PRIFYSGOL
BANGOR
UNIVERSITY

# UNIVERSITY SUBSIDIARY COMPANIES
# POLICY AND PROCEDURES

| **Rev** | **Date** | **Purpose of Issue / Description of Change** | **Equality Impact Assessment Completed** |
|---|---|---|---|
| 1. | 19th June 2020 | Initial Issue | |
| 2. | 14th June 2021 | Review and re-approval | |
| 3. | 17th September 2021 | Further review and re-approval | |

| **Policy Officer** | **Senior Responsible Officer** | **Approved By** | **Date** |
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| Deputy Secretary & Head of Governance Services | Chief Operating Officer | Nominations and Governance Committee | 17th September 2021 |

*This Policy will be reviewed in 3 years*

## University Subsidiary Companies Policy and Procedures

### 1. Introduction

In common with other Higher Education Institutions Bangor University has established several subsidiary companies which exist to hold and manage specific activities and resources where it is beneficial to separate those from the University.

By virtue of its ownership, shareholding or membership of the company the University retains an interest in ensuring that the company maintains good governance and financial probity. Failure in these areas presents a potential reputational risk for the University.

### 2. Scope

This Policy will apply to the formation, dissolution and governance of all Bangor University subsidiaries. In approving the formation of, and investment into, a subsidiary company, members of the University Council, as Trustees of the University, will have due regard to the provision of this Policy and its procedures.

The University's *Scheme of Delegation and Decision-Making Powers* states that Council approval is required both for the creation of new enterprises or companies, and the approval of sale of equity or transfer of business in university companies. Decisions in relation to the finances of a subsidiary company must be made in line with the provisions of the Scheme. Wholly owned subsidiaries are governed by their own Boards as far as their operations are concerned. In this context, it is expected that any delegations they put in place will be consistent with those outlined for the University in the Scheme.

The University has established a control framework within which they must operate. This consists of the following elements: -

### A. Membership

a) All Non-executive and Executive Directors, and the Chair and Deputy Chair, shall be appointed by the Nominations & Governance Committee on behalf of the Council.
b) When relevant the Nominations & Governance Committee will appoint one member of Council to serve on the Board.
c) The Chair and / or Managing Director of a subsidiary may wish to make a recommendation to the Nominations and Governance Committee.
d) When recruiting executive directors or senior employees of the Company, the requirements of the Company's insurers must be followed (including, in some cases, the provision of at least two written references) and that the normal recruitment processes of the University are adhered to, including due diligence. The recruitment panel should normally include a senior member of the University, who is not a Director of the Company (e.g. the University Nominated Officer).
e) The term of office for the Chair shall be four years. The Chair shall be eligible for reappointment of one further period of four years, subject always to a maximum period on the Board of eight years.
f) Non-executive and Executive Directors will be appointed by the Nominations and Governance Committee on an initial four-year term and can be put forward by the Board to the Nominations and Governance Committee for re-appointment for one additional four-year term[1].
g) The University shall hold the majority on the Board[2].

[1] The roles of Managing Director and Company Secretary are excluded from the 8-year limit.

h) The Nominations & Governance Committee will decide on the number of members it requires for a particular Board.
i) The Chair and Managing Director will work to ensure that the Board maintains a selection criteria which ensures a diverse Board membership.
j) The Board will identify a Deputy Chair who will serve in the absence of the Chair.

**B. Board Operation**

a) The Articles will establish limits on their sphere of operation that cannot be amended without Shareholder and University consent.
b) Companies must submit a a Business Plan annually which will set out how the company defines its objectives and achieves its goals. The Plan will be subject to review by the Finance & Strategy Committee from which a budget will be agreed.
c) Companies may periodically be asked to provide a Strategic Plan defining the strategy and direction of the company, or an update of the same.
d) All financial dealings will be undertaken through the Finance Office, including payroll, payments, processing of income, cash, banking etc. Any increase in loan or credit facilities will require support from the Finance & Strategy Committee.

Matters which require shareholder resolution either under the Articles of Association, Shareholders' Agreement or Companies Act (Schedule 1) for small sized subsidiaries have been delegated to the Vice-Chancellor (who may further delegate). It is therefore the case, that in relation to smaller-sized subsidiaries, it will be the responsibility of the University Executive to consider and apply the principles contained in this Policy.

**C. Meetings**

a) The Board shall meet in person, or virtually as the Chair of the Board directs.
b) The quorum for meetings of the Board is 50% of the membership plus one, provided that University members are in a majority.
c) Members of the Board are expected to attend at least two thirds of the scheduled Ordinary meetings each academic year. Members who fail to attend regularly may be removed following a recommendation to the Nominations & Governance Committee.

## 3. Definitions

[a] Under the Companies Act 2006 a company is a subsidiary of a "parent" or "holding company" if the parent

- holds a majority of the voting rights in it;
- Is a member of it and has the right to appoint or remove a majority of its Board of Directors;
- is a member of it and controls alone, the majority of voting rights in it.

[b] A company is a "wholly owned" subsidiary of another company if it has no members except those from the parent company, or persons acting solely on behalf of that company.

[c] This Policy refers primarily to wholly owned subsidiaries, which reflect the current structure and status of Bangor University companies.

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[2] Directors falling into the category of University Directors include employees of the University, and members of Council and its Sub-Committees. When a University Director ceases to be an employee or a member of Council or its Sub-Committees the individual will cease to be a University Director, and a member of the Board.

## 4. Principles

A subsidiary is a legal entity distinct from the University. The University recognises the independence of the Board of Directors which, as long as the company remains solvent, has an overriding duty to act in the best interest of the company. While noting this point however, the University would expect the following principles to apply to the Board of Directors of its wholly owned subsidiary companies.

a) To act in accordance with the company's constitution (where such exists) and exercise powers only for the purpose for which they are conferred;
b) To promote the success of the company for the benefit of its members as a whole;
c) To exercise independent judgement;
d) To exercise reasonable care, skill and diligence;
e) To avoid conflicts of interest
f) Not to accept benefits from third parties by reason of being a director; and
g) To declare an interest in a proposed transaction or arrangement with the company in accordance with the University's Policy on Declaration of Interest.

The University and the Company should continually ensure that the Company supports the strategic goals of the University, and that the annual Key Performance Targets set by the University for the Company are relevant and aligned. The method and arrangements for the review of the targets and performance together with Budget approval, will be set out in the shareholders agreement.

On establishment of the company, University agreement to the Directors will normally be given either by the Council or the Nominations and Governance Committee depending on the University policies, procedures and *Scheme of Delegation and Decision-Making Powers*. Thereafter agreement to any changes in Director of a subsidiary company will be given by the Nominations and Governance Committee on behalf of the Council.

The University will appoint at least one Nominated Officer to the Company and this role is set out in Section 7 below.

## 5. Process for Establishing a Subsidiary Company of Bangor University

The business case for establishing a subsidiary company should originate from and be sponsored by a member of the University Executive. Where the proposal relates to a particular College it is expected that the relevant Pro Vice-chancellor / Dean will be the sponsor.

Where the proposal to establish a subsidiary company is the outcome of a strategic project or initiative (e.g. the establishment of a satellite campus) establishing the company will be part of a wider business plan, which will be considered through the appropriate approval routes, which must include consideration by the Council.

The outline proposal for the establishment of a subsidiary company should be sent to the Head of Governance Services who will liaise with the Chief Operating Officer, the Director of Finance and the Director of Human Resources to ensure that appropriate due diligence, financial and resourcing scrutiny is undertaken. In particular this will include consideration:

- Whether the establishment of a subsidiary company is the most appropriate vehicle for the proposed activity;

- Whether the financial, staffing, governance and legal implications of the proposal have been appropriately considered
- Whether external legal advice is required to support the establishment of the subsidiary company;

Key matters that should be determined at this stage of the process, prior to approval will include:

- The Directors and Shareholders;
- The share capital;
- Specific provisions which are required in the Articles of Association.

Prior to finalising the proposal, the Chief Marketing Officer / Vice President International will also be consulted in relation to matters of branding, including the proposed name of the subsidiary company.

Following completion of the steps outlined above the Executive will consider the proposal and any feedback from the Executive must be considered prior to submitting the business case and paper to the Finance and Strategy Committee. The proposal to the Finance and Strategy Committee must include a recommendation from the Executive. Following consideration by the Committee the proposal and business plan, will be recommended to the Council.

The registration process for incorporation of a subsidiary company will not be undertaken until the Council have given their approval.

The Director of Finance is responsible for making all arrangements for the registration of the subsidiary company as required by Companies House. A subsidiary company cannot operate until its Certificate of Incorporation is issued by the Registrar of Companies, and the Director of Finance has confirmed that the company can commence operation.

## 6. Directors, Shareholders and Company Operations

a) Newly appointed Directors should be given an induction to enable them to be fully engaged with the Company's business. The Head of Governance Services will ensure that appropriate induction and ongoing training is given to directors on their duties and responsibilities, as required.

b) Both non-executive and executive Directors should have clear role descriptions, together with a detailed and comprehensive understanding of the Company's operations, including the challenges and opportunities it faces.

c) Directors should act in accordance with the company's constitution and exercise powers only for the purpose for which they are conferred. They should promote the success of the company for the benefit of its members as a whole;

d) Directors should complete annual fraud and anti-bribery returns;

e) The University will have the right to appoint a University Director, regardless of shareholding;

f) The Company should retain the same external auditors as the University and should keep the same financial year, unless specifically agreed with the University.

g) The Company should maintain a risk register;

h) The Company should take out appropriate insurance, normally with the same providers as the University.

i) The Company should have in place a Service Level Agreement in relation to the use of any University assets e.g. HR and payroll, to ensure that these are provided on commercial terms.

j) The Company should engage annually with the University to complete a review of strategic alignment, to set key performance targets for the forthcoming year and review performance against the previous year's targets. The annual review will normally coincide with the preparation of the Budget for the forthcoming year.

k) The Company should produce an Annual Report for the Finance and Strategy Committee including the extent to which any specific key performance targets for the year have been met, and records of attendance for the Directors at Board meetings.

l) The Company should report any issue of significance to the Chief Operating Officer.

m) Company Directors should continue to attend regular training (e.g. in relation to directors' duties, and corporate governance) provided either by the University, by the Company or by an alternative provider as appropriate and relevant.

n) The Company should, as a default position, adopt all University Policies and Procedures. The Company can develop its own Policies and Procedures, but these should be approved by the appropriate University Committee, with clear reasons provided as to why the deviation has been applied.

o) Day to day management of the subsidiary company will be delegated to the Board of Directors, subject to any limitations imposed by the Articles of Association and shareholders agreement where this is applicable. The power of Directors to act is vested in the Board as whole, which will exercise such powers by passing resolutions at board meetings.

**7. University Nominated Officer**

a) The University will appoint at least one Nominated Officer per subsidiary company who will be a senior member of staff at the University.

b) The University's Nominated Officer will:

- **a.** have full rights to attend all Company Board meetings (and working groups) and receive all papers presented to the Board.
- **b.** raise issues or comment at the Board meetings when appropriate and can feedback information to the University as necessary and generally act to ensure good communication between the Company and the University.
- **c.** not be a member of the Board, or have any voting rights at Board meetings, but will ensure that there are no issues of conflict of interest regarding information about the Company being relayed back to the University.
- **d.** Ensure that the Company is acting within its constitution, and raise any related matters with the aim of ensuring they are appropriately

**e.** Review and discuss with the Directors when appropriate, any monthly management information on the company's performance;

**f.** Report any significant issue affecting the Company to the Chief Operating Officer.

## 8. Procedure for the Dissolution of a Subsidiary Company of Bangor University

The approach set out in this Policy is designed to ensure that the University only invests in subsidiary companies which have a better than reasonable chance of success. In addition, adoption of the principles contained within this Policy should ensure that the Council, either directly or through its sub-committees, and / or the Executive retain sufficient oversight of the subsidiary companies or remain well informed of any threats to the viability of the subsidiary. This Policy, alongside the Scheme for Delegated Authority are designed to guard against situations where the University continues to provide financial support to an ailing subsidiary when it was clear that the failure of the subsidiary was likely.

It will be the Council / Executive/s decision whether it is in the best interests of the University to procure the subsidiary's termination or to sell the business as a going concern to a third party. Protecting the University's assets from the subsidiary's creditors outweighs considerations such as concerns about the subsidiary's employees or reputational damage arising from the subsidiary's liquidation.

## 9. Further information

For general guidance on the details of this Policy, please contact the Head of Governance Services.