Appendix C– University Considerations

1. Victorian Regulatory Framework

The *University of Melbourne Act 2009* (the **Act**) permits the establishment of entities by the University for purposes authorised by the Act. In summary:

a. Section 48(1) of the Act permits the University to form or become a member of a company, association, partnership, trust, or joint venture provided it is for the purpose of one or more of the objects in section 48(2).

b. Section 48(2) lists a variety of objects which may apply including:
   - making available facilities for study, research or education;
   - providing teaching, research, development, consultancy, or other services for public or private entities;
   - assisting or engaging in the development or promotion of the University's research or the application or use of the results of that research;
   - preparing, publishing, distributing, or licensing the use of literary or artistic work, audio or audiovisual material or computer software;
   - exploiting commercially a facility or resource of the University, including but not limited to, study, research or knowledge developed by or belonging to the University, whether alone or with another entity;
   - seeking or encouraging gifts to the University or for the University's purposes;
   - any other object, consistent with the Act, that the Council considers appropriate in the circumstances.

c. Where the University is carrying out a commercial activity (irrespective of whether this involves the creation of an entity or otherwise), the establishment of the commercial activity must be in accordance with any guidelines made under section 55 which, at this time, are the *Commercial Activities Guidelines*.

2. UOM Delegations Framework

Under the University's *Delegations Framework*, delegates have the authority to approve the University or a subsidiary becoming a member of an entity subject to the thresholds and conditions set out in *Schedule G – Corporations, joint ventures, partnerships and associations*. For non-entity presence, *Schedule A – Contracts and purchase orders with expenditure or income* may be relevant.

3. Due Diligence

Advice should be sought from Legal Services in consultation with relevant stakeholders on the due diligence requirements for the relevant transaction necessitating offshore presence. Relevant stakeholders on due diligence decisions will depend on the activity – refer to the Guidelines for Establishing University Offshore Presence for a non-exhaustive list.

The Organisational Lead must consider if the activity involves either the University undertaking a "commercial activity" or if the relevant entity is being established for a "commercial activity" as there are specific approval requirements for due diligence relating to a "commercial activity". A commercial activity is defined in the *Commercial Activities Guidelines* and generally includes provisions or sale of goods or services by the University with a view for profit (including jointly with others). The definition has a list of exclusions that need to be reviewed in the conduct of each proposal. The assessment is undertaken by the Organisational Lead and where it is a commercial activity, the adequacy of the due diligence will be decided by the Vice Chancellor and the Chief Operating Officer under the *Council's Instrument of Reservation and Delegation*.

4. UOM Controlled Entity Operations

While the operation of an entity is legally the responsibility of its board of directors, the University is subject to various legal requirements in relation to entities it controls or has an interest in which require the support or input of the entity (such as financial reporting). The **primary source** with respect to the University's expectations of its controlled entities is the *Controlled Entities Policy* (**CEP**).

In addition to meeting CEP requirements, controlled entity boards must ensure that the entity operates in accordance with all applicable laws and are responsible for managing and operating the entity. As a separate legal entity, the controlled entity must make all necessary arrangements for its operations including funding, staff, accounting and book-keeping, IT, HR, legal and other advice. Where the University is seeking to appoint a nominee Director, the primary source for information on the nominee director process is the *UOM Nominee Director Guidance*.

Under the CEP, a controlled entity is defined using the s50AA *Corporations Act* 2001 (Cth) definition, which is also used by the *Commercial Activities Guidelines*. Note the accounting standards use a different definition of "control" for determining whether an entity should be consolidated in the University's Financial Report (which applies AASB10). Therefore, in some instances an entity may be a "controlled entity" under the CEP yet not consolidated or vice-versa. CFOG should be briefed before the relevant entity is incorporated or any interest acquired.

5. Insurance

Risk (Insurance) must be contacted to advise on insurance coverage for entities, directors and expected activities.

6. Shared services

The University has developed a process for wholly owned subsidiaries to acquire shared services from the University such as support or access to systems, premises, facilities, resources, etc. These services may only be obtained to the extent agreed by the Director responsible for the University service and formalised in a signed shared services agreement between the University and the entity. The Office of the COO coordinates this process for wholly owned subsidiaries.

7. International Governance Group

Under its *Terms of Reference*, the role of the International Governance Group is to coordinate the structures and arrangements that enable a whole-of-University presence in overseas jurisdictions.

Note the University also has a controlled entity, UOM International Holdings Pty Ltd, under which the University may hold offshore subsidiaries. The appropriate holding company/entity for an offshore controlled entity will need to be considered as a part of Step 4 of the Procedures.