THE UNIVERSITY OF MELBOURNE
FINANCE COMMITTEE

GUIDELINES FOR ‘CONTROLLED ENTITIES’, ‘UNIVERSITY COMPANIES’
AND ‘UNIVERSITY SUBSIDIARY COMPANIES’

Background

Section 48 of the University of Melbourne Act 2009 (the ‘Act’) provides that the University may, in accordance with the Commercial Activities Guidelines, participate in either the membership or formation of a company (as well as an association, trust or partnership, or enter into a joint venture or joint undertaking with other person(s)), where the objects or purposes include one or more of the following:

- making available facilities for study, research or education;
- providing teaching, research, development, consultancy or other services for public or private entities;
- assisting or engaging in the development or promotion of the University’s research or the application or use of the results of that research;
- preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audiovisual material or computer software;
- exploiting commercially a facility or resource of the University, including but not limited to, study, research or knowledge developed by or belonging to the University, whether alone or with another entity;
- seeking or encouraging gifts to the University or for the University’s purposes;
- any other object, consistent with this Act, that the Council considers appropriate in the circumstances.’

The Act provides that the University Council must ensure that any guidelines coming within its terms, including in this case the University’s Commercial Activities Guidelines, are complied with in accordance with their terms.

The Commercial Activities Guidelines mandate that specified risk assessments are to be carried out before the University enters into any ‘commercial activity’, and a register is to be maintained of all such activities disclosing the mandated particulars.

The Terms of Reference for Finance Committee require it to exercise governance accountabilities in relation to oversight of the identification and management of financial risk, including commercial risk exposures arising from the operation of controlled entities, associated companies, auxiliary operations, and significant business ventures, and as otherwise mandated by the University’s Commercial Activities Guidelines.

As a consequence, Finance Committee is required to review all proposals for University participation in an outside company (whether for commercial purposes or otherwise), including approval of applicable constitutions and any amendments thereto (paragraph 9 of Terms of Reference).
In addition to the above, the accountability and reporting provisions in the Audit Act 1994 and the Financial Management Act 1994 apply to the University as a statutory corporation and to all of its controlled entities (sections 49-51 of the Act). Sections 50 AA and 64A of the Corporations Act 2001 also address the concept of ‘control’ in relation to an entity, and the reference to an ‘entity’.

**To Whom These Guidelines Apply**

As a consequence of its Terms of Reference, Finance Committee has specified that all business ventures involving a ‘commercial activity’ (including University subsidiary companies) in which the University has a material interest, and any business venture involving a ‘commercial activity’ conducted within a University faculty and which must also be overseen by the dean of that faculty, are matters requiring the review of Finance Committee before implementation. This is in addition to required Finance Committee approval of all proposals for University participation in an outside company (whether for commercial purposes or otherwise), including approval of applicable constitutions and any amendments thereto (paragraph 9 of Terms of Reference, as noted above).

A ‘controlled entity’ is a University company, University subsidiary company or other entity where the University has effective control. It could be by way of ownership, control of the board of directors, assets, income streams or other business operations.

A ‘University company’ is a company in which the University has an interest, either as a shareholder or a member (excluding interests held merely for investment or insurance purposes).

A ‘University subsidiary company’ is a University company where the University controls the composition of the board of directors or has more than 50 per cent of the general meeting voting rights of the company.

The following guidelines should be read in conjunction with the Terms of Reference of Finance Committee:

1. **Initial Constitution**

   At the time of formation of a University company, the constitution of the company should preferably state the objects and purposes of the company (or recorded elsewhere if appropriate), and where it is also a controlled entity of the University, the said constitution must also provide that the company will not alter its constitution unless authorised by Council. The constitution of a University subsidiary company (and any amendments thereto) needs to be recommended to Council by Finance Committee.

2. **Changes to Constitution**

   A controlled entity of the University must not alter its constitution without approval of Council (Guideline 6 of the Commercial Activities Guidelines).

3. **Board Membership**

   The constitution of a controlled entity of the University should provide for the inclusion of at least one director who is not a member of Council, or an officer or student of the University.

4. **Registered Company Auditor**

   (a) A controlled entity of the University that expects its total annual income to exceed $1 million must cause a report by the Auditor-General or a registered company auditor on the accounts of the company to be made every twelve months, and the University
is to ensure that this occurs, whether directly or as part of the consolidated annual report of the University (Guideline 6).

(b) Sections 325 and 327A of the Corporations Act 2001 deal with the appointment of an auditor to a proprietary company and a public company respectively, being a mandatory requirement in relation to the latter.

(c) In relation to a company which is a controlled entity of the University, the Victorian Auditor General is to be appointed as the auditor of the company. For any other University company, prior approval of the auditor is required as part of Finance Committee review of all proposals for University participation in an outside company (paragraph 9 of Terms of Reference).

(d) The Victorian Auditor-General is able to act as the registered company auditor, and must do so for controlled entities of the University (see also sections 49 to 51 of the Act). It should be noted that the Victorian Auditor-General is required to audit in the ‘public interest’, which may not coincide with the interest of the shareholders or members.

(e) The University Chief Financial Officer can provide names of registered company auditors who act for other University companies, and who co-operate with the Victorian Auditor-General.

5. Role of the Victorian Auditor-General

If the company is a University controlled entity in Australia (Guideline 6 – paragraph 12(e)), irrespective of whether it is incorporated in Victoria, the Victorian Auditor-General has powers to:

(a) audit the company;

(b) inspect the books, securities, accounts and vouchers of the company; and

(c) seek such other information as he deems appropriate (Section 51(2) of the Act and Guideline 6 – paragraph 15).

The Victorian Auditor-General is not required to audit the accounts of a company incorporated or formed in a place outside of Australia if:

(d) he cannot be appointed an auditor in that jurisdiction; or

(e) he deems it impracticable or unreasonable to conduct the audit (Section 50(2) of the Act).

6. Notification to Minister and Treasurer

Copies of any material report, statement or return in respect of a University controlled entity lodged with the Australian Securities and Investments Commission or the Australian Taxation Office (other than routine changes) must be submitted to the Minister and the Treasurer within the ensuing 14 days. The notification should be handled by the University Secretary.

7. Form and Content of Annual Accounts

Irrespective of where the University controlled entity is incorporated, the annual accounts of the company must be prepared on an annual basis, present fairly the financial transactions
and, be in a form complying with the Part 7 of the Financial Management Act 1994 (Section 51(c) of the Act). In the case of a University controlled entity, the financial accounts are required to be consolidated with the University for reporting purposes.

8. Tasks to be completed annually

All University controlled entities nominated by Finance Committee in which the University has a material interest, including all University subsidiary companies, are required to:

(a) produce annual financial statements; and

(b) notify the University of any management letter received from their auditor, together with the action taken to address those issues identified.

In addition to the foregoing requirements, all University ‘controlled entities’ are also required, through Finance Committee, to:

(c) submit quarterly reports on operations and financial performance at the May, August and December meetings for the preceding quarter and the annual report for the preceding year at the March meeting;

(d) submit an annual budget and business plan for the ensuing year at the December meeting;

(e) submit risk assessments and the management strategies to deal with the risks identified at the December meeting;

(f) adopt and annually evaluate a written statement of their Governance Principles. A checklist of Corporate Governance Principles is available from the ASX website at http://www.asx.com.au; and

(g) report promptly any instance of fraud or other misappropriation of moneys, and any action taken against the suspected perpetrator (if known) and measures taken to prevent such activities occurring in the future.

9. Prior approval of Finance Committee

Any decision of a University subsidiary company that falls into the following guidelines must be reported to Finance Committee for approval before it is put into effect:

(a) the investment of $10 million or more in any venture or capital acquisition;

(b) the purchase or sale of an asset for $10 million or more;

(c) the purchase or sale of a business operation which, on a full year basis, represents 25 percent or more of the revenue of the ‘University subsidiary company’ in the previous financial year;

(d) the entering into of a contract which involves the expenditure of $10 million or more over the life of the contract; and

(e) the creation of its own subsidiary company or controlled entity.

For each proposed activity which falls within the above guidelines, the University subsidiary company must provide Finance Committee with a business case that includes at least the
following information, and which otherwise complies with Guideline 1 of the University’s Commercial Activities Guidelines:

(f) the objectives of the purchase, sale, investment, company creation or contractual arrangement;

(g) the strategic advantage for (a) the ‘University subsidiary company’, and (b) the University;

(h) in the case of acquisitions, the financial position of the entity and its liabilities;

(i) in the case of acquisitions and investments, the likely return to be provided by the acquired entity or the investment and, if this is estimated to be less than 3 percent above the long-term Commonwealth bond rate, what other benefits there are;

(j) In the case of purchases and other investments, details of the funding source (note that use of borrowed funds from external sources is subject to approval by Finance Committee and is subject to Loan Council requirements);

(k) in the case of a creation of a company or other controlled entity, details of the name and structure of the proposed entity, including the names of proposed directors, company auditors and company secretary, together with a copy of the proposed constitution; and

(l) advice on how the purchase, sale, investment, company creation or contractual arrangements will affect the business plans of the ‘University subsidiary company’.

* Any decision by a ‘University subsidiary company’ to wind up one of its own subsidiaries, while not requiring prior approval, is to be reported to Finance Committee with information on the implications of the decision for the “University subsidiary company” business plan, and any implications for the University as a shareholder or member.

Finance Committee should be kept informed of any decisions made by a controlled entity, not being a University subsidiary company, that fall within the previous guidelines set out in this section, and as otherwise required under the University’s Commercial Activities Guidelines.

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