

Oxford University

## Checklists for new legal entity

Working draft

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Checklists for planning a new legal entity

The following checklists cover the most common issues encountered when establishing a new Legal entity. They are not exhaustive and are intended to be used in conjunction with each of the virtual Legal Entity Support Team members when preparing the case for a new legal entity. Additional subject matter experts may be invited to contribute to this process as necessary e.g. Health and Safety, IP etc

## Governance checklist

*To be discussed with Legal Services and Company Secretariat*

### Company secretariat

#### Before approval

* What type of legal entity is being considered and why?
* How will the entity be limited, by shares or by guarantee?
* What will be the entity’s registered address? This is important for all Companies House statutory registers any legal correspondence and banking arrangements
* Does the entity require Articles of Association or equivalent?
* Is any share capital required?
* Is a Shareholder’s Agreement or other agreement required?
* Who is recommended to join the Board and why?
  + - * Is there a mix of external / internal, Academic / non-academic?
      * What is the tenure of Board members and will Board members receive any remuneration or reimbursement of expenses?
      * Do any Board members have any conflicts of interest to declare, how will conflicts be managed?
      * How will appointments and removal of Board members be handled?
    - How will the legal entity be owned by the University? Is the proposal in line with the University strategy? i.e. is there an existing holding company for the entity, will it be held directly or does a new holding company also need to be set up?
    - How will the University exert control over the entity – what are the voting rights and how will the University be represented in decision making?
    - What, if any, services will be provided between the Legal Entity, any holding company and the University or other joint venture party?
    - What is the expected life of the Legal Entity and what are the exit plans for the University? Is there a milestone trigger for the end of the Legal Entity life?

#### After approval

* + - Once approved has the GPC or Council provided the necessary extract from the minutes to approve incorporation?
    - Have “Know your Client” (KYC) Compliance checks on Board members & Funders been conducted in line with University policy? (see ABC & anti-money laundering policies)
    1. For joint ventures and overseas operations:-
* Who will provide company secretarial services for a joint venture/ overseas entity? Are they professionally qualified and how are they insured?
* Who will provide Legal representation overseas?
* Have significant beneficial owners (SBO’s)/funders completed the KYC process? (Note this is a legal requirement)
* For overseas entities is a notary public and/or consular approval required for registration?

### Other legal

* What due diligence is planned or been undertaken on third parties before entering into a legal arrangement with them?
* Are there any special licences required for research or services which must be in place before activity begins?
* Will the Legal Entity be connected to any other University subsidiaries by way of ownership or trading? If so notify the Financial Controller to ensure intercompany trading is accounted for correctly.
* For overseas entities are there any special requirements for appointment of a country manager in the overseas location. Is there a requirement for any particular local content such as employees/ purchases/ expenditure in the country?

### Governance arrangements

* + 1. What will be the University’s governance of the Board?
       - Will this be defined in a shareholders / relationship agreement?
       - How will the entity report to GPC?
       - How will the risk register be maintained and reported to Audit and Scrutiny committee?
       - Have Board members followed the University process to declare conflicts of interest?
    2. What Board level Governance and reporting will be required for the entity, how will it report on;
  + Delivery of strategic plan
  + Financial performance
  + Audit Compliance
  + Anti-Bribery and corruption
  + GDPR Compliance
  + Quality standards (such as ISO9001, data assurance equivalents)
    - What is the meeting governance for the Board? Consideration should be given to;
      * Frequency and location of meeting
      * Required attendees and quorum
      * Minutes and circulation
      * Decision rights
      * Delegated authority to the Board collectively or Board members from the University
      * Sub-committees

## Operations

*To be discussed with the Project Sponsorr and Senior University staff as necessary*

### Operations

* + - Are there any matters or decisions which are reserved for GPC to take
    - What services are requested of the University and what is the proposed fee and Service level agreements e.g. accountancy, legal, tax, co- secretarial?
    - What legal agreements are in place for IP/trademark ownership and registration?
    - Will the Entity have customers and how will they be charged? What are the standard terms of business?
    - What other external legal agreements might be needed during operation?
      * Property Lease
      * Operating leases
      * Service contracts (cleaning, etc)
    - Which legal team have been appointed to review the agreements on behalf of the University?
    - How will the Entity protect its assets?
* Health and Safety Executive
* IT and Data protection
* Insurance
* IP protection

### Cessation

* + - To whom will ownership of assets and liabilities pass on cessation?
    - What provisions have been made with any partners for funding during winding up and who is responsible for what actions?
    - How will disputes be resolved?
    - What insurance requirement will remain after the event for run off cover?
    - Will the entity be run down to remain dormant or liquidated?
    - If dormant, who within the University will own the Legal Entity post operation?
    - Are there any special considerations to agree in event of insolvency or a requirement for additional capital

## Administration

### HR matters

*To be discussed with Operations Manager*

### Recruitment

* + - Is there a budget for headcount and is there authority to recruit?
    - Is there a job description for the role(s)?
    - Who will conduct recruitment for vacancies?
    - What are the terms of the employment contract, salary, pension scheme, length and nature of contract?
    - What HR/ Payroll system will be used and who will manage it?
    - Will there be any agency workers? (i.e. non-University employees or contractors) these must be employed within IR35 to work in the University.
    1. Employee legal responsibilities

*(to be covered by the adopted recruitment process and should consider…)*

* + - For overseas and UK ventures – In all cases does the employee have the right to work in the country of employment?
    - Where there are employees with no right to work- is there a visa requirement and who will sponsor that process?
    - Has the employee returned the signed contract with details of National insurance number, start dates etc?
    - Has payroll been informed of the need to set up a new employee
    - Should the employees be subject to an additional non-disclosure agreement?
    - Has the employee been made aware of any University or JV IP provisions and ownership of IP?
    - Has the employee been made aware of the University code of conduct and compliance with University policies (e.g. Equality and Diversity, IT policy)
    - Has the employee completed a medical declaration form? Does the employee require any additional support to perform the role?
    1. HR in overseas subsidiaries
    - Is there a requirement to provide employment for local people?
    - Are there any special bonus arrangements / pensions / benefits required in the country of employment?
    - Who has been appointed to oversee and administer the Legal Entity’s local HR requirements?

### Finance matters

*To be discussed with Financial Reporting Subsidiaries team*

* + 1. Bookkeeping and General Ledger set up
    - What accounting requirements are there? Can the entity be set up within Oracle?
    - If not Oracle what accounting package will be used and why?
    - What is the financial year end? The preferred year end is in line with the year end of the University i.e. 31st July
    - Which Accountants/ bookkeepers will be used if not in-house? Recommendations should be sought from independent advice not from Joint venture parties
    1. Financial Accounting
    - Has a notification been made to external auditors if required overseas?
    - How will the entity be consolidated into the University Financial statements?
    - Are there any reasons why the Accounting policies might be different from those in the University?
    - What format and frequency will be required for reporting purposes?
    - Under what local Financial reporting standards and policies will the entity be required to operate?
    - What currency will be the prevailing reporting currency if not GBP how will this be accounted for?
    - For audit purposes is a Letter of Support required and what representations will be required from the Board to the University at year end?
    - What accounting services will be required centrally , invoice processing , expense claims etc)
    - Will a new PRAS organisation code need to be set-up?
    - Do other systems or departments of UAS need to know about the new Legal Entity e.g Estates, HR, Student Systems, Research Services and Research Accounts

### Budgeting Forecasting, & Financial control

* + - Was the Legal Entity in the long-term plan? If not has PRAS been informed of the new venture?
    - Who will provide forecasts and management accounting support to the Financial Reporting team?
    - If the Legal Entity has employees what is their employment package (salary, bonus and will they be University employees, secondees or contracted staff?
    - Who will have delegated authority for expenditure it is in line with recommended practice from University Assurance team?
    - Has a Cost and benefit analysis been performed on the proposal? Who is responsible for ensuring benefits are realised and costs are controlled?

### Funding

*To be discussed with All team members*

* + - Who is providing the funding for the Legal Entity? Has the necessary due diligence been performed on the Ultimate Beneficial Owners (UBOs) and funding providers?
    - What is the nature of the funding to be provided – (e.g. endowment by loans or by shareholding or divisional or departmental support) is there any restriction on the use of funds?
    - Will there be any surplus funding or profits to be remitted back to the University? How will they be returned? Loan repayment, dividends, deed of covenant?
    - Has a deed of covenant been put in place to allow the transfer of funds for charitable purposes?

### Treasury

*To be discussed with Treasury team*

### Banking arrangements

* + - Does the entity require its own bank account?
    - Has the University banking team been notified? Barclays is the University preferred bank as it allows full visibility of all correspondence, balances and transactions in one place
    - How many individuals are to be on the bank mandate and who are they?
    - Have the individuals on the mandate been made aware of their responsibilities with regard to banking?
    - What is the frequency and type of transaction which will be undertaken?
    - How will payments be made? Electronic transfers are referred and can be managed by the banking team who will use on-line banking
    - Has a Board minute been provided giving authority to open a bank account?

### Currency requirements

* + - Will any currency accounts be required? The University has existing currency arrangements which could be advantageous to a Legal Entity
    - Will any other financial instruments be required? (Letters of credit, hedging etc)

### Treasury management of overseas entities

* + - Which bank has been chosen and why?
    - What additional Due diligence such as KYC checks are required by the bank?
    - Is it possible to operate the bank account from outside of the country?
    - How will funds be sent/remitted back to the UK? i.e. will they be repayment of a loan, payments for services or share issues
    - What route will funds take from or to UK? via US or Europe and in what currency?

### Insurance

* + - What countries will require cover and for what purposes?
    - Will the Legal Entity require a separate Employers Liability Insurance from the University policy?
    - What is the appropriate level of Public liability cover?
    - Is the Legal Entity covered by the University Directors and Officers policy?
    - Does the Legal Entity need an all risks policy related to projects or research?
    - Will the Legal Entity be covered by the University travel policy?
    - Does the Legal Entity have assets which require insurance? Buildings and contents, plant and machinery?
    - Do other parties involved have adequate insurance in place and has evidence been gathered of their certification for insurance purposes?
    - Is the Legal Entity providing or using services for which Professional indemnity insurance is required? E.g. provision of company secretarial or accounting services?
    - Will employees require additional Medical Insurance (especially if overseas)?
    - On cessation will there be a requirement to continue cover for a run off period?
    - Is legal insurance advisable to cover legal action e.g. Intellectual property infringement?

## Tax

### Employment taxes

* + - Has advice been taken on Employment taxes?
    - How many employees will there be and where do they work and pay tax? (a permanent establishment is deemed in some overseas countries after a certain period of working)
    - Is an Ex pat package and tax advice required?
    - Will Payroll registration be required in the UK or elsewhere?
    - Will the entity have employees who qualify for Pension?
    - Will the Legal Entity have any agency staff? Is the Legal Entity aware of the provisions of IR 35 and the need to work within IR 35?

### VAT status

* + - Notify the tax team to identify the correct tax treatment. Does the entity require its own registration or is it part of the wider University VAT group?
    - Overseas companies may be liable for General Sales tax (GST) and separate in-country tax advice should be sought via the University tax team who have access to overseas advisors

### Corporation tax

* + - For UK entities – if funds are remitted via Gift aid, has a deed of covenant been put in place?
    - Has notification been made to HMRC of Legal Entity by the tax team?
    - For overseas companies - Has tax advice been sought for the best type of legal entity to incorporate in that country? Has a formal tax registration been undertaken in the overseas country?
    - What is the overseas country corporation tax structure and is the tax reporting required understood?

## Other

### IT services

* What IT services are required?
* How will 3rd party data be kept secure?
* How will 3rd party data be used and what plans are in place to comply with GDPR or similar legislation if the entity is overseas?

### Use of University Assets

* What of the Universities assets are required within the Legal Entity
* Is a license of the University Logo and other trademarks required?
* What physical assets of the Universities will be used and how will the University be compensated for their use?
* What terms for return of University assets are in place

### Intellectual property

* What IP will be used by the Legal Entity which is the property of the University? Has a license been granted to the Legal Entity for its use in the relevant jurisdictions?
* Does the Legal Entity require access to any background IP which is owned by the university?
* What is the subsidiaries IP strategy? Is the Legal Entity targeting specific regions or topics for registration? Does the Legal Entity have access to legal IP support in the University?
* What processes are in place for capturing IP generated by the Legal Entity and registering the patents?
* Who is competing in this patent space and are searches being conducted in the sector to identify any possible infringements by the University, joint venture or against either party?
* If the Legal Entity is a joint venture in what name is the IP to be registered? Does the University have freedom to operate?
* Should the Legal Entity close does the University have a worldwide freedom to operate? I.e. can the patent portfolio be sold to someone who could sue the University for Infringement?

### Health and Safety / Other specialist bodies requiring notice …..

1. Notary Public-a legally registered solicitor who provides a service to certify or witness documents as a true copy of the original, Often used to verify copies of documents which are being sent for KYC checks
2. Consular Approval- registration of notarised documents which are being sent overseas