OLLSCOIL NA GAILLIMHE
UNIVERSITY OF GALWAY

FRC/24/A7/11

Code	QA308
Title	University participation/investment in Subsidiary/Associated and Other Entities
Policy Owner	Bursar
Date	9th December 2024
Approved By	Finance Resource Committee 9.12.2024 and Údarás na hOllscoile 18.12.2024

1 **Purpose**

To ensure that University of Galway properly and correctly identifies, manages, and controls subsidiary, associated, 'spin-out', or linked joint venture companies, partnerships, and similar business combinations, to include all aspects of:

a) initiation/incorporation/formation
b) participation, oversight, reporting
c) disposal/dilution/liquidation etc.

2 Description

The circumstances which require the establishment and/or investment in a subsidiary/associated/joint venture/partnership etc. are limited and may proceed only in accordance with this policy, underpinned by the Code of Practice for the Governance of State Bodies 2016 and the Code of Governance for Subsidiary Companies of Irish Universities.

2.1 The University conducts its business under its legal name (University of Galway and it will not ordinarily be necessary to register or use any other trading name (whether a Business Name, Trademark or otherwise), in the conduct of University business.

2.2 In situations where the University does conduct some of its business through a 'trading' name (e.g. to promote a specific aspect of its activity), the registration or creation of such a name (whether a Business Name, Trademark or otherwise), does not create a legal entity separate from the University itself.

2.3 Notwithstanding the foregoing, the University may sometimes incorporate, participate with, or invest in a wholly/partially owned subsidiary/associate or otherwise connected entity. This step results in a 'de facto' separate legal entity, which may conduct business in its own right. The objectives and constitution of any such connected entities must be aligned with those of the University.

3 Establishment

~~Section 8 ('Diversification, Establishment of Subsidiaries and Acquisitions by State Bodies') of the Code of Practice for the Governance of State Bodies 2016~~ The Code of Governance for Subsidiary Companies of Irish Universities contains the Guiding Principles and Code Provisions for the establishment of subsidiaries. All parent universities are expected to follow these provisions when establishing subsidiaries.

As one of the functions of a university, section 13 (2) (c) of the 1997 Act provides that a university, "… may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university."

Any proposals for the diversification of a university's activities, particularly in relation to diversification into areas outside the core functions of teaching and research, or for the establishment of new subsidiaries should require the approval of the governing authority, which should consider the full implications, including any financial or other risks, for the university.

When seeking such approval, the University unit (College, School, Research/Support Service unit) proposing the participation, formation or establishment of the entity shall submit a written request (see requirements below) to the Bursar's office for UMT consideration and approval. The Bursar shall notify the Secretary for Governance and Academic Affairs of the submission and shall table the request for consideration at UMT. If approved by UMT, the Bursar shall then table that approval for ratification on the agenda of the subsequent Finance Resources Committee / Údarás na hOllscoile. The university should supply the governing authority with complete details of such proposed subsidiaries, joint ventures or acquisitions, and should do so at the earliest opportunity in order to avoid delays.

The written request to the Bursar must include the following (which is not an exhaustive list) together with such other information as may be requested or deemed appropriate:

- the full business case for the proposal;
- cash flows and projections;
- risk analysis of proposal;
- the amount of share capital proposed for acquisition, compared with the entire issued share capital of the company concerned;
- details of any shares held in such company by any other State body, its subsidiaries or State body joint ventures;
- data on the financial commitment and exposure of the parent body, whether by way of equity, loans, guarantee or otherwise;
- other potential liabilities that may have a negative impact on the company;
- outstanding borrowings of such company from all sources, whether guaranteed or not, and any commitments by them which could involve financial exposure for the university;
- Notification of potential conflicts of interest; and
- the proposed approach to the remuneration and conditions of employment of the CEO/Managing Director and, where appropriate, other employees of the subsidiaries should be outlined, when seeking approval for the establishment or acquisition of subsidiaries.

Borrowing Limits: Under Section 38 of the 1997 Act, universities must observe the provisions of any Framework for Borrowings and Loan Guarantees (as amended, adapted or extended from time to time) agreed between the universities and the HEA under Section 38(2) of the 1997 Act.

The submission must also include:

(i) Executive summary to include entity format, shareholding, constitution etc.
(ii) Proposed Directors/Secretary/Management
(iii) Financial Projections and resource/seed capital requirements
(iv) Taxation implications (VAT/Corporation Tax/PAYE/PSWT etc)
(v) Banking arrangements
(vi) Audit and accounting arrangements
(vii) Arrangements for dissolution/winding up or other divesting of the University's investment in the entity.

3.1 Legal Aspects

If authorised, legal services required to incorporate or otherwise establish the entity shall be procured in accordance with the University's legal services procurement framework.

4 Management, Oversight and Reporting of University controlled entities

4.1 The Code of Governance for Subsidiary Companies of Irish Universities sets out the requirements for subsidiaries in terms of their management, oversight and reporting to the parent university and its Governing Authority, in addition to the duties and obligations under the Companies Act 2014 and the Charities Act 2009 as appropriate.

4.2 Clear accountability underpins effective relations between the universities and their subsidiaries. Effective accountability depends upon respective roles and responsibilities being clearly defined and understood by both sides. A formal Service Level Agreement (“SLA”) should be put in place that, together with the Constitution of the subsidiary company, clearly defines the roles and responsibilities of each side.

Once approval has been granted by UMT to establish/ and/or invest in a subsidiary/associated/joint venture/partnership etc., the CEO/ Secretary of the subsidiary should contact the Office of the Secretary for Governance & Academic Affairs to initiate the process of developing an SLA with the university.

The Service Level Agreement should include:

- Purpose of the subsidiary company and agreement to provide services
- Details of services to be provided by the subsidiary
- General obligations of the parent university
- Details of subsidiary company reporting requirements to the parent university and its Governing Authority
- Detail of Board of Directors memberships and responsibilities
- Taxation requirements
- Financial performance
- Accounts
- Insurance
- Procedures for approved enhancements and capital projects
- Subsidiary company personnel
- Health and safety requirements
- Confidentiality and parent university trademark
- Term and termination
- Dispute resolution
- Performance review meetings and termination
- Other.

5 Reporting

All entities in which the University participates, holds an interest in, or otherwise exercises a controlling interest in, shall be notified to Údarás na hOllscoile by way of:

a) FRC minute upon first establishment/formation
b) Annual report to FRC in the form of summary of financial results
c) The completion of an Annual Governance Statement by March 1st reporting on a comply or explain basis on a range of compliance requirements
d) Any other such reporting as Údarás na hOllscoile and/or University Management Team requires.

6 Annual Audit

The external auditor of the Financial Statements of entities in which the University holds a controlling interest shall be appointed by the University. The entity will liaise with the auditors to ensure that the financial statements are prepared and the audit is complete in line with the requirements of the University. The Bursar's office shall ensure the consolidation of the entity's financial results with those of the University and its other subsidiary and associated entities as appropriate.

6.1 All/any such entities must be operated on a profitable/break even basis and may not incur deficits without the written authority of the Bursar. Any events, developments, information that indicates the possible incurrence of deficits or asset impairment must be formally brought to the attention of the Bursar immediately.

7 Dissolution, Dilution, Liquidation, Wind-up, Disposal of University-controlled entities

7.1 Arrangements for the subsequent winding up, liquidation, dissolution, dilution, share swaps etc. or disposal of such <u>entities that are controlled by the University</u>, must reflect its investment, if any, in them. All/any assets remaining upon such cessation of trade or disposal of such University controlled entities must either be:

7.1.1 Returned to the University for application in accordance with its constitution, i.e. the Universities Act 2009.

7.1.2 In the case of an entity holding charitable status, any remaining value on dissolution must be transferred to another charitable institution or institutions having main objects similar to those of the entity being dissolved. The institution or institutions to which the property is so transferred shall prohibit the distribution of their income/assets amongst their members as follows:

(a) No portion of the Company's income and property shall be transferred or paid directly or indirectly by way of dividend, bonus, distribution, or otherwise howsoever by way of profit to members of the Company, except where such members are themselves charitable institutions, officially registered with the Charities Regulatory Authority.

(b) No Director shall be appointed to any office of the Company that is paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Company. However, nothing shall prevent any payment in good faith by the Company of:

(i) reasonable and proper remuneration to any member or servant of the Company (not being a Director) for any services rendered to the Company;
(ii) interest at a rate not exceeding 1% above the Euro Interbank Offered Rate (Euribor) per annum on money lent by Directors or other members of the Company, to the Company;
(iii) reasonable and proper rent for premises demised and let by any member of the company (including any director) to the Company;
(iv) reasonable and proper out-of-pocket expenses incurred by any Director in connection with their attendance to any matter affecting the Company;
(v) fees, remuneration or other benefit in money or money's worth to any company of which a Director may be a member holding not more than one hundredth part of the issued capital of such company.

(c) Nothing shall prevent any payment by the Company to a person pursuant to an agreement entered into in compliance with section 89 of the Charities Act, 2009 (as for the time being amended, extended or replaced).

7.1.3 Members of the company being dissolved/wound up etc. shall select the relevant institution or institutions at or before the time of dissolution and if and so far as effect cannot be given to the provisions at (a) to (c) above, then the property shall be given or transferred to a charitable object with the agreement of the Charities Regulator.

7.1.4 Final accounts to the date of dissolution shall be prepared, audited, and approved by the board that include details of any income/assets transferred, details of the beneficiaries, and the terms of the transfer.

7.2 Arrangements for the subsequent winding up, liquidation, dissolution, dilution, share swaps etc. or disposal of entities in which the University participates but that are <u>not controlled</u> by it, must have due regard for the charitable objects of the University and its stakeholders.

8 Responsibilities

Role	Responsibility
Bursar	Policy owner. Receive written proposal for the establishment, disposal or dissolution of an entity and bring to UMT for consideration.
Initiating Unit	Prepare a written business case to support the establishment, disposal or dissolution of an entity and send to Bursar for consideration.
University Management Team	Review written proposal for the establishment, disposal or dissolution of an entity and make recommendations to Finance Resource Committee.
Finance Resource Committee	Review written proposal for the establishment, disposal or dissolution of an entity and make recommendations to Údarás na hOllscoile.
Údarás na hOllscoile	Consider proposals from Finance Resource Committee for approval.
Director Financial Accounts	Ensure that entities which the University holds a controlling share are consolidated within the University's Financial Statements.

9 Related Documents

Code of Governance for Subsidiary Companies of Irish Universities
Code of Practice for the Governance of State Bodies, 2016.