

# International Activities

**May 9, 2012**  
**150 University Hall**  
**3:00pm - 4:30pm**

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# Presentation Overview

- Introduction
  - The Context
    - University of California as a Global Institution
    - UC Berkeley International Programs
  - The Challenges
  - The Responses and Lessons Learned
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# Challenges of Operating Overseas

- Remote Management and Oversight
- Organizational Structure
  - MOU, Agreements, Registrations, Foreign Entities
  - UC Foreign Affiliate/Operations Guidelines  
<http://www.ucop.edu/ucophome/coordrev/policy/PP081505.pdf>
- Risk Management and Evaluation
- Finance, Accounting and Controls
- Tax
- Employment Matters
- Immigration - Visas
- Facilities
- Contracting – Selecting and Managing Contractors
- US Restrictions
  - Foreign Corrupt Practices Act
  - Export Controls
  - Office of Foreign Asset Controls

# Authority Over International Activities



The Regents

- Public Corporation established under Article IX, Section 9 of the California Constitution

President

- General Authority delegated to President by Standing Order 100.4 and by Regents Action (July 2002)

Provost or  
Chancellor

- Guidelines for the Establishment and Operation of Foreign Affiliates or Operations (August 2005)
- Specific Authority: DA 2569 Extramural Grants <\$10,000,000

# Guidelines - Roles and Responsibilities

## Provost and EVP

Initial Program Approval

Approval of Organizational Documents for Affiliates

General Fund Transfers

Acceptance of Gifts -Approval of Use of Gift Funds

Receipt of Annual Filings and Reports

Approval of Transactions with Foreign Affiliate, Officer or Staff

## General Counsel

Retention of Outside or Local Counsel

Approval of Organizational Documents for Affiliates

Receipt of Annual Filings

## Director of Financial Controls and Accounting

Establishment of Bank Accounts and Exceptions

Designation of Persons Authorized to Issue Checks >\$10,000

Receipt of Annual Report on Bank and Financial Accounts

## EVP – University Affairs

Acceptance of Gifts

Approve Gift Solicitation and Acceptance Policies

## Vice President – Budget and Capital Resources

Approve Leases, Property Management and Capital

Improvement Agreements > \$25,000 or

longer than one year

# Risk Management

- Contact Campus Risk Manager or Risk Services
- Evaluate Risk – Risk Shifting Mechanisms
  - Insurance Coverage, Endorsements
  - Local Requirements
- Register with the **UC Trips** system prior to departure to ensure life, travel, kidnap and ransom, medical, evacuation and other benefits  
<http://www.uctrips-insurance.org/>
- Information and communication through **IJET**
- Pre-departure liability waivers and releases from program participants
- Pre-departure Field Safety or Contingency Planning

# International Research Activities at Berkeley

- Research performed for international sponsors
- Research performed overseas
- Visiting scholars and researchers
- Large-scale research collaborations

# Research for Foreign Sponsors

- Sponsor requirements
- Allowability of costs
- Facilities and administration costs/indirect costs/overhead
- Cost sharing
- Currency fluctuation risk
- Guarantees of performance (vs. cost reimbursement model)
  - Pre-financing deposits
  - Approval rights
  - Payback provisions



# Case Study - EU Framework Programme 7 Research Project

- FP7: 54B Euros (US\$70B) over 7 years
- Consortium agreements
  - ETH Zurich “coordinator”, UCB was a “beneficiary” (1 of 11)
- Pre-financing amount of 5% set aside to complete work
- Applicable law – Belgium
- EC must approve of reports and deliverables to receive payment or partial payment.

# FP7 Case Study

- Payment in Euros (currency fluctuation risk)
- IP disclosures for 2 years after completion
- Guarantee Fund to manage risk of non-performance
- Termination – EC may terminate participation and require reimbursement of funds related to breach and pre-financing
- Audit and review of technical reports for 5 years

# FP7 Case Study

- Publication
  - 14 days before publication, party may object
  - Objection is justified if objecting Party's legitimate academic or commercial interests are compromised
  - Parties must work to “overcome” the objection.  
Postponement of publication no longer than 3 mos.
- Indemnity
  - Grant Annex – beneficiaries must indemnify the EC
  - Consortium Agt – each party is liable for injuries resulting from its performance or on its behalf.

# Research Performed Overseas

- Fiscal support
- Risk management issues
  - Insurance, medical services, extraction services
- Fields Safety Plan
- Compliance Reviews
  - Human or animal subjects, biosafety
- Export control issues
  - Controlled items – laptops, GPS
  - Controlled technical data
  - Embargoes and sanctions

# Visiting Scholars and Researchers

- Berkeley International Office
  - Visas
  - Campus resources
- Visitor Exchange Office
  - MOU
- IPIRA
  - Visitor agreements
  - Patent acknowledgements

# Conducting Research Overseas – Operational Models

- Existing NGO (services agreement)
- Local partner (subaward)
  - Monitoring overseas work
- Local incorporated entities
- Umbrella US entity for all overseas research
  - Nonprofit Corp. or LLC

# Conducting Research Overseas – MOU Issues

- Registration
- MOU – legal status
  - Symbolic agreement? Operational agreement?
  - Binding legal obligations?
  - Most major NGOs have MOUs
    - Quasi-diplomatic status granted? Indemnification?
  - Duties and taxes

# Conducting Research Overseas – Managing Foreign Operations

- Federal agency requirements still apply to overseas research conducted by U.S. institutions or on their behalf –
  - Procurement
  - Subrecipient monitoring
  - Effort reporting
  - Human subjects review



# Conducting Research Overseas – Federal Requirements

- OFAC economic sanctions
- Commerce and State Dept. export control laws
- Anti-boycott laws
- Foreign Corrupt Practices Act

# Case Study in Large-scale Collaborations - BEARS

- Research on building energy efficiency in tropics; future topics – synthetic biology
- Funding provided by National Research Foundation of Singapore (S\$94.8M, US\$76.4M)
- Model followed by MIT, TUM, ETH Zurich
- Two large research programs to start; potential for more later
- Residency requirement – 6 mos. in one block followed by a remaining 6 mos. over 5 years

# BEARS – a Case Study

- Formation of company limited by guarantee in Singapore – 100% owned by UC
- Governing board split between UC and NRF
- 80% of funding stays in Sg; 20% comes to UCB
- Attributes
  - Unique research environment
  - Potential strategic alliances with Sg universities
  - Base of operations for other research activities in the Far East

# BEARS – a Case Study

- Formation of corporation
  - Retain local counsel/corporate secretary
  - Retain local tax accountant and auditor
  - Governing board
- Open bank account
  - Board of Directors resolutions
- Employment passes
- Hiring of local staff
- Taxes

# Key Compliance Topics

## Research

- Intellectual property
- Ethics and privacy
- Contract and Grant requirements/auditing
- Export controls
- Personnel competence
- Dispute resolution
- Choice of Law
- Branding and use of UC Mark

# Responses and Lessons Learned

- Early Engagement is Critical
  - Budgeting
  - Identification of Resources
  - Assemble Multidisciplinary Team
  - Clearly Defined Roles, Responsibilities, Milestones and Deliverables
- Development of Operating Plan
  - Objectives
  - Resource Needs
  - Assignments

Questions?

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