

# CONTROLLED ENTITY POLICY 2012

The Vice-Chancellor and Principal, as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 28 February 2012

Signature:

Position: Vice-Chancellor and Principal

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### 1 Name of policy

This policy is the Controlled Entity Policy 2012.

### 2 Commencement

This policy commences on 1 March 2012.

### 3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University, staff, and affiliates.

### 4 Statement of intent

This policy is intended to ensure that entities controlled by the University:

- (a) have in place effective systems of control and accountability;

- (b) meet standards of governance which satisfy legal requirements and community expectations; and
- (c) meet their stated objectives and operational requirements.

## 5 Application

This policy applies to all controlled entities.

## 6 Definitions

<b>board</b>	means the governing body of a controlled entity, whether or not that entity is a corporation.
<b>commercial activity</b>	<p>has the meaning given to it in the <i>Guidelines Concerning Commercial Activities</i>, which at the date of this policy is:</p> <ul style="list-style-type: none"><li>a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University; and</li><li>b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Commercial Activities Guidelines to be a commercial activity.</li></ul> <p><b>Note:</b> As at the date of this policy, the <i>Guidelines Concerning Commercial Activities</i> can be found at <a href="http://sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/66&amp;RenderNum=0">sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/66&amp;RenderNum=0</a></p>
<b>control</b>	means the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.
<b>controlled entity</b>	<p>means a person, group of persons or body over which the University has the power to govern the financial and operating policies so as to obtain benefits from its activities.</p> <p><b>Note:</b> See also the definition of “controlled entity” in Section 16A of the <i>University of Sydney Act 1989</i> (as amended); Sections 39 (1A) and 45A of the <i>Public Finance and Audit Act 1983</i> and Australian Accounting Standard AASB 127 <i>Consolidated and Separate Financial Statements</i></p>
<b>director</b>	means a member of the board of a controlled entity, whether or not that entity is a company.
<b>relevant Deputy Vice-Chancellor</b>	in relation to a controlled entity or to a proposed controlled entity, means the Deputy Vice-Chancellor whose accountability area most closely aligns with the activity or proposed activity of the controlled entity.
<b>University director</b>	means a director, or other member of a board, appointed by the University to the board of a controlled entity.

## 7 Determining control

- (1) The University regards itself as being in a position to control an entity where:
  - (a) the University directly or indirectly owns the majority of the shares in a company;
  - (b) the University is the sole member of a company limited by guarantee;
  - (c) the University has power over more than half of the voting rights in the entity;
  - (d) the University has the power to cast the majority of votes at meetings of the entity's board;
  - (e) the University has the power to appoint or remove the majority of the entity's board;
  - (f) the University has the power to govern the financial and operating policies of the entity; or
  - (g) the University has the power to cast or to control the casting of a majority of the votes likely to be cast at a general meeting of the entity.
- (2) The list in sub clause (1) above is not exhaustive. The question of whether or not control exists in any given situation must be decided in reference to the particular circumstances.
- (3) Where there is doubt, the University will regard the decision of the Chief Financial Officer as determinative of whether or not it considers a situation of control to exist.

## 8 Establishing or acquiring controlled entities

- (1) A person proposing the establishment or acquisition of a controlled entity must first consult:
  - (a) the relevant Deputy Vice-Chancellor about the desirability of doing so;
  - (b) the Office of General Counsel about the appropriate structure of the entity; and
  - (c) the Chief Financial Officer about the likely cost.
- (2) A formal written proposal must then be submitted to the relevant Deputy Vice-Chancellor.
- (3) If it is proposed that the controlled entity will engage in commercial activity, the proposal must be approved by the Chief Financial Officer before being submitted to the relevant Deputy Vice-Chancellor.

**Note:** The *Guidelines Concerning Commercial Activities* must also be complied with if the proposed controlled entity will engage in commercial activity. As at the date of this policy these can be found at [sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/66&RendNum=0](http://sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/66&RendNum=0)
- (4) The Chief Financial Officer may determine procedures which specify the form and content of a proposal under this clause.
- (5) The relevant Deputy Vice-Chancellor will determine whether or not to establish or acquire the proposed controlled entity.

- (6) Before reaching a determination, the relevant Deputy Vice-Chancellor may seek further information, require additional work to be performed and take advice as appropriate.

## 9 Boards and directors

- (1) The directors of a controlled entity must possess the experience and expertise necessary to provide proper stewardship and control of that entity.
- (2) The board of each controlled entity must adopt a board charter against which its performance as a whole, and the performance of its individual members, is regularly assessed.
- (3) Where possible, each controlled entity will have some directors who are not members of the Senate, the staff or students of the University.
- (4) All directors of controlled entities must comply with the provisions of the University's *Code of Conduct* and the *External Interests Policy 2010*.

**Note:** As at the date of this policy the *Code of Conduct* can be found at [sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/65&RendNum=0](http://sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/65&RendNum=0) and the *External Interests Policy 2010* can be found at: [sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/75&RendNum=0](http://sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2011/75&RendNum=0)

- (5) Remuneration of directors, as may be recommended by the relevant entity's board, should be determined in consultation with the University.
  - (a) Remuneration should consider normal industry practice, the needs of the board to attract/retain relevant skills, whether its relationship to performance is clear and any other relevant matters.
  - (b) In some cases, entities may have volunteers as directors and remuneration may not be appropriate.
- (6) Any benefits provided to directors, including remuneration, must be disclosed in the annual financial statements and annual report provided to the University.
- (7) The Board will determine the remuneration for the managing director and this must be disclosed in the annual report to the University.
- (8) A University director may only be appointed to the board of a controlled entity with the prior approval of the relevant Deputy Vice-Chancellor.
- (9) The appointment of a University director may only be terminated with the prior approval of the relevant Deputy Vice-Chancellor.

## 10 Governance generally

- (1) Controlled entities must adhere to the following principles of good governance.
  - (a) *Lay solid foundations for management and oversight.* Recognise and disclose the respective roles and responsibilities of board and management.
  - (b) *Structure the board to add value.* Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.
  - (c) *Promote ethical and responsible decision making.* Actively promote ethical and responsible decision making. In relation to companies limited by guarantee, responsible decision making includes being aware of and acting in furtherance of the objects of the company.

- (i) To be successful, entities need to have regard to their legal obligations and the interests of a range of stakeholders including shareholders, employees, business partners, creditors, consumers, the environment and the broader community in which they operate.
    - (ii) It is important for entities to demonstrate their commitment to appropriate organisational practices and decision making.
  - (d) *Safeguard integrity in financial reporting.* Have a structure to independently verify and safeguard the integrity of the entity's financial reporting.
  - (e) *Respect the rights of members.* Respect the rights of members and facilitate the effective exercise of those rights.
  - (f) *Recognise and manage risk.* Establish a sound system of risk oversight, risk management and internal control.
  - (g) *Remunerate fairly and responsibly.* Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to organisational and individual performance is clear.
- (2) The constitution of a controlled entity must contain provisions which address the matters prescribed in Schedule 1.
- (3) The Chief Financial Officer may determine procedures which further specify the provisions required to be contained in a controlled entity's foundational documents.
- (4) A controlled entity may enter into an agreement with the University, to be negotiated with the relevant Deputy Vice-Chancellor, which further defines aspects of the entity's relationship with the University.
- (a) The provisions of such an agreement must not be inconsistent with the requirements of this policy.
  - (b) Matters addressed in such an agreement may include:
    - (i) principles and procedures for dealing with key issues or assets, such as intellectual property;
    - (ii) provision of services by the University to the entity, or vice-versa;
    - (iii) application of specified University policies to the entity;
    - (iv) risk management and insurance arrangements;
    - (v) the University's relationship with third parties with whom the entity has or may have dealings, including other members of the entity;
    - (vi) the entity's dividend policy; and
    - (vii) dispute resolution procedures.
- (5) A controlled entity must inform the relevant Deputy Vice-Chancellor as soon as possible after becoming aware of any of the following:
- (a) a potential material risk exposure, financial or otherwise;
  - (b) changes of directors;
  - (c) identified conflicts of interests;
  - (d) proposed or actual related party transactions (including any proposed agreements with University staff);
  - (e) any indemnity or insurance against a liability given to a current or former officer;

- (f) any benefits provided by the controlled entity to the University or a University staff member; and
  - (g) any changes to any previous such notification.
- (6) A controlled entity must make its financial and other records available to the University's internal auditors upon request.

## **11 Reporting**

- (1) A controlled entity must submit an annual report on its activities to Senate through the relevant Deputy Vice-Chancellor by 30 April each year in the form prescribed in the procedures.
- (2) The Chief Financial Officer may determine procedures which further specify the form and content of the annual report required under this clause.
- (3) The relevant Deputy Vice-Chancellor may request further reports on other matters as he or she considers appropriate.
- (4) The accounts of each controlled entity will be reported in the consolidated accounts of the University.

## **12 Employees of controlled entities**

- (1) Staff employed by a controlled entity are not employees of the University unless:
  - (a) they are seconded from the University; and
  - (b) their letter of appointment specifies that they will remain employees of the University; or
  - (c) an alternative arrangement, approved by the relevant Deputy Vice-Chancellor, provides for their employment by the University.
- (2) A controlled entity is responsible for establishing its own staffing policies and conditions for its employees, including superannuation.

## **13 Insurance**

- (1) A controlled entity is responsible for managing its own risk.
- (2) Each controlled entity must carry appropriate levels of:
  - (a) directors' and officers' insurance;
  - (b) workers' compensation and related injury insurance; and
  - (c) public liability insurance.

**Note:** Audit and Risk Management Office can provide assistance on insurance cover.

## SCHEDULE 1

The constitution of a controlled entity must contain, at a minimum, provisions which address the following matters.

<b>Provision</b>	<b>Content / requirements</b>
<i>Purpose</i>	The commercial and /or other purpose of the controlled entity, and its responsibility to act in the interests of the University.
<i>Membership</i>	The members of the controlled entity and procedures relating to admission to membership and circumstances when membership will cease.
<i>Governance structure</i>	The establishment of a board, and procedures for appointment and removal of the chairperson and directors. The constitution would generally also specify the powers and duties of directors and address matters concerning directors' interests.
<i>Limits of authority</i>	<p>Provisions requiring the approval of the University, as controlling member, and a majority vote of directors for certain actions. For example, to:</p> <ul style="list-style-type: none"> <li>• materially change the controlled entity's activities;</li> <li>• acquire an interest in another legal entity which could expose the University to significant risk;</li> <li>• borrow funds without the knowledge or agreement of the University's Chief Financial Officer;</li> <li>• issue shares, or options to acquire shares, to other parties;</li> <li>• trade in derivatives except forward exchange contracts to cover known foreign currency commitments;</li> <li>• create employee share schemes</li> <li>• act, or purport to act, as agents/partners of the University or represent that the University is underwriting its activities</li> <li>• commit University resources into contractual arrangements with other entities, except that a controlled entity may commit its own resources in contractual arrangements with another entity;</li> <li>• grant equity in an associated company to directors or to employees of the entity or the University;</li> <li>• provide any loans to directors or entity staff or associates of directors or entity staff;</li> </ul>

- provide benefits to directors, in their role as director, other than directors' fees;
- Charge, pledge or otherwise encumber its assets.

<i>Management structure</i>	The role and appointment of a managing director and company secretary (and other key positions, as required).
<i>Accountability arrangements</i>	Annual reporting and accountability arrangements to the University, addressing requirements specified in this policy and any associated procedures.
<i>General meetings</i>	Provisions relating to the calling and holding of general meetings and the voting of members, including the respective voting rights to be enjoyed by the University and the other members.
<i>Taxation office and other reporting requirements</i>	Specific clauses that the constitution of a non-profit company must contain to be eligible for tax concessions as required by the Australian Taxation Office. Reporting requirements to bodies other than the University should be identified.
<i>Audit and accounts</i>	A requirement that the directors cause the controlled entity to keep written financial records in relation to the business of the controlled entity and, if relevant, to have those financial records audited in accordance with the requirements of the <i>Corporations Act 2001 (Cth)</i> .
<i>Arrangements for winding up or a sale of the undertaking of a controlled entity</i>	Requirements of the members upon winding up. The University, as controlling member, is empowered to approve the winding up of, or sale of the undertaking of, a controlled entity. The board and managing director will normally be responsible for ensuring that the sale or winding up occurs in accordance with any requirements specified by the University.
<i>Constitutional amendments</i>	Amendments to the constitution will be made by the members in general meeting. The University, as controlling member, should have the power to approve any amendments to the constitution of a controlled entity on the recommendation of its board.
<i>Indemnity</i>	A clear statement of the extent to which the controlled entity indemnifies its directors and secretary for liabilities incurred by those persons as officers of the controlled entity.



## NOTES

### Controlled Entity Policy 2012

Date adopted:

Date registered:

Date commenced: 1 March 2012

Administrator: Chief Financial Officer

Review date: 1 March 2017

Related documents:

*Corporations Act 2001 (Cth)*

*University of Sydney Act 1989 (as amended) (NSW)*

*Public Finance and Audit Act 1983 (NSW)*

*Australian Accounting Standard AASB 127 Consolidated and Separate Financial Statements*

Guidelines Concerning Commercial Activities  
University of Sydney (Delegations of Authority – Administrative Functions) Rule 2010

Affiliates Policy  
Code of Conduct – Staff  
External Interests Policy 2010

Controlled Entity Procedures 2011

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## AMENDMENT HISTORY

Provision	Amendment	Commencing
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