

Category: Governance and Management

Version: 2

Document Type: Policy

Document Status: Published

Approved On: 02 April, 2024

Audience: Affiliate

Effective Date: 03 April, 2024

Review due by: 28 March, 2027

Policy Approver: Council

Policy Steward: University Secretary

Supporting Process:

Governance and Management Processes

Controlled Entities Policy (MPF1376)

1. Objectives

1.1. The objective of this policy is to facilitate compliance by the University with the University of Melbourne Act 2009 (Vic) ('the Act') and the Guidelines Concerning Commercial Activities in accordance with Part 6, Division 6 of the Act ('the Guidelines'), and to establish a mechanism to support good governance of entities which are controlled entities as defined in this policy.

2. Scope

2.1. This policy applies to all controlled entities as defined in this policy.

2.2. Controlled entities in existence as at the effective date of this policy have 6 months to become fully compliant with this policy (or such longer period as approved by the University Secretary).

3. Authority

3.1. This policy is made under the Act and Council Regulation and supports compliance with:

- a) the Act ;
- b) the Guidelines ;
- c) the Audit Act 1994 (Vic) ;
- d) the Financial Management Act 1994 (Vic) ;
- e) the Corporations Act 2001 (Cth) ; and
- f) the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and other laws applicable to corporate entities with a charitable purpose.

4. Policy

4.1. The University has the authority under the Act and the Guidelines to :

- a) be a member of a company, association, trust or partnership;
- b) form, manage or participate in the formation of a company, association, trust or partnership ;
and
- c) enter into a joint venture or joint undertaking with another person or persons,

for one or more of the objects set out in subsection 48(2) of the Act including in respect of commercial activities or otherwise. Where entities are controlled entities, the University requires each such entity to comply with this policy and to have regard to the matters set out in the Guidelines.

4.2. Nothing in this policy is intended to conflict with a controlled entity's obligation to comply with all applicable laws and regulations that apply to that entity (including laws and regulations outside of

Australia which apply to the controlled entity because it has been incorporated in a country other than Australia or because its business operations occur in a country or countries outside of Australia). If compliance with this policy would result in a controlled entity breaching any legal or regulatory obligation, the relevant obligation in this policy shall not apply (but only to that extent).

5. Procedural principles

Financial management and business planning

5.1. The Board of each controlled entity must ensure the following in relation to that entity:

- a) it has appropriate business planning processes in place and that the controlled entity operates in accordance with an annual financial and business plan which is reviewed by the Board no less than once every three months;
- b) any significant departures from the initial business plan are approved by the Board and, where material, notified in writing to the relevant University approver (particularly where those departures may have a financial impact on the University);
- c) the controlled entity is able to meet its debts and other obligations as and when they fall due;
- d) the controlled entity takes out and maintains (including where appropriate via applicable University insurance policies) insurances adequate to cover the operations of the controlled entity, noting that:
 - i. advice on the adequacy of the insurance should be sought from the University General Counsel (or their nominee); and
 - ii. controlled entities must comply with reporting and other requirements of any (i) University insurance policies or (ii) self-insurance arrangements applicable to the controlled entity (as notified by the University Risk Officer or Director Health and Safety (or their nominee), respectively);
- e) if requested by the University, the Board must support the Auditor-General's appointment as its auditor (Guidelines, p ara 13(a)-(c)) ;
- f) it will notify the University where the entity's total annual income exceeds, or may reasonably be expected to exceed, \$1 million (Guidelines, para 12);
- g) if requested by the University, it will assist the University with any report required by the University to be prepared by the Auditor-General or a registered company auditor on the accounts of the controlled entity;
- h) it will ensure that the registered company auditor, or the Auditor-General and any person assisting the Auditor-General (if applicable) under the Guidelines (paras 12 and 15): (i) has right of access at all times to the books, securities, accounts and vouchers of the controlled entity; and (ii) is provided with any information, assistance and explanations necessary for the performance of the duties of the Auditor-General or person in relation to the audit (Act, s 51(2));
- i) the Board will notify the University in writing of any activity (whether commercial activity or otherwise) of the controlled entity which could be considered to be significant having regard to the purpose for which the entity was established and the Guidelines and provide the University with any information reasonably requested by the University to allow the University to monitor the significant activities of controlled entities (Guidelines, para 16);
- j) it will assist the University to prepare the annual report of the University's operations under section 45 of the *Financial Management Act 1994* (Vic) (Guidelines, paras 8(b) and 12(c));
- k) it will do all things reasonably requested by the University to ensure that the University can establish and keep full and complete books and accounts of all moneys received and paid by the University in so far as the same relates to the controlled entity, at such intervals specified by the University (Guidelines, para 17); and
- l) it will ensure an annual financial report and business plan (strategic and operational) is submitted to the University's Finance Committee at times requested by the University and no less than once each calendar year.

Risk management

5.2. The Board must :

- a) establish effective processes, systems and controls to ensure that risk (financial, operational, legal and regulatory) associated with the controlled entity's operations are appropriately identified and managed. In meeting this requirement, the Board can adopt University policies or it can establish its own;
- b) provide the University Risk Officer with the contact details for a responsible officer of the controlled entity with whom the University Risk Officer can liaise to obtain a copy of the risk management plan for the controlled entity;
- c) implement any monitoring systems of control and accountability of the University directed by University Council or by the Vice-Chancellor;
- d) ensure the controlled entity's risk management plan is submitted to the University Risk Officer no less than once in any calendar year on a date to be notified to the University Risk Officer so that the report can be made available to the University Audit and Risk Committee;
- e) ensure that it promptly complies with and gives effect to any requirement notified to it by the Audit and Risk Committee or the University Risk Officer. Where the requirement necessitates a variation to the controlled entity's risk management plan, the controlled entity must re-submit the varied risk management plan to the Risk Officer and/or the Audit and Risk Committee;
- f) ensure that the appointment of legal advisers to the controlled entity is notified to the General Counsel. University Legal Services should support the selection and appointment of legal advisers for the controlled entity as appropriate;
- g) ensure that the University approver has approved any proposed amendment to the constitution (or relevant constituent document or agreement) of that entity before that amendment is voted on by the entity's members or shareholders or equivalent approver(s) for that entity (Guidelines, para 12);
- h) notify the University Secretary in writing promptly and prior to lodging any material report, statement or return in respect of the controlled entity with the Australian Securities and Investments Commission under the Corporations Act, the Australian Taxation Office or other Regulator, other than a routine report of changes to the controlled entity's officers, minor changes to the controlled entity's constitution or the like (and provide the University Secretary with a copy);
- i) immediately notify the University Secretary in writing and provide a copy of any report, communication or notice in respect of the controlled entity provided by the Australian Securities and Investments Commission under the Corporations Act or the Australian Taxation Office or another Regulator which may have material reputational or financial implications for the controlled entity or the University;
- j) obtain the approval of the Chief Financial Officer in writing prior to the controlled entity entering into any arrangements to borrow any monies or analogous financial accommodation; and
- k) advise the Chief Financial Officer in writing prior to the controlled entity providing any indemnity that is "significant", having regard to relevant accounting standards and insurance policies.

Policies and procedures

5.3. The Board must:

- a) establish robust and effective and documented processes to ensure that conflicts that may arise between an individual's duties as a board member, officer or employee of the controlled entity and their duties as an employee or officer of the University or another organisation or other interests are either avoided, or disclosed and managed in an appropriate and effective manner; and
- b) establish, implement and maintain a code of conduct and appropriate policies and procedures to ensure that the controlled entity operates in a lawful and ethical manner and so as to avoid or minimise any reputational damage to either the controlled entity or the University. The controlled entity must adopt and implement the following policies, or adopt policies which are equivalent in all material respects, unless it has been provided with formal written exemptions by the Vice-Chancellor (or delegate) (noting there might need to be adjustments to account for the governance structure and staffing of the controlled entity):
 - i. Whistleblower Protection Policy ([MPF1346](#));
 - ii. Health and Safety Policy ([MPF1205](#));

- iii. Appropriate Workplace Behaviour Policy ([MPF1328](#));
- iv. Sexual Misconduct Prevention and Response Policy ([MPF1359](#));
- v. Fraud and Corruption Management Policy ([MPF1351](#));
- vi. Managing Conflicts of Interest Policy ([MPF1366](#)); and
- vii. any other University policy which is expressed to apply to controlled entities or that the Board considers should apply to it based on the nature of the activity engaged in by that entity.

University appointed directors

5.4. University nominee Directors appointed by the controlled entity must ensure that they meet the requirements of the University Nominee Director Eligibility and Approval Guidance and enter into and comply with appointment documentation provided by the University.

Board operations

5.5. The Board must ensure that:

- a) a company secretary is appointed who shall be responsible for ensuring that Board procedures are followed, that all controlled entity filings and registers are maintained as required by law and good corporate governance principles, and this appointment must reflect any requirements of the University Secretary; and
- b) Board meetings are held with appropriate frequency and include a written agenda, and appropriate and timely papers and minutes.

6. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Responsibility</i>	<i>Conditions and Limitations</i>
Approves University processes supporting this policy	University Secretary	Within the scope of the Act
Where not otherwise specified in this policy, confirms the University officer/contact person or persons administering section 5.1 of this policy (financial management and planning)	Chief Financial Officer	Within the scope of the Act
Where not otherwise specified in this policy, confirms the University officer/contact person or persons administering section 5.2 of this policy (risk management)	University Risk Officer	Within the scope of the Act

Communication of new University Policies (and amendments to existing University Policies) applicable to controlled entities under section 5.3 of this policy	University Secretary	Within the scope of the Act
Ensures compliance with this policy	Controlled entity Board	

7. Definitions

Act means the [University of Melbourne Act 2009 \(Vic\)](#) .

Approved activity is when the University is:

becoming a member of a company, association trust or partnership;

forming, managing or participating in the formation of a company, association, trust or partnership ; or

entering into a joint venture or joint undertaking with another person or persons,

where such activity results in the incorporation, formation or acquisition of, a controlled entity in Australia or overseas.

Auditor-General has the same meaning as in the *Audit Act 1994 (Vic)*.

Board means the Board of Directors of the controlled entity.

Commercial activity has the meaning set out in the Guidelines.

Controlled entity means an entity that is subject to the control of the University in terms of section 50AA of the *Corporations Act 2001 (Cth)* and includes an entity which is subject to the control of a controlled entity.

Section 50AA of the Corporations Act states:

■ For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

■ in determining whether the first entity has this capacity:

○ the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and

○ any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

■ The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

■ if the first entity:

○ has the capacity to influence decisions about the second entity's financial and operating policies; and

- o is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members, the first entity is taken to control the second entity.

Controlled Entity Establishment Guidance means the guidance in relation to establishing controlled entities as provided by the University Secretary from time to time.

Delegations framework means the standing [delegations framework](#) as described in the Council Instrument of Delegation and Conferral, Vice-Chancellor Delegation and Delegations Policy ([MPF1301](#)) .

Entity has the meaning given in section 64A of the Corporations Act.

Guidelines means the [Guidelines concerning Commercial Activities issued under the Act on 11 May 2011](#) .

Initial business plan means the initial business plan for the controlled entity as included in the business case for the project which was approved by the University approver.

Project means a project or other initiative that will involve seeking to implement an approved activity in accordance with the Controlled Entity Establishment Guidance.

Regulator means any regulator which has legal jurisdiction over the controlled entity or aspects of its operations or activities.

Significant activities means activities which the University may consider sufficiently important or of sufficient interest to list on the register kept under paragraph 8(a) of the Guidelines, or which the University may consider sufficiently important or of sufficient interest to monitor (Guidelines, para 16).

University approver means the person(s) authorised to approve the relevant project, agreement or other action under the Delegations framework.

University Nominee Director Eligibility and Approval Guidance means the guidance in relation to nominee director eligibility and approval provided by the University Secretary from time to time.

University Risk Officer means the University's Director, Risk and Assurance (or equivalent role from time to time).

POLICY APPROVER

Council

POLICY STEWARD

University Secretary

REVIEW

This policy is due to be reviewed by 3 April 2027.

VERSION HISTORY

Version	Approved By	Approval Date	Effective Date	Sections Modified
1	Council	21 June 2023	3 April 2024	New policy.

2	University Secretary	2 April 2024	3 April 2024	Editorial amendment to 5.2(f).
---	----------------------	--------------	--------------	--------------------------------