

## Regulations on Working for Third Parties

### Preamble

Pursuant to the Higher Education and Academic Research Act (WHW), the Executive Board is legally entrusted with the governance and administration of Leiden University. The Board has delegated a number of responsibilities.

Teaching, research and valorisation activities at Leiden University are funded by the government, but may also be funded with resources acquired from external parties.

These regulations detail the working method and standards that play a role here. These regulations should be quoted as ‘Working for Third Parties 2015’.

### 1. Definitions

- 1.1. Research funding: money that is received from third parties for conducting research.
- 1.2. Consultancy: making the knowledge and experience of employees available to third parties in order to answer specific questions (by definition, this does not cover experimental work and/or the provision of protected knowledge).
- 1.3. Protected knowledge: knowledge that is kept secret on behalf of Leiden University and/or is protected by intellectual property rights.
- 1.4. Intellectual property rights: all exclusive rights that are granted to protect knowledge, in these regulations principally copyright, patent rights, database rights etc.
- 1.5. Spin-out: an independent legal body that is chiefly occupied with the development and/or provision of products, processes and/or services based on knowledge developed at Leiden University.
- 1.6. Employee(s): staff members in the sense of the CAO NU and persons who have been granted the status of guest employee or temporary employee, as well as students who carry out work at Leiden University.
- 1.7. Principal Investigator (hereafter: PI): employee whose responsibility is to lead a project or programme, in accordance with legislation, internal and external regulations and agreements, during both the application for and the implementation of the project or programme.
- 1.8. Academic: employee who has been appointed to the Education and Research family (Academic Staff) in the University Job Classification Scheme (UFO) and who carries out agreements made with third parties.
- 1.9. Luris: the Knowledge Exchange Office of Leiden University and the LUMC with expertise on matters and agreements concerning knowledge exploitation and intellectual property.
- 1.10. Market-based fee: a fee that is determined by the rules of the economic principles of the free market.

### 2. The pursuit of activities in general

- 2.1. For activities in the fields of education, research and valorisation that are carried out on behalf of Leiden University for third parties, insofar as these are not included in the budget from government funding, a fair payment must be received, which is for the benefit of Leiden University.
- 2.2. This fair payment is based on guidelines established by the Executive Board of the University.
- 2.3. In the pursuit of activities, employees must adhere to the relevant legislation and regulations (including legislation and regulations relating to the environment, health, safety and taxation) as well as to the standards and principles of academic practice relating to integrity and ethics (Regulations on Academic Integrity, Policy on Conflicts of Interest, The Netherlands Code of Conduct for Scientific Practice).



- 2.4. With a view to future earnings, knowledge that has been developed can be protected by means of intellectual property rights. Insofar as this comprises patentable knowledge, Leiden University applies for patents for knowledge developed at the University. Such applications are made through Luris.

### **3. Preparation and pursuit of activities**

- 3.1. A contract must be signed between Leiden University and the parties in question before any activities can be carried out. The PI bears primary responsibility for drawing up this contract.
- 3.2. The contract must include the key terms relating to such matters as the goods or services that will be provided and the fee and its payment. Before signing the contract, the PI must ascertain whether the key terms of the contract can be executed by Leiden University.
- 3.3. Prior to and during a project, the PI (or potential PI) ensures that:
- a) the colleagues involved in the project are informed in a timely and thorough fashion;
  - b) the work corresponds with what can reasonably be expected to be the skills of the academics and other (research) partners who will be working on the project;
  - c) the unit and/or department involved in the project is willing and able to provide the required facilities and materials;
  - d) predictable financial risks are avoided in the budget or provisional budget and the likelihood of a negative financial outcome is reduced to a minimum;
  - e) relevant experts have been given timely opportunity to express their opinion of the aspects of the project relating to legal and financial matters, human resources and intellectual property and that their advice has been taken wherever possible;
  - f) the academics involved in the project adhere to the law and internal and external regulations including the Regulations on Delegation (Mandaatregelingen) concerning research and agreements with third parties;
  - g) a proper administration and record is kept of the project, and that this is in accordance with the rules in force;
  - h) on completion, a record will be kept of the project according to the rules in force in the PI's own department, or if such rules do not exist, at the Department of Documentary Information and Archiving (DIA).
- 3.4. If intellectual property rights play a role, the advice and support of Luris is mandatory.

### **4. Contract education**

- 4.1. Alongside education funded by the government, Leiden University also provides education to third parties (contract education).
- 4.2. It is mandatory that the manager of the academic in question should agree to any planned contract education. Leiden University will ensure that a market-based fee is charged for this contract education. Furthermore, the rights to any teaching materials that are developed must remain the property of Leiden University.

### **5. Research funding**

- 5.1. Research projects can be funded in one of the three following ways:
- a) As grant projects, which are projects that are funded by a grant only. This is said to be the case if nothing is expected in return (including future rights) by the grant provider and any other parties who are involved, the results can be published freely and the parties retain their own results and the rights to these.
  - b) As collaboration projects, which are projects in which the partners in the project enjoy an equal relationship, which is apparent from the nature of the contract signed between them. This is the case if the budget is based on internal funding, the results can be published freely and the parties retain their own results and the rights to these. There may be a further agreement stating that interested partners may gain access to these results and/or rights for commercial use under



market-based terms. Collaboration projects may be funded with grants, in which case the terms of the grant take precedence over the terms stated in this article.

- c) As contract research, which is if a project has been commissioned by a factual party who pays a market-based fee for the pursuit of certain activities. The fee must at least equal the integral cost price plus a market-based supplement (as stated in the fees determined by the Executive Board). In this case, the results and any rights to these are, in principle, transferred to the external party.

## **6. Consultancy**

- 6.1. It is mandatory that the manager of the academic agree to consultancy work, both to the topic and the commissioning party. The manager should consider the following aspects: the effect on the research or follow-up research, the available time, the nature of the topic, the commissioning party, the purpose for which it is reasonable to expect that the answer will be used and other aspects that influence Leiden University.
- 6.2. The terms for consultancy are that Leiden University reaches agreements with the third party, that the consultancy is for a market-based fee and that Leiden University retains its own results and the rights to these. In exceptional cases, Leiden University may transfer the results and the rights to these results to the commissioning party, but only if these have been generated in answer to a specific question posed by the commissioning party.
- 6.3. Due to its nature, consultancy does not fall within the scope of the Leiden University Framework Regulation on Work for Third Parties; however, it is without further prejudice to this Regulation.

## **7. Spin-outs**

- 7.1. Leiden University applies the following principles to the facilitation of spin-outs. The department or unit must consider the activities of the planned business to be important and these activities must not be in conflict with the legal, ethical and practical requirements. The parties involved must not experience any proportional disadvantage from the planned activities and it must be probable that these activities will lead to relevant academic research. Furthermore, it must be unlikely that the planned activities will result in damage to Leiden University. Finally, given the context (parties involved, knowledge and funding), it must be likely that the intended business will succeed.
- 7.2. The Executive Board of the University will decide whether to facilitate the establishment of a business on the recommendation of the academic director of the department or unit in question, with the help of the dean of the faculty in question and any experts including at least Luris. The proposal must be supported by the parties who are directly involved:
  - a) in his or her supporting letter the academic director must focus at least on the desirability of the spin-out and the impact at departmental level;
  - b) in his or her supporting letter the dean must at least focus on the desirability of the spin-out and the impact at faculty level (for instance whether it is in line with the research agenda or relationships with important partners);
  - c) in its supporting letter, Luris must at least focus on whether the business will be a commercial success.
- 7.3. The above is without prejudice to the fact that all parties (including the academics involved) have a duty to inform. They must share relevant knowledge and information with their manager and Luris that will facilitate the decision making. This could include agreements concerning ownership of and control within the proposed business.
- 7.4. The facilitation of spin-outs can include:
  - a) adopting special regulations relating to the appointment of academics;
  - b) making facilities available for a suitable fee;
  - c) investment by Leiden University or a third party designated by Leiden University, possibly in the form of shares;
  - d) providing knowledge that might be protected for a suitable fee; and/or



- e) providing other relevant support.

## **8. Intellectual property and knowledge exploitation**

- 8.1. Leiden University makes knowledge or protected knowledge available to third parties on the proviso that the third party makes a reasonable effort to use this knowledge. This can mean that the knowledge is used in as many applications as possible and/or in various fields and/or by other third parties and/or in other parts of the world. Furthermore, the third party must pay a reasonable fee for the use of this knowledge.
- 8.2. Leiden University prefers to issue licences to its intellectual property rather than transferring ownership of its intellectual property. It is possible to deviate from this if the interests of the third party/parties and Leiden University are sufficiently guaranteed. Leiden University appoints Luris as an expert in matters and agreements concerning knowledge exploitation.

## **9. Employee rights**

- 9.1. Leiden University follows the legal regime and the CAO NU with regard to the emergence of intellectual property rights. The following is without prejudice to the applicability of the regulations on work for third parties, academic integrity and conflicts of interests. It is the responsibility of the academic to respect the relevant academic standards and to act accordingly.
- 9.2. For the application of these regulations, staff employed on a temporary basis or guest academics must be considered employees of Leiden University if the work that led to intellectual property rights is within the scope of work that was performed for Leiden University and/or actually took place at Leiden University.
- 9.3. The net earnings from the exploitation of intellectual property rights is shared between the academics who achieved the results upon which the rights rest, the relevant faculty and the University (as an institution) according to the ratio 1/3:1/3:1/3, insofar as the academics actively tried to gain the protection of the intellectual property and/or reach agreements with third parties. If the academics do not exercise any claim, the net earnings are shared between the faculty and the University (as an institution). The net earnings are the earnings following the deduction of costs such as patent expenses and other protection expenses, advice and marketing expenses and employer costs incurred in the realisation of the licence or intellectual property rights.
- 9.4. The academic in question receives this fee for the rest of his or her life, as long as he or she has met the requirement above and insofar as there are net earnings. The academic can choose to be paid this fee or to use it for research in a manner of his or her own choosing. A maximum of € 1 million per person will be paid per intellectual property. If the earnings exceed this threshold, the amount by which it is exceeded will be used for University purposes, in consultation with the developers or inventors.
- 9.5. If an academic has a direct or indirect say in or about a legal entity that further develops research findings from Leiden University and/or markets these or attempts to do so, this activity counts as work for third parties and is only permitted if the Executive Board of the University issues its written permission, unless this relates to shares in a business that are freely traded on an open stock exchange. The academic in question must substantiate the request for permission to work for the third party and explain why his or her controlling role in the business does not represent a risk to Leiden University. Furthermore, the academic must focus on such matters as conflicts of interest, academic integrity, future research and other relevant aspects. If this concerns a proposed spin-out, this must be an aspect of the considerations (and letters of support).

## **10. Final Provisions**

- 10.1. These regulations enter into force on the day following their adoption by the Executive Board of the University.
- 10.2. These regulations will be published on the website of Leiden University. All contracts signed before the day of commencement fall under the regulations that applied previously (Instructions on



Working for or with Third Parties 2008), on the understanding that twelve months after these regulations enter into force, all contracts will be governed by them.

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These regulations were adopted by the Executive Board of the University in its meeting on 7 July 2015.



# **Explanation on the Regulations on Working for Third Parties 2015**



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## Introduction

Teaching, research and valorisation activities at Leiden University are funded by the government, but may also be funded by resources acquired from third parties. In the regulations ‘Working with Third Parties 2015’ the Executive Board has further defined the working method and standards that play a role here. This explanation describes the aim of these regulations in more detail as well as how they can be applied in practice. These instructions have been issued by the Executive Board of the University and are binding for all employees, temporary employees and students who work at Leiden University. These regulations are without prejudice to the fact that other relevant legislation and internal regulations must always be complied with.

Society expects a more dynamic and open interaction between the University and third parties that operate as a business. This interaction creates some tension, and each party must be aware of its individual role and the interests that it serves. It is therefore logical that alongside commercial aspects, academic and ethical aspects (the normative framework of good academic practice) play a significant role in decisions that are made on the basis of these regulations.

Leiden University takes the following core values into consideration when making decisions within the scope of these regulations:

- freedom of spirit, thought and expression;
- independent development of knowledge;
- societal responsibility; and
- integrity.

### *Framework*

Employees of Leiden University must observe the standards of good academic practice in their professional work. At the core of this are academic rigour and academic integrity, but also the ethical consequences of academic research and innovation, both at Leiden University and in society as a whole.

### *Academic standards*

The societal value and recognition of the knowledge created at Leiden University and by academics in general is determined by whether academic standards have been observed. The status that academics and their results have acquired over the centuries is based on trust in these standards. In the academic’s contact with other academics and society, this trust is crucial for the good name of both the academic and Leiden University.

An important standard in this respect is transparency. Leiden University’s employees may not have any invisible roles or duties that could influence their professional performance. Particularly if these invisible activities are of a commercial nature, there is a real likelihood that their discovery will injure the good reputation of the academic and the University. On the one hand, such actions are often in conflict with the regulations on academic integrity, and on the other, it is often in conflict with legislation for the employee of a research institution that is funded with public money to be making a private profit.

Another important standard in this respect is neutrality. This is also a key aspect of good academic practice. In this respect, employees who serve commercial and academic interests have entangled interests. In particular if one of these interests is of a private nature and the other a professional one, this can lead to a potential conflict of interests.

#### *Relevant regulations*

At the University, all those involved in academic teaching and research are responsible for maintaining academic integrity. Employees must thus consider the general principles of professional academic practice. The VSNU's Netherlands Code of Conduct for Scientific Practice ([www.vsnu.nl](http://www.vsnu.nl)) form the basis of this and contains five principles that are also endorsed by Leiden University. These apply as a guideline for the University and its staff, as stipulated in Article 1.7 of the Higher Education and Academic Research Act. These principles are scrupulousness, reliability, verifiability, impartiality and independence.

Leiden University has Regulations on Academic Integrity, on the basis of which a Confidential Adviser for Academic Integrity and an Academic Integrity Committee have been appointed. These regulations describe the procedures concerning complaints about the academic integrity of employees of Leiden University. The Secretariat of the Academic Integrity Committee is located in the Department of Legal Affairs, PO Box 9500, 2300 RA Leiden and its visiting address is Rapenburg 70, 2311 EZ Leiden.

See in this respect the Policy on Conflicts of Interest. This policy provide academics with pointers and a procedure for situations in which there may be a conflict of interests. Furthermore, if academics experience an 'integrity dilemma' when conducting contract research (section 4), the Police provides a procedure that ensures that the interests of the academic and Leiden University are protected.

#### *State aid*

The legal prohibition of state aid also applies to Leiden University. As a publicly funded organisation, the University must avoid disrupting the free market by offering certain companies advantages over others. This does not just relate to providing money: if materials, people or facilities are provided to a business, this must be under market-based conditions. If one party benefits (by receiving or saving on something) and its competitors do not, this affects the market. State aid is a clear disruption of the market and is undesirable and forbidden, except under specific circumstances.

For this reason, Leiden University requires compensation for the activities that it performs for third parties, in the form of a fair fee. This is not only for the use of protected knowledge but also for access to equipment and for any research or follow-up research that it conducts. Government grants can also be a form of state aid. For this reason, grant regulations are assessed to see whether they disrupt the market. There must be sufficient guarantees that no (factual) discrimination of certain businesses or institutions will arise.

#### *Market-based fee*

What constitutes a fair fee depends on the context. In instances in which commercial parties are involved, we also refer to a market-based fee, which helps define what a fair fee is. The lower limit of this is determined by the list of fees drawn up by the Executive Board of the University.

The basic principle here is that research or other forms of service are provided to third parties for a fee that is at least equal to the integral fee. Alongside the cost of staff, the integral fee covers the organisational cost for Leiden University, such as the use of a laboratory or another workplace. With assignments on what is known as the free market, the fee should also contain a market supplement or ‘profit’ component, which is what a business would also calculate. A market-based comprises at least the integral cost price plus a market supplement.

If activities are being funded with a fee that is based on grant regulations and the financial compensation is insufficient to cover the integral costs, the unit and/or department will have to consider whether the difference between the grant and the integral costs is equal to the qualitative benefits of carrying out the activities in question.

Here are a number of examples from practice. Leiden University is initially positively inclined towards a contract in which a company is prepared to contribute € 100,000 towards a PhD position for a specific project in return for a non-exclusive licence to the future results from the project. If this company had wanted an exclusive licence, then it would need to fund the full cost of this research position. This would mean that alongside the salary expenses, the company would have to pay for accommodation, the use of laboratories and so on.

An example of collaboration in which the relationship can be termed equal is if a third party makes expensive material available to the researcher. The basic principle here, too, is that in principle a fair fee must be paid for a licence and that Leiden University wishes to retain the knowledge for future research and teaching. In this case, the value of the material that is made available will be important in the assessment of whether a licence can be granted in the light of the above legislation. In practice, it may be that an organisation considers the value of the material to be so high that it expects a free licence for its provision. The question that then needs to be answered is whether the economic value of the material is so high that this can be termed a fair fee. Here a distinction also needs to be made between an exclusive and a non-exclusive licence.

## 1 Preparation and pursuit of activities (article 3)

If the activities that Leiden University carries out for and/or with third parties are to be performed in a professional manner, attention must be paid to the preparation and pursuit of these activities. Various parties are involved in a project from start to completion. The PI bears primary responsibility for the preparation and pursuit these activities, including determining whether they are feasible at all. The PI can receive help from various experts here, such as legal, HRM or financial experts. They often already have experience from previous projects and are ready to answer any questions.

### *The PI has primary responsibility for a project*

Before the planned activities are carried out, the PI must reach agreements that detail all plans, rights and responsibilities concerning the pursuit of the intended activities. In addition, prior to and during the project the PI ensures that:

- a) the colleagues involved in the project are informed in a timely and thorough fashion;
- b) the work corresponds with what can reasonably be expected to be the skills of the academics and other (research) partners who will be working on the project;
- c) the unit and/or department involved in the project is willing and able to provide the required facilities and materials;
- d) predictable financial risks are avoided in the budget or provisional budget and the likelihood of a negative financial outcome is reduced to a minimum;
- e) relevant experts have been given timely opportunity express their opinion of the aspects of the project relating to legal and financial matters, human resources and intellectual property and that their advice has been taken wherever possible;
- f) the academics involved in the project adhere to the law and internal and external regulations (including the regulations on delegation) concerning research and agreements with third parties;
- g) a proper administration and record are kept of the project, and that this is in accordance with the rules in force;
- h) on completion, a record will be kept of the project according to the rules in force in the PI's own department, or if such rules do not exist, at the Department of Documentary Information and Archiving (DIA).

### *Signing a contract prior to carrying out activities*

Once the parties have reached an agreement on the work that needs to be carried out, the agreements that have been reached need to be recorded in a contract. This contract contains at least the main stipulations concerning the duration of the contract, what the parties will achieve, the fee that will be paid for this and the manner in which this will be paid along with provisions concerning confidentiality and intellectual property. In addition, any further necessary agreements will be made concerning legal and contractual liability and the law applicable to the contract. The latter is the case if foreign external parties are involved.

#### *Support from colleagues (under e)*

The PI is supported by other members of the University staff in the preparation and execution of the project. Questions relating to staffing can be directed to the Human Resources Department and questions relating to financial matters to the financial department of the department or faculty. In addition, the Department of Legal Affairs provides broad support on drawing up contracts. If intellectual property rights play a role, advice and support from Luris is mandatory.

#### *Timely and detailed discussion*

All contractual provisions must be discussed with the future contractual partner at an early stage in order to ensure that lack of time does not prevent the signing of the contract. This also applies for collaboration with colleagues. Discussion of the provisions should thus not be left until the point in time at which the parties wish to proceed with signing the contract. A good contract is made to measure and is specifically adjusted to the assignment in question.

#### *Observation of relevant legislation and internal regulations (under f)*

The relevant legislation and regulations need to be observed in the executing of activities. This could mean legislation on keeping records, privacy, environment, health, safety and procurement. It is equally important that the standards and principles of integrity and ethics in academic practice are observed.

#### *Regulations on delegation (who is allowed to sign which contract)*

The regulations on delegation established by the Executive Board of the University clearly indicate who is allowed to sign which contracts. The Executive Board is always authorised to sign contracts. It has also delegated certain administrative tasks at the faculties to the faculty boards. Below is a summary of the delegation regulations. This is governed by the regulations.

In principle, two bodies are authorised to sign contracts: the Executive Board of the University and the faculty boards. In all contracts in which there is a transfer of intellectual property rights, only the Executive Board is authorised to sign. With contract research, the results must generally be handed over to the third party. In such cases, only the Executive Board is authorised to sign the contract.

The authority to sign contracts with a value of up to € 450,000 has been delegated to the faculty boards. The value of the contract, as stated above, is the value of the fee that Leiden University will receive and/or spend within the scope of the agreements. This can also be the budget for the activities carried out by Leiden University. The higher of the two serves as a measure.

NWO and EU contracts have a special status in this respect. Faculty boards are always authorised to sign projects with NWO that are based on the NWO Regulation on Granting (if no other parties are involved). This also applies to projects within the European Framework Horizon 2020 Programme. Even if it were possible to sub-delegate the authority to sign a contract on the basis of these regulations, the current digital mechanism of the European Commission (LSIGN) means this is not possible.

If the contract relates to making available for commercial use knowledge and/or results from research that has full or partial public funding, the delegated authority may not be sub-delegated,

regardless of whether this knowledge is protected with intellectual property rights and regardless of the compensation (or lack of compensation). This is to ensure, on the one hand, that an overview of such contracts and their administration remains in one place and, on the other, that those people who are directly involved in the project are not the ones to sign. Most contracts involving businesses are covered by this, because such parties want clarity about how they will gain access or under which conditions.

In practice, this means that the authority can be delegated to sign a limited number of research-related contracts with companies. These are contracts in which research or the results play a role but no commercial users rights are granted or received. The most relevant examples are the Confidential Disclosure Agreement (CDA) or Non-Disclosure Agreement (NDA) and the Material Transfer Agreement (MTA).

The CDA is used if unpublished knowledge is shared or received. In this contract, the parties agree that this knowledge may only be used for a specific aim and may not be disseminated. There is normally no financial incentive for this knowledge. Such contracts are principally intended to investigate whether further collaboration is desirable. The knowledge is therefore only used for this evaluation.

The main purpose of MTAs is to make material available (by or to Leiden University) for research. Here it is normally agreed that no financial incentive will be paid in exchange for the material. However, agreements are sometimes reached about publications and authorship. It is sometimes agreed that the cost of developing or sending the material will be charged. Other or more far-reaching use of the material is not part of this contract either.

If further rights or responsibilities are included in these two types of contract, Luris must be involved.

#### Overview of who is authorised to sign contracts in which there is no transfer

Type of contract	Who is authorised to sign
All contracts	Executive Board
Contracts up to € 450,000	Faculty board (no sub-delegation possible)
Agreements only with NWO or within the scope of Horizon 2020	Faculty board (no sub-delegation possible)
CDA/NDA/MTA	Faculty board (sub-delegation possible)

#### *Administration of the project (under g)*

A proper sound administration and record must be kept of the project, and this must be in accordance with legislation and internal regulations. The Department of Financial and Economic Affairs in every faculty provides support here.



Certain contracts make it compulsory to note hours worked by all employees who are directly or indirectly involved in the project. A module is available in SAP Selfservice that makes time tracking possible in a uniform and easily accessible manner. The commissioning party often has specific requirements for time tracking. For example, monthly approval from a manager and time tracking by the staff involved are made mandatory.

Upon request, the financial administration can create invoices and a list of all assignments with the fixed invoice times per month. For projects that do not have fixed invoice times, the financial administration can devise an invoice schedule that can be deviated from at the request of the project leader.

#### *Adjustment settlement*

At the end of the assignment, the project leader ensures that an account is drawn up in consultation with the Financial and Economic Affairs Department. Depending on the agreements reached (pre- or post-calculation) an adjustment settlement may be made. The amounts that have already been invoiced must be taken into account here. It is important to check whether these amounts have actually been received. Costs that are still expected to be made after the project has been completed (including warranty work) must be included in this adjustment settlement. The adjustment settlement may include an accountant's declaration (see header 'accountant's declaration').

#### *Closing the file*

Upon completion of the project, the file must contain all relevant information. The file must be retained for the legal term of seven years.

#### *Accountant's declaration*

If the contract requires one or more audits, the financial administration will reach timely agreements with the Audit and Internal Control Department (AIC) concerning these. The AIC checks the file, manages the audit process and coordinates with the external accountant. The audit can only be requested if all the specific conditions concerning the project have been met. Extra costs incurred due to an incomplete file are charged to the unit and/or department.

## 2 Contract teaching (article 4)

Alongside government-funded teaching, Leiden University provides its students with teaching in the form of commercial services such as programmes or courses (contract teaching). This is generally the case with teaching that is provided to people who are not enrolled as a student and education whose content is determined by the participants (or their employer). This is certainly the case if a fee is paid by or on behalf of the participants. This means there is a contract and thus contract teaching. If the participants receive a certificate or similar, this is also an indication that it is contract teaching.

Contract teaching can, for instance, take place within the scope of professional training, be a one-off training session or be part of a more extensive provision. In almost all of these examples, national and international businesses also offer comparable activities. The University thus acts as a commercial market player on the commercial market and charges a market-based fee for its services.

General Studies or other public lectures are not classed as contract teaching due to their nature (access, topic and frequency) and thus do not fall within the remit of these regulations. This is because the participants do not have a say on the content, do not pay a fee and do not receive a certificate for participation. In various instances, a presentation can meet some of the criteria. Whether it constitutes contract teaching is a question of considering the various aspects. If a commercial organisation develops an equivalent initiative, the teaching is more likely to be contract teaching, regardless of the decisions that Leiden University makes in terms of structure and execution.

### *Contract teaching provided by staff*

If academics wish to provide teaching as a commercial service to an external party during their contractual hours, they must have received authorisation from their manager before providing this contract teaching. Academics who wish to do this outside of their contractual hours will need to consider this in terms of the Regulation on Work for Third Parties.

### *Contracts with third parties pertaining to contract teaching*

When delivering contract teaching, Leiden University signs contracts with third parties on the service that it will provide and the market-based fee that will be paid. The rights to any teaching materials that are developed remain in principle the property of Leiden University. If intellectual property rights play a role in the contract, support from Luris is mandatory. The Department of Legal Affairs can be asked to help draft any contracts.

### 3 Consultancy (article 6)

Leiden University may make the knowledge and experience of academics available to third parties by providing advice in return for compensation (consultancy). In principle, this means applying specialist knowledge to respond to a specific question from the third party. As the question is so specific to the context of the third party that is asking the question (for example because it relates to its R&D activities or problems it is facing) the response is generally not of interest to general academic work. This makes it possible to reach agreement on the use of the response that is issued on behalf of Leiden University. For example, the third party can use the response exclusively without hindering scientific practice, because it only applies to the context of the third party. Leiden University can thus agree to keep the data received from the third party confidential. Open research questions therefore do not count as consultancy.

#### *Limitations concerning the work to be carried out*

When providing these consultancy services, the academic may not provide any protected knowledge belonging to Leiden University or carry out activities that comprise experimental work. If this is planned, the work probably counts as research funding and other terms will apply (section 4).

#### *Manager's permission*

Before providing the services mentioned above, the academic must seek permission from his or her manager. The manager must agree to the academic providing advice, as concerns both the topic and the commissioning party. The manager must consider the following aspects at least in the decision:

- the effect on the research or follow-up research;
- the time available;
- the nature of the topic;
- the commissioning party;
- the aim for which the answer can reasonably be expected to be used; and
- other aspects that affect Leiden University and its research.

#### *Consultancy for a market-based fee.*

Leiden University provides consultancy services for a market-based fee (see also section 1). Leiden University preferably issues licences to its intellectual property rather than transfer the rights to this intellectual property, because this allows it to monitor its social and academic interests. If intellectual property rights play a role in a contract, support must be sought from Luris. The Department of Legal Affairs can help draft any contracts.



## 4 Research funding (article 5)

Projects can be funded in one of the three manners below. The title (grant or contract) is not indicative of the type of funding but rather the terms and conditions that apply to the activities.

The case sometimes arises in which a company provides valuable knowledge or material that the academic can use in his or her research on the understanding that he or she shares the results with the company. It is difficult to say under which category of project this example falls. The value that the research object represents (in the contract) and the agreements that the business wishes to make with regard to the results are among the aspects that are relevant here. Are the results confidential and exclusive or can they be shared after a possible patent has been applied for? This illustrates that in practice there are many different variants and that these must be assessed on an individual basis. As advice and support from Luris is mandatory when intellectual property rights play a role, Luris must be notified in good time.

### *Grant projects*

Grant projects are projects that are only funded by a grant. This is said to be the case if nothing is expected in return (including future rights) by the grant provider and any other involved parties, if the results can be freely published and if the parties retain their own results and rights to these. Examples of this are NWO grants such as VENI, VIDI and VICI, together with ERC grants.

### *Collaborative projects*

Collaborative projects are projects in which the partners in the project enjoy an equal relationship, which is apparent from the stipulations of the signed contract. This is the case if the budget is based on internal rates, the results can be freely published and the parties retain their own results and the rights to these. There might be a further agreement that interested partners may be granted access to these results and/or rights for commercial use under market-based conditions.

Such collaborative projects may be funded by grants. An example of such a partnership would be an OTP/STW project, in which STW often retains some of the rights to the results. Such a project is thus a collaborative project rather than a grant project.

Another example is collaboration with a commercial party if the partnership is equal and the parties retain the rights to their own results. It is customary for the commercial party to retain the right to exercise an option. This means that if the project delivers results that are of interest to the third party, Leiden University reaches subsequent agreements with this party on the use of these results. If the commercial party funds the research and wishes to receive the results (without further payment) the research is then deemed to be contract research.

### *Contract research*

Contract research is if a party has commissioned a project involving certain activities and if the party that has commissioned these activities pays a fee. The fee to be paid must be market-based, as explained further in section 5. If a market-based fee is paid for contract research, the results and any rights resting on them are, in principle, transferred to the commissioning party. An example of this is a commission from the business community or the government to conduct research into a certain topic or theme. Leiden University preferably remains free to conduct follow-up research,



although it is acceptable that the data that has been received from the commissioning party will not be used for this.

## 5 Intellectual property and exploitation (article 8)

### *Basic premise*

The protection of knowledge through intellectual property rights makes it possible to combine follow-up research on this knowledge with its commercial use (by third parties). Further agreements can be reached with third parties about access to and the use of such intellectual property, for instance if knowledge is developed within the scope of a project or in instances that involve licences for knowledge that was previously developed.

Agreements concerning intellectual property and its use are thus often an important aspect of contracts with third parties. Grant providers can therefore impose conditions and set specific requirements in contracts relating to the ownership of new knowledge (improvements) or how this will be made available (e.g. open access). This must be taken into account when applying for grants. The parties may need to reach agreements before a grant application is submitted, for example in the shape of a collaborative agreement or consortium agreement. This would be necessary if the academic wants to use the invention or material belonging to another party in further research.

### *Importance and value*

If knowledge exploitation is to be considered interesting by commercially operating social partners, this knowledge must be exclusive or semi-exclusive. This can be achieved through confidentiality or intellectual property rights. Both options give the user an opportunity that others do not have. The value that the opportunity represents is the competitive advantage. As this prevents the wider use of knowledge in society, it is at odds with the core task of Leiden University. Good agreements must therefore be made with the third party who will be using this knowledge in an exclusive or semi-exclusive manner.

With regard to its societal role as an academic knowledge institution, Leiden University works on the principle that if knowledge (and possibly protected knowledge) is made available to a third party, this party is expected to make a reasonable effort to apply this knowledge. This could mean using the knowledge in as many applications as possible, by using it in various domains, by allowing other third parties to use it or by using it in other parts of the world. This is to ensure the greatest likelihood that the knowledge is used effectively.

Furthermore, this (factual) exclusivity must be paid for. This is in view of the fact that research that enjoys full or partial public funding and gives a single or a few businesses an advantage is in conflict with the ban on state aid if it is not in return for a market-based fee. This is also the reason why exclusive rights may not be granted. This fee thus reflects the value represented by the exclusive or semi-exclusive access to the knowledge. The fee enables Leiden University to conduct new research. The extent of this compensation is particularly important for Leiden University if this knowledge is thus not available for research, education and (in the longer term) wider use (for instance due to a confidentiality agreement).

Finally, academic integrity and ethical standards must play a role in any agreements that are reached, as must the choice of partner. Leiden University works on the principle here that a relationship with an third party may not harm the good name of academia and Leiden University

by violating their core values and the above standards. It is thus important that such agreements are monitored and managed.

For these reasons, Leiden University prefers to issue licences to its intellectual property, so that it can monitor its social and academic interests. This makes it easier to intervene if a partner does not comply with agreements. Intellectual property rights can only be transferred to an external party if the interests of the external party and Leiden University are sufficiently guaranteed. The explicit approval of the Executive Board of the University is mandatory for agreements in which the intellectual property rights are transferred to an external party.

#### *Property and protection of knowledge*

Leiden University follows the legal regime and the CAO NU with regard to the emergence of intellectual property rights. This means that the intellectual property rights to new knowledge and inventions belong to the employer of the person who has generated the knowledge. The employee has a duty to report a potential invention in the earliest stage possible to the employer. In the case of knowledge that is generated by employees of the University in projects with third parties, the property rights belong to the University. Please note that unprotected knowledge has no owner. If this is shared without reaching agreements about what the recipient can do with the knowledge (in terms of use and further dissemination) the recipient is free to do what he or she wishes with the knowledge he or she has received.

The property rights to knowledge and inventions generated by students belong to the student. For this reason, additional agreements must always be made when involving students in projects for third parties. The student can be asked to relinquish the intellectual property rights in exchange for rights comparable with those of an employee. This includes arrangements concerning payment. This also applies in instances in which a student or a third party who is not employed by the University builds a website or writes a software programme that is used in an internal or external project.

Alongside copyright, knowledge can be protected with patent protection, trademark law and industrial design rights. For questions concerning copyright on publications, please contact the Copyright Information Desk or the Department of Legal Affairs.

#### *Intellectual property rights from partnerships with third parties*

In partnerships with third parties, it is often the case that alongside Leiden University several parties contribute to a new discovery, for example in a partnership with other universities or companies. In that case, the inventors often work for different employers. If the parties involved in this new invention want to apply for a patent, they must reach agreements on the ownership of this and how they will share the costs, enforcement and exploitation of the patent. This must be done before applying for the patent. Patent applications must always be filed in the name of the joint owners and must correctly list the inventors and employer. Employees of Leiden University must always state Leiden University as their employer.

#### *Patents*

Patents are commercial rights that are used by businesses in order to recuperate some or all of the investment in research. These rights can be traded, so the costs that are being recuperated do not

need to be the costs made by the owner of the patent. Patents provide protection from commercial use of the protected invention by unentitled parties. The invention must be described (so that third parties can familiarize themselves with and learn from it) and the rights are limited to 20 years after the patent was first filed with the official institution. A patent represents a commercial value insofar as it offers a commercial advantage.

Given the cost of a patent application in the first 30 months (about €25,000) Leiden University must see a real chance that companies are interested in access to a patent (for a fee). This fee is in order to both facilitate further development and cover the expenses that this entails. In principle, the University therefore only applies for patents if the expected return outweighs the cost of the patent application.

Premature publication of knowledge can endanger its protection in the form of a patent. This is the case if knowledge is released prematurely in the form of articles, publications, presentations, poster presentations at public events such as symposia or conferences or in discussions with parties who are not employees of the University without a prior written confidentiality agreement. Before publishing knowledge, it is thus essential to consider whether it would be wise to protect the knowledge first if possible, for example with a patent. Once a patent application has been filed, the protected knowledge can be published as desired. The patent application itself is published after 18 months.

#### *Exploitation of protected knowledge*

With regard to income from licences or other forms of trade of intellectual property rights, with the exception of shares, the net revenue from these is shared between the creators/inventors, the faculty in question and the Executive Board of the University in the ratio of 1/3, 1/3, 1/3. The Executive Board has appointed Libertatis Ergo Holding BV (LEH) to act on its behalf here. Those creators/inventors wishing to claim this income must have done their utmost to make the knowledge exploitation a success. The creator/inventor can request that they are paid this fee or (if and insofar as this has been agreed in their own faculty) they can use this as they see fit in research. The net revenue is the revenue following deduction of costs such as patent costs and other costs of protection, external costs for advice and marketing and employer's costs relating to the implementation of these regulations.

A total of a maximum of € 1 million per invention per person can be paid in private to the creators/inventors. Any earnings that exceed this threshold will be used for University purposes, in consultation with the creator/inventor. The faculty can further distribute its share of revenue internally in accordance with faculty policy. LEH revenue is used to cover the future cost of knowledge exploitation. This includes the central budget for patents.

Here are two examples: an academic from Leiden University and an academic from the LUMC develop an invention together that earns a net sum of € 120,000. This revenue is first divided between the parties (Leiden University and LUMC). The € 60,000 revenue that Leiden University earns is then divided in the ratio of 1/3 for the inventor (€ 20,000), 1/3 for the faculty (€ 20,000) and 1/3 for LEH (€ 20,000).



Two employees of Leiden University develop an invention that earns a net sum of € 60,000. Each works for a different faculty. The 1/3 share of the Executive Board goes to LEH (€ 20,000). Of the remaining 2/3 (€ 40,000), 1/3 goes to the inventors (€ 10,000 each) and 1/3 to their faculties (€ 10,000 each).

## 6 Spin-outs and business launches (article 7)

New entities such as foundations and businesses that involve University employees or resources may only be set up with the explicit permission of the Executive Board. Commitments to a new entity that may or may not involve other parties may not be made within the scope of grant applications or securing other resources without the aforementioned permission.

The description below concerns a case in which an employee wishes to pursue such activities alongside his or her regular work. If an employee leaves the University, he or she (alone or via a legal entity) can negotiate with Leiden University about access to knowledge, materials, people or facilities. As the combination of post at a publicly funded research institution and responsibility/involvement in a business must generate value and entails potential risks, this is given extra attention in the regulations.

### *Basic principles of spin-outs*

The Executive Board applies the following basic principles:

- the department or unit in question must see value in the activities of the planned business;
- the planned activities are not in conflict with the legal, ethical and practical framework;
- the parties involved will not experience any unfair disadvantage from the planned activities;
- it is likely that the planned activities will lead to relevant academic research;
- the initiators can continue to perform their work;
- it is improbable that the planned activities will harm Leiden University; and
- the planned business is likely to succeed.

The feasibility must be considered in the light of the duties that the academic must carry out within the scope of his or her appointment at Leiden University.

The legal ban on state aid also plays a role here. Leiden University is not allowed to grant spin-outs advantages over their competitors without the receipt of fair payment. Advantages are more than just money alone. If materials, people or facilities are provided to a business this must be under market-related conditions. This applies not only to the use of protected knowledge but also to access to equipment and research or follow-up research that is to be conducted.

Once approval has been granted for a spin-out, its facilitation can include:

- adopting special regulations relating to the appointment of the employees who are involved;
- making facilities available for a suitable fee, such as access to laboratories;
- investment by Leiden University or a third party to be designated by Leiden University, possibly in the form of shares;
- providing knowledge for a suitable fee; and/or
- providing other relevant support, for example advice from Luris on which commercialisation route to choose in a certain phase.

### *Process and roles*



The Executive Board considers its decision on the basis of plans submitted by the initiators and letters of support received from the academic director, dean and experts in question (at least from Luris). The initiators make the proposal and are supported by these parties.

The proposal that is submitted must provide such information as the reason for launching a new business with regard to the possibility of licencing out the knowledge to existing businesses, the nature and scope of the involvement of University employees and the direct and/or possible sources of funding. The proposal should be supported by a letter from the academic director, dean and experts involved.

It is wise for the academic director to ask the initiators to have their plans assessed. This should be on whether the plans are within the scope of Leiden University and whether they are commercially and financially sound. The former can be undertaken with the faculty and HRM experts. The latter can take place via Luris, but it can also be with the help of external experts.

### *Proposal*

In the proposal, the initiators must explain why the plan falls within the scope of Leiden University and why it is of commercial interest. The latter can be achieved simply by referring to the business plan. The former is crucial because in such cases some or all of the initiators wish to undertake commercial activities or have a say in a business alongside a part or full time post at Leiden University. ‘Say in a business’ is a broad term. It could mean being a shareholder but could also mean involvement as a board or committee member. Any agreements that can be considered equivalent also fall under this term. It is for this reason that the initiators must be fully transparent about their role in the initiative, as further explained under the header ‘Employee’s say in the business’ below.

### *Business Plan*

The business plan is at the heart of the request. Although there are various different type of business plan, at the core is always: who is the client and what is the product or service worth to this client? What are the alternatives from the perspective of this client? How does the product or service differ from existing alternatives? In particular with initiatives that are a long way from the market, this is largely based on assumptions. However, these do serve to illustrate the initiators’ reasoning. With initiatives for which no concept has yet been developed, the initiators themselves are the deciding factor. Will the expertise and experience of this team enable them to start a business? Will they be able to make good financial, commercial and technical arrangements? Do they have the focus and ambition required to realize this plan? The business plan must also demonstrate that the initiators have taken this role and their background into account.

### *Supporting letters*

The supporting letters are an essential element because all the internal parties that are involved indicate the value and risks of the planned initiative. The basic principles above are relevant here. The academic director will need to devote particular attention to matters pertaining to the relationships in his or her department, whether the initiative corresponds with academic strategy and the role of the initiators (with particular regard to conflicts of interest, academic integrity and future research). The dean will need to pay attention to aspects at the faculty level, such as HRM

policy and access to facilities and rooms. Luris and other experts will mainly consider aspects that correspond with their expertise. For Luris this principally means the legal framework, the possibilities of protection and the exploitation of the commercial proposition.

#### *Assessment*

Such an initiative or proposal is assessed in terms of the direct and indirect interests of Leiden University. The basic principles above are key to this. The commercial chances of the initiative are only assessed with regard to the commercial feasibility. The three following perspectives are key to this:

- Feasibility of the solution. Is it realistic to assume that it will ‘work’? Have alternatives been considered? Is a disproportionate amount of luck or special equipment required for the solution? Are special circumstances required for the solution to be able to work?
- Societal and commercial impact. Is it socially and commercially useful and relevant? Is it something that meets a need? Does the potential customer think there is a problem that needs to be solved? What is an imaginable value proposition for this initiative?
- Investor Readiness. Are the involved parties sufficiently ready to develop the initiative that market parties are prepared to fund its development? Do they possess the right skills and knowledge? Do they possess the right experience? Are they sufficiently focused on the initiative?

#### *Leiden University as shareholder*

Libertatis Ergo Holding BV, a 100% subsidiary of Leiden University, is the shareholder and makes decisions on the management of shares and liquidation on behalf of Leiden University. If a new business is set up with University knowledge, the University can grant access to the intellectual property required for this in exchange for shares (via LEH), share options, payment regulations including royalties and dividend payments or any combination of the above. LEH can also receive shares following agreements with existing companies.

#### *Inventor fee with new business*

The inventors/creators are entitled to 1/3 of the net liquidation revenue of shares that LEH holds for Leiden University insofar as these shares have been received in return for granting access to knowledge protected by intellectual property rights.

#### *Employee’s control in a business*

Employees of Leiden University who wish to have control in a spin-out must request permission for this. This is an aspect of the above proposal. Control in a business is equated to agreements or actual arrangements that make such control possible. Examples of this are share option contracts, a position on the board of a foundation that owns shares, giving the spouse or long-term partner of the employee a degree of control, etc.

If the employee is given control in a company, he or she has been given a particular responsibility. The employee must adhere to the standards of good academic practice here. Alongside the legal framework, the aforementioned framework (see introduction) of responsibility towards society and



academic integrity together with the ethical consequences of academic research and innovation, both at Leiden University and in society as a whole applies here.

The proposal submitted by the initiators must also make it clear what kind of say in the company they wish to have and how they will ensure that risks are avoided. Furthermore, they must specify the extent and type of say that they will have. With regard to shares, the norm for the academic world is 4.9% of the share capital. This is no entitlement, however. The initiators must explain why a direct (personal) say in the company is important to them and how it can be reconciled with the fact that they wish to have permanent employment at Leiden University. They must focus here on the academic standards and core values of Leiden University.

An important standard in this respect is transparency. Employees may not conceal any control that they have in a business, and this must not lead to a potential conflict of interest, as explained in the introduction. In all of the cases above, all parties involved are therefore obliged to share all knowledge and information that is relevant to the decision that is to be made. An example of relevant knowledge and information is agreements on who will own the business and have control in it. This duty to inform is also taken to mean the duty to provide information about any third parties involved (potential shareholders, the relationship between these shareholders and the possible governors, investors and partners).

## 7 Employee rights (article 9)

### *Intellectual property*

Leiden University follows the legal regime and the applicable CAO NU with regard to the emergence of intellectual property rights. In principle, this means that Leiden University is entitled to the rights to the results that its employees achieve. Employees are entitled to a fee for inventions (see section 5).

The remaining rights, such as the fee that the academic can receive from the net revenue from knowledge exploitation and from a direct or indirect say in a legal person who further develops the research findings of an academic and/or brings them onto the market, were discussed in the preceding sections (5 and 6).

### *Regulations on Working for Third Parties*

Due to its nature, consultancy work does not fall within the scope of the Regulations on Work for Third Parties; it is, however, without further prejudice to these. Work that the employee carries out on behalf of Leiden University and/or using the facilities of Leiden University falls within the range of application of the Regulation on Working for Third Parties. If an employee works outside Leiden University, for instance for a company or as a freelancer, he or she is not permitted to operate under the name of Leiden University or use the facilities of Leiden University.

An employee may, for instance, state on the website of his company that he works as a researcher at Leiden University, but the wording that he chooses may not suggest another relationship between the company and Leiden University. In contrast to his work for Leiden University, the employee may not make use of University facilities such as laboratories. This also means that the employee may not grant other people access to the laboratory without receiving prior permission. An employee who structurally works outside Leiden University must inform the University of this work and have it assessed against the Regulations on Work for Third Parties.