Northumbria University NEWCASTLE

University Subsidiary Company and Joint Venture Policy		Ref: GS0015	
Brief Description & Purpose:	This policy set out the principles that apply in relation to the formation, governance and dissolution of University subsidiaries and joint ventures.		
Applicable to (list cohorts):	**Staff:** All staff, including Governors and co-opted Board Committee Members	**Students:** Not applicable	**Third Parties:** Not applicable
Effective From:	28 October 2013	**Approved date:**	28 October 2014
Approval Authority:	Finance and Resources Committee	**Last reviewed date:**	31 March 2023
Executive Owner:	Georgina Bailes	**Next review date:**	March 2026
Business Owner:	Richard Elliott	**Publication External Y/N**	Y

1.Introduction

1.1 The University has established a number of subsidiary companies and joint ventures in accordance with Article of Government 3.1.12, which exist to hold and manage specific activities and resources, where it is beneficial to separate these legally from the University. In this context, the University still retains control as the holding company of the subsidiary company. Collectively, the University and its subsidiary companies and joint ventures are known as the Group.

1.2 The University's existing subsidiary companies are listed on the University's webpages.

1.3 Unless noted otherwise, the term 'subsidiary company' hereafter includes joint ventures.

1.4 The University is required to comply with the Companies Act 2006 when establishing subsidiaries including the reporting of accounts and appointment of company Directors.

2. Policy Detail

2.1 The effective management of subsidiary companies supports the Strategic Outcomes of the University Strategy 2018-24 in the following ways:

Strategic Outcome	Supported by
Strong global reputation and market position, with diversified revenue streams	A subsidiary company may be used as the vehicle for a specific activity or initiative, such as a business operation, a new campus or a segment of the University's workforce.
World class research driving excellence in all of the University's activities	The majority of the University's research will be considered charitable and therefore can be undertaken in the name of the University. However, some research may not be, and will therefore be most appropriately placed in a subsidiary company structure.

Transformed student and stakeholder outcomes.	The transfer or inception of activities to a subsidiary company operation could improve external stakeholder satisfaction; support the University in dealing more effectively and flexibly with external bodies and partners with whom it wishes to contract, through a recognised structure.
Organisational sustainability, efficiency and effectiveness.	Subsidiary companies can be a more efficient way of managing specific resources and assets, separating these from other activities for commercial or charitable purposes. Other efficiencies include greater flexibility and the ability to employ staff on different terms and conditions.

2.2 Rationale for establishing subsidiary companies

2.2.1 There are a number of benefits to establishing a subsidiary company, either as a company limited by guarantee as permitted by Article of Government 3.1.9, or one with or without a share capital. These include:

- ensuring the activities are ring-fenced for commercial reasons, as well as those linked to the charitable status of the University. Due to strict tax and charity regulations, the separating out of specific activities which would largely be considered non-charitable in nature into a subsidiary company is a means of ensuring that complications from a tax and charitable perspective do not occur. An advantage of using subsidiary companies, therefore, is that they are not subject to restrictions on their trading activities that charities are, even those which are exempt. A subsidiary company can also take advantage of the tax relief available for charitable donations, and can use the Gift Aid Scheme to give all or part of any profits in a tax efficient manner;
- the subsidiary company has a distinct legal personality from the University, and whilst owned by the University either wholly or partly, can contract with other bodies or organisations and can employ staff, including on differentiated Terms and Conditions;
- subsidiary and the University maintain legally segregated assets and liabilities;
- recognition of the 'company' structure by external bodies with which the University would wish to interact; and
- compliance with regulatory regimes outside of the UK.

2.2.2 The University may also set up a joint venture company in partnership with an external party. Joint Venture Companies may be established for a variety of reasons. In most cases, the University would have a shareholding of between 20% and 80%, since shareholders below 20% would typically not be considered to have significant influence; such shareholdings would typically (although not always, since other aspects such as the Memorandum and Articles of Association and/or a shareholders' agreement governing the joint venture partnership could result in significant influence) be treated as a simple investment.

2.2.3 A separate Policy governs the setting up and management of spin-out companies, given the significant differences in structure, purpose and shareholding arrangements for these. The University will generally have a minority initial shareholding which will then be further diluted by additional investment if the spin-out is a success; one or more members of

UE may be initial Directors. The spin-out process is over seen by Spin-out and Equity Committee, a committee of UE but including a member of Finance and Resources Committee, which is the overall approving body for spin-out activity.

2.3 Establishment, Management and Governance

2.3.1 Proposals for establishing a subsidiary company should originate from and be sponsored by a member of the University Executive or by the relevant Faculty PVC for proposals related to specific Faculty activity. All proposals to establish subsidiary companies must be submitted to Finance and Resources Committee which has delegated authority from Board of Governors to approve the establishment or dissolution of subsidiaries. Detailed procedures for the establishment, management and governance, and change of status or dissolution of subsidiary companies and joint ventures are set out in the associated Subsidiary Companies Procedures.

2.3.2 All subsidiaries and joint ventures will require a Board of Directors to be appointed. Directors with sufficient seniority e.g. a member of University Executive or a senior manager with relevant experience and expertise to operate the company should be appointed. Occasionally an Independent Governor may be appointed as Director, if this would be beneficial to the management of the subsidiary.

2.3.3 The general duties of directors under the Companies Act 2006 part 10 are similar to but distinct from their responsibilities as Governors or members of University Executive, and are as follows:

- a duty to act within their powers in accordance with the company's constitution and only exercise powers for the purposes for which this are conferred
- a duty to promote the success of the company
- a duty to exercise independent judgement
- a duty to exercise reasonable care, skill and diligence
- a duty to avoid conflicts of interest (this applies after ceasing to be a director)
- a duty not to accept benefits from third parties (this applies after ceasing to be a director)
- a duty to declare any interest in a proposed transaction or arrangement

2.3.4 Directors of University subsidiaries have an underlying duty to act in the best interests of the Company and the University as the shareholder. Subsidiaries are established by the University for specific purposes so any conflict between these duties is unlikely. If a potential conflict does arise or is anticipated, the Chair of the Subsidiary's Board of Directors should consult with Director of Governance and the VC.

2.3.5 The Director of Governance and Head of Legal will provide the full text of the statutory duties to all existing and new directors, and supplement this with induction or refresher training to directors of University subsidiary companies as required. Training and guidance will also include more recent legislation including the responsibilities of directors in relation to the Bribery Act 2010.

2.3.6 All Directors, employees, students and third parties who are in a formal relationship with a subsidiary company will be expected to adhere to Northumbria University Policies and Procedures where there are no specific policies related to a subsidiary company.

2.3.7 Subsidiary Companies that have not traded with the last 3 months can be dissolved with the approval of Finance and Resources Committee. For full details of the criteria and procedure for dissolution refer to the Subsidiary Companies Procedures section 2.6.

3. Key Roles and Responsibilities

Role	Responsibility
Director of Governance	Provide full text of statutory duties to all existing and new directors. Provide supplementary or refresher training to all directors. Conduct required due diligence for establishing a Subsidiary Company as detailed in the Subsidiary Companies Procedure. Ensure all electronic filing is carried out on time with Companies House.
Chief Financial Officer	Consult as needed during the required due diligence for establishing a Subsidiary Company as detailed in the Procedure.
Chief People Officer	Consult as needed during the required due diligence for establishing a Subsidiary Company as detailed in the Procedure.
Head of Legal	Consult as needed during the required due diligence or establishing a Subsidiary Company as detailed in the Procedure. Make arrangements to file initial registration documents for registering new Subsidiary Companies with Companies House. Confirm registration of new Subsidiary Companies.
Chief Marketing Officer	Consult as needed regarding branding.
Faculty PVC	Sponsor applicable proposals and business cases for establishing a Subsidiary Company if required.
Assistant Director Financial Control	Organize external audits and monitor finances of each Subsidiary Company as detailed in the Procedure.

4. 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 it;
- is a member of it and has the right to appoint or remove a majority of its board of directors;
- 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.

Annual General Meeting: A general meeting of the members which, following the year of the company’s incorporation, must be held within six months of the financial year end. Only public companies and private limited companies are required to hold AGMs. Subsidiary companies which are wholly-owned may hold one should they wish to do so.
Annual Return: A document in prescribed form which every registered company is required to file with the Register of Companies on an annual basis, containing basic information about the company accurate as of the return date, which is normally the anniversary of the incorporation of the company.
Companies House: The body in England and Wales, Scotland and Northern Ireland which registers and records companies.

Company Secretary: The individual appointed who advises the Board, preparing documentation for general meetings, and undertaking the registration and return process with Companies House.
Director: Any person occupying the position of a director of a company, by whatever name they are called.
Dissolution: The process by which a company is dissolved following specific conditions laid by the Registrar of Companies.
General Meeting: A meeting of members of the Company. In the case of a wholly owned subsidiary company, the Directors constitute the Members.
Holding Company: A company having one or more subsidiary companies, i.e., holding a majority of voting rights or the right to appoint or remove a majority of directors in or more other companies.
Incorporation: the process by which a legal entity, separate from its owners and managers is formed.
Issue Shared Capital: The combined financial value of the shares issued and held by the Company.
Model Articles: The default Articles which form part or all of the Articles of a registered company.
Registrar of Companies: The registrar of companies for England and Wales, Scotland and Northern Ireland, to whom documents are sent to form a company and to whom other returns are submitted.
Winding Up: The liquidation of a company

5. Related Policies, Procedures and Other Resources

- Establishment, Management and Dissolution of Subsidiary Companies Procedure
- Policy for Managing Intellectual Property
- Spin-out Companies Policy (tbc)
- Declaration of Conflicts of Interest
- Gifts and Hospitality
- Code of Conduct (internal access only)

6. Version

Version No.	Reviewer	Date	Changes
2.0	Dr Adam Dawkins	28th October 2013	
2.1	Richard Elliott	31 March 2023	Policy format change and creation of associated procedure, links added, minor updates to wording.
2.2	Clare Stogden	2 August 2024	Minor updates to Committee and role titles