Appendix A– Scoping a proposed Offshore Presence

Table 1: Defining the parameters of the proposed activity

Category	Questions	Key Issues
1. Scope	• What is the nature and purpose of the activity? • Does the University already have an offshore presence in the relevant jurisdiction?	Refer to the Guidelines for Establishing University Offshore Presence for a list of potential activities.
2. Significance	• Is the activity a key component of a University/Faculty strategy? • Does the activity align with the objects of the University? • Is the activity core to University business? • Does the University ordinarily operate in the relevant jurisdiction? • Is the activity a Commercial Activity to which the Commercial Activities Guidelines apply?	These questions may assist in assessing the appropriate internal approval pathway, as matters of strategic significance and/or which present significant risks are ordinarily reserved for the University Council irrespective of the transaction value involved. Commercial activities have specific administrative requirements and approval pathways.
3. Physical or Digital	• Does the proposal contemplate a physical presence? • Does the proposal contemplate the creation of a digital presence?	These questions are relevant to determining whether the University intends to hold or use property within the jurisdiction and scoping associated advice. If the University intends on establishing a digital footprint in-country (either from an offshore location to the jurisdiction or from within the jurisdiction), then consideration will need to be given to local regulations governing the proposed digital activity, including taxation of digital products, digital security and access, and consumer and marketing laws. See also below questions relating to intellectual property, data flows and branding.
4. Financial	• Will the University fund the activity? • Will the activity raise revenue for the University? • Does the proposal involve repatriating funds to the University or elsewhere? • Will the activity involve soliciting charitable/philanthropic donations?	These questions identify whether there may be an impact to the University's for-profit or not-for-profit status, tax risks, requirements and costs associated with repatriating funds and risks

	• Will the activity contemplate attracting inward investment? • Will the activity involve the awarding of grants or contracts or other sponsored research awards? • Is the University the intended recipient for any contracts, grants, funds or donations? • What will the nature of the expenses for the activity be?	relating to currency capital controls. Fundraising or any investment-related activity may necessitate local advice on fundraising, charity and securities regulations. Note that the CFOG will require visibility of accounts for controlled entities, any proposals to change arrangements and any funds transfers. For this reason, the CFOG should be consulted early.
5. Personnel	• Does the activity require in-country personnel? If so, how many individuals are envisaged to work in-country? • Will they be engaged on a full-time or part time basis? Will they work exclusively for the University? Where is their ordinary place of work? • Will personnel be engaged in-country on a short-term or project basis, or as an ongoing engagement? • What activities will the personnel undertake? • Will any University employees be required to undertake the activity in-country? Is it intended that they undertake regular travel to the relevant jurisdiction, or would they be expected to relocate? • Does the University expect to make decisions for, or direct the activities of in-country personnel?	These questions are important to identify employment, tax and OH&S issues from an Australian and local legal perspective. For University staff, this includes addressing any visa and personal income tax issues that might arise where they are expected to travel for work and/or potentially spend significant amounts of time working overseas. It is important to seek advice on the most appropriate model of engaging in-country personnel to ensure appropriate benefits are paid and to mitigate the risk of tax and other penalties for misclassifying employees as contractors.
6. Geo-political and security	• Would the proposed activity trigger obligations under the Australian Foreign Arrangements Scheme and/or related laws? • Are there any political or security risks in the relevant jurisdiction (e.g. natural disasters, change in government, political instability, high incidents of violent crime).	These considerations are important to ensure the health and safety of in-country personnel, and that any insurance and business continuity risks are appropriately considered.
7. Governance	• How important is it for the University to exercise direct control over the activity and/or in-country personnel? • Would in-country personnel have the authority to act as the University's agent including, for example, to negotiate grants and enter into agreements? • Does the University expect to formally control an entity and treat	It is important to consider what role existing University policies, committees and functional teams within the University will play in establishment and ongoing oversight, operations and support. There may be limitations on the extent to which the University can exercise control and/or make decisions in-country. Local legal

	it as a subsidiary if one were to be established? • Will the University be the corporate "member" (i.e. shareholder or other equity structure) of any entity that is established?	and taxation advice will need to be procured due to regulatory requirements for establishment and ongoing compliance.
8. Intellectual Property and Data	• Does the activity contemplate the creation and/or commercialisation of intellectual property in-country? • Does the activity contemplate data flows between the University and the offshore presence? • Does the activity contemplate the use of University IT infrastructure or shared services? • Will the offshore presence be using University branding or is new branding required?	It is important to ensure that requirements around personal information, data security and managing intellectual property and confidential information are considered from the outset, including any local restrictions around exporting data and ownership of proprietary materials. There may be tax and other compliance implications for in-country commercialisation activities.