

**Owner:** Nominated Officers

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**Related Companies Policy and Procedures**

**[Title] Policy**

# SCOPE AND PURPOSE

* 1. These policy and procedures apply to all BU staff where a proposed activity is to be channelled through a Related Company as defined below.
	2. For the purposes of these policy and procedures, a Related Company is any of the following:
		1. a ‘**wholly owned company’**: a company in which BU is the only shareholder or in which one of BU’s other wholly owned companies is the only shareholder;
		2. a ‘**spin-out company’**: a company which has been set up to exploit intellectual property arising from a research project or other activities within BU. Usually, some shares in the company will be owned by BU (or by one of BU’s wholly owned companies) and some shares will be owned by investors (who may be the member of staff who generated the intellectual property);
		3. a ‘**joint venture company’**: a company which has been set up for a particular purpose or venture. Usually, some shares in the company will be owned by BU (or by one of BU’s wholly owned companies) and some shares will be owned by the joint venture partner (or partners). Whilst ownership of a joint venture company is normally split 50:50, this is not always the case.
		4. any other undertaking:
			1. in which BU is being asked to invest; and/or
			2. for which BU is being asked to share liability; and/or
			3. over whose activities BU exercises a substantial degree of control.

For a list of types of undertaking which could be a Related Company under these policy and procedures, please see Appendix 4.

* 1. Outside the scope of these policy and procedures are:
		1. the sale and purchase of shares by BU in companies listed on a stock exchange for investment purposes. Such purchases should be made in accordance with BU’s Financial Regulations and investment policy.
		2. membership of certain categories of company (usually limited by guarantee) or other undertakings which are aligned to BU’s charitable objectives, for example professional associations, such as the British University Finance Directors Group. Exclusion from these policy and procedures will be limited to low risk[1](#_bookmark0) entities and subject to the approval of UET. Legal Services will review the information provided in relation to each entity in order to ascertain levels of risk and BU’s liability and advise UET accordingly.
	2. These policy and procedures must be followed if BU sets up or invests in a Related Company or if one of BU’s wholly owned companies sets up or invests in a Related Company.
	3. If any Related Company other than a wholly owned company wishes to set up or invest in a company or undertaking, then the BU staff involved in the Related Company should ensure that these policy and procedures are followed by the Related Company so far as possible depending on the degree of influence that BU has over that Related Company.

# BACKGROUND AND LINKS TO OTHER BU DOCUMENTS

* 1. The Office for Students recognises that institutions may set up related companies for a variety of reasons: for example, to carry out commercial trading activities, to exploit intellectual property, to provide a focus for commercial enterprise in a culture different to the institution itself, or to protect the institution’s charitable status.
	2. BU’s involvement in Related Companies provides BU with opportunities to manage its business effectively and with a degree of flexibility and varying involvement. However, BU’s use of Related Companies also exposes BU to a number of legal, financial and reputational risks (particularly if the company or undertaking fails).
	3. Related Companies cover a wide range of entities and activities across BU, and there are a number of other BU rules and policies which must be considered, including:
		1. the BU Financial Regulations;
		2. the BU Contract Signing Policy and Procedures; and
		3. the BU Conflicts of Interest Policy and Procedures***.***

1Risk is not limited to financial risk, but includes regulatory, reputational and/or any other risk

# KEY RESPONSIBILITIES

* 1. The Nominated Officer is an officer of BU appointed on behalf of BU to oversee its Related Companies and to ensure that Related Companies are established in a controlled manner and to report to the BU Board and its committees on the performance of BU’s Related Companies. The Nominated Officer is supported by members of staff within Legal Services and Finance.
	2. A proposal to set up a Related Company under these policy and procedures requires a sponsor, who will take responsibility for ensuring that the proposal is driven forward appropriately and in accordance with these policy and procedures and with the directions of the Nominated Officer, the University Executive Team (UET) and the BU Board and its committees.
	3. Certain committees of the BU Board will take responsibility under these policy and procedures for the oversight of Related Companies, in order to ensure that all aspects of BU’s investment in a Related Company are reviewed.

# Policy

1. **BU POLICY ON RELATED COMPANIES**
	1. BU’s policy is to support and encourage mutually beneficial relationships with Related Companies.
	2. BU recognises that the establishment of a Related Company may involve a significant commitment from BU and investment of BU assets (both financial and otherwise).
	3. In order to ensure that BU’s involvement in Related Companies complies with relevant legal requirements and is appropriately risk-controlled, BU is only prepared to set up and/or invest in a Related Company under the procedures set out below and, as relevant, those procedures set out in paragraph 2.3 above.

# Procedures

1. **INTRODUCTION**
	1. These procedures cover the entire life cycle of a Related Company, from the initial proposal to set up the Related Company to BU’s exit from the Related Company. A flow-chart summarising the key stages in these procedures is attached as Appendix 1.

## *Set up*

* 1. The set up of a Related Company is controlled under these procedures through a three stage process involving review by UET and the BU Board (and certain of its committees).

## *Governance*

* 1. After BU has set up and/or invested in a Related Company, these procedures set out a review cycle to be followed by BU to ensure appropriate governance of the Related Company.

## *Exit*

* 1. Where BU has decided to stop its involvement with a Related Company or a Related Company decides to close (for whatever reason), these procedures set out how BU should organise its exit from the Related Company.

# SET UP – STAGE 1

* 1. A member(s) of staff involved in a proposed activity which is to be channelled through a Related Company must find a sponsor, who shall be a member of UET (other than the Nominated Officer).
	2. The member(s) of staff involved in the proposed activity must prepare a business case for the Related Company. Details of what the business case must include can be obtained from Legal Services (email: legalservices@bournemouth.ac.uk).
	3. If the business case involves a third party (which, for the avoidance of doubt, would include a BU student or a member of BU staff acting in a personal capacity), the member(s) of staff involved must prepare draft heads of terms for the Related Company. Details of what these must include can be obtained from Legal Services (email: legalservices@bournemouth.ac.uk).
	4. The member(s) of staff and the sponsor must contact Legal Services for advice on the business case (and heads of terms if applicable).
	5. The sponsor must review the business case (and heads of terms if applicable) and, if acceptable to the sponsor, the sponsor should submit the business case (and heads of terms if applicable) to the Nominated Officer.
	6. The Nominated Officer will, in conjunction with Legal Services, Finance and others, review the business case (and heads of terms if applicable) in the light of the relevant checklists contained in the guidance document ‘*Related Companies: Guidance for Higher Education Institutions*’ produced for HEFCE by RSM Robson Rhodes and in the light of the questions in Appendices 2 and 3. Legal Services and Finance will highlight any significant legal or financial risks in relation to the business case (and heads of terms if applicable) on a subsidiary authorisation form 1 (**SAF 1**).
	7. The sponsor shall present the business case, heads of terms (if applicable) and SAF 1 to a meeting of UET for consideration.
	8. UET shall consider any business case presented to it in the light of BU’s strategic plan and any risks highlighted in the SAF 1. To avoid doubt, UET

shall not review a business case unless it is accompanied by a SAF 1.

* 1. The outcome of UET’s review may be one of the following:
		1. The business case should not be taken forward to Stage 2 for the reasons provided (UET may at its discretion invite the sponsor to re- submit the business case at a later date); or
		2. The business case should be taken forward to Stage 2.

# SET UP - STAGE 2

* 1. If UET considers that a business case should be taken forward to Stage 2, the sponsor shall present the business case, heads of terms (if applicable), SAF1 and a covering paper to the following committees of the BU Board for consideration (in the following order):
		1. the Finance & Resources Committee, which shall consider the business case in the light of the key questions set out in Appendix 2 together with any other questions that the committee considers appropriate under the committee’s general terms of reference; and
		2. the Audit, Risk & Governance Committee, which shall consider the business case in the light of the key questions set out in Appendix 3, together with any other questions that the committee considers appropriate under the committee’s general terms of reference.
	2. To avoid doubt, neither committee shall review a business case or heads of terms unless accompanied by a SAF 1 and a covering paper from the sponsor explaining why UET supports the business case.
	3. If either committee identifies an issue which is outside of its remit described above but which is inside the remit of the other committee, it shall refer that issue to the other committee for consideration, which may require additional meetings to those envisaged under paragraph 7.1 above.
	4. The outcome of the committees’ review may be one of the following:
		1. One (or both) of the committees does not recommend that the business case is taken forward to Stage 3, for the reasons provided (the relevant committee may at its discretion invite the sponsor to re-submit the business case at a later date); or
		2. Both committees recommend that the business case is taken forward to Stage 3 (either with or without qualification or amendment).
	5. If both committees recommend that the business case is taken forward to Stage 3, the sponsor shall present the business case, heads of terms (if applicable), SAF1 and covering paper to the BU Board, which shall consider the business case in the light of the recommendations made by the committees.
	6. To avoid doubt, the BU Board shall not review a business case or heads of terms unless accompanied by a SAF 1 and a covering paper from the sponsor explaining why UET supports the business case.
	7. The outcome of the BU Board’s review may be one of the following:
		1. The BU Board decides that the business case should not be taken forward to Stage 3, for the reasons provided (the BU Board may at its discretion invite the sponsor to re-submit the business case at a later date); or
		2. The BU Board decides that the business case should be taken forward to Stage 3.

# SET UP – STAGE 3

* 1. If the BU Board considers that a business case should be taken forward to Stage 3, the sponsor and members of staff involved must obtain advice from Legal Services in relation to the set up of and/or investment in the Related Company in accordance with the business case and the necessary documentation. Legal Services must advise on whether external legal, financial or commercial advice is necessary, and the seeking of such external advice must be approved in advance by Legal Services.
	2. The documentation necessary to set up and/or invest in the Related Company will depend on the nature of the activity and the legal personality of the Related Company, and Legal Services will provide advice on what documentation is necessary. As a guide, a checklist is available from Legal Services (email: legalservices@bournemouth.ac.uk). However, in all cases, certain documents must be created, as follows:
		1. The sponsor of the Related Company must prepare a business plan (details of what must be included in the business plan can be obtained from Legal Services (email: legalservices@bournemouth.ac.uk))
		2. If the Related Company will be a wholly owned company, a memorandum of understanding (**MoU**) must be concluded between BU and the Related Company (a template MoU and details of what must be included in the MoU can be obtained from Legal Services (email: legalservices@bournemouth.ac.uk))
		3. If the Related Company will not be a wholly owned company, a shareholders’ agreement or equivalent must be concluded between BU and the other shareholders or other parties of the Related Company (details of what must be included in any such agreement can be obtained from Legal Services (email: legalservices@bournemouth.ac.uk)).
	3. The sponsor must ensure that any essential further actions listed in the SAF 1 are followed up and must notify Legal Services of the outcome.
	4. The sponsor must submit **ALL** draft documentation in relation to the formation or investment in a Related Company to the Nominated Officer, who in conjunction with colleagues in Legal Services and Finance, will review the documentation in the light of the relevant checklists contained in the guidance document ‘*Related Companies: Guidance for Higher Education Institutions*’ produced for HEFCE by RSM Robson Rhodes and in the light of business case as approved by the BU Board under Stage 2.

Legal Services and Finance will highlight any legal or financial risks identified (in particular, any new risks emerging after Stage 2 or any significant deviation from the business case) on a subsidiary authorisation form 2 (**SAF 2**).

* 1. The sponsor shall present the draft documentation and SAF 2 to a meeting of UET for consideration.
	2. UET shall consider whether the draft documentation presented reflects the business case approved by the BU Board under Stage 2, and shall also consider any risks identified in the SAF 2. To avoid doubt, UET shall not review any documentation unless it is accompanied by a SAF 2.
	3. The outcome of UET’s review may be one of the following:
		1. UET considers that the set up of and/or investment in the Related Company based on the draft documentation presented should NOT go ahead, for the reasons provided (UET may at its discretion either invite the sponsor to resubmit an alternative business case for consideration under Stage 1 or to resubmit the draft documentation to UET under Stage 3); or
		2. UET considers that a legal or financial risk or other matter identified in the SAF 2 needs to be referred to either the Finance & Resources Committee or the Audit, Risk & Governance Committee for consideration prior to proceeding with the set up of and/or investment in the Related Company (in which case the Nominated Officer will liaise with the Chair of the relevant committee to agree how the matter will be referred to the committee); or
		3. UET considers that the set up of and/or investment in the Related Company based on the draft documentation presented should go ahead, in which case UET will notify the sponsor of the individuals who are authorised to sign the documentation on behalf of BU.
	4. If UET refers a matter to a committee pursuant to paragraph 8.7(b) above, then that committee shall consider the matter referred to it. The outcome of the committee’s review may be one of the following:
		1. The committee considers that the set up of and/or investment in the Related Company based on the draft documentation presented should NOT go ahead, for the reasons provided (the committee may at its

discretion either invite the sponsor to resubmit an alternative business case for consideration under Stage 1 or to resubmit the draft documentation to UET under Stage 3); or

* + 1. The committee considers that the set up of and/or investment in the Related Company based on the draft documentation presented should go ahead, in which case the committee will notify the sponsor of the individuals who are authorised to sign the documentation on behalf of BU.

# GOVERNANCE

* 1. Once a Related Company has been set up/BU has invested in the Related Company, the Nominated Officer shall submit an initial report to the BU Board confirming that the Related Company has been set up in accordance with the business case.
	2. Each Related Company will be subject to periodic review by BU. The MOU or shareholders’ agreement or equivalent relating to a Related Company shall set out the frequency of the periodic reviews.
	3. The Nominated Officer shall be responsible for carrying out the periodic reviews and reporting on the results of such reviews to the Finance & Resources Committee via a Nominated Officer’s Report (a template Nominated Officer’s Report is available from Legal Services (email: legalservices@bournemouth.ac.uk)).
	4. The Finance & Resources Committee shall review all periodic reports received from the Nominated Officer and, if thought fit, approve any recommendations made by the Nominated Officer in such report.
	5. In addition to the above periodic reports, the Nominated Officer shall also be responsible for reporting to either or both of the Audit, Risk & Governance Committee or the Finance & Resources Committee on any matters that come to the Nominated Officer’s attention concerning the Related Company and that the Nominated Officer considers should be brought to their attention.
	6. The relevant committee shall review any extraordinary report received from the Nominated Officer and shall make a recommendation to the BU Board about whether or not to continue BU’s involvement with the Related Company.
	7. The BU Board will review any recommendations made by a committee and will communicate the results of its review to the Nominated Officer. The outcome may be one of the following:
		1. The BU Board decides that BU should continue its involvement with the Related Company, in which case the BU Board may provide instructions to the Nominated Officer concerning the ongoing management of the Related Company. The Nominated Officer shall

communicate any instructions to the board of directors or main contact of the Related Company, and shall report on the Related Company’s compliance with such instructions; or

* + 1. The BU Board decides that BU should discontinue its involvement with the Related Company, in which case the exit procedure below should be followed.

# EXIT PROCEDURE

* 1. There may be circumstances in which the continued operation of the Related Company is no longer required – or where BU wishes to exit its involvement with a project.
	2. Where the sponsor decides that the Related Company is no longer required, the directors or sponsor of the Related Company will need to make a formal decision to close. The sponsor should liaise with the Nominated Officer who will prepare an Exit Report for consideration by UET, Finance & Resources Committee, Audit, Risk & Governance Committee and approval by the BU Board (a template Exit Report is available from Legal Services (email: legalservices@bournemouth.ac.uk)).
	3. Alternatively, BU may wish to end its involvement in the Related Company, and the Related Company may wish to continue without BU support. Any decision to terminate BU’s interest will need to be considered by UET, Finance & Resources Committee and Audit, Risk & Governance Committee, and approved by the BU Board. The Nominated Officer will prepare an Exit Report for UET, Finance & Resources Committee, Audit, Risk & Governance Committee and BU Board (a template Exit Report is available from Legal Services (email: legalservices@bournemouth.ac.uk)
	4. The Exit Report must set out the Nominated Officer’s proposed actions to achieve exit from the Related Company, as well as any steps which the Related Company will take.
	5. The Nominated Officer shall submit the Exit Report to UET, Finance & Resources Committee, Audit, Risk & Governance Committee and BU Board, which shall consider whether or not to accept the Nominated Officer’s proposed actions. Any recommendations made by Finance & Resources Committee and/or Audit, Risk & Governance Committee will also be submitted to the Board alongside the Exit report for the Board’s consideration.
	6. If the BU Board accepts the Nominated Officer’s proposed actions, the Nominated Officer shall oversee BU’s exit from the Related Company in accordance with those actions.
	7. If the BU Board does not accept the Nominated Officer’s proposed actions, the Nominated Officer shall oversee BU’s exit from the Related Company in accordance with such actions as the BU Board shall dictate.
	8. In the event that the BU Board decides that it is not appropriate to exit the Related Company, the Nominated Officer shall continue to monitor the progress of the Related Company and provide periodic reports as set out under paragraph 9.

# General

1. **GUIDANCE**
	1. If any member of staff would like further guidance on the operation of these policy and procedures, they may contact Legal Services on legalservices@bournemouth.ac.uk.

# REFERENCES AND FURTHER INFORMATION

* 1. These policy and procedures have been informed by a variety of sources, including:
		1. ‘*Related Companies: Guidance for Higher Education Institutions*’ produced for HEFCE by RSM Robson Rhodes (available athttps://dera.ioe.ac.uk/5844/1/05\_48.pdf)
		2. ‘*Trustees, trading and tax*’ published by the Charity Commission (available at <http://www.charitycommission.gov.uk/Library/guidance/cc35text.pdf>)
		3. ‘ *Charities and investment matters: a guide for trustees*’ published by the Charity Commission (available at [http://www.charitycommission.gov.uk/Charity\_requirements\_guidance/ Charity\_governance/Managing\_resources/cc14full.aspx](http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_governance/Managing_resources/cc14full.aspx))

# APPENDICES

Appendix 1 Flow-chart of Related Companies Policy and Procedures Appendix 2 Key Questions for the Finance & Resources Committee Appendix 3 Key Questions for the Audit, Risk & Governance Committee Appendix 4 Types of undertaking covered by this policy and procedures

# Appendix 1 – Flow-chart of Related Companies Policy and Procedures

**Start**

**Requirement to set up a new undertaking**

**Find a sponsor**

**Generate the**

**business case (and heads of terms if applicable)**

**No**

**UET approval?**

**Yes**

**BU Board No**

**Yes**

**No**

**Committees’ approval?**

**Invited to resubmit?**

**End**

**Yes**

**No**

**BU Board approval?**

**Yes**

**Yes**

**Generate undertaking documentation**

**UET approval? Yes**

**No**

**Referral**

**Invited to No resubmit?**

**No**

**Committee approval?**

**End**

**Yes**

**Decisiontoexit End**

**Periodic review of company and**

**reporting by Nominated Officer**

**Set up/invest in company**

# Appendix 2 – Key Questions for the Finance & Resources Committee

*Confirmed by Finance & Resources Committee in October 2012 n.b.* the Committee noted that it reserved the right to explore areas other than those specified in evaluating the business case*.*

1. Consideration of the feasibility of the Project.
2. Financing (from non-earmarked sources) and the need for guarantees.
3. The permanent capital required.
4. An understanding of the true costs, contribution to overheads and rates of return required.
5. The return of profits to the institution.
6. Can the University afford to commit the proposed financial resources to the company at the present time and over its life?
7. Is the proposed return (financial or non-financial) on the University’s investment acceptable?
8. Is the proposed budget for the Company realistic and are the proposed Key Performance Indicators appropriate to measure performance against that budget?

# Appendix 3 – Key Questions for the Audit, Risk & Governance Committee

1. Has adequate scrutiny and challenge of the business case been applied elsewhere?
2. Has the business case been shown to be consistent with BU’s risk appetite?
3. Has it been shown that governance arrangements will be adequate and appropriate?
4. Has suitable assurance been received regarding (actual or potential) conflicts of interest?

# Appendix 4 – Types of undertaking which could be a Related Company under these policy and procedures

Types of legal entity include:

* + Private company limited by shares
	+ Public company limited by shares
	+ Company limited by guarantee
	+ Unlimited company limited by shares
	+ Limited partnership
	+ Limited liability partnership
	+ Industrial and provident society
	+ European Economic Interest Group
	+ Community interest company
	+ Charitable incorporated association
	+ Interests in foreign legal entities

Types of unincorporated arrangement include:

* + Trusts
	+ Partnerships
	+ Unincorporated associations