

10.6 Policy on University Subsidiaries, Technology Transfer Activities and Joint Venture

Policy Number & Name: 10.6 Policy on University Subsidiaries, Technology Transfer Activities and Joint Venture

Approval Authority: Board of Trustees

Responsible Executive: President

Responsible Office: Office of the President

Effective Date: May 25, 2011

1. Purpose and Summary of Policy

The University's mission is founded upon its educational and research activities. These activities are charitable in nature and qualify the University as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Compliance with law requires the University to ensure that its assets and resources are utilized in furtherance of its charitable mission, with particular scrutiny of situations in which the University works with the commercial sector.

The University may find it desirable to establish separate entities or subsidiaries to further University goals or provide certain legal or other protections to the University; these entities may be structured as for-profit entities. In addition, other aspects of the University's activities may lead it to enter into contractual or other arrangements with commercial entities, some of which may be classified as joint ventures. Another critical part of the University's mission is the transfer of research results from the University to the commercial sector for further development and commercialization through a variety of mechanisms designed to widely distribute technology and benefit society. As it pursues these activities, the University must continue to evaluate its compliance with the requirements of Section 501(c)(3) of the Code.

The University may undertake to organize its activities in furtherance of these goals in a variety of ways, over time and depending upon current trends and practices in both the non-profit and commercial sectors. This policy is intended to establish principles for structuring these activities but to allow them to develop and change within the University's governance structure.

2. Policy Statement

A. Subsidiaries of the University

The University may determine, for reasons relating to its general operations, its technology commercialization efforts or otherwise to further the University's goals, to establish a non-profit or for-profit subsidiary of the University. The structuring of any such subsidiary must be analyzed to determine its proper governance relationship to the University including the identity of the directors or trustees and the officers of the subsidiary, the financial, tax and legal implications of the University maintaining such a subsidiary and how the activities of the subsidiary will be organized and operated consistent with the institutional risk management structure of the University.

The establishment of any subsidiary of the University must first be analyzed and approved by the President of the University. Any such proposal shall then be submitted for approval to the Board of Trustees, after consideration by the Nominating and Governance and Finance Committees of the Board of Trustees.

Once established, any subsidiary of the University will be operated as a separate entity, distinct from the University. The corporate records of the subsidiary will be maintained by the Office of the Secretary of the University.

B. Technology Commercialization

The University's charitable mission includes the granting of licenses or transferring of results of University research to third parties who will then create and distribute products or services for the broadest possible benefit of the public. The University may grant a license or otherwise transfer research results to an existing company or, in certain cases, a new company may be formed by one or more individuals specifically to obtain a license or otherwise receive University research results and begin a business (commonly referred to as a "start-up company"). The consideration to be paid to the University under the license typically includes cash royalties and, in the case of a start-up company, is likely to include equity in the company as some portion of royalties. While the University is willing to grant a license to either type of company, its focus on teaching and fostering entrepreneurship and innovation makes the University particularly interested in working with start-up companies. The University, through its administrative staff in the technology transfer area, enters into licenses with companies on a negotiated arm's length basis with advice from the University's Office of General Counsel.

In addition, the University may work with start-up companies in a number of other ways, depending upon the programs and resources available from time to time at the University. In all University programs and transactions with commercial third parties, the University must ensure that its transactions are structured in a manner that protects the University's tax-exempt status. While each program or transaction will require individual analysis and legal advice, as a general matter, the University must observe the following principles:

- Transactions between the University and a commercial third party must, as a general matter, be on arm's-length terms;
- If University assets, funds or other resources are being used by a commercial third party without consideration paid to the University, such use must clearly be incidental to the educational mission of the University;
- Any other use of University assets, funds or other resources must be analyzed to ensure that the use is in furtherance of the University's mission and does not result in private inurement or undue private benefit to the third party;
- If a use of University resources is permissible, determine whether the third party should pay a fee for such use and whether such use results in unrelated business activity on the part of the University for which income tax is payable;
- Any use of facilities or services of the University by a commercial third party must be carefully analyzed to determine whether any issues arise relating to the University's tax-exempt bond financings;
- The University must not appear to endorse a particular product, service or company without the prior approval of the President; and
- Any conflicts of interest which may arise between the University's different activities and the interests of commercial third parties are identified and managed with involvement of appropriate University staff (e.g., conflicts involving research, faculty, students, etc.).

The University may supplement its activities and its administrative staff with outside consultants or other advisors. While the principles listed above may not apply directly to a non-exempt third party, contractual arrangements between the University and such a party must receive legal and tax review to ensure that the University's obligations under such an arrangement are compliant.

Structuring and implementing programs for technology commercialization, including programs to encourage the creation by entrepreneurs of start-up companies, is the responsibility of the University administrators in the Academic Entrepreneurship and Enterprise Development and Licensing areas, working under the Provost and the President. The administrative staff responsible for these areas, and the Provost and the President, report on a regular basis to the Research, Technology and Commercialization Committee of the Board of Trustees, and this Committee reports to the Board of Trustees at each regularly-scheduled meeting of the Board.

C. Joint Ventures

Certain arrangements between the University and third parties may be characterized as “joint ventures” for purposes of U.S. tax laws applicable to the University by virtue of its status as a tax-exempt organization. Under this Policy, engaging in activities that constitute a joint venture requires prior legal and tax analysis and specific University approvals.

The starting point for identifying a joint venture is a relationship between the University and a third party to undertake a joint activity. The relationship may be embodied in a contract or may be based on a verbal or other understanding. The third party may operate on a for-profit or non-profit basis and may be an entity or an individual. The technology transfer activities described above, if properly structured, should not fall within the definition of “joint venture;” in pursuing technology transfer activities, the University will enter into arm’s length contractual or other arrangements with the company (e.g., licensing technology to the company pursuant to a license agreement, holding equity in the company as an investment), rather than the University entering into a joint business venture.

The University engages in many varying collaborative activities and works with many third parties. Only certain types of joint activities will constitute a “joint venture” and raise tax issues for the University. If a joint activity has any of the following characteristics, additional reviews and approvals should be sought prior to entering into such arrangement to ensure proper structuring to protect the University’s tax-exempt status:

- revenue sharing with a third party;
- the University agreeing with a third party to jointly pursue a revenue-generating activity;
- a third party exercising control over a program or project of the University;
- a third party being given the right to use the University’s name or logos outside of routine licensing arrangements regularly carried on by the University; or
- the University guarantying the debt of a third party.

Any proposal that the University engage in a joint venture requires careful structuring and advice from the University’s Office of General Counsel and the Finance Department, and the approval of the President. Under certain circumstances involving programs or financial or other commitments which are significant in scope or amount, the approval of the Board of Trustees, after consideration by the Finance Committee, is required.