

Policy for the formation, acquisition, dissolution and governance of wholly-owned subsidiaries

Document Title: Policy for the formation, acquisition, dissolution and governance of subsidiaries and joint ventures			
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Introduction

1. Purpose of Policy

This policy sets out the principles that shall apply in relation to the formation, acquisition, dissolution and governance of subsidiary companies wholly owned by the University. It also provides guidance on the responsibilities of directors of subsidiary companies and the financial management of such vehicles.

2. Scope: Mandatory Policy

The policy applies to all staff that are involved with setting up, acquiring, managing or trading via a subsidiary company.

Please note that this policy should be followed in conjunction with the University's Financial Regulations, in particular, Section 17 (dealing with subsidiaries and joint ventures).

3. Definitions

Under the Companies Act 2006, a company is a subsidiary of a 'parent' or 'holding company' if the parent:

- Holds a majority of the voting rights in the company; or
- Is a member (shareholder) of the company and has the right to appoint or remove a majority of its board of directors; or
- Is a member of it and controls alone, a majority of voting rights in it.

A company is a 'wholly-owned' subsidiary of another company if it has no members except those from the parent company, or persons acting solely on behalf of that company.

This policy focusses on wholly-owned subsidiaries, which reflect the current structure and status of current University companies.

Should any other form of corporate vehicle be preferred, including joint ventures that include third parties, specific advice must be sought from the Executive Director of Legal and Governance Services & University Secretary, however the principles of sections 5 and 7 below will apply to other vehicles as far as they relate to the University's interest in those vehicles.

Policy

4. Principles

As with many other large organisations, the University has established a number of subsidiary companies, which exist to hold and manage specific activities and resources, where it is beneficial to separate such activities from the day-to-day operation of the University (primary purpose trading).

In this context, the University still retains control as the holding company of the subsidiary companies and collectively the University and its subsidiary companies are known as the 'group' – in the same principle as a corporate group structure.

5. Establishing that a subsidiary is the appropriate form to undertake the activity:

The rationale for the formation of a subsidiary will normally be for one of the (non-exhaustive) reasons set out below and in the context of non-primary purpose trading where:

- The non-primary purpose trading carries risks and placing these activities into a separate legal entity may ring-fence such risks from the University's core mission;
- The activity to be carried out by the subsidiary is likely to employ staff on different employment terms and conditions than those applying to University staff; or
- The non-primary purpose activity may generate sizeable profits and the University wishes to take advantage of the 'gift aid' regime, which enables the subsidiary to pass its distributable profits to the University free from tax.

6. Trading and operating of subsidiary companies in HE

Subsidiary companies are suitable vehicles for a wide range of activities undertaken by the University. Examples of trading activities in which wholly-owned subsidiary companies have been established in the HE sector include the following:

- Conference facilities and commercial use of University estates and facilities;
- Catering, entertainment and sporting and recreation functions in the University's control;

- Management of student residences;
- Provision of consultancy, training, research and equipment;
- Research spaces and incubators for other companies; or
- Structures for satellite or branch campuses of the University.

7. Internal process for incorporation of subsidiary companies

- 7.1 The initial case for establishing a subsidiary company should originate from and be sponsored by a member of the University Executive Team (UET). Where the proposal relates to a specific school activity, the proposal should be sponsored by the relevant Dean and include a comprehensive business plan.
- 7.2 Where a proposal to establish a subsidiary company is an outcome of a strategic project or initiative; for example, the creation of a satellite or branch campus, the company component is likely to be part of a wider business plan, which must be considered through the usual reporting and approval routes (following the provisions set out below). This will entail consideration through the University's project governance arrangements and endorsed by UET and onwards to the Board of Governors.
- 7.3 Whether as part of, or separate to, any wider business plan, the Executive Director of Legal and Governance Services & University Secretary and the Director of Finance and Commercial Development should be consulted in the first instance on the outline proposal who will have due regard to any guidance issued by the Office for Students (OfS) and ensure compliance with the University Scheme of Delegation and Financial Regulations. In respect of existing and new organisations, full financial, regulatory, reputational and operational due diligence must be undertaken to determine the existence, reputational history and financial health of all parties with whom the University is seeking to enter into a formal agreement. The Executive Director of Legal and Governance Services & University Secretary will liaise with the Chief Operating Officer, the Executive Director of Human Resources and the Director of Finance and Commercial Development to ensure appropriate due diligence, financial and resourcing scrutiny is undertaken. Specifically, this will involve an assessment of the viability of establishing the subsidiary company for the purpose intended, and whether the establishment/acquisition of a subsidiary company is the most appropriate vehicle and structure for the activity in question. This will involve a thorough examination of the

financial, staffing, governance and legal implications of the proposal, including taxation and employment contracts.

- 7.4 The Executive Director of Legal and Governance Services & University Secretary shall be responsible for engaging any external legal advice required to support the establishment/acquisition of the subsidiary company.
- 7.5 Other key colleagues will be consulted, as appropriate, in relation to matters of branding of the company, recognising that the name under which any subsidiary operates or trades will be subject to company law.
- 7.6 Key matters to be determined at the point of approval and pending further advice from those listed in above, include the directors and shareholders; share capital and any specific provisions to be included in the subsidiary company's Articles of Association.
- 7.7 Following satisfactory completion of the discussions identified above, UET will consider the proposal, and any feedback from UET must be acted upon prior to submitting a paper and full business plan to Resources Committee for consideration and recommendation to the Board of Governors for approval. The Board of Governors, on the advice of the Resources Committee, will establish the shareholding arrangements and appoint Directors of the subsidiary, wholly or partly owned by the University. .
- 7.8 The registration process for incorporation of a new subsidiary company of the University outlined in 7.10 below will be not undertaken until approval of the Board of Governors has been granted.
- 7.9 The Executive Director of Legal and Governance Services & University Secretary shall be responsible for ensuring that the OfS are notified of the existence of the subsidiary, as well as making arrangements for the registration of the subsidiary company as required by Companies House, namely the filing of the initial registration documents: the key information about the company, such as its intended company status, share capital and shareholder/director details, and the Memorandum and Articles of Association, whether the Model or adapted versions reflecting the specific requirements of the University and subsidiary company. The year end date should also be changed to 31 July.

- 7.10 A new subsidiary company does not exist and cannot operate as a company until the Registrar of Companies issues its certificate of incorporation. Confirmation of registration will be returned to the Executive Director of Legal and Governance Services & University Secretary who shall confirm to the Directors and other relevant parties that the company is able to commence operation.

8. Subsidiary company governance

- 8.1 All subsidiary companies require directors who have strict fiduciary duties to the company in order to ensure effective stewardship, or oversight of, the subsidiary company.
- 8.2 Collectively, the directors constitute the 'board' of the subsidiary company.
- 8.3 The duties of directors under the Companies Act 2006 are provided as Appendix 2. The Executive Director of Legal and Governance Services & University Secretary will provide induction and ongoing training to directors on their duties and responsibilities, as required.
- 8.4 An Annual General Meeting (AGM) of the directors may be called, but this is not compulsory. The purpose of the AGM is principally to discuss the audited annual accounts, and should be called within six months of completion of the audit under company law, should a decision to convene an AGM be made. Other topics which may be covered at a general meeting or annual meeting include confirming and agreeing changes to shareholdings, directorships and the winding up or dissolution of the company.
- 8.5 In line with company legislation, the subsidiary company need not appoint a Company Secretary, however the University's preference is to appoint a Company Secretary to ensure the proper oversight as a member of the group. The Executive Director of Legal and Governance Services & University Secretary will be appointed as Company Secretary for any wholly-owned subsidiary company.

9. Financial management of the subsidiary

- 9.1 The financial management of subsidiaries shall be undertaken by the University's Finance and Commercial Development Department and reported to the Resources Committee at least annually.
- 9.2 Each company is responsible for developing and maintaining its own business plan which will support the company's operational strategy. Each company should also be expected to have exit strategies in place to

ensure that an orderly wind-down of an activity, if and when needed, can be properly effected.

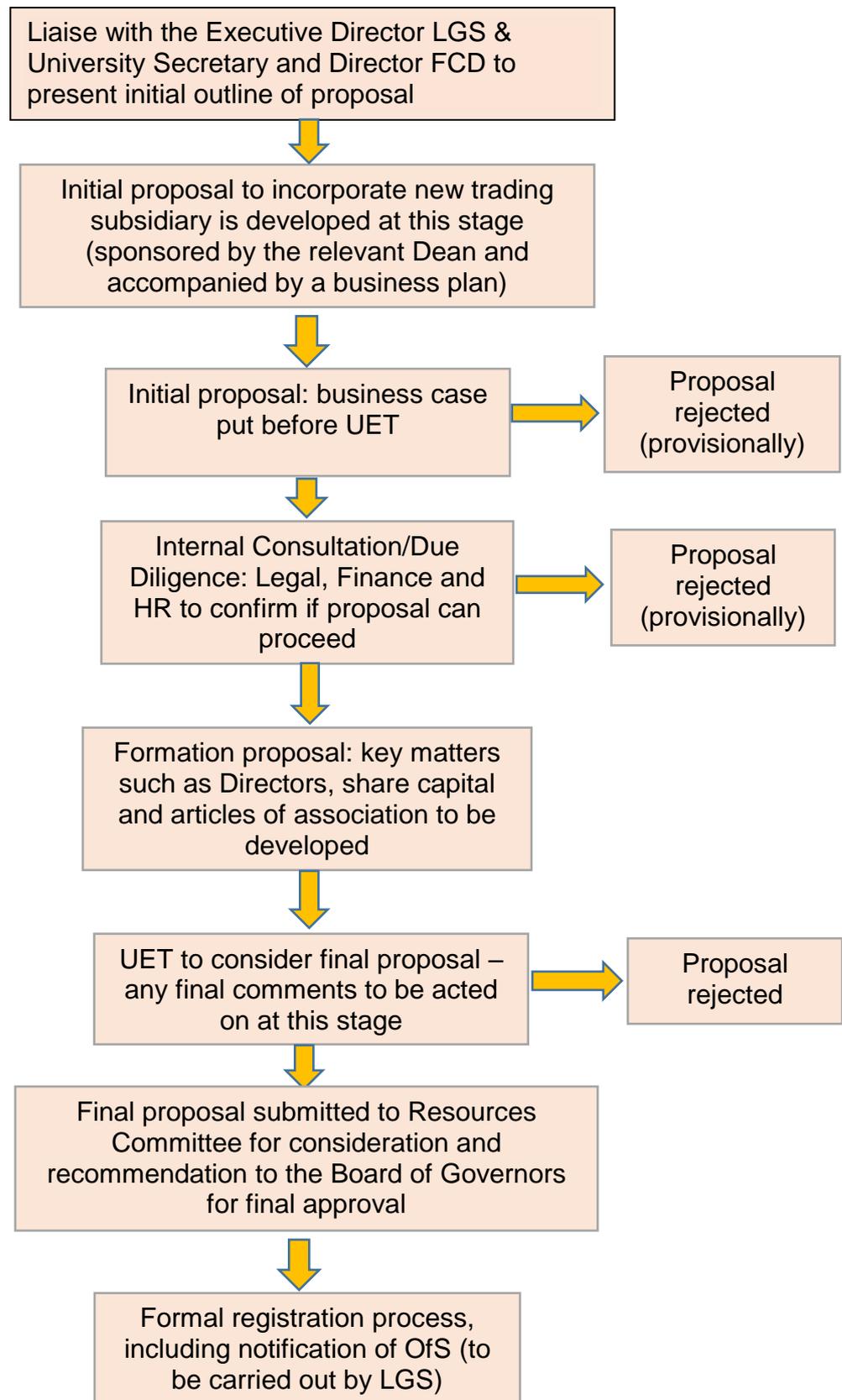
- 9.3 Subsidiary companies must act at arm's length from the University. Therefore, all services and/or assets used must be paid for at a rate that does not amount to the University providing a financial subsidy to the subsidiary company.
- 9.4 Subsidiary companies must have an annual audit by the University appointed auditor.

10. Dissolution of a subsidiary company

- 10.1 There may be circumstances in which the continued operation of the subsidiary is no longer required. For example, companies can make a request to be dissolved or closed, provided that they have not traded within a period of three consecutive months; the name of the company has remained unchanged; the company is not subject to legal proceedings and has not made a disposal for value of property rights.
- 10.2 In order to 'wind up' the business, the directors of the subsidiary company must make a resolution to wind up the subsidiary and will require the approval of the Board of Governors. The Board would expect to receive a recommendation from the Resources Committee to 'wind up' the subsidiary.
- 10.3 Any assets, financial resources and shareholdings of the subsidiary company will be transferred to the University as the parent body, provided that all creditors of the subsidiary company have been paid.
- 10.4 Should the company status of a subsidiary company seek to be amended, for example, if the subsidiary merges with a pre-existing or newly-registered subsidiary company, or a decision is made to adopt a new company status, then this will require a resolution of the Directors of the relevant company/companies, and the approval of Board of Governors upon the recommendation of the Resources Committee.
- 10.5 The relevant closure and dissolution of the company, and re-registration with Companies House will need to take place in line with the procedure in Section 7 above.

11. Appendices:

1. SUBSIDIARY COMPANIES PROCESS FLOWCHART



2. DIRECTORS' DUTIES

Any individual acting as a director for a subsidiary company should be made aware of and fully understand the fiduciary duties owed to the company as prescribed by current legislation.

Chapter 2 of Part 10 of the Companies Act (CA 2006) codified certain common law and equitable duties of directors. In summary, the seven general duties under the CA 2006 are:

- To act within powers.
- To promote the success of the company.
- To exercise independent judgment.
- To exercise reasonable care, skill and diligence.
- To avoid conflicts of interest.
- Not to accept benefits from third parties.
- To declare an interest in a proposed transaction or arrangement.

3. EXISTING SUBSIDIARIES

- **Teesnap Limited (CRN: 03329609)**
- **University of Teesside Enterprises Limited (CRN: 02455705)**
- **Teesside Sports Injury Centre Limited (CRN: 05716200)**

Checklist for setting up a corporate vehicle

(Please refer to the 'Policy for the formation, dissolution and governance of subsidiaries and joint ventures' for further details)

Initial considerations

Is there a viable business case to create a subsidiary? Y/N

What are the proposed key activities for the subsidiary?

Is there a viable business plan with appropriate due diligence undertaken by FCD and LGS?

Is there a commercial need for a subsidiary?

Briefly summarise the benefits of the activities being undertaken in a subsidiary and why this is the preferred legal structure

Highlight any risks of the activity being undertaken in a subsidiary versus the University.

Incorporation - LGS

What type of vehicle would be appropriate? Limited company (by shares), Charitable Incorporate Company (CIC), company limited by guarantee etc?

Who will manage the business?

Proposed Board of directors – directors' fiduciary duties, background, knowledge, consent, remuneration, internal/external appointees, any conflicts?

Does the subsidiary require a Company secretary? Yes/No

Business name – board approval, run CH check for availability/suitability.

Branding/IPR?

Shareholding – wholly owned by TU/TU a majority shareholder? Shareholders' agreement? How many shares will be allotted upon incorporation and will there be different classes of shares bestowing different rights to the holders?

Bespoke articles of association/standard subsidiary articles?

Is the subsidiary to be based in UK? Address of Registered office

Tax and Finance

The subsidiary will (as a member of the University's group) require an annual audit which will be provided by the University External Auditors.

Any other tax consequences and/or benefits from the subsidiary? Y/N. If Yes please provide a brief summary

Employees

Will the subsidiary require its own separate workforce? Y/N

If Yes, employees will be employed by the subsidiary NOT the University, Please provide proposed structure as contracts of employment/employee handbooks, pension plan* and pay scales will need to be agreed with LGS, FCD and HR and implemented.

*Pensions – what scheme will be offered to employees?

Employees moving from University into the subsidiary may wish to continue in LGPS/TPS etc and need to consider if this will be (a) allowed, (b) required, (c) impact i.e. costs, transfer of existing liability etc

Will there be a need to utilise any University staff or other resource? If so, please provide details of the proposed secondments and/or contract for services that will be required.

Contracts and Licences

The subsidiary will be its own legal entity and therefore must enter into its own commercial agreements with suppliers/clients etc.

Does the company require any specific licences to operate its activities?