Appendix A

Common Legal Issues in Cross-Border Transactions

1) **Foreign Taxes** – Revenue-generating activities that involve tasks or individuals in other countries frequently have foreign tax consequences in addition to US tax consequences.
   a. For example, providing a distance education course to a Chinese company’s employees is taxable in China. When the Chinese company tries to make payment to the US, the company will be required by the local tax authority to withhold taxes.

2) **The Foreign Corrupt Practices Act (commonly known as the “FCPA”)** – The FCPA is an extremely broad US law that prohibits US individuals from bribing foreign officials. FCPA violations can result in huge fines and criminal prosecution.
   a. Importantly, a bribe under the FCPA could be just a disproportionate consulting fee or paying for an official’s travel that isn’t entirely business related. Also, the term “foreign official” is extremely broad, and could include, for example, doctors employed at a hospital in China (since hospitals in China are mainly state-owned).
   b. The university could also be held to violate the FCPA if one of its outside consultants bribes a foreign official. Departments and units need to make sure they are doing adequate due diligence on foreign vendors that might be interacting with foreign officials.

3) **Export Control Laws** – US law prohibit the “export” of certain items, services, technology, and technical data outside the US or to particular countries or to foreign individuals in the US. Departments and units need to be very careful when sending sophisticated technology or technical data overseas, such as on a laptop, or when sharing that information in the US with foreign individuals.

4) **Data Protection Laws** – Be very careful when collecting the personal information of foreigners. Many countries have comprehensive data protection laws that restrict the processing of such information, particularly without consent of the data subject.

5) **“De Facto” Employment** – See Appendix B. The university faces significant risks when employing individuals overseas or when creating nominal independent contractor arrangements that foreign countries may deem to be “de facto” employment.