

THE UNIVERSITY OF MELBOURNE

FINANCE COMMITTEE

GUIDELINES FOR “CONTROLLED ENTITIES”, “UNIVERSITY COMPANIES” AND “UNIVERSITY SUBSIDIARY COMPANIES”

Preamble

Following the incorporation of the activities of Subsidiaries Sub-Committee into the Finance Committee of Council in July 2008, these Guidelines have been amended to reflect the new reporting requirements.

Background

The Melbourne University Act 1958 (the “Act”) provides that the University may participate in either the membership or formation of a company where the objects or purposes include one or more of the following:

1. providing facilities or services for study, research or education;
2. undertaking research, development, consultancy or other services for commercial organizations, public bodies or individuals;
3. aiding or engaging in the development or promotion of university research or the application or use of the results of such research;
4. preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audio-visual material or computer software;
5. seeking or encouraging gifts to the University or for University purposes;
6. promoting or assisting drama, music, or the visual arts.

The Act imposes obligations on the University, whether the company is incorporated within Victoria (Section 40A of the Act) or outside of Victoria (Section 40B of the Act). The obligations are more onerous where the company is incorporated within Victoria.

In addition to the above, a company incorporated within Victoria in which the University has a controlling interest (50 per cent or more shareholding) must also comply with the Audit Act and the Financial Management Act 1994.

To Whom These Guidelines Apply

The Terms of Reference of Finance Committee require *inter alia* that substantive issues arising from the operation of (a) all controlled entities of the University and (b) certain other business ventures nominated by the Finance Committee in which the University has a material interest. The Finance Committee has for this purpose nominated all business ventures (including University subsidiary companies) in which the University has a material interest and any business venture conducted within a University faculty which is being overseen by the Dean of that Faculty.

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 has 50 per cent or more shareholding or membership 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 state the objects and purposes of the company and provide that the company will not alter its constitution unless authorised by Council. The Constitution of a University subsidiary company needs to be recommended to Council by the Finance Committee.

2. Changes to Constitution

A University company incorporated in Victoria, irrespective of the level of control, should not alter its Constitution without approval of the Council of the University (Section 40A (2) (a) of the Act).

3. Board Membership

The Constitution of a University company which is a “controlled entity” should provide for the inclusion of at least one director who is not a member of the Council, or officer or student of the University.

4. Registered Company Auditor

1. A University company incorporated in Victoria, that expects its total annual income to exceed \$100,000 must cause a report by a Registered Company Auditor on the accounts of the company to be made every twelve months. (Section 40A(2)(b) of the Act).
2. The Directors of a University company must appoint a Registered Company Auditor within one month of the date of incorporation (Section 327(1) of the Corporations Act). Prior approval of the auditor is required.
3. The Victorian Auditor-General is able to act as the Registered Company Auditor. 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.
4. The University Chief Financial Officer can provide names of Registered Company Auditors who act for other University companies and who co-operate with Victorian Auditor-General.
5. If the company being formed is a University subsidiary company, it is desirable for the same Registered Company Auditor be appointed to the subsidiary as to the parent.

5. Role of the Victorian Auditor-General

If the company is a University subsidiary company, irrespective of whether it is incorporated within or outside of Victoria, the Victorian Auditor-General has powers to:

- (i) Audit the company.
- (ii) Inspect the books, securities, accounts and vouchers of the company.
- (iii) Seek such other information as he deems appropriate.

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

- (i) He cannot be appointed an auditor in that jurisdiction, or
- (ii) He deems it impracticable or unreasonable to conduct the audit.

6. Notification to Minister

Where the University forms a University subsidiary company or participates in the formation of a University company outside of Victoria, the University must notify the State Minister within 30 days (Section 40A3(ba) and 40B(3) of the **Act**). The notification should be handled by the University Secretary.

7. Reporting to Treasurer

If the company is a University subsidiary company, the University must lodge with the Treasurer within 14 days a copy of any report, statement or return lodged with the Australian Securities and Investments Commission under the Corporations Act (Section 40A(3)(d) of the **Act**).

8. Forms and Content of Annual Accounts

Irrespective of where the University company is incorporated, the annual accounts of the company must be prepared on an annual basis, present fairly the financial transactions and, in the case of a University subsidiary company incorporated in Victoria, be in a form complying with the Part 7 of the Financial Management Act 1994 (Section 40A(6)(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.

9. Tasks to be completed annually

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

- 1. Produce annual financial statements.
- 2. 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 “controlled entities” are also required, through the Finance Committee, to:

3. 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.
4. Submit an annual budget and business plan for the ensuing year at the December meeting.
5. Submit risk assessments and the management strategies to deal with the risks identified at the December meeting.
6. 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>.
7. 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.

10. Prior approval of Finance Committee

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

1. The investment of \$5 million or more in any venture or capital acquisition.
2. The purchase or sale of an asset for \$5 million or more.
3. 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.
4. The entering into of a contract which involves the expenditure of \$5 million or more over the life of the contract.
5. 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 the Finance Committee with a business case that includes at least the following information:

1. The objectives of the purchase, sale, investment, company creation or contractual arrangement.
2. The strategic advantage for (a) the “University subsidiary company” and (b) the University.
3. In the case of acquisitions, the financial position of the entity and its liabilities.
4. 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.
5. 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 the Finance Committee and is subject to Loan Council requirements).

6. 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.
7. 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 (eg. Victorian College of the Arts, Melbourne Business School), that fall within the previous guidelines set out in this section.

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July 2008