

University Subsidiary Companies Policy and Procedure

Introduction

As with many other large organisations, the University as a Higher Education Corporation (HEC) has established a number of subsidiary companies which exist to hold and manage specific activities and resources, where it is beneficial to separate these 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 are known as the 'Group', akin to a Corporate Group.

Section A: Definitions, Strategic Context and Purpose

Definitions

- A1 Under the Companies Act 2006, a company is a subsidiary of a 'parent' or 'holding company' if the parent:
- (a) holds a majority of the voting rights in it;
 - (b) is a member of it and has the right to appoint or remove a majority of its board of directors;
 - (c) is a member of it and controls alone, a majority of voting rights in it.
- A2 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.
- A3 This Policy refers primarily to wholly-owned subsidiaries, which reflect the current structure and status of University companies.

Strategic Context

- A4 The effective management of subsidiary companies supports the Strategic Outcome of the Corporate Strategy 2013-18 in the following ways:

Strategic Outcome	Supported by:
1. To build global reputation, market position and 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 segment of the University's workforce. This is likely to support one or more of the Business Outcomes to deliver the Corporate Strategy 2013-18.

2. Grow high quality research and use it to drive 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.
3. Maximise student and stakeholder satisfaction.	Subsidiary companies are unlikely to have any direct impact on the student experience. However, the transfer of activities to a subsidiary company operation could maximise external stakeholder satisfaction; support the University in dealing more effectively and flexibly with external bodies and partners with whom it wishes to contact, through a recognised structure.
4. Strengthen operational efficiency and effectiveness, and foster a culture of continuous improvement	Subsidiary companies are 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 contracts and terms.

Rationale for establishing subsidiary companies

A5 There are a number of benefits to establishing a subsidiary company, either as a company limited by guarantee, or one with or without a share capital. These include:

- i. ensuring the activities are ring-fenced for commercial reasons, as well as those linked to the charitable status of the University. The University is exempt from the payment of corporation tax and is exempt from, or may recover, VAT for its core educational and research activities. 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 made to the University and will not have to pay any tax on these;
- ii. 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;

- iii. liabilities remain with the subsidiary and the University would not be liable for its debts (even if wholly owned) except in certain circumstances, e.g. if it had given parent company guarantees;
- iv. recognition of the 'company' structure by external bodies with which the University would wish to interact. This could be beneficial for business engagement purposes, as the concept of universities as chartered corporations (the majority of the pre-1992 HEIs) or Higher Education Corporations (the majority of post 1992 HEIs) is less well understood.

Section B: Trading and Operating of Subsidiary Companies in HE

B1 Subsidiary companies are suitable entities and 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:

- conferencing facilities and management making use of the University estates and facilities
- catering and entertainment and sporting and recreation functions in the University's control
- management of student residences
- provision of consultancy, training, research and equipment
- science parks, or research spaces and incubators for other companies
- structures for satellite or branch campuses of the University.

The University's existing subsidiary companies are listed in Appendix 2.

Section C: Internal Process for establishing a Subsidiary Company

C1 The business case for establishing a subsidiary company will occur as a result of a wider strategic proposal, or relationship and partnership the University intends to form with another body.

C2 The initial case for establishing a subsidiary company should originate from, and be sponsored by a member of the University Executive. Where the proposal relates to a specific Faculty activity, the proposal should be sponsored by the relevant Executive Dean.

C3 However, it is important to note that where a proposal to establish a subsidiary company is an outcome of a strategic project or initiative (e.g., 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. This will entail consideration through the University's project governance arrangements and endorsed by the University Executive and onwards to Employment and Finance Committee and the Board of Governors

where this applies¹.

- C4 Whether as part of, or separate to, any wider business plan, the Head of Governance should be consulted with in the first instance on the outline proposal. The Head of Governance will liaise with the Chief Legal Officer, Director of Human Resources and Chief Operating Officer to ensure appropriate due diligence, and 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:
- i. whether the establishment of a subsidiary company is the most appropriate vehicle and structure for the activity in question;
- financial, staffing, governance and legal implications of proposal, including taxation and employment contracts.
- C5 The Chief Legal Officer shall be responsible for engaging any external legal advice required to support the establishment of the subsidiary company.
- C6 Other key colleagues will be consulted as appropriate, including colleagues in Business and Engagement, and the Marketing Director 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.
- C7 Key matters to be determined at the point of approval and pending further advice from those listed in above, include:
- i. the directors and shareholders;
 - ii. share capital;
 - iii. specific provisions to be included in the Articles of Association.

University Executive and Employment and Finance Committee

- C8 Following satisfactory completion of the discussions identified in C.6 above, the University Executive will consider the proposal, and any feedback from the University Executive must be acted upon prior to submitting a paper and full business plan to the Employment and Finance Committee. The revised proposal to the Employment must include a recommendation from the University Executive for the approval of the establishment of the subsidiary company, along with the appropriate assurances.
- C9 The Employment and Finance Committee has delegated authority from the Board of Governors to approve the establishment and dissolution of subsidiary companies. Feedback from the Employment and Finance Committee must be acted upon prior to commencing the formal registration process for incorporation

¹ It is important to note that the development of a Business Plan differs from that outlined in the Procedure for Setting Up and Managing a Spin-Out Company, which also requires for the establishment of a Project Team specific to the spin-out company. See the Procedure for Establishing a Spin-Out Company at Northumbria.

of a subsidiary company of the University.

- C10 The registration process for incorporation of a subsidiary company of the University outlined in C.10 below will be not undertaken until approval of the Employment and Finance Committee has been granted.

Registration with Companies House

- C11 The Chief Legal Officer shall be responsible for 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 company.
- C12 A subsidiary company does not exist and cannot operate as a company before its certificate of incorporation is issued by the Registrar of Companies. Confirmation of registration will be returned to the Chief Legal Officer who will confirm the Directors and other relevant parties that the company can commence operation.

Section D: Subsidiary Company Governance

- D1 All subsidiary companies comprise 'Directors' who have fiduciary duties to ensure effective stewardship, or oversight of, the company.
- D2 Collectively, the Directors constitute the 'Board' of the subsidiary company.
- D3 The duties of directors under the Companies Act 2006 are provided as Appendix 2. The Head of Governance and Chief Legal Officer will provide induction and ongoing training to directors on their duties and responsibilities, as required.
- D4 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.
- D5 In line with company legislation, a Company Secretary need not be appointed to the company, although aspects of this role will be undertaken as described in E4 below.

Section E: Financial Management, Monitoring and Filing Information with Companies House

- E1 As noted in C6 share capital will need to be determined prior to registration of the subsidiary company. Shares may be issued as ordinary shares or with preferred, deferred or other special rights as regards dividends, voting and return of capital. Shares with limited voting rights or no voting rights are possible. In the case of

subsidiary companies if the University, shares would normally be allocated as 'ordinary'.

- E2 Under UK company law, the subsidiary must have at least one shareholder, and a minimum authorised share capital of 1 share at £1.
- E3 The finances of the subsidiary company will be monitored on a periodic basis by the Deputy Finance Director (Accounting) or his/her nominee. Any adverse, positive or substantive changes to the financial performance or compliance of the company shall be reported to the University Executive and other bodies where appropriate.
- E4 Employment and Finance Committee should receive a report approximately on a six-monthly basis on the financial position of all subsidiary companies of the University, one of which may be as part of the external audit and presentation of the annual accounts. See E.5 below.
- E5 Arrangements for the annual external audit of the subsidiary company will be co-ordinated by the Deputy Finance Director (Accounting), in parallel with the audit of the University as a parent undertaking, whether these are consolidated in the annual accounts of the University, or reported on separately.
- E5 The filing of information to Companies House on the University's subsidiary companies is an important activity, which holds statutory significance, on the basis that it is a criminal offence to file late, misleading or false information relating to the University's subsidiary companies. In addition to the incorporation documents submitted to Companies House prior to registration of the company (see C.10-11), the other returns submitted include:
- the annual return
 - change of accounting reference date
 - appointment of directors or company/corporate secretary
 - change of particulars of directors or company/corporate secretary
 - termination of directors or company/corporate secretary
 - dissolution or winding up documentation and the return of an allotment of shares, where appropriate.
- E6 The Head of Governance will hold responsibility for the filing of electronic and or other information on the University's subsidiary companies listed in E.4.

Section F: Dissolution of a Subsidiary Company and re-registration of the status of a Subsidiary Company

- F1 There may be circumstances in which the continued operation of the subsidiary company is no longer required. For example, companies can make a request to be dissolved or closed, provided that they have not traded within the last 3 months; the name of the company has not changed; and not subject to legal proceedings; has not made a disposal for value of property or rights.
- F2 The Directors of the subsidiary company will need to make a resolution to wind up

the subsidiary company, and will require the approval of:

- the University Executive
- Employment and Finance Committee.

F3 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 company had been paid.

F4 Should the company status of a subsidiary company seek to be amended (e.g., 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:

- the University Executive
- Employment and Finance Committee

F5 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 C.

Section G: Joint Venture Companies (JVCs) and Spin-Out Companies

G1 The University may also set up a joint venture company in partnership with another party. Joint Venture Companies may be established for a variety of reasons. In most cases, the University would have an equal 50% shareholding with its partner, creating a 'deadlock' situation (i.e., both shareholders have an equal say and neither can outvote the other. In the event of a deadlock scenario, one outcome would be that the JVC became the wholly owned subsidiary of one of the partners/shareholders, thereby resolving the deadlock between the shareholders (and terminating the joint venture). Equivalent governing instruments, such as a Memorandum and Articles of Association and/or a shareholders' agreement govern the joint venture partnership.

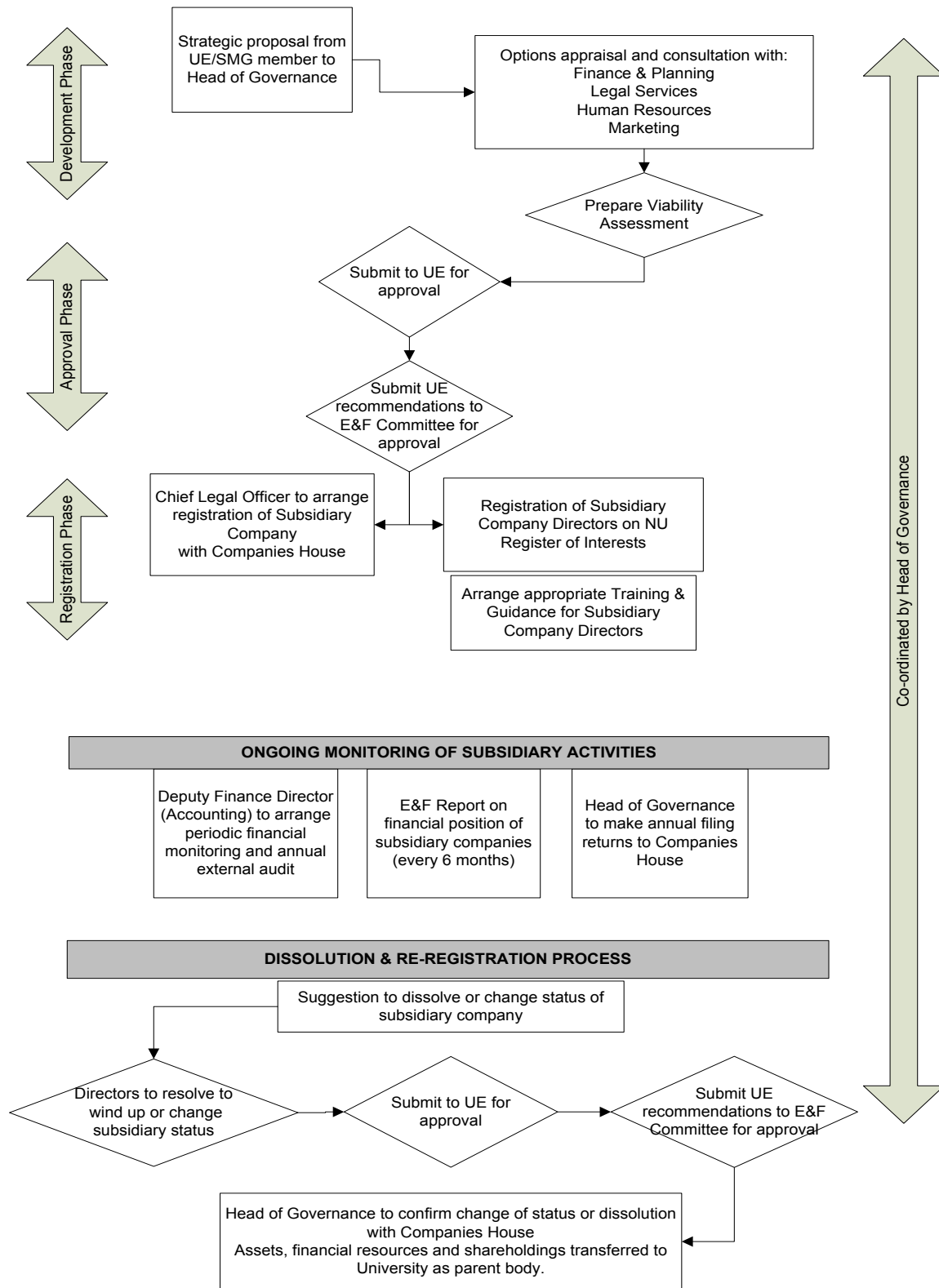
G2 The same principles for approval and reporting as identified in Sections C and D of this Policy apply to Joint Venture companies in which the University is involved.

G3 A separate procedure has been developed for the setting up and management of spin-out Companies, given the significant differences in structure, purpose and shareholding arrangements for these. The University would normally have a minority shareholding in such companies.

Head of Governance
October 2013

Annex 1: Flow-diagram of the procedure

**Subsidiary company lifecycle stages
October 2013**



Annex 2: Glossary of Terms

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 with an expression requirement, 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 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 he is 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 Ireland, to whom documents are sent to form a company and to whom other returns are submitted.

Winding Up The liquidation of a company.**Annex 3: Subsidiary Companies of the University of Northumbria at Newcastle**

As of 01 October 2013, the University holds the following wholly-owned subsidiary companies which are registered with Companies House in England and Wales.

The name and registered office of each of the University's wholly-owned subsidiary companies is:

ELLISON BUILDING
ELLISON PLACE
NEWCASTLE UPON TYNE
TYNE & WEAR
NE1 8ST

Company Name	Company Purpose	Date of Incorporation	Company Registration Number	Issued share capital	Directors
University of Northumbria at Newcastle Developments Limited	The company's principal activity is the provision of Nurse training and other health related occupational training to employees and members of the regional Primary Care Trust	29/04/1997	03362064	2 x £1 Ordinary Shares	Vice-Chancellor and Chief Executive Chief Operating Officer
Northumbria International Limited (Formerly named NORTHERN BUSINESS SCHOOL LIMITED until 31/08/06)	The company operates in China and Malaysia. There are registered offices in each country which carry out all marketing and promotional activities related to Northumbria University as well as other countries in the region.	03/12/2001	04333222	1 x £1 Ordinary Shares	Vice-Chancellor and Chief Executive Director of International Development Chief Operating Officer
Northumbria University Nursery Limited	Nursery Services	09/02/2012	07942799	1 x £1 Ordinary Shares	Vice-Chancellor and Chief Executive HR Director Deputy Director of Finance (Accounting)

Annex 4: Directors' Duties as specified in the Companies Act 2006

Seven general duties of directors of companies were codified for the first time in UK Law in the Companies Act 2006 and are summarised as follows:

- a duty to exercise reasonable care, skill and diligence
- a duty to promote the success of the company
- a duty to act within their powers
- a duty to exercise independent judgement
- a duty to avoid conflicts of interest
- a duty not to accept benefits from third parties
- a duty to declare any interest in a proposed transaction or arrangement

The Head of Governance and Chief Legal Officer 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. Training and guidance will also include more recent legislation including the responsibilities of directors in relation to the Bribery Act 2010.

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