

# Managing Risks in HE Partnerships

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# “The beginning of a beautiful friendship..” Why partner? - Discussion



# Reasons for forming a strategic partnership

- Recruiting to home campus
- Build reputation
  - Global rankings
- Build global ties
- Risk sharing
- Resource sharing
- Build, gain new capacity



# Spectrum of collaborative activity



Credit  
recognition

Joint  
Programme

Joint  
Institute

Joint  
Venture

# Different forms of joint ventures

- Unincorporated joint venture
  - In China, usually
    - Joint Institute
    - Joint Programme
- Incorporated joint venture (full JV university)



# “Another fine mess...” Problems with strategic partnerships - Discussion



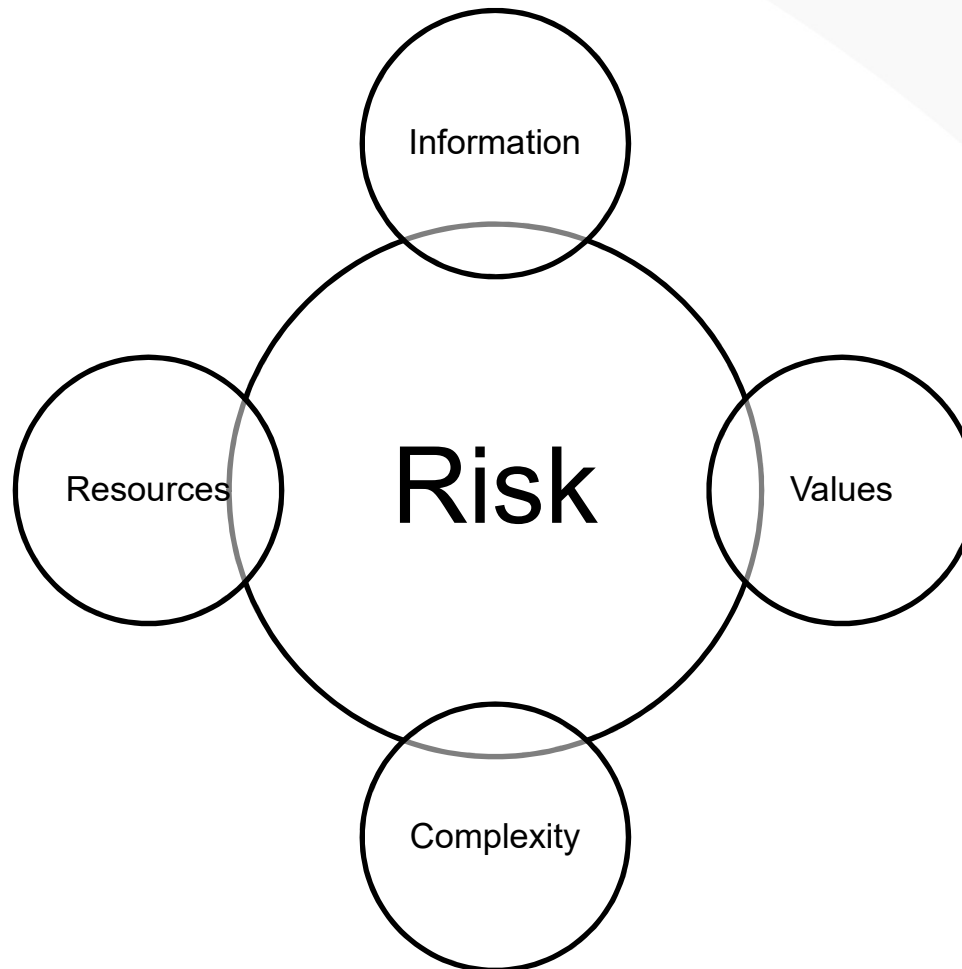
# What is “risk”?

**Risk** is the potential for [uncontrolled]\* loss of something of value...Risk can also be defined as the intentional interaction with uncertainty. Uncertainty is a potential, unpredictable, and [uncontrollable] outcome; risk is an aspect of action taken in spite of uncertainty.

<https://en.wikipedia.org/wiki/Risk>

\*brackets added by author

# Risk ...





# Common pitfalls associated with strategic partnerships

- Start up costs, challenges
- Underestimate costs, overestimate benefits
- Poor information and execution
- Ineffective management - lack of resources / coordination
- Internal conflicts
- Uncompetitive awards (demand, cost, quality)
- Clashes of culture
- Divergence of interests



# China programme closures - 2018

- Background
  - Some 234 Sino-foreign programmes closed.
  - Mostly joint programmes, just a few Joint Institutes
  - Most were dormant.
  - A few Chinese universities in NE China accounted for a large number of closures, disproportionately affecting a few foreign universities.

**FAILED**

# China programme closures

- Lessons learned
  - Parties on both sides made mistakes
  - China has gotten serious about quality
  - Need to vet new partners and programmes carefully, with clear objectives, and implement well with a focus on quality, competitiveness and student demand.



# Case Study – University of Groningen

- JV with China Agricultural University
- Council had final right of consent
  - Student and faculty representatives
- Council rejected the plan
- Concerns
  - Delivery challenges
  - Quality of teaching
  - Equality of stature
  - Academic freedom

<https://www.insidehighered.com/news/2018/02/23/why-university-groningen-canceled-plans-branch-campus-china>

# Factors in the decision

- “the risk of underestimating the workload for Yantai back in Groningen,”
- “the lack of benefits for the educational programs in Groningen”
- “the continuous costs to keep up the quality of the programs in Yantai.”
- “the lack of support by those (two out of the six programs planned to start in Yantai) who had to do the most of the work.”

Bart Beijer, the chair of the University Council’s nine-member Personnel Faction

# Factors in the decision

- the fact that the same degrees were offered in Yantai and in Groningen
- we did not have the confidence with the plan that was there that the quality of education could be ensured, which threatens the value of the diplomas in Groningen here
- concerned about issues related to academic freedom and plans to appoint a Chinese Communist Party secretary

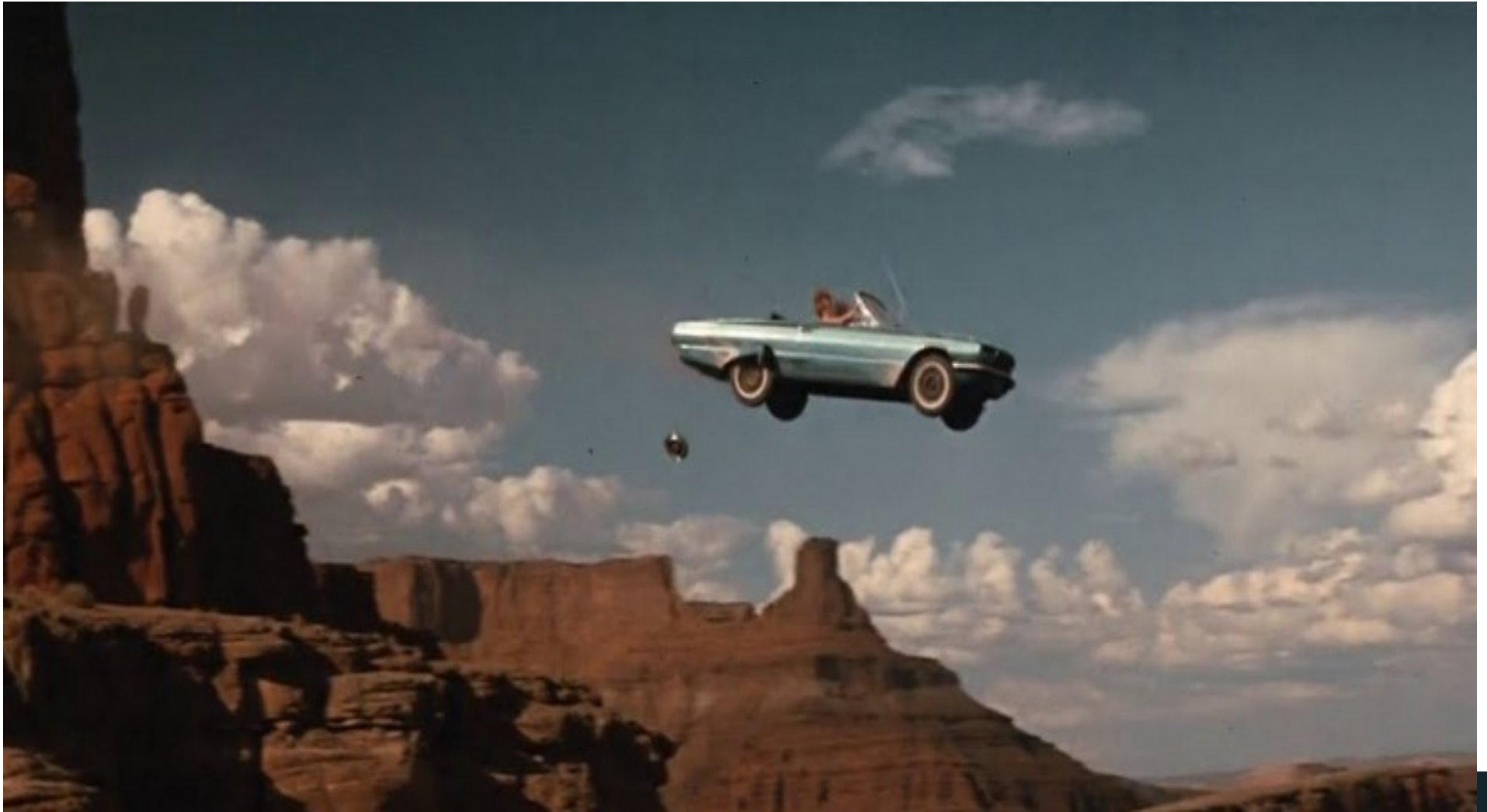
Henk-Jan Wondergem, a member of the University Council and chairman of the student party Lijst Calimero

# Geopolitical risks for universities

- LSE pulls out of China cooperation
- Hong Kong and Chinese students clash in HK
- US restricts visas for Chinese students
- Chinese and Taiwanese students clash over globe sculpture at LSE
- Confucius Institutes accused of interfering in academics
- FBI warning US universities of IP theft by Chinese researchers
- Australian trade journals warn of universities receiving Chinese military funding
- Trump threatens to restrict US companies investment in China.

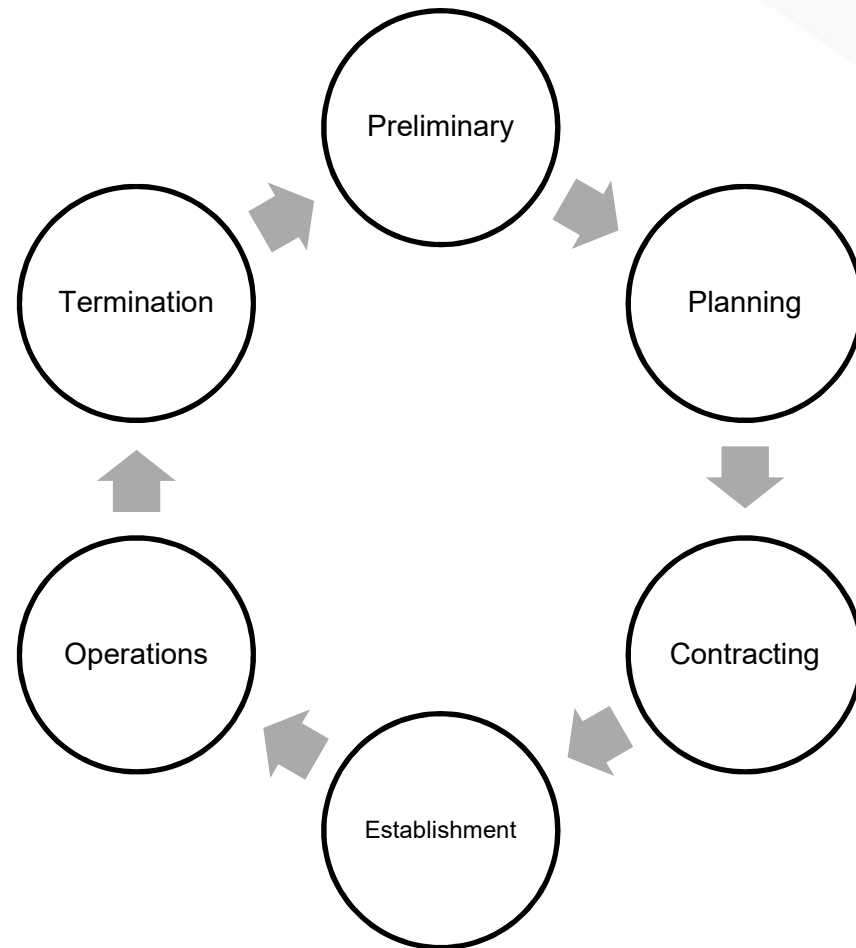


# Before you go over the edge: Diligence, Planning and Implementation

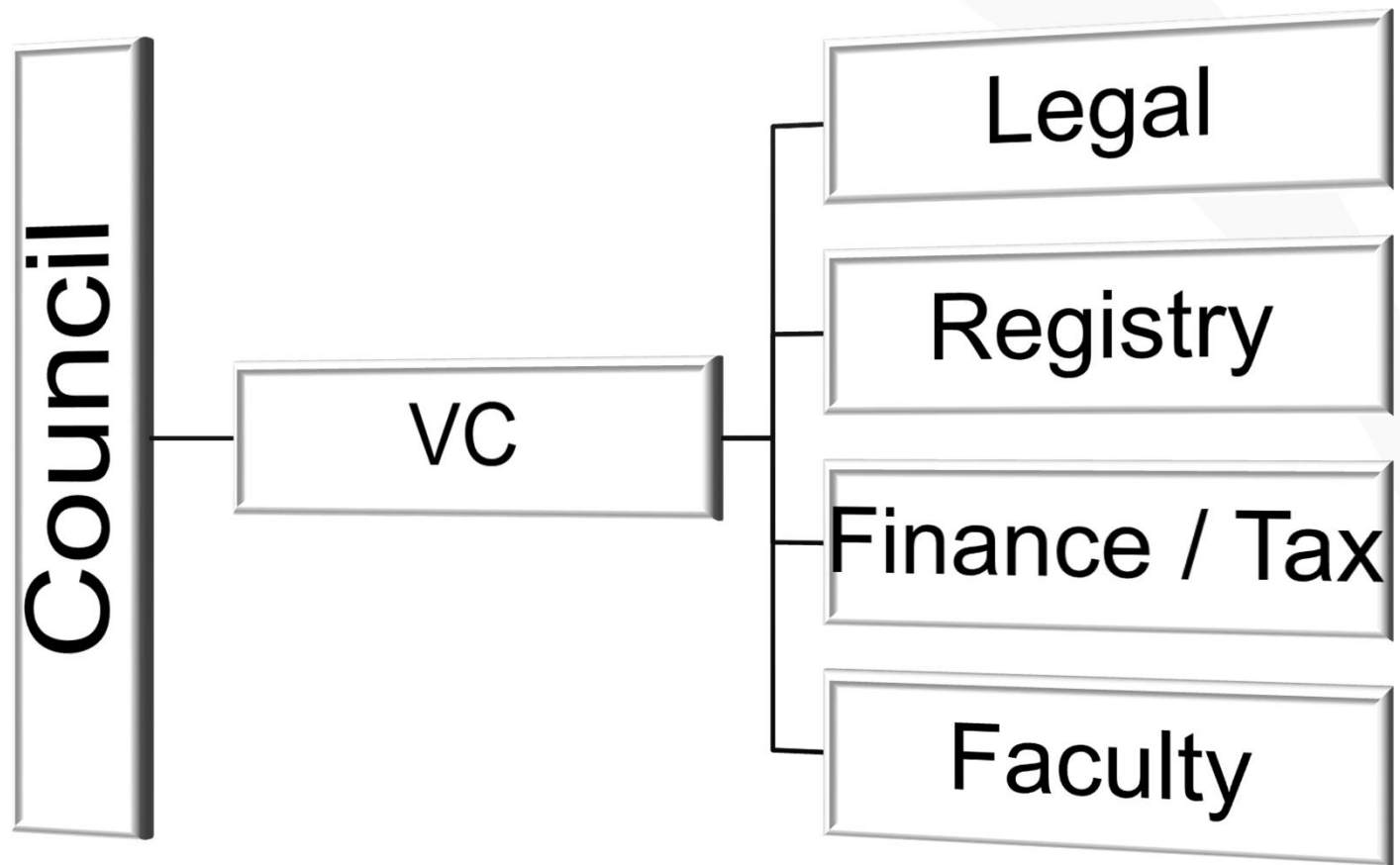




# Project life cycle



# Project team



# Pre-contractual investigations (due diligence & planning)

- Internal stakeholders & resources
- Market
- Legal / Regulatory
- Financial
- Curriculum
- Business / operational
- Facilities & resources



# Typical JI - basic documents

- Cooperation Agreement
- Articles of Association
- Side Agreement on finance
  
- Application
  - Teaching Plan

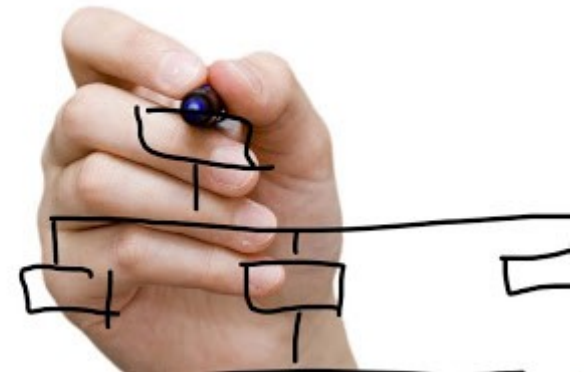
# Basic documents (Cont'd)

- Investments - commitments
- Governance structure, management, the composition of the management board and voting procedures
- Likely timetable
- Choice of law
- Dispute resolution
- Termination procedures (teach out)
- Any conditions precedent



# Governance and Management

- Regulatory requirements
- Spell out in the Cooperation Agreement and Articles
- Dean and Vice Deans
- When and how meetings are called
- Voting rights and procedures - UNANIMITY
- Delegated authority, sub committees, management committees
- Lines of communication / reporting



# Academic Concerns

- Quality assurance
- English levels
- Curriculum design
- Joint and dual degrees
- Validation
- Assessments
- Data protection
- Professional accreditation
- Academic freedom
- Plagiarism

# Student issues

- Entry requirements
- Tuition and fees
- Student contracts
- Registration / enrolment
- Student complaints and discipline
- Student welfare
- Policies and procedures, Handbooks
- Work in country (internships, after graduation)





# Financial terms – China JPs & JIs

- China cooperations are ‘non-profit’.
- Parties reimbursed for ‘teaching costs’
- Foreign Uni costs are sunk
- Foreign party takes fixed amount, or fixed % of tuition based on minimum student numbers.
- Prevalence of side agreements

# Finance

- Initial contribution/set up costs
- Tuition rates (statutory requirements?)
- Ongoing financial arrangements
- Accounting / systems
- Consequences of non-payment
- Financial reporting
- Information / audit rights
- Foreign exchange controls

## Profit and loss account

For the year ended 30 March 2008

	Note	2008 Before exceptional items £m	2008 Exceptional items £m	2008 Total £m	2007 Before exceptional items £m	2007 Exceptional items £m	2007 Total £m
<b>Continuing operations</b>							
Turnover	2,3	502.1	-	502.1	716.1	-	716.1
Operating costs	4	(505.8)	(59.5)	(565.3)	(610.9)	8.1	(602.8)
<b>Operating (loss)/profit</b>		<b>(3.7)</b>	<b>(59.5)</b>	<b>(63.2)</b>	<b>105.2</b>	<b>8.1</b>	<b>113.3</b>
Income from other financial assets	6	0.1	-	0.1	0.1	-	0.1
Profit on part disposal of subsidiary	9	-	335.2	335.2	-	-	-
Interest payable and similar charges	7	(8.0)	-	(8.0)	(27.0)	-	(27.0)
Interest receivable and similar income	7	69.7	-	69.7	12.2	-	12.2
Share of post tax losses of joint ventures	13(a)	(24.6)	(2.5)	(27.1)	(0.3)	-	(0.3)
Share of post tax losses of associates	13(b)	(0.3)	-	(0.3)	(0.6)	-	(0.6)
<b>Profit before taxation</b>	4	<b>33.2</b>	<b>273.2</b>	<b>306.4</b>	<b>89.6</b>	<b>8.1</b>	<b>97.7</b>
Taxation	8	(15.3)	16.1	0.8	(32.3)	(1.2)	(33.5)
<b>Profit attributable to equity shareholders</b>		<b>17.9</b>	<b>289.3</b>	<b>307.2</b>	<b>57.3</b>	<b>6.9</b>	<b>64.2</b>

The notes on pages 45 to 75 form part of these financial statements.

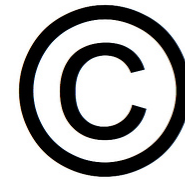
# Tax

- Financial model must account for tax!
  - CIT
  - VAT
  - IIT
- New China SAT rules – Joint Institutes and Joint Programmes are Permanent Establishments
  - Increased filing & reporting requirements
  - Higher tax rates
  - Faculty subject to China IIT to full extent.
- VAT exemption for tuition



# Intellectual property - transactional

- Trademarks
  - Branding / marketing
  - Licenses
  - Register Chinese-language marks!
  - Exclusivity
- Teaching materials and curriculum
  - Background
  - Foreground
- Third party materials (who will pay?)

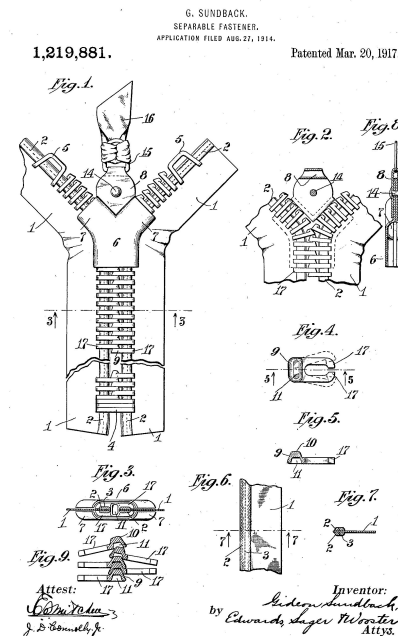


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# Intellectual property - operational

- Patents jointly developed
- Student IP
- Publication
- Third-party funding
  - State, corporate
- Local disclosure rules (China)
- Implementation:
  - IP policies / handbooks
  - Employment contracts (individual waivers / consents)
  - Project-based documentation



# Employment

- Will you employ any staff? Secondments?
- Where are you employing staff and are you in compliance with local law, visa requirements etc.?
- Do you have the right entity to employ?
- Employment rules are very different between Europe and Asia-Pacific – and indeed, elsewhere. Have you obtained advice and do you know the rights of employees?
- Standard contracts – cross border – localize ...
- Local policies / handbooks.



# Visas

- Types
  - Development and other administrative visits
  - Flying faculty
  - Long term faculty
  - Local hires?
- Issues
  - Appropriate type?
  - Time limits
  - Requirements
  - Consequences of non-compliance



# Dealing with deadlock and disputes

- Total breakdown?
- Contracts always provide for arbitration ... I have never seen it used for HE in China.
- Negotiation ...
- Enforcement
  - Remedies (monetary, injunction, performance)
  - Foreign / cross-border judgements (treaties in effect?)





# Termination

- Commitments to students – teach out
- TM licenses terminate
- Liquidation
- De-registration
- Confidential materials

**CANCELLED!!**

Thank you!

Questions?

Feel free to contact me.

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