

Template Guidance for MOU with Host Country Government

Note: These guidelines identify potential benefits and entitlements for Columbia’s international projects that may be available in host countries. **This is for illustration purposes only.**

The Office of General Counsel should be consulted to develop an MOU or agreement with the relevant government ministry or other government party (“Government Party”) that appropriately captures these provisions based on local regulatory requirements and practices.

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Item	Comments
1. Background:	
a. Does Columbia seek benefits for a specific project, department, subsidiary, or for the University as a whole?	
b. Provide brief overview of expected projects and durations.	
c. Consider which ministries or entities within the host country are empowered to participate in the expected activities and grant the desired benefits. Not every ministry is empowered to grant the full range of desired benefits – multiple governmental units may be required.	
2. Project Activities:	
a. Where applicable, describe the project responsibilities of each of Columbia and the host-country entity.	
b. Explore what conditions should apply, such as availability of funding	
c. Ensure that Columbia’s scope is limited to appropriate academic and research functions.	
3. Possible Benefits:	
a. Explore whether the Government Party can grant the following:	[Hatched area]

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<p>i. Tax Exemptions for Expatriates: Non-<i>[host country]</i> personnel, consultants, and technical experts assigned to the <i>[local Columbia entity]</i> shall be exempt from all taxes including but not limited to customs, import, and export duties and taxes, and taxes on income derived from both <i>[U.S. and host country sources]</i>, which includes income for services performed in the host country. The <i>[Government Party]</i> shall take the necessary steps to obtain any needed approval for such tax exemptions from the appropriate tax authorities;</p>	
<p>ii. Tax Exemptions for Columbia and <i>[its related local entity]</i> ("Local Entity"): Columbia University and its affiliates, including the <i>[Local Entity]</i>, will be exempt from VAT, duties, import taxes, and pre-inspection requirements in (a) their purchase and importation into <i>[country]</i> of vehicles, materials, equipment and (b) their purchase of vehicles, materials, equipment, and services within <i>[country]</i>; The <i>[Government Party]</i> shall take the necessary steps to obtain any needed approval for such tax exemptions from the appropriate tax authorities;</p>	
<p>iii. Work Permits: The <i>[Local Entity]</i> will have the right to recruit and hire <i>-[non-host-country]</i> citizens and permanent residents, without a cap or quota, and be granted the relevant work permits for such staff, their families and dependents without restriction;</p>	
<p>iv. The <i>[Local Entity]</i> will have the ability to freely receive and transfer funds to and from the United States and other countries in furtherance of its non-profit mission, and without permissions or approvals;</p>	

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<p>v. Any dispute or legal claim brought against Columbia and/or <i>[Local Entity]</i>, other than a claim brought by the <i>[Government Party]</i> against Columbia or <i>[Local Entity]</i> shall be referred to the <i>[Ministry of Foreign Affairs]</i> for negotiation and settlement and the <i>[Government Party]</i> shall be solely responsible for any such claims;</p>	
<p>vi. The <i>[Local Entity]</i> may allow other appropriate entities and persons, including Columbia University faculty and staff, involved in similar or complementary activities, to use facilities and resources of <i>[Local Entity]</i>;</p>	
<p>vii. The <i>[Government Party]</i> will help coordinate <i>[Local Entity]</i> registration and set-up with any governmental units and ministries (e.g., Ministry of Finance, if required for tax exemptions).</p>	
4. Dispute Resolutions:	
<p>a. In general, Columbia will wish to avoid referring disputes with host-country governmental organizations to courts within that host country. Alternatives include arbitration or litigation in a neutral forum. It may be necessary for the government entity to explicitly waive protections of sovereign immunity in the MOU.</p>	
5. Term:	
<p>a. The MOU should have a definite term and provisions for early termination. Typically, Columbia seeks the right of immediate termination upon written notice if it determines that its continued participation would violate any laws, regulations, policies, or rules applicable to Columbia, jeopardize the health or safety of its faculty, students, or staff, or adversely affect its accreditation, licenses, or tax status. Columbia also should have the right to terminate early if there is a loss of funding for the project in question.</p>	

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6. Retained Responsibilities:	
<p>a. The <i>[Government Party]</i> should retain sole responsibility for decisions on projects that might affect the health and safety of its citizens.</p> <p>For Example:</p> <p>[Add if appropriate: While Columbia and <i>[Local Entity]</i> hope and intend that their work under this MOU will be useful to the <i>[Government Party]</i> and the people of <i>[country]</i>, the Government recognizes the non-profit, collaborative, and public spirited nature of the work. Accordingly, appropriate governmental ministries and units of the <i>[country]</i>, whether at a local, regional, or national level (collectively, the “Government”) acknowledge and agree that the activities, services, and all actions by Columbia, <i>[Local Entity]</i> and their other collaborators are being performed in an advisory capacity only, and the Government retains sole and exclusive responsibility for all decisions, measures, actions, and inactions affecting the wellbeing of its communities, citizens and residents. Without limitation, any decisions whether and how to implement any changes (or to decline to implement any changes) in infrastructure, practices, and policies will reside solely with the Government.</p> <p>Columbia, <i>[Local Entity]</i>, and their collaborators make no assurances regarding their advice, deliverables, and activities, and do not make any promise to keep such information up-to-date and complete. Under no circumstances will Columbia, <i>[Local Entity]</i> and their collaborators be liable for any consequential, exemplary, indirect, special, incidental or similar or equivalent damages (regardless of how characterized) related to, arising from, or connected with this MOU or any of the activities contemplated by this MOU or otherwise authorized by the <i>[Government Party]</i>.</p> <p>The <i>[Government Party]</i> confirms to Columbia that no further consents, registrations, permissions, or other filings are needed by Columbia University or <i>[Local Entity]</i> to engage in the activities envisioned by this MOU or to be entitled to any of the tax exemptions or other benefits set forth herein. The <i>[Government Party]</i> further represents that it is empowered and authorized to enter into this MOU and make the statements and assurances provided herein.</p>	
7. Other Provisions:	
a. Typical other provisions include:	
i. Each of the Parties is dedicated to the principles of non-discrimination and academic freedom. Nothing in this MOU shall restrict either Party from publishing, disseminating, and disclosing the results of its research and academic initiatives.	

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<p>ii. Each Party agrees that in connection with this MOU it will take no action, or omit to take any action, that would cause the other Party to be in violation of applicable laws, including those of the United States and <i>[host country]</i>, without limitation, (i) the U.S. Foreign Corrupt Practices Act and anti-bribery laws of <i>[host country]</i>, and (ii) any United States trade controls, export, and anti-boycott laws and regulations. In that connection, each Party agrees that in connection with this MOU it will not offer, promise or give, directly or indirectly, anything of value to any government official, political party official, political candidate, or employee thereof or to any third party for the purpose of obtaining or retaining business or obtaining any illegal benefit or advantage.</p>	
<p>iii. Although the Parties envision a cooperative and productive collaboration, each is an independent entity with respect to one another, and nothing in this MOU constitutes the Parties as partners (in the legal sense), or joint ventures, or allows a Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever. Neither Party will assign, delegate, or subcontract this MOU to any third party without the prior written consent of the other Party, and any attempt to do so without consent shall be void.</p>	
<p>iv. Neither Party will use the name, insignia, or symbols of the other Party, its faculties or departments, or any variation or combination thereof, or the name of any trustee, faculty member, other employee, or student of a Party for any purpose whatsoever without the other Party's prior written consent. The Parties will coordinate any public announcement or press release regarding the existence or contents of this MOU.</p>	

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<p>v. Nothing in this MOU will establish an exclusive relationship between the parties, and each Party may freely elect to engage in research and other initiatives with others.</p>	
<p>vi. All Columbia and <i>[Local Entity]</i> faculty, officers, students, and personnel shall enjoy full rights of academic freedom and non-discrimination, consistent with Columbia policies and applicable U.S. and New York laws.</p>	
<p>vii. If either Party's performance under this MOU should be prevented or delayed by an event of force majeure, including, but not limited to, acts of war; revolution or insurrection; acts of terrorism; civil unrest; fire, flood, earthquake or other natural disaster; blockades or embargoes; strikes or work stoppages; or governmental action (including any law, regulation, decree, or denial of visas or residence permits); and any other event customarily accepted in similar international transactions as an event of force majeure not reasonably within its control, such Party's duty to perform those obligations affected by the event of force majeure shall be suspended for the period reasonably required or justified by the circumstances. This MOU may be terminated, upon the request of any Party, if the force majeure event: (i) threatens the continued operation of associated programs; (ii) poses a threat to the health or safety of its faculty, staff or students; or (iii) continues uninterrupted for a period of 90 days. Prior to any such termination, the Parties shall discuss the possibility of a reasonable resolution short of termination.</p>	