

APPENDIX A

TO THE TESTIMONY OF DAVID J. SKORTON

BEFORE THE

HOUSE COMMITTEE ON SCIENCE & TECHNOLOGY

HEARING ON THE GLOBALIZATION OF R&D AND

INNOVATION: THE UNIVERSITY RESPONSE

JULY 26, 2007

FORGING LONG-TERM ACADEMIC ALLIANCES WITH FOREIGN ENTITIES

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University Counsel and Secretary of the Corporation
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Key questions:

1. What makes the relationship worth pursuing?
2. What will make the relationship work?

Main features of proposed program:

- degree granting program?
 both?
- major research collaboration?
- U.S. university degree?
 joint degree?
- dual degrees by U.S. and foreign universities?

- long-term or short-term relationship?

Guiding principle governing the evaluation, planning, negotiation, approval, establishment and operation of an academic alliance abroad:

1. the benefits must be compelling, and
2. the risks must be manageable

Three-phased approach:

- I. exploratory phase
- II. due diligence and planning phase
- III. decision and contract formation phase

I. EXPLORATORY PHASE

- identify potential benefits
- check with other U.S. universities who have programs in the foreign country (or considered, but declined)
- gauge university's negotiating leverage
- visit the foreign venue and meet the potential partners
- determine the principal players: who will commit financial resources to the project, and who will contract on the foreign entity's behalf:
 - the government? governmental agency?
 - a university? private organization, foundation?

- ☐ combination of these entities?
- ☐ take stock whether “distance,” “climate” or different “culture, customs” are positives or possible impediments
- ☐ deal with the “deal breakers” upfront – threshold conditions, commitments before launching the due diligence phase:
 - ownership of capital assets?
 - academic freedom and non-discrimination?
 - nature of degree (sole, joint or dual)?
 - academic autonomy (standards, curriculum, admissions)?
 - operational control (complete or shared)?
 - financial resources? management fee?
 - accrediting and licensing implications?
 - legal relationship (subsidiary corp’n, management contract)?
 - use of university name?
 - governance arrangement? joint advisory board?
 - term and exit strategies?
 - other?
- ☐ settle on planning costs (who pays?) and due diligence timetable
- ☐ craft, sign “**fundamental principles**” letter
- ☐ brief president, board and faculty leadership

II. DUE DILIGENCE AND PLANNING PHASE

- ☐ map things out:
 - ☐ drawing from “fundamental principles” letter, outline key “academic,” “business/finance,” and “legal/risk” issues
 - ☐ form internal project team and assign areas of inquiry; designate chair
 - ☐ engage external consultants as needed (e.g., business, legal, security, architects)
 - ☐ enlist a few board members as advisory group
- ☐ anticipate and address “daunting” aspects of project:
 - attracting ample pool of prospective students
 - developing or adapting curriculum
 - faculty and administrative recruiting, staffing
 - dilution of home campus management time/energy
 - dealing with distance, climate, different cultures
 - immigration, local sponsorship issues
- ☐ probe, protect against “main risks”:
 - ☐ **reputational risk**
 - academic control?
 - governance oversight?
 - ☐ **financial risk**
 - no real property ownership?
 - operational costs covered?

• tax exempt status?

• legal safeguards?

• exit strategies?

geopolitical risk

• dependability of partner?

• education a priority?

• hospitable, stable environment?

- develop budget, business plan for full term of relationship
- brief governing board and invite suggestions
- negotiate detailed “**term sheet**” with foreign partner, confirming all key “academic,” “business/financial,” and “legal/risk” elements
- is project team convinced concerning “compelling benefits” and “manageable risks”? Is university leadership on board?

III. DECISION AND CONTRACT PHASE

- review, approval of appropriate faculty governance groups
 - school/college faculty?
 - university faculty senate?
 - both?
- review, approval of university governing board
 - standing committee?
 - executive committee?
 - full board?
- craft **comprehensive contract** covering all points in “term sheet”, plus specific legal safeguards:

- letters of credit
- indemnification and insurance
- early termination for “cause” or “emergency”
- disengagement costs
- monetary damages limitations
- internal dispute resolution and international arbitration
- U.S. law controls
- intellectual property ownership
- local (foreign venue) “liaison office”

☞ contract signing and press releases

☞ appoint program director → program implementation