



# Non-Controlling Interest Policy (Equity)

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## OVERVIEW

The University of Adelaide Act 1971 (SA) ("the Act") provides for Council to be the governing body of the University and it is vested with a number of responsibilities. Its primary responsibilities are set out in section 9 of the Act. Specifically, section 9 (e) requires Council to "*approve and monitor systems of control and accountability, including general overview of any entities controlled by the University (within the meaning of Section 50AA of the Corporations Act 2001)*" and section 9 (h) requires Council to "*approve significant commercial activities of the University*".

Where an event does not result in the Control of an Entity, or is not related to a Significant Commercial Activity, under section 10 of the Act, Council has delegated this responsibility to the Vice-Chancellor and President.

Through Innovation and Commercialisation Services, the University's technology transfer business unit, the University is actively seeking to leverage its Intellectual Property for commercialisation purposes. One mechanism for realising the opportunities available to the University is by acquiring Non-Controlling Interests in Entities.

The purpose of this Policy is to provide a Non-Controlling Interest governance framework where the University holds equity.

## SCOPE AND APPLICATION

This Policy only applies to Non-Controlling Interests in Entities where the University holds the equity. For guidance in relation to all other types of Non-Controlling Interests in Entities, other than as set out below, refer to the Office of General Counsel.

This Policy does not apply to Non-Controlling Interests in Entities where Innovation & Commercial Partners Pty Ltd ACN 008 027 085 (**ICP**), a wholly owned subsidiary of the University, holds the equity. Acquisitions and disposals of Non-Controlling Interests by ICP are governed by ICP's constitution, as approved by Council from time to time. ICP must however have regard to the substance of this Policy, to the extent applicable, when ICP is acquiring or disposing of Non-Controlling Interests. ICP will ensure each Non-Controlling Interest it holds is recorded in the ICP Commercialisation central register, including shareholding scripts, legal instruments and any other documentation to determine control.

This Policy does not apply to Controlled Entities (refer to the *Controlled Entity Policy*).

This Policy applies to all staff, students and titleholders of the University.

## POLICY PRINCIPLES

1. For commercialisation purposes, under the oversight of ICS Commercialisation, the University encourages the acquisition of Non-Controlling Interests in Entities.
2. Acquisition of a Non-Controlling Interest in an Entity requires the approval of the Vice-Chancellor and President. If the acquisition may result in a Significant Commercial Activity, then Council approval will also be required.
3. Controlled Entities are governed by the *Controlled Entity Policy*, and have the potential to expose the University to increased levels of risk and liability. These entities are controlled by the University, and are subject to a governance framework determined by the University.
4. Events that could change the extent of the University's influence on an Entity, particularly those that may result in the University obtaining Control of an Entity, require assessment by ICS Commercialisation and, if appropriate, consideration under the *Controlled Entity Policy*.

## AUTHORITIES

<b>Key</b>	<b>Authority Category</b>	<b>Authority</b>	<b>Delegation Holder</b>	<b>Limits</b>
Governance	Non-Controlling Interest in an Entity	Approve the acquisition or disposal of a Non-Controlling Interest that results in, or is defined as, a Significant Commercial Activity	Council	None
Governance	Non-Controlling Interest in an Entity (Equity)	Approve the acquisition of a Non-Controlling Interest where the University holds equity	Vice-Chancellor and President	Within Financial Delegation  Significant Commercial Activity
Governance	Non-Controlling Interest in an Entity (Equity)	Approve the disposal of a Non-Controlling Interest where the University holds equity	Deputy Vice-Chancellor and Vice-President (Research)	Significant Commercial Activity

## PROCEDURES

### 1. Acquiring a Non-Controlling Interest

ICS Commercialisation is responsible for undertaking appropriate due diligence, and where there is potential for a University staff member to have a conflict of interest, refer to the Conflict of Interest Procedure. The Deputy Vice-Chancellor and Vice-President (Research) is responsible for making a recommendation to the Vice-Chancellor and President, or for Council's approval if defined as a Significant Commercial Activity.

Where the University is proceeding with the acquisition, ICS Commercialisation will:

- a) set the objectives of the acquisition of a Non-Controlling Interest and the exit strategy; and
- b) record the acquisition of a Non-Controlling Interest in a defined central register, including shareholding scripts, legal instruments and any other documentation to determine control.

As the University cannot control an Entity within the scope of this Policy, it is the responsibility of the University appointed directors and officers to ensure that the Entity establishes and maintains appropriate insurances, including without limitation, directors and officers insurance, during their term.

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**Responsibility: Director, Commercialisation**

- a) Undertake appropriate due diligence.
- b) Where there is the potential for a University staff member to have a conflict of interest, refer to the Conflict of Interest Procedure.
- c) Set the objectives of the acquisition of a Non-Controlling Interest and the exit strategy.
- d) Record the acquisition of a Non-Controlling Interest in a defined central register, including shareholding scripts, legal instruments and any other documentation to determine control.
- e) Where the acquisition will result in a University equity holding of 20% or more, notify Finance.

**Responsibility: University Appointed Directors and Officers**

- f) Ensure that the Entity establishes and maintains appropriate insurances, including without limitation, directors and officers insurance, during their term.

**Responsibility: Deputy Vice-Chancellor Vice-President (Research)**

- g) Make a recommendation, and seek approval from the Vice-Chancellor and President for:
  - i. the acquisition of a Non-Controlling Interest in an Entity; and
  - ii. the nomination of a University Shareholder Representative.
- h) Where the acquisition is defined as a Significant Commercial Activity, make a recommendation to the Vice-Chancellor and President for Council's approval of a Non-Controlling Interest in an Entity.

**Responsibility: Vice-Chancellor and President**

- i) Consider, and where appropriate, approve the acquisition of a Non-Controlling Interest in an Entity.
- j) Consider, and where appropriate, nominate a University Shareholder Representative.

**Responsibility: Council**

- k) For acquisition of a Non-Controlling Interest that will result in, or is defined as, a Significant Commercial Activity, consider and, where appropriate, approve the acquisition of a Non-Controlling Interest in an Entity.

**2. Event Changing a Non-Controlling Interest**

Where an Event is reasonably likely to change the extent of the University's influence on an Entity, ICS Commercialisation will undertake an assessment of the impact of the Event.

If the assessment of the Event determines that the University will obtain Control of the Entity, and the University is either: a) willing to accept the Control; or b) unable to avoid Control, then ICS Commercialisation must comply with the *Controlled Entity Policy*.

If the impact results in the acquisition of a Non-Controlling Interest in an Entity, refer to Procedure 1.

**Responsibility: Director, Commercialisation**

- a) Assess the impact of an Event to determine if the University will obtain Control of an Entity.
- b) For Events that result in Control of the Entity, comply with the *Controlled Entity Policy*.

**3. Disposal of a Non-Controlling Interest**

The Disposal of a Non-Controlling Interest in an Entity requires the approval of the Deputy Vice-Chancellor and Vice-President (Research), on the recommendation of the Director Commercialisation. Where the Non-Controlling Interest is defined as a Significant Commercial Activity, Council approval will also be required.

**Responsibility: Director, Commercialisation**

- a) Make a recommendation, and seek approval from the Deputy Vice-Chancellor and Vice-President (Research) to Dispose of a Non-Controlling Interest in an Entity.

**Responsibility: Deputy Vice-Chancellor Vice-President (Research)**

- b) Consider and, where appropriate, approve the Disposal of a Non-Controlling Interest in an Entity.

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**Responsibility: Council**

- c) For the Disposal of a Non-Controlling Interest that has been previously defined as Significant Commercial Activity, consider and, where appropriate, approve the Disposal of a Non-Controlling Interest in an Entity.

**4. Reporting Requirements**

On an annual basis, for the year ending 31 December, ICS Commercialisation will:

- a) assess each Non-Controlling Interest for any change to the extent of the University's influence on the Entity;
- b) assess each Non-Controlling Interest to determine the value of the University's holding;
- c) undertake a risk assessment and performance assessment of the Non-Controlling Interest;
- d) undertake a review of each Non-Controlling Interest against the objectives set on acquisition and the exit strategy; and
- e) provide Finance with any information required to enable the University to satisfy its statutory reporting obligations.

Note: greater reporting obligations are required where the University has significant influence over the entity, which is presumed to occur where the equity holding is 20% or more.

**Responsibility: Director, Commercialisation**

- a) Assess each Non-Controlling Interest for any change to the extent of the University's influence on the Entity.
- b) Assess each Non-Controlling Interest to determine the value of the University's holding.
- c) Undertake a risk assessment and performance assessment of the Non-Controlling Interest.
- d) Undertake a review of each Non-Controlling Interest against the objectives set on acquisition and the exit strategy.
- e) Provide Finance with any information required to enable the University to satisfy its statutory reporting obligation.

**DEFINITIONS**

**Control** is the power to determine the outcome of decisions about an Entity's financial and operating policies (as per s50AA of the *Corporations Act 2001* (Cth)). The document titled "[Control under section 50AA of the Corporations Act 2001 \(Cth\)](#)" is available to assist with the definition of Control. Where there is doubt regarding the determination of Control, advice can be sourced from Finance and Procurement Services.

**Corporations Act** means the [Corporations Act 2001 \(Commonwealth\)](#).

**Disposal** means to sell, transfer, divest or dispose.

**Entity** means an entity where the University will hold equity, or membership in another legal entity (e.g. company limited by guarantee), and does not include other legal structures, e.g., partnership, joint ventures.

**Event** means an actual or potential occurrence of some importance that is likely to impact either directly, or indirectly, on the University's Non-Controlling Interest in an Entity.

**Non-Controlling Interest** means a shareholding or legal interest in an Entity that does not result in Control.

**Significant Commercial Activity** is an undefined term used within the University of Adelaide Act 1971 (SA). For the purposes of this Policy, this term will be assessed on a case-by-case basis. Note: unless it can be reasonably demonstrated otherwise, the activity by default will be defined as a Significant Commercial Activity.

**University's Shareholder Representative** means an approved University representative, acting on behalf of the University, authorised to engage in all relevant shareholder communications, responses and requirements.

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<b>RMO File No.</b>	F. 2021/8391
<b>Policy Custodian</b>	Deputy Vice-Chancellor and Vice-President (Research)
<b>Responsible policy officer</b>	Director, Commercialisation
<b>Endorsed by</b>	Vice-Chancellor's Executive on 11 April 2018
<b>Approved by</b>	Vice-Chancellor and President on 11 April 2018 Re-affirmed with minor amendments by the Vice-Chancellor and President for a further three years on 10 November 2021; reviewed and re-affirmed by Policy Custodian for a further three years on 19 April 2024.
<b>Related Documents and Policies</b>	<i>Controlled Entity Policy</i>
<b>Related Legislation</b>	<i>The University of Adelaide Act 1971</i>
<b>Superseded Policies</b>	N/A
<b>Effective from</b>	19 April 2024
<b>Review Date</b>	18 April 2027
<b>Contact for queries about the policy</b>	Director, Commercialisation, tel: 8313 9993