Controlled and Non-Controlled Entity Policy

Section 1 - Purpose

(1) This policy establishes the governance framework within which the University will acquire and manage ownership or other significant interests in an Entity in keeping with its powers under section 48(1) of the Royal Melbourne Institute of Technology Act 2010 (RMIT Act). This policy has been developed in line with the Guidelines concerning commercial activities in accordance with Part 6 Division 6 of the RMIT Act published in the Victorian Government Gazette on 4 November 2010 (Guidelines) and with reference to the University Governance Principles from the Expert Council on University Governance.

Section 2 - Overview

(2) The governance framework for the University's controlled and non-controlled Entities is designed to ensure that:

a. The University operates in accordance with its obligations under the RMIT Act and the Guidelines;
b. RMIT University Council (Council) has appropriate oversight of all functions and activities conducted by Entities.

Section 3 - Scope

(3) This policy applies to all Entities within the RMIT Group.

(4) Any investment in the ordinary course by RMIT as part of the University's enterprise-wide investment strategy overseen by Council is excluded from the requirements of this policy.

Section 4 - Policy

Principles

(5) Subject to the approval process described in this policy, the University may form, manage or participate in an Entity where:

a. one or more of the following purposes are met:
    i. to provide a more appropriate governance or operational framework for the management of specialised functions of the University;
    ii. to separate the management of non-core functions from the core functions of the University;
    iii. to meet country specific legislative requirements for operations outside Australia; or
    iv. to act as a holding entity or trustee for specific activities of the University; and
b. one or more of the following objects are met:
    i. making available facilities for study;

ii. providing teaching, research, development, consultancy or other services for public or private entities;
iii. assisting or engaging in the development or promotion of the University's research or the application or use of the results of that research;
iv. preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audio-visual material or computer software;
v. 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;
vi. seeking or encouraging gifts to the University or for the University's purposes; or
vii. any other object, consistent with the RMIT Act, which the Council considers appropriate in the circumstances.

Approval and Review

(6) Subject to clause (8), approval by Council is required for the formation or management of, or the participation in, an Entity by the University prior to the establishment or acquisition of the interest, including but not limited to an equity or equity-like interest, in the Entity. To avoid doubt, subject to clause (8) approval by Council is required for any increase in the size of an interest in an Entity.

(7) Subject to clause (8), the Vice-Chancellor must submit to Council, for approval, a proposal for the formation, or management of, or the participation in, an Entity (other than a Research IP Translation Entity) in accordance with the Controlled and Non-Controlled Entity Procedure.

(8) Approval by Council under clauses (6) and (7) is delegated to the Vice-Chancellor in respect of Research IP Translation Entities. A proposal for approval of the formation of, or participation in, including but not limited to acquisition of an equity or equity-like interest in, a Research IP Translation Entity must follow the Research IP Translation Entity Procedure.

(9) Approval must not be given under paragraph (6), (7) or (8) until the following assessments and measures have been undertaken as appropriate to the nature of the activity:

a. that the activity is consistent with the mission or strategic direction of the University or its objects or functions;
b. a financial analysis that assesses the level of exposure of the University's resources and assets;
c. a cost/benefit analysis including, as appropriate, the social costs and benefits;
d. a risk assessment of the activity and development of associated risk management measures;
e. whether the governance arrangements, legal structures and audit requirements are appropriate for the size, risk and type of activity;
f. whether the terms and conditions of the arrangements and agreement are appropriate including those dealing with governance, representation of the University on any board or decision-making group formed for the purpose of the undertaking, risk (including insurance), taxation, intellectual property, the rights of the University to terminate its involvement in the activity and any indemnities;
g. a due diligence assessment in a form appropriate for/commensurate with the activity;
h. whether there are any actual or perceived conflicts of interest for University staff or University Council members that may arise from the activity, and measures to address those conflicts;
i. in respect to activities conducted overseas, appropriate legal advice in respect of relevant overseas laws, having regard to the nature of the arrangement; and
j. any consequences of termination of the commercial activity, including contractual arrangements.

Disposal of an Interest in an Entity

(10) Subject to clause (12), Council must approve the proposed disposal of an interest in a Controlled Entity or Non-

Controlled Entity (other than a Research IP Translation Entity) prior to the disposal of such an interest by the University.

(11) Subject to clause (12), the Vice-Chancellor must submit to Council for approval a proposal for the disposal of an interest in a Controlled Entity or Non-Controlled Entity. Any proposal must:

a. detail the reasons and background for the proposed disposal; and
b. include provisions for the distribution of any assets in accordance with the constituent documents of the Entity.

(12) Approval under clauses (10) and (11) is delegated by Council to the Vice-Chancellor for Research IP Translation Entities. Any proposal for approval to dispose of an interest in a Research IP Translation Entity must be in accordance with the Research IP Translation Entity Procedure. The proposal must detail the matters set out in clauses (11a) and (11b) and include the information required under clause (17) of the Research IP Translation Entity Procedure.

Governing Documents of Controlled Entities

(13) The terms, including any changes to those terms, of governing documents of Controlled Entities must:

a. be approved by Council;
b. be compliant with the laws in the jurisdiction in which the Controlled Entity is registered;
c. include a description of the mechanism in which the University maintains control (as defined in section 50AA of the Corporations Act 2001) of the Controlled Entity; and
d. include a provision that expressly authorises a director of the Controlled Entity to act in the best interests of the University.

Directors, Boards and Administration

(14) A Board of a Controlled Entity must have at least three and no more than seven directors approved by Council (subject to any requirement under local laws for Controlled Entities registered outside Australia).

(15) Nominations for directorship (including the appointment of a Chair) of a Controlled Entity must be made by the Vice-Chancellor in accordance with the Controlled and Non-Controlled Entity Procedure.

(16) On the recommendation of the Nominations, Remuneration, People and Performance Committee, Directors of a Controlled Entity must be approved by Council prior to their appointment.

(17) A Company Secretary will be appointed by the directors of a Controlled Entity in accordance with the Controlled and Non-Controlled Entity Procedure (subject to any requirement under local laws for Controlled Entities registered outside Australia).

(18) Administration of a Controlled Entity will be managed in accordance with the Controlled and Non-Controlled Entity Procedure and the Controlled Entity Guideline.

Policies, Governance and Reporting

(19) All Controlled Entities must comply with regulations, policies, standards and procedures of the University as applicable and to the extent permitted by the local laws of the jurisdiction in which the Controlled Entity operates. Where a conflict exists, alternative arrangements must be documented through governance frameworks approved by the University.

(20) Each Controlled Entity must report to Council prior to the commencement of each financial year, including providing Council with a draft strategic execution plan for Council approval and otherwise report to Council in accordance with the Controlled and Non-Controlled Entity Procedure.

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(21) Each Controlled Entity must provide regular (and not less than bi-annually) updates to Council against the Entity's strategic execution plan.

(22) The relevant member of the University Executive must ensure that the Vice-Chancellor has regular and sufficient information regarding activities of each Non-Controlled Entity.

(23) Each Controlled Entity operating in Victoria must be audited annually by the Victorian Auditor-General's Office (VAGO), or equivalent if operating interstate. If it is an entity outside Australia, RMIT must appoint an auditor.

Responsibilities

(24) The University Secretary and Academic Registrar is responsible for ensuring the currency of this policy.

(25) Responsibilities for the administration of Controlled Entities is described in the Controlled Entity Guideline.

Review

(26) This policy will be reviewed every five years, at a minimum, in accordance with the Policy Governance Policy.

Section 5 - Compliance

(27) Compliance with this policy is monitored by the Chief of Staff to the Vice-Chancellor.

(28) Breaches of this policy are reportable via the Organisational Breach Reporting Form and are managed in accordance with the Compliance Breach Management Procedure.

Section 6 - Subordinate Policy Documents

(29) Refer to the following documents which are established in accordance with this policy:

a. Controlled and Non-Controlled Entity Procedure
b. Research IP Translation Entity Procedure
c. Research IP Translation Entity Procedure Schedule 1 - Examples of Conflicts of Interest in Research IP Translation Entity Transactions
d. Controlled Entity Guideline.

Section 7 - Definitions

Any defined terms below are specific to this policy.

Controlled Entity	An Entity that is subject to the control of RMIT in terms of section 50AA of the Corporations Act 2001 (Cth). In essence, this is where RMIT has the capacity to determine the outcome of decisions about the second Entity's financial and operating policies.
Entities	Includes companies, associations, trusts, partnerships or joint ventures.
Non-Controlled Entity	An Entity in which RMIT has an interest but where RMIT's interest does not satisfy the definition of control in terms of section 50AA of the Corporations Act 2001.
Research IP Translation Entity	A Non-Controlled Entity that is established or participated in by the University for the purpose of translating, commercialising, licensing or otherwise exploiting research-related intellectual property or research output.

Status and Details

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Policy Owner	Brooke Griffin Chief of Staff to the Vice-Chancellor
Policy Author	Connie Merlino University Secretary and Academic Registrar
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Glossary Terms and Definitions

"RMIT Group" - RMIT University and its controlled entities (RMIT Europe, RMIT Online, RMIT Vietnam, RMIT University Pathways)