wrong. Involving legal advisers at an earlier stage may often save time and money in the long term (see Chapter 8).

4. DOS AND DON'TS

In order to manage international partnerships effectively the UK university should:

- Adopt a proactive and holistic approach to monitoring the operation of international partnerships, putting in place a systematic process for regular review of the operation of the partnership during its

lifetime and not waiting until close to the expected date of termination; the process should involve not only the academic lead department but also central departments of the university concerned with academic quality, finance and legal advice. Effective sharing of information across the university is therefore essential.

- Be constantly on the lookout for opportunities to extend successful partnerships so as to maximise the return on what is likely to be substantial investment by the UK university.
- Ensure that issues identified by the regular monitoring process are properly addressed and opportunities for developing the partnership appropriately planned and taken forward.
- Ensure that there is a fundamental review of the partnership in good time before the expected termination date, in conjunction with the international partner but also the university's own departments, and with the benefit of relevant external sources of information and advice (for example any report from QAA or relevant professional or other accrediting bodies).

UK universities should not:

- Assume that once the partnership agreement has been signed the operation of the partnership can be left to the academic department which instigated it.
- Allow partnership agreements to roll on from year to year without periodic systematic review of the whole of their operation and not just the financial schedule.
- Regard the involvement of legal advisers (whether from the institution's internal legal office or suitably experienced external advisers) as a defensive or negative step, since advice delivered promptly in response to a request for guidance in the early days of a potential problem (or opportunity) may save the institution considerable time and money.

8 What to do if things go wrong

1. INTRODUCTION

It would be wonderful to think that, having meticulously planned and documented your international partnering arrangements, and worked hard at the ongoing relationship, the future would be plain sailing. However, like any sailing expedition, it is almost inevitable that some things will go wrong at some point. The key to resolving disputes before they threaten the relationship and before costs start to mount up will be to have a strategy to deal with disputes of whatever size, whenever they occur. Chapter 7 dealt with strategies to try to prevent problems developing. This Chapter will attempt to assist with the process of developing strategies to deal with problems and threats to the ongoing partnering relationship.

It is worth bearing in mind at the outset that cultural differences often manifest themselves more strongly in times of stress and raised emotions. Your strategy for dealing with disputes needs to be flexible enough to be able to recognise and deal with the various different issues which may motivate your partner institution, and which may not be immediately obvious to you.

2. IMMEDIATE STEPS ONCE A DISPUTE HAS BEEN THREATENED OR A CLAIM HAS BEEN MADE

2.1 Seek legal advice at an early stage

As should be clear from the points which follow in this section, in international disputes there is a much greater likelihood that costs will be saved in the longer term, and that tactical advantages may be gained, by seeking legal advice in relation to the matter at an early stage.

If the written agreement(s) which covers the dispute contains an exclusive jurisdiction clause providing that the courts of one of the UK jurisdictions will have jurisdiction over the dispute, then clearly you will need to consult a lawyer qualified in that jurisdiction as to the way forward. However, even where the written agreement concerned does not contain such a clause, it is probably always worth speaking to a UK-based lawyer specialising in international disputes regarding whether there is any other basis for commencing a claim here. There is ample case law on jurisdiction issues, which establishes that ‘forum shopping’ is quite common and there may be very real tactical advantages to be gained by starting proceedings in a particular jurisdiction, but you will need to act quickly. Once a court of any jurisdiction is ‘seised’ of a case - i.e. has taken some form of procedural steps in relation to it, it may be difficult to prevent any proceedings from continuing in that jurisdiction.

2.2 Is urgent action needed?

Most disputes between partner education institutions are capable of being resolved using the partnership’s agreed internal mechanisms, or sometimes other external means of resolving disputes not involving the courts (see below). However, in a minority of cases you may need to take urgent action to prevent your partner institution from, for example, exploiting your institution’s intellectual property, disposing of property to which your institution has a claim, or from taking some other irrevocable step. In such cases you will need to consider whether to make an application for a court order to preserve the status quo and, if so, in which jurisdiction such an application can be made. Applications for ‘interim relief’ or a court order made on an urgent basis can be made in the courts of

England and Wales where those courts have jurisdiction over any future potential claim, and in some circumstances it will be possible to seek an urgent order notwithstanding the absence of such a jurisdiction clause. You will need to seek legal advice at an early stage, as set out above.

2.3

Has a crime been committed?

As with emergency issues affecting institutions in the UK, where a criminal act may have been committed you will need to consider carefully whether it is appropriate to involve the local police. You will also need to consider if the institution's 'whistle-blowing' procedures apply in this situation (see Chapter 5). Where student welfare is in issue, you will want to consider what pastoral support can be offered and whether emergency action needs to be taken (for example to exclude a student from University premises on a temporary basis, pending a further investigation of the matters concerned).

2.4

Documents

Try to collate the relevant documents together. The institution needs to be able to piece together the full facts of the case in order to develop an appropriate strategy. 'Documents' for this purpose includes any medium on which recorded information is stored including emails, post-it notes, texts from mobile phones, handwritten notes of meetings, as well as more formal correspondence and records.

Many cases have been won or lost on the basis of documents created after the dispute arose. The importance of controlling document creation cannot be over-emphasised. Impress on all individuals who are in any way involved in the dispute that they should not destroy any documentation relevant to the issues in the dispute, nor create any documents unnecessarily. Especially dissuade colleagues from circulating emails which comment on the ongoing dispute and/or the partner institution. If the institution is later involved in Court proceedings in the jurisdiction of England and Wales, or arbitration which is subject to procedural rules of England and Wales, then such documents may well have to be disclosed. The rules on disclosure of documents in other jurisdictions vary considerably, and it will be necessary to take local legal advice if the Courts of another state are likely to have jurisdiction over any claim.

2.5

Witnesses

Try to identify the key individuals who had a role in the events giving rise to the dispute. If any of them have left or are about to leave the organisation, it may be advisable to interview them and produce witness statements in draft in case it proves difficult to obtain access to them later on. You should involve lawyers in interviewing any witnesses so that the drafts of any evidence are subject to legal professional privilege. In most jurisdictions, communications between lawyers and their clients and 'attorney work product' are protected from disclosure to other parties in litigation or to the courts by the concept of 'legal professional privilege'. This is the principle that a party's communications with its lawyers should be protected from disclosure. Again, you will need to check the rules on disclosure of draft statements as they apply in jurisdictions other than England and Wales. In some jurisdictions, draft statements or experts' reports are not protected by legal professional privilege and will have to be disclosed.

3. HOW WILL DISPUTES WITHIN THE PARTNERSHIP BE RESOLVED?

3.1 Where the written agreement(s) make(s) specific provision for the way in which disputes are to be resolved

In previous chapters it has been suggested that partnership agreements should, wherever possible, include a governing law clause providing that English law will apply and either an exclusive jurisdiction clause providing that the courts of England and Wales will have jurisdiction, or an arbitration clause. It will not always be possible to negotiate the inclusion of terms such as these, but there is no doubt that having such provisions may act as a deterrent to the partner institution raising any dispute under the agreement. Further, in the event of a dispute it will almost certainly save time and costs, and may help to avoid unnecessary court proceedings. Such clauses may also help to preserve the relationship.

From 11 January 2009, the Courts of all EU member states other than Denmark have had to take into account the Rome II Convention in relation to non-contractual claims, where the events giving rise to the claim occurred after 11 January 2009. In brief, the effect of the Convention is that parties to an international contract can generally choose which country's governing law will apply to non-contractual claims, that is, tortious claims²¹, including, for example, claims in misrepresentation. Any such choice of governing law for non-contractual claims will need to be recorded in the agreement. In the absence of any choice being made in the agreement, the basic rule will be that the governing law in relation to any non-contractual claim will be that of the territory in which the alleged damage has occurred.

In most cases it will be preferable to include a jurisdiction clause specifying that the Courts of England and Wales will have authority to hear all disputes arising out of the contract. However, you will need to recognise that in some jurisdictions (China is one example) there is a great distrust of local Courts and it is generally considered preferable to resolve disputes by means of arbitration. Note that there is also a marked preference for arbitration in some European jurisdictions.

Once a dispute has crystallised, it is possible that the stated mechanism for resolving disputes under the written agreement will seem inappropriate. If this is the case, remember that the parties remain free to agree an alternative method of dispute resolution after the dispute has arisen. In practice, it is rarely possible to agree anything about how to handle the dispute once the parties have become entrenched. Accordingly you need to think about this at an early stage and consider whether it is an issue which should be resolved early on in the negotiations, by escalation to senior management if necessary. Early clarification of the procedure to be used may well save time and costs, avoid unnecessary proceedings and help to preserve the relationship between the partners.

Notwithstanding jurisdiction/arbitration and governing law clauses being included, the institution may still find itself subject to procedures in the overseas jurisdiction. By way of example, there may be mandatory rules which apply, for example, equality/discrimination legislation to which the institution may be subject overseas where they are the providing body for students who wish to bring a claim under the legislation. Similarly, different rules on protection from eviction and labour law may apply despite the fact that the institution has provided in all contractual documents that the law of England and Wales will apply.

²¹ See Glossary.

Also, there is a possibility that you will find another court is ‘seised’ of the case (i.e. has established jurisdiction over the matter) even where you have agreed a jurisdiction clause which provides for the courts of a different jurisdiction to have exclusive authority to hear disputes arising from the partnership arrangements. This can happen even where the court competing for jurisdiction is another European state, although the Brussels Regulation²² specifically makes provision to prevent such disputes arising. In the event that there seems to be a risk of another court becoming seised of the dispute, you will need to consider whether it is appropriate to apply for an anti-suit injunction to prevent the case being heard in that jurisdiction. This is an injunction obtained from the English courts which restrains the counterparty from pursuing or continuing with a claim in courts outside England and Wales.

3.2

Where there is no provision in any written agreement as to how disputes are to be resolved

If no written agreement between the parties exists which covers the subject matter of the dispute, or in the event that there is no provision in the agreement to cover the mechanism for resolving the dispute, it will be necessary to try to agree with the partner institution how to proceed, or to take unilateral action to ensure that the court favoured by you is ‘seised’ of the action.

Often, the lack of any clear jurisdiction clause will mean there is a ‘race’ to issue and serve proceedings from the court favoured by a particular party. Once a court is ‘seised of the proceedings’ in this way, it will generally be difficult to persuade it to stay those proceedings in favour of another court, even though the second court may be more closely connected with the dispute.

Clearly, issuing and serving proceedings is a ‘nuclear option’ which, while giving a strong tactical advantage which may in itself help to persuade the other party/ies to settle, often irretrievably damages the relationship between the parties involved. It may therefore be advisable to discuss openly with the partner institution what measures can be taken to resolve the matter without recourse to court proceedings. It may be necessary to agree a formal Standstill Agreement. This is a written agreement which is intended to ensure that one party does not seize the advantage and issue proceedings in a court of their choice while negotiations are still ongoing. Legal advice should be sought as to the form and content of such an agreement.

If, as potential Claimant, you plan to try to negotiate, ensure that you understand and diarise any time limits in the agreement relating to each individual claim, and that you take legal advice on limitation issues. For example, under English law, you would generally have six years from the date when a breach of contract occurred to commence any court proceedings in respect of the breach. After this date you would be barred from bringing any claim. Limitation periods vary enormously across different jurisdictions, however, and local law advice would need to be taken on these.

4.

NEGOTIATING DISPUTES

Many disputes are settled by agreement between the parties, but often after time and costs have been wasted in engaging in a formal dispute resolution process. A negotiation clause (i.e. a clause requiring the parties to the contract to discuss and seek to resolve disputes before commencing litigation or arbitration) may force the parties to seek to reach an agreement at the start of a

²² The Brussels Regulation lays down rules which govern the jurisdiction of courts in legal disputes (of civil or commercial nature) between parties that reside in different member states of the European Union.

dispute and provides a process for them to do so. This can avoid anyone fearing that by suggesting negotiation they will appear weak. It can also ensure that the dispute is dealt with at the appropriate level within the institutions and set deadlines for the process which will focus the parties' minds on settlement. Any agreement reached as a result will be binding as a contract in its own right under English law. You will need to take advice on the status of any agreement reached if the law of another jurisdiction may apply.

Obviously, the parties can negotiate even in the absence of a negotiation clause. Be aware that in some jurisdictions there may be a cultural difficulty in negotiating, for example, it may be perceived as a sign of weakness. Also, in some civil jurisdictions, breaking off negotiations without due cause can itself give rise to a cause of action against the party who walked away. If there is any doubt as to whether English law will apply it will be worth taking local law advice before taking any such action to cease negotiations.

Most escalation clauses expressly reserve the rights of the parties to seek interim relief where necessary (such as urgent court orders to preserve the current situation) although strictly speaking such rights would generally exist anyway despite the escalation clause. Aside from any urgent applications, the clause should require the parties to go through the process set out before issuing court proceedings and failure to do so will be a breach of contract and the relevant court/arbitrator may stay any proceedings issued prematurely.

Whether or not provision for escalating the dispute to senior management to negotiate appears in your agreement, such high level meetings can be extremely effective at resolving disputes which would otherwise have ended in litigation. Often meetings of Principals or senior management, either in compliance with provisions in the agreement or arranged ad hoc, can take place informally, and the wider relationship between the parties can be brought to bear in resolving the dispute. Escalation can also have significant deterrent value in some cases, where managers feel the pressure to resolve the dispute rather than involve more senior management in taking the time to try to agree a resolution.

Similarly, there are many cases where negotiation and escalation have failed spectacularly, either because of the culture of one or more of the parties involved, or because the relationship has deteriorated to such an extent that commencing a more formal process of dispute resolution is more or less inevitable.

In some cases there may be no easy solution to the problem and negotiation at senior level will be the only appropriate option. For example, where parties become concerned about risks to their brand or reputation, escalation to senior management for a decision on what to do on an ongoing basis may be the only practical dispute resolution method.

Any settlement agreement will need to comply with the institution's legal obligations, including obligations under the Bribery Act 2010.

For a discussion of the issues which will arise if you consider that the partnership will probably have to be brought to an end, see Chapter 9.

5. USING MEDIATION AND OTHER EXTERNAL ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

5.1 Introduction

Alternative Dispute Resolution (ADR) refers to any form of informal and consensual process. It is non-binding – parties cannot generally be forced to participate in ADR (save where there is a mandatory

ADR clause in the relevant contract) and there is not necessarily a 'result' from most forms of ADR as parties cannot be forced to reach agreement. However, if agreement is reached as a result of the ADR process, that agreement is binding as a contract in its own right under English law and can be enforced as such.

As ADR is a consensual process producing a private contract it obviously has no effect on third parties, but equally third parties can be included in the process/settlement if they agree.

Under current case law, although the English and Welsh courts cannot compel the use of ADR, it can deprive the successful party in any court proceedings of some or all of its costs if that party has acted unreasonably in refusing to agree to ADR. The Civil Procedure Rules for the Courts of England and Wales require the parties to a dispute to consider whether or not ADR would be suitable, and if so, to agree which ADR procedure to attempt. The parties are also required to provide evidence, if required by the court, that ADR was considered. Therefore, in all cases where proceedings are issued in the English courts there is an expectation that the parties will at least consider attempting to resolve the dispute with reference to ADR.

ADR can be used in any dispute whether or not the relevant contract contains an ADR clause (and whether or not another form of dispute resolution is provided for).

5.2

Forms of ADR

ADR can take various forms including:

Mediation: This is a confidential process of negotiation, facilitated by an independent and impartial third person, a mediator, who does not make a decision like a judge or arbitrator. The mediator is not an advisor to any of the parties. It is not the mediator's role to tell the parties what their rights are or how they should resolve the dispute. The mediator remains impartial throughout the process. The mediator's neutrality provides him with credibility in the process.

It is a condition of mediation that the parties will treat all discussions and documents as confidential and 'without prejudice'. What is said or written cannot be used in later proceedings if the mediation does not settle the dispute.

Mediation provides a private forum in which the parties can gain a better understanding of each other's positions and work together to explore options for resolution. During the mediation, the mediator will meet privately with each party to discuss the problem confidentially. This allows each party to be frank with the mediator and allows them to have a realistic look at their case in private, without fear that any weaknesses discussed will be communicated to other parties.

Be aware that if litigation in the courts of England and Wales follows, the court is very likely to order that mediation should be considered by the parties at some point before trial in any event. The experience of mediation is that it has a high rate of success for settling disputes, although much depends on the skills of the particular mediator concerned.

Bear in mind that for some cultures, particularly those where it is crucial to avoid 'loss of face', mediation is likely to be unpalatable.

Conciliation: This is similar to mediation but the conciliator has a more evaluative role and actually assists the parties to settle the dispute by making suggestions regarding settlement options.

Early Neutral Evaluation: This involves the use of an expert (often in the field of the subject matter of the dispute) to give his assessment on a point in issue which is advisory and non-determinative of the outcome. The 'expert' can also be a legal expert, for example, a leading counsel or a retired judge.

Specialist courts within the High Court of England and Wales, such as the Commercial Court, Mercantile Court and the Technology and Construction Court, offer an Early Neutral Evaluation service.

5.3 Advantages and disadvantages of ADR

ADR is normally much quicker and involves significantly less costs than full-blown litigation or arbitration, especially if it is used at an early stage of the dispute. It can be confidential (except where there is a dispute as to whether settlement has been achieved) and is also far more flexible in its procedures and its solutions. As a result, it can enable the parties' commercial relationship to survive the dispute.

Although relatively cheap and quick, ADR requires a significant commitment of management time to see it through properly which, if no settlement ensues, can result in a delay to the onset of formal resolution procedures.

The potential downsides of ADR are:

- there is no determination by a third party, so no answers are given as to who is right and wrong; and
- unscrupulous opponents can take advantage and may use ADR as a means to delay matters, frustrate legitimate claims, or simply use the process to test the resolve of the other party to litigate or arbitrate, should the dispute not settle.

The use of ADR generally assists in the early resolution of disputes. For example, in the event that the parties do not conclude a settlement at the mediation meeting, the parties often reach a compromise in the post-mediation period. Most mediators are amenable to a continuation of their role in post-mediation discussions in trying to achieve a settlement.

5.4 Arbitration

Arbitration is an umbrella term for a process of dispute resolution which encompasses a wide variety of processes under different rules.

Arbitration is a compulsory but (generally) confidential process which produces a decision (the arbitrator's 'award') which is binding on the parties only. Parties to an agreement to arbitrate are bound by that agreement and cannot pursue judicial proceedings instead (save with the consent of the other party/ies). The only exception to this is where the arbitration clause specifically preserves the right of one party to litigate. This is relatively unusual, and likely only to be encountered where there is a serious inequality of negotiating positions.

Arbitration is generally less formal than court proceedings. Depending on the type of arbitration and the subject matter/nature of the parties, it can also be a shorter and less costly procedure but this is not necessarily the case. Bear in mind that arbitrators, unlike judges, charge fees, and that facilities for the arbitral hearing may also have to be paid for. In addition, bear in mind arbitrators may have competing demands on their time and where there is more than one arbitrator hearing a case it may be difficult to arrange hearings promptly.

Your agreement(s) may specify which rules of arbitration you have chosen (for example UNCITRAL, London Court of International Arbitration, Singapore International Arbitration Centre) and the procedural 'seat' of the arbitration (i.e. which country's procedural laws on arbitration are going to apply). If not, you will have an 'ad hoc' arbitration in which the parties will endeavour to agree these issues and additional ones, such as where the arbitration hearings will be held.

Arbitrators' decisions are generally final. There are only very limited rights of appeal under the Arbitration Act 1996 which regulates all arbitrations in the UK. Arbitration awards are enforceable as Court judgments in the UK and overseas in any country party to the New York Convention 1958. A total of 147 states including, the USA and most other developed nations, have signed up to the Convention.

6.**LITIGATION**

Litigation is a compulsory process in the sense that a) the court can compel witnesses and evidence to be brought before it and b) it produces a judgment binding on parties and non-parties. Persons not party to the contract in issue may be joined into litigation, for example as a guarantor. Only the court can produce a decisive ruling on points of law which may be important as precedents vis-a-vis third parties. The court has wide powers to deal with recalcitrant or dishonest parties, for example by committal for contempt or through the grant of injunctions.

Judgments of the English court are enforceable in England and Wales by a range of methods. They are also enforceable within the rest of the UK, the EU and in some non-EU countries under various conventions. In other countries, including the USA, it is necessary to start fresh proceedings in order to give effect to a UK Judgment as a foreign Judgment.

Parties involved in litigation often complain of a lack of control, mounting costs and lengthy delays. While these undoubtedly are characteristics of litigation (which may explain the increased popularity of ADR) the courts of England and Wales now take an active role in case management, and will tend to drive the process forward even in the event the parties themselves do not take steps to do this. You will need to monitor your control of strategy and of costs, because the process itself can lead clients to feel they have a lack of control of both these elements.

7.**CASE MANAGEMENT**

The Civil Procedure Rules in England and Wales provide for various methods for the courts to deal efficiently with resolution of disputes, although it can still easily take 12 months for a case to come to court. Other jurisdictions may not move litigation forward so effectively. You will need to be liaising with your local lawyers to ensure they do everything to move matters forward and get a final resolution of the matter.

You will also want to obtain information on costs from your lawyers. It is probably fair to say that legal representatives in other jurisdictions are not so accustomed to providing regular updates on costs and transparency in relation to billing procedures. Not all jurisdictions (the US is a good example) allow recovery of costs for the 'winning party', as is the general rule in England and Wales. There are also some jurisdictions where the costs awarded to the 'winning' party are linked in some way to the amounts in dispute (for example, a percentage of the amount in dispute might be awarded). You will want to address these types of issues in formulating a strategy for how to deal with the dispute.

Seek regular updates from your lawyers as to the basis on which the courts are likely to approach the issues in the dispute in the particular jurisdiction concerned. In some civil law systems, documentary evidence is given an even greater prominence than it enjoys under the rules of the courts of England and Wales. It may be the case that you will not be able to rely on witness evidence to 'fill in the gaps'.

Finally, it will be helpful to get some idea of the degree to which court hearings, and court files, in the jurisdiction concerned, are open to the public or made available. What is the potential for adverse publicity? This may well influence your strategy for dealing with the dispute.

9.

DOS AND DON'TS

Do

- Check the contractual documentation which exists - what dispute resolution mechanisms have been agreed, what are the timeframes for bringing a claim?
- Establish what jurisdiction/arbitration provisions are likely to apply.
- Establish what governing law is likely to apply to the dispute (this may be established by agreement or by operation of law - see further below).
- Consider whether emergency steps (for example injunction/preservation order) need to be taken to preserve the status quo.
- Notify insurers.
- Collate and preserve relevant documentation and ensure that all those involved in the matter understand the need to preserve relevant documentation and not to create unnecessary/prejudicial documentation in relation to the dispute, which might later have to be disclosed.
- Consider whether staff and/or students are involved or likely to be affected by the dispute, and what communications need to be put in place to keep them informed.
- Consider whether any third party contractors/partners or any other interests of the institution are likely to be involved or affected.
- Take account of any wider reputational issues and consider whether it is appropriate to communicate to the press.
- Take legal advice at an early stage of the dispute.

Don't

- Act in haste. In particular, be prepared to spend a good deal of time working through the consequences of termination before any action is taken; careful planning is crucial to developing an appropriate strategy for dealing with individual problems.
- Allow satellite disputes to arise, for example as to whether there is a 'Dispute' which triggers the dispute resolution provisions under the agreement. Hopefully the provisions will be clear, but if not, consider escalating the issue to senior management to try to reach agreement on the way this particular issue will be dealt with.
- Become entrenched in a particular strategy. This can be a particular problem where individuals within the organisation may feel morally aggrieved by what has happened. It should be clear from the points made above that there are many different factors which should influence your choice of strategy for a particular dispute and some of these points may only come to light during the course of the dispute.

- Take anything for granted; expect the unexpected, especially where there are cultural differences involved. Don't assume you understand why your international partner has suddenly become uncooperative. There may be very complex political or financial motivations which are worthy of further investigation.
- Assume that settlement at any cost is desirable; in reality if the fundamental issues are not resolved, this may be storing up problems for another day. This could place the institution in a worse position if, in the meantime, further costs have been incurred and/or students' reasonable expectations have not been met.

9 Ending a partnership and beginning again

1. THE PROCESS OF TERMINATION

1.1 Are there grounds for termination?

Termination of an international partnership should not be regarded as a fate worse than death. It must be accepted that in a significant proportion of cases partnerships which seemed a good idea at their inception may no longer seem so attractive three or five years down the line. Having conducted the reviews recommended in Chapter 7, one or perhaps both partners may simply decide that the partnership should be allowed to come to an end and that it should not be extended, without taking steps to terminate it prematurely. However, in some cases problems may have arisen which cannot be resolved by the ordinary process of review and the more drastic measures discussed in Chapter 8 will have been used. As recommended in Chapter 4, the partnership agreement will normally distinguish between situations where one (or both) of the partners is in breach of its obligations under the agreement, and where those breaches are serious the ‘innocent party’ may well have the right to terminate. Alternatively, or in addition, the agreement may well provide for either party to terminate the agreement by giving the appropriate period of notice, regardless of whether it is alleged that the agreement has been broken. In any event, it is crucial that the party wishing to terminate the agreement is clear which of the various grounds for termination they are going to rely upon, and makes this clear to the other party.

1.2 Using the correct process

It is not enough that the party wishing to terminate the agreement has appropriate substantive grounds for doing so, it must also use the procedures set out in the collaboration agreement properly. Otherwise the ‘innocent’ partner may find itself taken to court, even though it may have ample cause for wishing to bring the agreement to an end; see the example quoted in Annex 5. To ensure the termination procedures are operated correctly, the following points need to be considered:

- Does the collaboration agreement require that the ‘innocent’ party gives the party ‘in breach’ a minimum period of notice? This will commonly be the case unless the alleged breach is so serious that the party at fault cannot realistically remedy it, however long the period of notice it is given.
- Make sure that the various reviews which may be required under the agreement have been properly carried out. Ensure there is the relevant audit trail identifying whether recommendations arising from such reviews have been properly carried out or not, and detailing the extent of remaining problems which are the reason why the ‘innocent’ party wishes to terminate.
- Make sure that the decision to terminate has been made properly by the authorised individuals or committees within the ‘innocent’ university.
- Ensure that the relevant termination notices are sent to the person(s) specified in the collaboration agreement and that you have the appropriate evidence that this has been done.

1.3 Implementing termination

Achieving effective termination of an international partnership agreement is not necessarily a straightforward matter. It should be considered as a medium term project in much the same way as

establishing the partnership. The partners should put together an implementation plan and, if at all possible this should be an agreed document setting out respective responsibilities and timescales. So far as possible the factors which have caused the agreement to be terminated should be put on one side, with the interests of students, staff and the long-term interests of the institutions themselves being the priorities rather than settling old scores. It should be borne in mind that if this particular partnership can be brought to a close in a civilised manner, long-term relationships between the institutions - which may remain important to both partners - can be preserved. Allowing the termination process to deteriorate into an unseemly squabble will generally not benefit either institution and will only serve to discredit the good name of UK higher education. Some of the more detailed points that will need to be taken into account to protect the various stakeholders are now considered.

2. PROTECTING STUDENTS

2.1 General

Where, for whatever reason, any of the partners are intending to terminate their partnership arrangements, the potential implications of termination on the students of both the partners should be considered as a priority and identified at the earliest point in time, before termination takes place wherever possible. Having identified the implications for students which may occur, the partners will need to ensure that the termination process is managed in such a way that potentially prejudicial effects on students are avoided or minimised. Some circumstances giving rise to termination may be unanticipated (for example, where one of the partners has breached the partnership agreement) but other situations may be less unexpected (for example, where a programme fails to attract a sufficient number of applicants to run viably). The partnership agreement should provide mechanisms for dealing with student-related implications of termination, in particular where termination situations can be anticipated.

Managing and minimising the potential implications of termination on students will almost inevitably call for cooperation and dialogue between the partner universities even where the circumstances giving rise to termination may have soured their relationship. Partners will need to act proactively and cooperatively if adverse implications for students are to be minimised.

Crucially, partners must ensure that students are kept informed from the earliest appropriate time of the termination, what termination might mean for students, and the arrangements which the partners will be putting in place to assist students to deal with the consequences of termination. Managing student expectations will be an important part of the termination process.

2.2 Common problems

Common student-related areas which will need to be considered are:

Completion of programmes: Perhaps the most obvious and crucial area which the partners will need to consider is how termination will affect students' programmes. Every effort should be made to assist students to complete their programmes, or at least defined periods such as academic years and semesters, wherever possible. Where this is not achievable, the partners will need to consider carefully what alternative measures can be put in place to minimise the potentially adverse effects of termination on students. This may involve consideration of, for example, transfer of students to other programmes with their respective home university or perhaps even to other institutions (such

as where a visiting student of an overseas partner takes the credits earned from his or her existing programme and registers as an international student with another university which was not a party to the partnership arrangements) or it may involve assisting students to complete particular parts of their programmes by distance learning.

Scenarios will vary according to the particular facts and circumstances that the partners find themselves in and will need to be explored carefully, including considering whether aspects such as regulatory or insurance requirements will need to be overcome. Putting measures in place will also no doubt require the consent to the proposed new arrangements of the students concerned. Partners should anticipate that exploring and implementing arrangements will undoubtedly incur expenditure in terms of management time and costs, including potentially the making of financial payments to students to compensate them for inconvenience or loss which termination may have caused. The UK university may well wish to take legal advice before making any such payments in order to ensure that doing so will not expose the university to future difficulties such as further student claims (payments may need to be offered, for example, on a without prejudice basis and in full and final settlement of all claims by a student).

Awards: Similarly, careful thought will need to be given to the making of awards. Partners will need to put in place measures which ensure that students are granted certificates, degrees and other awards by the relevant university wherever possible notwithstanding termination.

Applicants: In addition to the running-off of students currently registered on programmes, partners will need to give thought to whether it will be necessary to close programmes to future applicants (which may involve, for example, removing references to the programmes in prospectuses and other institutional literature and curtailing marketing and related activity). In addition, partners should consider how to deal with any applicants to whom they have made offers of places on programmes but who have yet to commence the programmes and whether the sort of arrangements described above for students currently on the programme will need to be put in place for those individuals.

Other provision: In addition to the delivery of programmes of study, partners should also identify what other provision is being delivered to students affected by the termination and whether arrangements need to be made to continue such provision and/or to minimise any adverse consequences of the termination in relation to that provision. Relevant areas may be, for example, the provision to students of counselling, disability support or accommodation.

General assistance: In addition to the above areas, partners should take a common sense approach to the type of general assistance that students may require or find helpful in dealing with the effects of termination. Examples might include assistance in repatriation or with visa requirements, specific help where students have dependants (for example, a spouse and children), and the notification of contact details and the creation of a general help-line service to which students may direct questions and concerns. It is crucial that partners keep students informed from the earliest moment about termination and its potential implications for students.

Internal proceedings: Partners should consider what effect termination may have on existing and anticipated internal proceedings, for example those under student disciplinary, complaints and academic appeals procedures. Arrangements will need to be put in place to ensure that cases are dealt with promptly whilst the partnership relationship continues and careful thought is given to how cases will be dealt with which will be ongoing after the partnership has ceased. Similarly, arrangements should be made for dealing with future cases which cannot currently be anticipated, for example academic appeals made by students regarding examinations and assessments that they will not undertake until after the partnership has ceased. Partners will need to determine which institution's rules will apply to such cases and ensure that this is made clear to students.

The **QAA Quality Code** provides that there should be a written and legally binding agreement setting out the rights and obligations of the partners to deal with (amongst other matters) the specification and adequacy of the residual obligations of the partners to students on termination of the collaborative arrangement, including the obligations of the awarding university to enable students to complete their studies leading to the award (UK Quality Code for Higher Education Chapter B10, Management of collaborative arrangements, Indicator 10).

3. STAFFING ISSUES

Where an international partnership comes to an end, employees will obviously be affected. The possible scenarios are:

- the employee returns to the UK university
- the employee is redundant
- the employee remains abroad but is employed by another employer by reason of a transfer.

If, for example, the employee has been seconded to work abroad, the secondment agreement should provide for this eventuality and may provide that the employee returns to the UK to work for the UK university employer. Similarly, if the employee remains employed by the UK university, it is possible that they will be able to return to work in the UK.

Employees may, however, become redundant because their place of work has disappeared. In such a case, employees may have a right to a statutory redundancy payment and there may be collective consultation obligations depending on the numbers of employees affected. In this context an employer's obligations will differ according to whether or not the employment relationship is governed by UK law.

In the context of a change of employer, there may be an automatic transfer of employment (see Chapter 5 for more detail).

4. PRESERVING INTELLECTUAL PROPERTY RIGHTS (IPR)

4.1 Use of IPR post-termination

The partners should have agreed ownership of any intellectual property created during the course of the partnership (together with any associated rights to license such intellectual property) in the partnership agreement.

Depending on what has been agreed, any licences for one partner to use the intellectual property created may have been restricted in time to the term of the partnership agreement. There may also be restrictions in terms of what the partner licensed to use the intellectual property can use it for. Upon termination of the partnership it is important for the partners to consider the intellectual property that has been created and how each partner would like to use it, or if they may use such intellectual property in the future. If one partner possesses materials containing the other's intellectual property for example bearing the other's brand, do such materials need to be returned to the owner of the intellectual property or destroyed?

The intellectual property concerned will most likely be copyright in materials such as correspondence, teaching materials, websites or marketing materials. It may include trade mark rights for any brand used in connection with the collaboration. There may also be database rights in certain records such

as attendees on courses. These are all in addition to any specific intellectual property rights relevant to the specific type of collaboration, such as patents for inventions.

If licences granted in the partnership agreement are stated to last beyond termination of the agreement then the partners should ensure that the scope of any such licences is sufficient in terms of how and where they can use the intellectual property. If the intellectual property created is of particular interest to one partner, that partner may decide that a broader licence is required, in which case it will need to try and negotiate the terms of a broader licence with the other partner.

4.2 Protecting IPR post-termination

Another consideration is ensuring that the intellectual property arising from the partnership is sufficiently protected after termination. Assuming that the intellectual property created is owned by one partner and licensed to the other (as opposed to being jointly owned) it is common practice for the owning partner to have an obligation to maintain and protect the intellectual property and for it to pay all associated fees incurred. The partnership agreement may also contain a provision giving the other partner the option to take over the maintenance of the intellectual property if the owning partner decides for whatever reason that it no longer wants to protect the intellectual property. It is advisable for the partners to discuss the issue of maintaining the intellectual property upon termination of the agreement to ensure that any registered intellectual property, such as patents, is properly maintained post-termination and any registrations are not allowed to lapse.

4.3 Confidential information

The final issue to consider in terms of intellectual property rights is confidential information. In many cases the partnership agreement will state that the obligations with regard to confidential information will continue after termination of the agreement. This may include know-how. The partners should be aware of this and should be careful not to inadvertently disclose any such confidential information. If, for example, a patent application was about to be submitted in respect of the intellectual property, disclosure of any confidential information about the invention could potentially prevent its registration. There may also be obligations on one partner to return or destroy copies of the other's confidential information.

5. MANAGING INFORMATION

5.1 General

When dealing with information, especially personal data, it is necessary to remember the life cycle of information: creation or collection, use and copying, storage, archive and deletion or destruction. In addition, it should be recalled that one of the key data protection principles enshrined in the legislation is that personal data should not be retained for longer than reasonably necessary for the relevant purpose.

It is also important to note that information may have to be retained after actual live use of it has ceased for a variety of reasons, for example:

- because it is subject to specific legal requirements (for example, details of payments for taxation purposes must be retained for six years following the relevant tax year)

- to meet risk management or insurance obligations
- to ensure ongoing compliance with the UK Quality Code for Higher Education (see below)
- because of pending litigation
- to meet funding obligations in relation to record retention and audits.

Against this, the impact of the freedom of information legislation should not be forgotten: all retained records of information, no matter when created and whether or not in archive, are potentially available on request if held by or on behalf of a public authority subject to that legislation. Most UK higher education institutions are so subject.

This combination of factors means that thought must be given not only to ensuring that partnership arrangements cover the treatment of information in terms of its collection, use, disclosure and transfer while the partnership is operational, but also to the treatment of information and records post-termination. Suitable terms must then be agreed and documented accordingly. Where record-keeping in relation to services is outsourced, these obligations must not be forgotten as records held on behalf of an institution are also subject to freedom of information requests.

5.2

Checklist

Agreements should consider the following and have answers for these issues:

- How long should the institution keep its own records?
- Are there any particular internal policies, for example on retention, which it should follow?
- Are there any special circumstances which might extend normal obligations, for example litigation, investigation or audit commitments?
- ★ave the requirements of the UK Quality Code for Higher Education been addressed and will the information necessary to comply with the QAA's expectations following termination remain available to the institution? Such information might include:
 - assessment performance information needed to enable the institution to award any relevant qualifications in the future
 - appropriate records to enable students to obtain proof of attendance and grant of any award(s) for an indefinite period after graduation.
- Do these factors justify the retention of the relevant personal data?
- Is there any other factor which might require a different approach, for example a court or regulator order to destroy records?
- Where a partner has received information from the institution, what use of such information may legitimately be needed by the partner post termination?
- Is their use of institution post-termination sufficiently limited?
- Is their retention of information post-termination sufficiently controlled and can it be justified?
- Does the institution need information (in whole or part) returned, or to have originals, or to pass information to a replacement partner?
- Are there suitable arrangements for such activities?
- Do audit obligations affect the partner and survive termination?

- Has co-operation with such ongoing obligations been secured?
- How can the institution be satisfied the partner is no longer using its information, or only to a limited agreed degree?
- Should information be retained, returned or deleted and if so how? It is important to cover off these details and bind the partners to agreed actions. The personal data must be kept secure at all times and any deletion or destruction must also be permanent.
- How can the institution cover all the information with electronic copies, caching and back ups all being relevant, and how far should it go?
- How can there be certainty that no information has been retained?
- What tools can the institution use for reassurance in this area?
- What actions can the institution take to ensure compliance or deal with breach?
- Can the institution properly deal with any requests or investigations by the regulator or a data subject across itself and its ex-partner?

As collaborative arrangements increase and become more complex, it will be important to ensure all staff are aware of data protection and freedom of information obligations and that relevant staff have more detailed training. Personal details should only be accessed, used and shared on a need-to-know basis and all use must be adequate and proportionate, never excessive.

5.3

Preventing unlawful processing and data loss

In relation to many of these queries there is another material issue and that is the obligation to comply with the data protection principle. This requires data controllers and data processors to use appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.

This is as relevant to the storage and archiving of retained personal data and its return or destruction, as it is to its use in the normal course. It is not sufficient to pay lip service to this principle: thought must be taken to plan for, manage, train, police and enforce this in detail and in practice. The more sensitive or high risk the data the greater the obligation.

Agreements in the future must ensure this aspect is sufficiently addressed in case problems arise, or face the wrath of the regulator and potential unlimited damages claims from each of the data subjects (whether staff, students or others) affected by any breach and suffering damage or distress as a result. The Information Commissioner's Office (ICO) can and does impose financial penalties for breach of data protection legislation and these may be as high as £500,000.

Another key obligation (mentioned above) is the need for the institution to continue to meet the expectations of the QAA following termination. To ensure that this is the case, the institution should, where appropriate:

- inform the QAA (and any statutory or professional accrediting bodies) that the partnership has been terminated as, if these bodies are not informed, the collaboration may incorrectly remain listed as subject to audit in the future
- inform any other university considering a collaboration with the overseas partner of the termination and, subject to duties of confidentiality, the reason for termination.

Undertaking the final point above may risk souring the relationship with the overseas partner, if such actions are not expected. For this reason it should be clear to the partner from the beginning that there will be a culture of transparency throughout the relationship, which may include the UK institution divulging the reasons for termination to third parties, where such information is not subject to a common law duty of confidentiality. If this approach is adopted, the institution should be aware that any reasons for termination that come about as a result of its own actions may also be made transparent in this manner (and may be requested by the overseas equivalent of the QAA in any event).

6. RESEARCH-LED PARTNERSHIPS

Many research-led partnerships will have secured third party funding. If the undertaking of the research or related activity is to be transferred to one of the parties or to a completely new replacement party following termination of the agreement, the consent of the external sponsor will be required to effect the transfer. In addition, one party may wish to be released from its obligations and the consent of the external sponsor as well as the party continuing with the agreement will be needed. A special form of agreement known as a 'novation' may be required and legal advice should be obtained.

Research-led partnerships may also involve the purchase by the parties of equipment acquired specifically for the research project. If the agreement is terminated it will be necessary to decide what is to happen to such equipment. Again, this issue should be dealt with in the written termination arrangements.

7. LEARNING FROM THE PARTNERSHIP EXPERIENCE

Whether an international education partnership has gone well, badly or indifferently, it should be regarded at least as a potential learning experience. The reviews which should have been conducted during the lifetime of the partnership, and particularly the final review undertaken before the decision to terminate, will have thrown up much information which the UK institution can use to its advantage when considering a future international partnership. This information should not be left for consideration solely by the department, school or faculty immediately concerned but should be looked at more broadly by the university's central body or bodies with responsibility for international partnerships. Particular aspects which should be considered relate to what the experience can tell the university about:

- working with the particular overseas partner
- operating in the country and possibly the region concerned
- issues arising from the type of collaboration, particularly if it is of a type not previously undertaken by the university
- particular types of problem, for example relating to the student experience or that of the staff deployed in the partnership
- any commercial considerations, such as those concerning intellectual property, involvement with employers etc.
- relationships with quality assurance, regulatory, and professional bodies and with other external stakeholders, including UK and overseas governments and sector groups

- last but not least, any lessons for the UK university's internal structure and method of operation. The product of such a review will be a report of considerable value to the institution, albeit one that will need to be handled sensitively. However, the university should also consider whether there are more general lessons which can be shared widely, not only within the university but also with other international partners and indeed with the UK higher education sector more generally. While inevitably UK universities are to some extent in competition with each other to establish successful international partnerships, one of the reasons for the UK's success in developing such partnerships has been the readiness of those responsible for taking them forward to discuss issues on a cross-institution basis. There is a growing number of sector bodies which offer opportunities for sharing experience for mutual benefit. A number of these are listed in Annex 6. In particular, the UK International Unit welcomes such input as it will help to inform its future publications on topics relevant to international partnerships.

8.

DOS AND DON'TS

Do

- Be clear which of the various grounds for termination the university concerned is going to rely on and make it clear to the other party.
- Use the termination procedures set out in the collaboration agreement properly giving the 'party in breach' the appropriate period of notice of the decision to terminate which has been made by the authorised individual or committee within the 'innocent' university.
- Put together an implementation plan, if possible agreed between the partners.
- Ensure the termination process is managed in such a way that potentially prejudicial effects on students are avoided or minimised, that students are kept informed of developments and that every effort is made to assist students to complete their programmes.
- Provide in secondment agreements for the eventuality that staff of the UK university may have to return to the UK on termination of the agreement.
- Undertake the necessary consultations where employees may become redundant following termination of the agreement, or where staff are to be transferred to another employer.
- Ensure that appropriate thought is given when negotiating the partnership arrangements as to the treatment of information and records following termination of the agreement, in order not only to preserve confidentiality and comply with data protection requirements, but also to meet expectations of reasonable transparency from quality assurance and accrediting bodies.
- Ensure the final review of the partnership agreement is considered by the central body within the university with responsibility for international partnerships in order to assess the lessons for the university arising from the partnership, and be prepared to share those lessons more widely with the sector where possible.

Don't

- Regard termination of an international partnership as a fate worse than death: not all partnerships can last forever.
- Allow your institution to be wrong-footed, even though the other party is more in the wrong by

making procedural mistakes in ending a partnership.

- Allow the termination process to deteriorate into an unseemly squabble which is likely to discredit the name of both universities and of UK higher education.
- Forget the over-riding responsibilities of both partners to protect the position of students and staff.
- Forget to keep quality assurance and accrediting bodies, both in the UK and the overseas country concerned, informed of developments.
- Allow your partner to appropriate valuable intellectual property belonging to your university through failure adequately to protect such rights through the partnership documentation, or through failing to enforce rights protected by that documentation.
- Fail to ensure adequate arrangements for preservation of information and records following termination.
- Refuse to talk about terminated partnerships, provided confidentiality obligations are complied with. The collective knowledge and experience of international partnerships can only increase if institutions are willing to share their less happy experience of partnerships as well as their successes.

ANNEX 1

GLOSSARY

Word/phrase	Meaning
Accession countries	countries which have joined the European Union.
Act or Statute	formal written enactment of a legislative authority.
Alternative Dispute Resolution (ADR)	methods of resolving disputes other than being settled by a Court.
Amendment Agreement	an agreement detailing modifications that have been made to the head contract or agreement and which are accepted or approved by the parties.
Anti-suit injunction	a court order that prevents an opposing party from commencing or continuing a proceeding in another jurisdiction.
Arbitration	an alternative method of resolving disputes between parties, in which parties appoint an arbitrator to make a decision of which there are limited grounds of appeal.
Articles of Association	a company document which forms part of a company's constitution and includes information on shareholders' rights and voting rights.
Authority	a piece of legislation or judgment that is binding in relation to the law of the jurisdiction to which it applies.
Binding corporate rules	binding rules of corporate conduct that comply with the level of legal protection given to individuals living in the EEA which are used by multinational organisations to transfer personal data outside of the EEA but within university group of companies.
Boilerplate clause	a standard or typical clause that is often used in legal agreements.
Breach (of a significant term)	when either party breaks one of the key provisions of an agreement.
Brussels Regulation	the European Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
Certificate of incorporation	in the UK this is a certificate issued by Companies House as confirmation of the due incorporation and valid existence of the company.
Charges	a type of hold on or over assets.

Charitable incorporated organisations	a type of legal entity which has been created by the Charities Act 2006 (now the Charities Act 2011) but only available from early 2013.
Chartered corporations	a legal entity whose constitutional documents consist of a Royal Charter issued or granted by the Privy Council.
Civil law	the law determining the relationship between citizens, in contrast to criminal or public law; a legal system derived from Roman law (cf common law).
Civil procedure rules	rules applying to the High Court and County Courts, taking effect from 26 April 1999, affecting all types of civil disputes and aiming to make them quicker, simpler and less adversarial.
Collaboration Agreement	agreement between companies or individuals where the parties work together to develop a product or deliver a service.
Common law	law developed through decisions of courts and similar tribunals (called case law), rather than through legislative statutes or executive action.
Common law confidentiality	the individual's right at common law to expect that personal information about him or her will be kept confidential.
Common law duty of care	the legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others.
Company limited by guarantee	a company that does not have a share capital and which is commonly used for non-profit organisations that require legal personality. Its members guarantee to contribute a set amount of money (for example £1) in the event the company winds up.
Company limited by shares	a company in which the liability of the shareholders, who own shares in the company, to creditors of the company is limited to the capital the shareholders originally invested. A shareholder's personal assets are thereby protected in the event of the company's insolvency, but money invested in the company will be lost.
Competition law	referred to in the USA as anti-trust law, this regulates the exercise of market power by large companies or other economic entities.
Condition precedent	a requirement that must be fulfilled before another event can occur.

Confidentiality Agreement	a legal contract between at least two parties that outlines materials or knowledge that the parties consider secret and wish to share with one another for certain purposes, but of which they want to restrict disclosure to third parties.
Confirmation of Acceptance for Studies (CAS)	a document which a Student Visitor must obtain in order to apply for their visa.
Constitution of a company	the memorandum and articles of association of a company.
Constitutional documents	the documents of a legal entity which set out its powers, objects and the regulatory systems that have been put in place in order to achieve such powers and objects.
Consumer contract	a contract of which one party is a consumer.
Consumers	a natural person entering into contracts for personal reasons rather than in the course of business.
Counter-sign	add a signature to a document previously signed by another, for authentication or confirmation.
Data controller	the person (including a company) who determines the purposes for which, and the manner with which, any personal data are processed.
Data processor	any person who processes personal data on behalf of the data controller.
Data subjects	a living individual about whom a data controller holds personal data.
Domestic law/legislation	the internal law of a sovereign state.
Domicile	the permanent home of an individual, which can be important when determining what tax and legal system applies to the individual.
DPA (Data Protection Act) 1998	a UK Statute which provides a legal basis for handling peoples' information, including personal information.
Due diligence	the process of investigation of a company or business to determine its value and performance, usually undertaken by a potential buyer or investor of the company or business.
Economic entity	an organised grouping of resources that operates as a discrete unit and pursues an economic activity as a central or ancillary activity.
EEA (European Economic Area)	an agreement between member states of the European Free Trade Association (EFTA), the European Community (EC) and all member states of the European Union (EU). It allows these EFTA countries to participate in the European single market without joining the EU.

Employee	a person who works under a contract of employment for an individual, company or organisation, and is not a consultant or an agency worker.
Employment contract	a contract between an employer and an employee dealing with employment issues which may exist by express written or oral agreement, or may be implied by the nature of the relationship between employer and employee.
Entity (legal)	a body which has an identity recognised by law as being separate from the people or other bodies which may have a stake in it.
Escalation clauses (regarding disputes)	a provision of a contract which calls for disputes to be referred to progressively more senior authorities if they cannot be resolved at a low level.
Exclusive jurisdiction clause	a clause stating that the agreement must be governed solely within one or more identified and particular regions.
Exclusivity Agreement	an agreement where two bodies enter into negotiations with each other, to the exclusion of any other bodies for a particular period of time as set out in the agreement.
Executed	a document which is legally entered into by the authorised signatories, which gives the agreement legal recognition.
Exempt charity	a charity that is not required to be registered with the Charity Commission, and is included in Schedule 3 of the Charities Act 2011.
Expatriate employees	a person who is temporarily working in a country other than that in which they are domiciled.
Express written clause	a clause of a contract which exists in writing, and which sets out in detail the rights it awards (in contrast to an implied clause).
Force Majeure clause	a provision in a contract which deals with the possible situation where an event outside the control of a party (for example natural disasters, outbreak of war) causes a party to breach the contract. Usually this clause will prevent the defaulting party being liable for its breach.
Freedom of Information Acts	the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 give any person or company the right to access information held by public authorities.
General Student visa	a visa for a student for a period which can exceed 6 months.
Governing law clauses	a term of a contract which states the jurisdiction under which disputes which will be determined.

Group structure	the way a set of companies are linked to each other by the ownership of shares, funding agreements or mechanisms to give some companies control over other companies.
Guarantor	a person or company who enters into a legal commitment with another person or organisation to meet an obligation and/or repay the debt of a third party if the third party fails to do so.
Heads of Agreement	please see Heads of Terms.
Heads of Terms	a document which sets out the proposed details of a future transaction or contract, which is produced after negotiation between the parties on the provisions the future agreement should include. This document is not legally binding but has moral force.
Implied clause	a clause which does not explicitly have been agreed between two parties, but which is inserted into the contract between them by common law.
Incorporation of a company	the point of time at which a new company is formed and at which its existence is recognised by law.
Indemnity	a promise by one party to pay for the legal liability faced by another party if a particular set of circumstances arises.
Independent contractors	a worker who is not an employee, but is provided with a contract to work on a discrete task or project.
Injunctions	an order given by a court to compel a party to do something or, more commonly, prohibit a party from performing a certain action.
Insolvency	the inability of a company to pay its debts as they become due.
Intellectual property (IP)	intangible property which is a result of intellectual effort, for example patents, designs and copyright.
Interim relief	a temporary remedy in civil court and Employment Tribunal cases, intended normally to protect the status quo pending the final hearing of the case.
Issuing and serving proceedings	the steps required by rules of court to bring documents used in court proceedings to a person's attention.
Joint venture company	an entity formed between two or more parties to undertake economic activity together.
Jointly and severally liable	where two or more parties assume liability and each is treated as having assumed the obligation, both collectively on behalf of all those bound, and also individually for itself.

Judicial review	the system by which the courts ensure government ministers and departments, industry regulators, local authorities and other public bodies act lawfully and fairly.
Jurisdiction clause	the clause of a contract which determines which country's legal system will govern the resolution of any dispute arising under the contract.
Legal professional privilege	a fundamental common law right that entitles a litigant to withhold certain evidence during the course of judicial and quasi-judicial proceedings.
Legalised copy	legalisation allows a document previously notarised to be recognised by the Foreign and Commonwealth Office or the relevant foreign country's embassy to be legally recognised in that country.
Licensing Agreements	an arrangement in which a licensor grants the rights to intangible property to the licensee for a specified period and receives a royalty fee in return.
Limitation periods	the time within which a claim must be brought.
Limited liability	the fundamental principle of company law that states that the shareholders of a company are not liable for the acts and omissions of the company. The liability of shareholders in a company is limited to the fully paid up value of the shares owned by the shareholder.
Limited liability company (LLC)	used in the USA - a hybrid business entity having certain characteristics of both a corporation and a partnership that provides limited liability to its owners.
Limited Liability Partnership (LLP)	an alternative corporate business vehicle that gives the benefits of limited liability but allows its members the flexibility of organising their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its liabilities, the liability of the members will be limited.
Liquidation	an insolvency procedure leading to the appointment of an insolvency practitioner as the liquidator, whose principal duty will be to realise the assets of the company and distribute them to those entitled.
Lock-out Agreement	an agreement excluding either one or both of the parties from seeking or entertaining approaches from third parties during commercial negotiations.

Mediation	the appointment of a mediator who acts as a facilitator assisting the parties in communicating, essentially negotiating a settlement. Only the parties, of their own volition, can shift their position in order to achieve a settlement.
Members' Agreement	an agreement which sets out the respective roles, duties and responsibilities of the members of the company.
Members' voluntary liquidation	when the shareholders of a company decide to put it into liquidation and there are enough assets to pay all the debts of the company, i.e. the company is solvent.
Memorandum of Association	the document that governs the relationship between the company and the outside world.
Memorandum of Understanding	please see Heads of Terms.
Misrepresentation	an untrue statement of fact made by Party A to Party B which induces Party B to enter the contract thereby causing Party B loss.
Mobility clause	a clause in an employment contract that requires an employee to move to an alternative location.
Model terms	the terms of an agreement/contract which best achieve the particular object and which generally have to be modified to respond to the particular circumstances.
Moral force	usually used in relation to an agreement which has no legal effect and cannot be enforced by the parties, but which is considered a 'gentlemen's agreement' and which the parties intend to follow and comply with.
Natural justice	the legal principle that public bodies should make decisions without actual or apparent bias having given the party likely to be affected the chance to put their case.
Notarised	certified or attested to by a notary public (for example the validity of a signature on a document).
Novation	a written agreement by which the obligations as well as the benefits of an original agreement are transferred and the party originally subject to them is released from them.
Notice	under contract law, this is the notification required to terminate a contract at the end of a specified period.
Objects of the company	the purpose for which the company is established.
Ordinary residence	the place an individual is normally resident/living. For an individual to be ordinarily resident for tax purposes, they are required to stay at the address for a certain number of days per year.

Parent company	a company that controls other companies in the same group (subsidiary companies), usually through shares.
Partnership	the relationship which subsists between two or more persons carrying on business in common with a view to profit. A partnership is not a separate legal entity. Partners generally have unlimited liability for each others actions.
Partnership Agreement	the formal written contract creating a partnership.
Personal data (pursuant to the United Kingdom Data Protection Act 1998)	data which relate to a living individual who can be identified from that data (or from those data and other information in possession of the data controller).
Points Based System	the new immigration system for the United Kingdom.
Pooling of assets	when different partners to a joint venture project place their assets in the joint venture company.
Power of attorney	a document which gives a party (the 'attorney') the power to act on another party's (the 'donor's') behalf and with the donor's authority, either for a particular defined purpose or for more general purposes.
Pre-contractual Agreements	please see Heads of Terms.
Privy Council	a body that advises the Monarchy on how to exercise its executive authority. A UK university set up by Royal Charter is established with the consent of the Privy Council.
Professional indemnity insurance	insurance to cover liability for loss resulting from neglect, error or omission committed by or on behalf of the insured in connection with the insured business.
Public liability insurance	insurance to cover liability for injury or property damage arising out of and in the course of the business, but excluding personal injury or damage caused directly by the business' products.
Professional privilege	the principle that certain kinds of document produced or held by a party should be exempt from any duty of disclosure to its opponent and the court.
Public trust (Indian)	in India, public trusts have been created for the benefit of the public at large or a particular section of the public. Please note that, unlike English trusts, trust property is owned by individual trustees.
Real property	property that is tangible, involving an interest in land.
Residence	the permanent home of a person or place.

Restrictive covenants	a clause which prevents a party performing some act, commonly restricting the way a particular piece of land may be used, or found in employment contracts limiting a former employee's use of sensitive information.
Rome Convention	the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980.
Safe harbour	a provision of a statute or a regulation that reduces or eliminates a party's liability under the law, on the condition that the party performed its actions in good faith.
SDLT (Stamp Duty Land Tax)	a tax on transactions involving acquisitions of interests in UK land.
Secondary legislation	also known as delegated legislation, is law made by a person or body other than the legislature but with the legislature's express authority.
Secondment (of staff)	employees of one employer temporarily working for a different employer, usually for the duration of a discrete project, while still being paid by the original employer.
Secondment Agreements	an agreement or contract setting out the arrangements for the temporary transfer of an employee from one organisation to another, while the employee continues to be paid and disciplined by the first organisation.
Seised	having taken ownership of something whether a piece of property or by extension a piece of litigation.
Sensitive personal data	Personal data consisting of information on the data subject's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition, sexual life, or actual or alleged criminal convictions.
Service Agreements	an agreement or contract between two parties for the provision of services (in contrast to the sale of goods).
Share capital	the total number of shares a company is authorised to issue with regard to its memorandum and articles of association.
Shari'a law	the body of Islamic religious law.
Sovereign immunity	involves the position where the Sovereign or State is protected, usually from criminal prosecution or a civil claim.
Step-in rights	the right for one party to a contract to take over the second party's rights if the second party commits a serious and unremedied breach of the contract.

Student Visitor	a student visiting a country on a student visa in order to study an educational course at a recognised educational institute, for a period up to six months.
Subject access requests	a request under the Data Protection Act 1998 from an individual to a third party for access to information which contains the individual's personal data.
Subsidiary company	a company which is controlled by a more powerful company (the parent company) usually by shares.
Term	the length of time of appointment or employment contract; a clause in a contract.
Third party consents	permission from third parties, either verbal or written.
Tortious claim	a claim brought by one citizen against another citizen under a branch of law called 'tort' which results in civil (rather than criminal) liability for breach of legal obligations.
Trademarks	a sign or logo, usually including words and pictures, which enables customers to recognise goods or services of a particular individual or company. The owner of a registered trademark has the right to sole use of the registered sign or logo for their goods or services.
Transfer of undertakings	the transfer of the ownership of a business or economic entity.
Warranty provisions	a clause in a contract which gives an assurance or a promise to the other party to the contract which, if broken and leads to loss, can result in the other party claiming damages against the party giving the warranty.
Wholly owned subsidiary company	a company which is fully controlled by another company ('parent company') by the parent company holding voting rights and being the only member of the wholly owned subsidiary.
Without prejudice privilege	a principle of English law under which discussions or correspondence entered into between the parties to a dispute with a view to settling it should also be exempt from any duty of disclosure.
Worker	an individual who undertakes to perform any work or services for another party to the contract. The definition of 'worker' is wider than the strict definition of 'employee'.

ANNEX 2

OTHER POSSIBLE STRUCTURES FOR PARTNERSHIPS IN THE E.U.

If both of the institutions are situated in the European Union, then there are a number of legal entities which may be set up to undertake the collaboration. These are:

1. **SCE (Societas Cooperativa Europaea)**

The European Cooperative Society (SCE) is a European cooperative type of company, established in 2006 and related to the European Company. European Cooperative Societies may be established, and may operate, throughout the European Economic Area (EEA). The legal form was created to remove the need for cooperatives to establish a subsidiary in each member state in which they operate, and to allow them to move their registered office and head office freely from one member state to another, keeping their legal identity and without having to register or wind up any legal persons. No matter where they are established, SCEs are governed by a single EEA-wide set of rules and principals which are supplemented by the laws on cooperatives in each member state, and other areas of law.

An SCE has a variable share capital and may have among its members not only customers or suppliers but, in some circumstances, a limited proportion of investor members who do not use the services of the cooperatives. Voting rights for such investor members are limited.

For tax purposes an SCE is treated as any other multinational company according to the national fiscal legislation applicable at company or branch level. It will continue to pay taxes in those member states where it has a permanent establishment.

2. **SE (Societas Europaea)**

SEs are a European public limited company. An SE may be created on registration in any one of the Member States of the European Economic Area. Article 10 of the regulation requires Member States to treat an SE as if it is a public limited company formed in accordance with the law of the member state in which it has its registered office.

The registered office of the SE designated in the statutes must be the place where it has its centre of administration. The SE can easily transfer its registered office within the community without dissolving the company in one member state in order to form a new one in another member state. The SE must have a minimum capital of €120,000.

In tax matters, the SE is treated the same as any other multi national, i.e. it is subject to the tax regime of national legislation applicable to the company and its subsidiaries. SEs are subject to taxes and charges in all member states where their administrative centres are situated.

3. **EEIG (European Economic Interest Grouping)**

A European Economic Interest Grouping is a type of legal entity created under the European Union Council Regulation 2137/85. It is designed to make it easier for companies in different countries to do business together, or to form a consortia to take part in EU programmes. An EEIG may be set up in any one of the member states and operate in any part of the EU.

An EEIG's economic activities must be ancillary to those of its members. The concept of economic activity can be interpreted very widely. For example, universities and research institutions may participate in an EEIG. An EEIG cannot be formed with the object of making a profit, although it may do so as a consequence of its normal operations.

An EEIG is set up in much the same way as a company. It must be formed by at least two members from different member states and a manager, or managers, must be appointed to operate the EEIG on a day to day basis.

4.**ERIC (European Research Infrastructure Consortia)****Nature of an ERIC**

There is now available a potentially attractive legal framework for European research projects. European Council Regulation No 723/2009 creates a Community Legal Framework for a European Research Infrastructure Consortium (ERIC – previously ERI). The Regulation came into force in August 2009. ERICs may be useful for accessing and drawing down EU funding. Since ERICs will be legal persons, they will also ringfence liability thus making them an interesting option for joint ventures and other collaborations by universities.

The Regulation provides that the principal task of an ERIC will be to establish and operate a research infrastructure. Research infrastructures mean facilities, resources and related services used by the scientific community to conduct top-level research. Such facilities include major scientific equipment, knowledge-based resources such as collections and, archives and ICT based infrastructures such as computing and communication hardware and software. Such infrastructures may be on a single site or form an organised network.

An ERIC must pursue its principal task on a non-profit making basis. Profit making activities can be undertaken provided that they are closely related to the principal task and do not jeopardise it. Any such subsidiary activities must be charged for at market rates.

The ERIC must be necessary for the carrying out of European research projects, help to strengthen the European Research Area (ERA) and be a significant improvement in the relevant scientific and technology field at international level. Effective access to the infrastructure must be accorded to researchers from European member states and associated countries. The ERIC should contribute to the transfer of knowledge and/or mobility of researchers within the ERA.

To set up an ERIC a request must be made by an EU member state, in writing, to the European Commission. The application must include a declaration that the host state confirms that the ERIC will be an international body for VAT purposes and hence exempt from BAT. Only member states, associated countries, third countries and inter-governmental organisations can become members of an ERIC; however, universities and other research institutions will need to be allowed access to the infrastructure (which in many cases will be physically located within one such organisation) as a result of the requirement of "effective access" referred to above. Further, the exercise of specified rights and obligations of membership may be delegated to one or more "public entities" (including local or regional authorities and private entities with a public service mission, which could include universities). Accordingly, in effect, publicly funded universities can become members of ERICs.

An ERIC will have in each member state the most extensive legal capacity possible under the law of that state. In particular, it can acquire, own and dispose of both physical and intellectual property, agree contracts and be a party to court proceedings.

An ERIC must be based for legal purposes in a member state or associated country and its name must contain the abbreviation “ERIC”.

The constitutional arrangements of an ERIC are set out in its statutes. These are very flexible, but must indicate its objectives, duration and procedure for winding it up; whether its liability is to be limited (although this must be at least the amount of the member’s contributions); its basic principles of operation including access by users, scientific evaluation, intellectual property rights policy, employment, procurement and data policies etc. and the rights and obligations of members including financial obligations and voting rights and how decisions of the ERIC are made. Changes to the statutes require approval of the European Commission. Statutes must provide both for an assembly of members, which will have full decision making powers, and a director or board of directors appointed by the Assembly as its executive body.

Applying to establish an ERIC

The Commission will decide the application in the light of an assessment by independent experts on the intended activities of the ERIC. The decision will be published in the Official Journal. The Regulation and other community law apply to the decision whether to approve the ERIC and any later application for a change in the statutes. Otherwise the ERIC will be subject to the law of the state where it has its legal base, and by its own statutes and rules. The European Court of Justice will have jurisdiction over litigation among the members in relation to the ERIC. The ERIC must produce an annual activity report, approved by the Assembly and transmitted to the European Commission, within six months from the end of its financial year. The report will be publicly available. If the Commission becomes aware that an ERIC is in serious breach of the regulations, the Commission will request an explanation, require steps to be taken to remedy the breach, and if no such action is taken the Commission may disestablish the ERIC, the decision being published in the Official Journal.

Legal issues posed by an ERIC

Establishing an ERIC will involve a range of parties in a number of EU states, and the relevant government department in at least one of those states which will submit the application to the European Commission. There may be a need for preliminary agreements, for example in relation to confidentiality, and UK based research institutions will very likely wish any such agreements to be subject to the law of a UK jurisdiction.

The drafting of the states of the ERIC will require considerable legal input, for example in relation to the policies on intellectual property rights, employment and equal opportunities, procurement and data. It cannot be assumed that the parties will automatically agree approaches based solely on the law of one member state; such policies may involve compromises which will require on the part of those drafting them understanding of the range of approaches taken across the European Union.

However, the day to day operation of the ERIC will be subject to the law of the state in which the ERIC has its legal base, for example, establishing a physical base for the ERIC will require compliance with the law related to land and buildings in the state concerned. The ERIC is likely to require extensive contractual arrangements with suppliers; these again will be subject to the relevant state law. Again, the perceptions of the proposed members of the ERIC as to the advantages and disadvantages of the domestic laws of the states where the ERIC may have its legal base will need to be considered before a decision is taken as to where the ERIC will be legally sited.

5. Proposed SPE (Societas Privata Europaea)

A SPE is a legal form for a limited liability company that is currently being proposed by the European Commission to be introduced across the European Union. It forms a company of limited liability, similar to the English limited company, the German GmbH, or the French SARL.

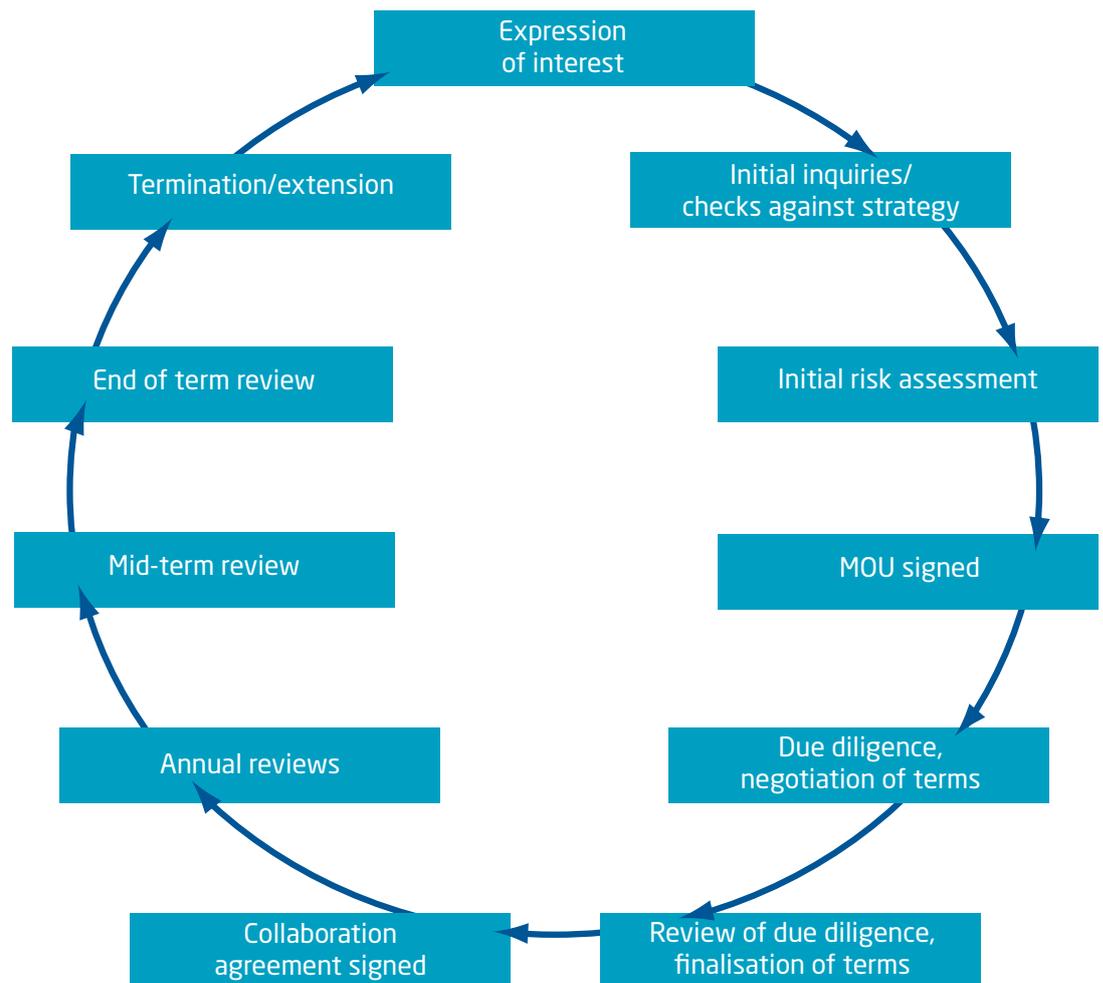
The aim of the proposal is to remove the current need for limited companies to reincorporate themselves in the corresponding legal form in all the EU member countries in which they want to trade.

An SPE will be a private limited liability company with a share capital and may be formed by one or more natural persons or legal entities without the requirement for a cross-border element.

SPE's are still under discussion within the European Council.

ANNEX 3

LIFE CYCLE OF AN INTERNATIONAL PARTNERSHIP



ANNEX 4

DUE DILIGENCE QUESTIONNAIRE FOR [INSERT NAME OF FOREIGN EDUCATION INSTITUTION]

Please supply the following information in respect of [foreign education institution] ('the Organisation'). We suggest that you retain photocopies of the documents you send us.

Where the information to be supplied may constitute 'personal data' or 'sensitive personal data' pursuant to the United Kingdom Data Protection Act 1998, please ensure that, unless appropriate consent has been obtained from the data subject, the data is anonymised prior to its supply.

THE ORGANISATION

- 1.** A copy of the constitutional documents for the Organisation (incorporating any amendments which have been made) (with English translation where appropriate) notarised where appropriate.
- 2.** Evidence that the Organisation has power to enter into the proposed partnership.
- 3.** Details of the legal framework for the jurisdiction applying to the Organisation in respect of the proposed partnership.
- 4.** Details of the organisation of education in [name of country].
- 5.** The audited accounts or equivalent records of the Organisation for the last three years.
- 6.** A copy of the management accounts or equivalent records of the Organisation since the end of the last accounting period.
- 7.** Confirmation of the solvency of the Organisation.
- 8.** Details of all mortgages, charges or other security documentation affecting the Organisation and copies of any documentation which may affect the partnership.
- 9.** Details of the tax status of the Organisation.
- 10.** Details of any double tax treaty between UK and [name of country where Organisation is based].
- 11.** Details of any exchange control or currency rules affecting payments of currency into or out of [country where Organisation is based] whether in Great British Pounds Sterling or otherwise.
- 12.** Details of the financing arrangements of the Organisation including particulars of all overdrafts, loans and other indebtedness and facilities affecting the Organisation.
- 13.** Details of any state or public sector funding applicable to the Organisation.
- 14.** Details of all third party rights in relation to the Organisation relevant to the proposed partnership.
- 15.** Confirmation that the Organisation owns all its own real property.
- 16.** Confirmation that the Organisation owns all intellectual property rights of its staff and employees.
- 17.** Particulars of all insurance arrangements of the Organisation relating to the proposed partnership.
- 18.** Details of any collaborations with third parties which the Organisation is currently involved with and if any collaborations have recently terminated, an explanation of the reasons for such termination.

- 19.** Details of any quotations or tenders which the Organisation has submitted which are relevant to the proposed partnership.
- 20.** Copies of all permits, authorities, registrations, licences, approvals and consents (whether granted by public or private authorities or otherwise) held by the Organisation and necessary to carry on both the Organisation or the proposed partnership.
- 21.** Details of any of the following which is current, or which is known to be pending, threatened or possible in relation to the Organisation or the proposed partnership:
 - 21.1** any litigation or arbitration proceedings (whether as claimant or defendant);
 - 21.2** any prosecution; and
 - 21.3** any investigation or inquiry by a governmental or official body.
- 22.** Details of all relevant grants, subsidies, payments or allowances taken out by or granted to the Organisation in relation to the proposed partnership.
- 23.** Other than as required elsewhere in this questionnaire, please provide details of any liabilities which are relevant to the Organisation or the proposed partnership.
- 24.** Details of any data protection requirements relevant to the Organisation or the proposed partnership.

Please provide all information in the English language and translations of relevant documents in English if necessary.

ANNEX 5

CASE STUDIES

Chapter 1 Introduction

The University's Director of Corporate Affairs bursts into your office. The Director has found a private college, which has branches across Asia and Eastern Europe, with whom to collaborate. He believes the financial rewards could be unprecedented. The collaboration must be ready to market in a month's time. Could he please have 'the usual' contract to send out to the various branches tomorrow?

On careful reflection, you decide that this may not be the most appropriate manner in which to collaborate. The collaboration does not go ahead this academic year. You use the intervening year to consider the collaboration more carefully. The promised financial rewards were not to be: the costs of managing such a wide ranging collaboration would have been vastly greater than the income generated. The University's insurance policies would not have covered the proposed activities, exposing the University to potentially open-ended liability. The collaboration would have cut across the University's existing activities in Hong Kong and Malaysia, giving long-term partners there the opportunity to terminate these relationships.

The following year, you enter into a validation agreement with the private college for delivery in a few countries in Eastern Europe. The Agreement is properly costed so that it provides a small, stable income stream for the University. The aim of the collaboration will be to bring the University's recognised expertise in chemistry to a wider audience, particularly one which would not usually have the resources to benefit from it.

On carrying out due diligence on the partner, the University learns that the institutions share expertise in a ground-breaking area of research in computer science. The institutions agree to pursue this common interest through a temporary secondment of a professor to the University.

Chapter 2 Planning the partnership

The purposes of partnership, duration and selection of partner

A UK university was considering establishing its first academic partnership with an institution in the Middle East. The proposed partner was newly created and was a private sector institution. The UK university regarded the proposed partnership as medium risk, although carrying attractive longer term academic and commercial opportunities. The university decided that it would enter an agreement to provide consultancy services rather than actual tuition or assessment in the first instance and that the agreement would last for only two years, although extension and development of the agreement could be considered if the partnership functioned successfully. The UK university's lawyers confirmed that this was an appropriate structure for an initial partnership of this type.

Initial risk assessment

The business school of a UK university was approached by a UK private sector education organisation which was already running courses in Russia. The UK university's involvement was sought because the course it had available was recognised by the relevant professional body in the UK. The prospective partner organisation assured the university that it would not need a licence to operate

in Russia, further that it would not be subject to Russian taxation on the fees the university would charge to the prospective partner for its services. The business school asked the university's in-house lawyer to approve a form of agreement provided by the prospective partner, giving the in-house lawyer some two weeks to do so before the programme was due to start. The in-house lawyer had doubts regarding the correctness of the statements made by the prospective partner and sought external legal advice. The Russian lawyers who were consulted confirmed that an educational licence would be required, and that if the partnership operated in the way planned, fees charged by the UK university would be subject to Russian taxation.

Appropriate documentation was, however, ultimately agreed so that the programme could take place, although this could not be done within the original timescale.

Chapter 3 Knowing your partner - due diligence

- Q** During a visit to its Tokyo campus one of your professors has entered into a mutual student exchange agreement with an institute operating under the abbreviation 'ILSCT'. The agreement will allow the small group of postgraduate students for which she is the PhD supervisor or co-supervisor to spend their final year of studies in Tokyo and to submit their PhD thesis for a dual award of your university and of ILSCT. The document was counter-signed by a director of ILSCT. Your Vice-Chancellor is not in favour of this collaboration and does not wish to endorse the Agreement. Is your university already bound by the terms of the Agreement?
- A** Had legal due diligence been carried out it would have transpired that the university was not in favour of entering into the agreement. Determining whether the university will be bound will depend on whether the professor had authority to bind the university, and establishing this will itself depend on what governing law and jurisdiction applies to the agreement. Under UK law an agreement may be unenforceable if it is made by a person or persons who lacks the requisite authority; however, in certain circumstances the other party (for example ILSCT) may have the right to enforce the agreement against the university if it entered into the agreement in good faith and believing that your professor had the necessary authority to bind your university. Consequently, it is always essential for all contracting parties to check that the necessary authority has been properly delegated and exercised.
- Q** While the first cohort of 10 Japanese students from ILSCT has arrived on your campus and are living in university accommodation, it now appears that ILSCT will not be able to provide the necessary academic support to your students. Some of your students have started complaining that they will not be able to finalise their theses in the conditions encountered at ILSCT. What can your university do?
- A** The university should have carried out a more detailed academic due diligence, which could have helped avoiding this scenario. The university should liaise with ILSCT as soon as it receives the student complaints and investigate the underlying reasons with ILSCT. If the complaints appear justified, the interests of the students should now be paramount and the university should try to provide all necessary academic and practical support to ILSCT or to the students directly to help them finish their studies. This then raises the question of whether the university will be able to claim reimbursement of the associated additional costs from ILSCT and whether the university could, ultimately, terminate the agreement with ILSCT. In any event, the university should follow the student complaints procedures (if necessary), the escalation procedures set out in the collaboration agreement (if any) and check whether the agreement expressly allows for (i) early termination (ii) rights for the University to 'step in' to the shoes of ILSCT (iii) financial compensation mechanisms, or (iv) dispute resolution procedures. If not, these questions will need to be resolved under the applicable law.

Chapter 4 Documenting the partnership

- Q** The language clause in the agreement referred to in the questions based on Chapter 3 states that in the event of a conflict between the English and Japanese translations, the Japanese translation shall prevail. After the agreement has been signed you discover that the English translation says 'dual degree' but it has been translated into 'joint degree' in the Japanese version. What should you do?
- A** It is advisable to have the English version of international agreements prevail over any foreign language versions or to have the prevailing version carefully checked by a fluent speaker/reader of that language. The answer now depends on what was the true intention of the parties. If they intended to award dual degrees to successful students, the prevailing Japanese version is correct. If the intention of both parties was to award joint degrees, the parties can amend the prevailing Japanese version by virtue of an amendment agreement. If it now appears that the parties actually had (and still have) diverging views regarding the nature of the degree to be awarded, then, from a legal point of view, the Japanese version will prevail. In theory ILSCT would be able to make a claim against the UK institution to get this provision enforced. The UK institution may have a defence to contest the validity of the Agreement or of this specific clause, but such a small error in translation could lead to protracted legal proceedings (unless, of course, the parties come to an amicable arrangement).
- Q** You hope to enter into an agreement with an Indian partner for the establishment of an international collaboration in New Delhi. As part of the arrangement you agreed to license your courseware and some know-how to the Indian partner. The agreement is governed by the laws of India and the State of the National Capital Territory of Delhi. Is this sensible and what are the risks?
- A** As the rules relating to the protection and enforcement of intellectual property rights etc. are primarily to be found in national laws, in any international transaction it is necessary to consider local laws applicable to the relevant rights and, if necessary, to take local legal advice. Therefore, before agreeing that the laws of India would govern the Agreement, a thorough investigation into the relevant laws governing licensing agreements, intellectual property, confidential agreements etc. should have been undertaken so that the parties can assess whether adequate protection and rights are actually given. In addition, it would be advisable to set out all the issues relating to the intellectual property etc. in the Agreement in the context of each phase of the collaboration, such as its formation, its operation and its termination. Consequently, should any disputes arise the parties will have an understanding of how they should be dealt with under the contract, and how the relevant law will apply.

Chapter 5 Staff issues

- Q** You enter into an agreement with a partner in Germany so that one of your members of faculty will spend time on a German university campus over a period of between 3 to 5 years. Your employee, who travels under a Malaysian passport, expects you to assist him in obtaining the necessary immigration clearances before taking his family to Germany. Your HR department is also concerned that your employee will be able to claim benefits from the university in accordance with German employment laws. Is this possible and what issues should be addressed?

- A** First, you need to determine, together with your member of faculty and the German university, whether your employee shall continue to be employed by you while he lives and works in Germany or whether he shall become an employee of the German entity. Your employee will probably prefer not to sever his employment with the university, in order to conserve his employment related benefits. In this situation, a secondment agreement should be entered into, whereby the employee will continue to be bound by his employment contract with the university but will be seconded to the German partner for a certain period of time. Such secondment agreement would usually be governed by English law. Your employee will have to continue to comply with any contractual policies, procedures or codes of practice which you have put into place. However, certain employee-friendly aspects of German employment law are mandatory and apply to all persons who work in Germany. In order to fully understand the applicable provisions, advice should be obtained from a German lawyer prior to any arrangements being made with the member of faculty and the German university.
- Q** You enter into an agreement with a partner university in Malaysia and recruit a number of lecturing staff in the UK who are to work in Malaysia. After a period of time, it transpires that one of the lecturers is guilty of gross misconduct and you wish to dismiss him. Will he be able to bring a complaint of unfair dismissal in the UK?
- A** It is likely that an employment tribunal would hold that an unfair dismissal complaint was outside its jurisdiction in these circumstances.

The right not to be unfairly dismissed is contained in the Employment Rights Act 1996 which is silent about its territorial scope. Consequently, it has been established through case law that the question to be asked is whether there was employment in Great Britain at the time of dismissal, rather than what was contemplated at the time the employment contract was made.

There are some circumstances in which expatriate employees will be able to claim unfair dismissal. One example is where an employee is posted abroad by a British employer for the purposes of a business carried on in the UK. In this particular case however, it is possible that the employee concerned, though an expatriate employee, would not be able to bring a claim on the basis that he is not furthering the business of the British employer.

Chapter 6 Student issues

- Q** You enter into a partnership arrangement with a commercial partner in Abu Dhabi which involves the exchange of students and staff. Your staff wish to set up a branch of the university's lesbian, gay, bisexual and transgender organisation in Abu Dhabi. What issues arise?
- A** While it is recognised that the university may wish to ensure students at the university's branch in Abu Dhabi have a similar experience to those in the UK, there are some cultural, religious and traditional norms which the university will need to cater for when replicating this experience. A thorough investigation into the laws and cultural issues is therefore essential. Although the higher education system in the UAE supports the formation of student unions and organisations or clubs that help students become 'well-rounded mature human beings' there are still laws and regulations that have to be considered. In particular, the UAE is a Muslim country and Abu Dhabi, in particular, is a conservative emirate which places a considerable degree of importance upon religion. Homosexuality is forbidden under Islam. It would therefore not be appropriate for people practising such conduct to live in Abu Dhabi. Also, it would not be wise for the University to encourage the establishment of gay/lesbian rights organisations/support groups in Abu Dhabi.

Q Last year, your UK university entered into a partnership with a small university in a remote part of Eastern Europe. The partnership provides for certain programmes delivered in the UK to be delivered also at the overseas university. Students of the overseas university who successfully complete these programmes will be awarded a degree by the UK university.

The students' unions of the two universities have organised various social exchange trips to the UK to help promote good relations between the two student bodies. Jez, a student registered with the UK university, has chatted with a number of the visiting overseas students.

The UK university has now received a letter from Jez in which he voices his concerns that academic standards at the overseas university appear to be low and states that visiting students have admitted to colluding and copying each others' assignments, to which the overseas university has turned a blind eye.

Last term, Jez was the subject of academic misconduct proceedings by the UK university resulting in an assignment he handed in receiving a zero mark. In his letter, he expresses extreme displeasure at learning that students of the overseas university are not subject to the same rigorous academic regulations as UK students and asks for a full and written response from the Vice-Chancellor to his letter. He copies his letter to the UK university's student newspaper.

A The UK university should regard the letter as a complaint and deal with it in accordance with its student complaints procedure. It should be dealt with promptly and robustly in order to seek to avoid the matter escalating unnecessarily (for example, generating press interest).

The allegations which the letter raises may prove to be without foundation but they will need to be investigated in order to allow the UK university to reach a conclusion on the matter. This may involve the need for senior managers of the UK university to have sensitive discussions with their counterparts at the overseas university. The UK university will need to ensure that the matter is dealt with in such a way as to respect the confidential nature of the internal student complaints procedure and in order to avoid exposure to claims of defamation by any of the parties involved.

The UK university should be aware of the potential for receiving requests from third parties to produce copies of documents relating to the matter, for example pursuant to a request made by Jez under the Data Protection Act or by the press under the Freedom of Information Act. The OIA and the QAA may also wish to see related documents. Disclosure might also be necessary were legal proceedings to ensue (for example, if Jez were to complain to the courts that he had been unfairly treated by his university in connection with the academic misconduct proceedings brought against him). The university should be circumspect about documents, including emails, it creates relating to the matter as these may need to be disclosed.

If Jez is unhappy with the response of the UK university to his complaint he may, once internal procedures have been exhausted, take the matter to the OIA. There is also the potential for the QAA to take an interest in the matter; certainly the QAA will expect there to be rigorous and transparent institutional systems in place to deal with concerns raised such as the ones here, as may any similar quality assurance body in the overseas country.

The QAA's UK Quality Code for Higher Education makes clear that the awarding institution, here the UK university, is responsible for the academic standards of all awards granted in its name and so it should ensure that a partner organisation involved in the assessment of students understands and follows the requirements approved by the awarding institution for the conduct of assessments. (Chapter B10 : Management of collaborative arrangements).

On a wider note, issues of academic standards and quality should have been addressed by the partner universities as part of the due diligence prior to entering into the partnership arrangements. Further, the legal partnership agreement should specify what processes are in place for ensuring academic standards and quality and how matters of concern will be addressed by the partners. In addition to dealing with Jez's complaint, the partner universities may need to use the machinery provided in the partnership agreement to review aspects of academic standards and quality which complaints of this type may uncover. If the partnership agreement does not provide such machinery, the universities may need to devise arrangements to deal not only with the issues to which the complaint made by Jez gives rise but also with any similar matters arising in the future.

In their partnership arrangements, the partners should also have addressed how each university will deal with allegations of academic misconduct against students, including specifying powers each university has to withdraw awards where it is established that students have obtained them through unfair means. Such aspects should also have been made clear to students.

Both universities will no doubt be keen to minimise the potential for the matter attracting adverse publicity and detriment to their reputations, and also to head off possible criticism from the QAA or any relevant overseas quality assurance body, over its handling of the matter.

Chapter 7 Managing the partnership

Contract management and 'good housekeeping'

A UK university had a partnership with a private sector institution in Israel. The authorities in Israel started to take a tougher line on the monitoring of quality. Following adverse press reports on the partnership activities of another UK university and a number of problems with the private sector partner, the UK university decided to terminate the agreement. When the UK university's lawyers were asked to advise in relation to termination, it became clear that:

- the original partnership agreement could not be found, only an unsigned copy of the agreement was on file
- responsibility for the effective management of the programme was diffuse being shared between the academic department concerned, a middle manager with a diverse portfolio of responsibilities, and the university's quality office

The UK university did manage to terminate its operations in Israel and also parted company with the member of staff concerned but only after considerable legal fees had been incurred.

Chapter 8 What to do if things go wrong

Governing law and jurisdiction

Q A UK institution enters into a partnering arrangement with a Malaysian higher education provider for services to be provided in Malaysia. The arrangements are recorded in an agreement, which provides that the law of England and Wales governs it and that the courts of England and Wales have exclusive jurisdiction to determine disputes under it.

A dispute arises between the two institutions but the UK institution decides to try to negotiate a solution, rather than rushing to court proceedings in the English courts. The Malaysian institution is slow to respond to the UK institution's overtures, but the UK institution continues to try to open discussions with the Malaysian institution. However, whilst those efforts are still in process, to its surprise, the UK institution is served with court papers relating to a claim issued by the Malaysian institution in the courts of Malaysia.

- A** As soon as it becomes clear that a dispute has arisen, the UK institution should have sought legal advice, both English law advice and Malaysian law advice. Where a party to a contract is based abroad, there is always a risk that, no matter what a written agreement provides, that party may try to secure a tactical advantage and put the UK institution to disadvantage by starting a claim in its own home court or the courts of a third jurisdiction.

The UK institution should seek English law advice on whether it can obtain an order from the English courts preventing the Malaysian proceedings from continuing (known as an 'anti-suit injunction') or requiring the Malaysian entity to abide by the terms of the agreement and start any claim in the courts of England and Wales. The timing of making such an application may be critical, in view of any procedural time limits which may apply in the Malaysian proceedings.

The UK institution should very promptly seek Malaysian law advice on whether:

- there are steps it can take in Malaysia to challenge the jurisdiction of the Malaysian courts
- there are any precautions it should take to avoid being deemed to have accepted that the Malaysian courts have jurisdiction (whilst taking care to avoid penalties imposed by the Malaysian courts for not taking steps to contest the claim)
- under Malaysian law, the courts recognise legal professional privilege²³ and without prejudice privilege²⁴.

Civil unrest

- Q** A UK institution forms a partnering arrangement with an institution based in a former republic of the USSR. Students in that jurisdiction are to attend courses held in that jurisdiction by the partner institution and will obtain a qualification issued by the UK institution on successful completion of the course. The documents constituting the contract with the individual students makes clear that their contract is with the UK institution, not with the partner institution, and the contract is stated to be governed by English law and gives the English courts jurisdiction over disputes under the agreement.

Once the relationship is established and students enrolled on the courses, the former republic of the USSR suffers political instability, and the partner institution suspends its operations as a result of fears about public safety. Students enrolled on the courses protest at the suspension of their courses and threaten legal action against the UK institution for damages.

²³ The principle that certain kinds of document produced or held by a party should be exempt from any duty of disclosure to its opponent and the court.

²⁴ A principle of English law under which discussions or correspondence entered into between the parties to a dispute with a view to settling it should also be exempt from any duty of disclosure.

A The UK institution should consider what steps it may need to take as a result of any duty of care owed to any employees it has in the former USSR republic. If it has any employees present in that jurisdiction, the UK institution should consider what steps it may need to take to ensure their safety and wellbeing and to provide them with any support and guidance they might require in view of the civil unrest.

The UK institution needs also to check the documents constituting its agreement with the individual students to see if the agreement permits it to cease providing services if an event outside its control makes it very difficult or impossible for it to perform its obligations (for example civil unrest, war or a natural disaster). If the agreement contains such a provision entitling it to suspend performing its obligations (called a ‘force majeure’ clause) and the event in question falls within the definition in the agreement of a force majeure event, the UK institution will not incur legal liability as a result of the failure to perform its obligations. If, however, the agreement does not contain such a clause, the UK institution will remain liable to the students for its breach of contract in failing to provide the course contracted for, save in certain limited circumstances where the law may afford other relief from the obligations. If faced with such a situation, the UK institution should take prompt legal advice on the consequences of failing to perform its obligations. The UK institution can mitigate such risks by ensuring that its contract with students allows it to cease providing services on the occurrence of an event beyond its control which stops it from providing the services it has agreed to provide or which makes the continued provision of those services impossible.

Chapter 9 Ending the partnership and beginning again

Q You enter into agreement with a partner in Germany and send several employees to work on the German University campus. The partnership terminates. What will happen to the employees?

A This situation emphasises how important it is to make provision for every eventuality in a contract of employment. A contract may make express provision for such a scenario and may, for example, provide that employees will, where the partnership terminates, immediately transfer back to work for the UK university in the UK. If there is no such express provision, then the employee is likely to be redundant on the basis that his place of work has disappeared. As such, the UK university employer university will need to consider whether it is UK law or German law which applies to the employment and then comply with the relevant laws in effecting any redundancies. The process will need to include consideration of whether or not the employee can be offered alternative employment in the UK.

ANNEX 6

SOURCES OF HELP

Books and reports

ASET, *A Good Practice Guide for Placement and other Work-Based Learning Opportunities in Higher Education* (2009)

www.asetonline.org

British Council, London Statement on ethics for education agendas

www.britishcouncil.org/press/landmark-international-code-of-ethics-education-agendas

Council for Industry and Higher Education: *Global Horizons for UK Universities*

Summary only, full report only available in hard copy

www.cihe-uk.com/docs/PUBS/0711IntHEsumm.pdf

Council of Validating Universities: *Handbook for Practitioners*, www.cvu.ac.uk

Department for Business, Innovation and Skills:

Higher Education – Students at the Heart of the System

www.bis.gov.uk/assets/biscore/higher_education/docs/h/11944_higher_education_students_at_heart_of_system.pdf

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Quality Assurance Agency for Higher Education, UK Quality code for High Education
www.qaa.ac.uk/Assuring_Standards_And_Quality_-_code/Pages/default.aspx.
See also Quality Update International Audits of overseas provision.

Student Charter Group – Final Report
www.bis.gov.uk/11-736-student-charter-group/pdf

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Leadership Foundation for Higher Education/Committee of University Chairs:
www.lfhe.ac.uk/governance/govpublication/risk/pdf

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www.ucea.ac.uk/objects_store/guidance_on_health_and_safety_in_fieldwork.pdf

Universities and Colleges Employers Association/ Universities Safety Association (1998), *Health and Safety Guidance When Working Overseas*,
www.ucea.ac.uk/filemanager/root/site_assets/publishing/1176994185031.pdf

Woodfield S, Middlehurst R (2009) *Universities and International Higher Education Partnerships: Making a Difference, Million Plus*,
www.millionplus.ac.uk/documents/millionplusUniversitiesInternationalHigherEducation/pdf

UUK: *Universities and development: Global co-operation November 2010*
www.universitiesuk.ac.uk/Universitiesanddevelopment.asp

UUK: *Response to the student immigration system - a consideration February 2011*
www.universitiesuk.ac.uk/Publications/Documents/UUKresponseToTheStudentImmigrationSystem.pdf

Websites

Association of UK Higher Education European Offices: www.heuro.org

British Council: www.britishcouncil.org

British Universities International Liaison Association: www.buila.ac.uk

Central and Eastern European Directory online: www.ceebe.co.uk

Council of Validating Universities: www.cvu.ac.uk

Department for Business, Innovation and Skills: Joint International Unit:
www.bis.gov.uk/policies/higher-education/international-education

Department for International Development: www.dfid.gov.uk

European Commission Education and Training site: http://ec.europa.eu/education/index_en.htm

European Universities Association: www.eua.be/

Eversheds LLP: www.eversheds.com/uk/Home/Sectors/Higher_education.page?

Foreign and Commonwealth Office, Travelling and Living Abroad pages:
www.fco.gov.uk/en/travelling-and-living-abroad

Quality Assurance Agency for Higher Education: www.qaa.ac.uk

The Observatory on Borderless Higher Education (most resources only available to subscribers):
www.obhe.ac.uk

The University of Warwick: Global People - supporting intercultural partnerships:
www2.warwick.ac.uk/fac/cross_fac/globalpeople

Universities and Colleges Employers Association: www.ucea.ac.uk

UK Borders Agency: www.ukba.homeoffice.gov.uk

UK Council for International Student Affairs: www.ukcisa.org.uk

UK Higher Education International Unit: www.international.ac.uk

Universities UK: www.universities.uk.ac.uk

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The IU works to support the development and sustainability of the UK HE sector's influence and competitiveness in a global environment and promotes the sector's distinctive strengths internationally. It supports the sector's engagement in European Union and Bologna Process policy debates.

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