

PART III: RECOMMENDED PRACTICE GUIDELINES – CHECKLISTS

Introduction

The following checklists should be studied and completed by officers of the institution and the company as appropriate. We recommend that the Nominated Officer should prepare a report for submission to the institution. We set out a suggested report structure at Appendix B.

Completion cycle

The checklists are set out in five parts, each broadly corresponding to a stage in the life cycle of a company. We recommend that these checklists should be reviewed as follows:

A - Preliminary considerations	Before formation
B - Company formation	On formation
C - Management	To be completed at the formation stage and on a regular basis thereafter (we recommend at least annually)
D - Review	To be completed on a regular basis (we recommend at least annually)
E - Exit/realisation of investment	Pre-disposal/closure

Every institution considering creating a company should examine the issues in Checklist A.

Once it has been decided to proceed, every institution should consider the formation, management and review issues outlined in Checklists B, C and D respectively before taking a decision to implement.

Checklists C and D should be reviewed at regular predetermined points (or ad hoc review if required by performance) by the institution or by the holding company (when different people may have responsibility). This should be agreed by the institution's Nominated Officer.

Checklist E should only be completed once the decision has been taken by the institution to dispose of its investment or wind up the company.

The checklists have been designed to allow the addition of relevant comments, or references to supplementary documents as appropriate.

CHECKLIST A: PRELIMINARY CONSIDERATIONS

Checklist A should be considered and, where relevant, completed before a related company is established. It is intended to determine that a company is appropriate for the purpose and that the reason for formation is valid.

	Yes, No or N/A	Comments
A1 Have the governors approved the project? In particular, have they satisfied themselves as to the objectives in drawing up the business plan?		
A2 Has a Nominated Officer been appointed by the governors to oversee the formation of the company?		
A3 Has a preliminary business plan been prepared? Does it include: <ul style="list-style-type: none"> (i) consideration of the feasibility of the project; (ii) the proposed objectives of the company; (iii) details of the proposed management structure of the project and company; (iv) constraints (eg, is the institution prepared to allow the proposed subsidiary to use its name and reputation?); (v) financing (from non-earmarked sources) and the need for guarantees; (vi) assessment of risks and sensitivities; (vii) exit strategy; (viii) formation timetable? 		

	Yes, No or N/A	Comments
<p>A4 Is a company the most suitable vehicle for the proposed activity?</p> <p>Have alternatives been considered, including:</p> <ul style="list-style-type: none"> (i) straightforward contractual agreement by the institution; (ii) joint venture not involving the formation of a company; (iii) partnership; (iv) franchising/licensing arrangements? 		
<p>A5 Has professional advice been taken as to whether a company is appropriate for the purposes and objectives of the proposed activity?</p> <p>In particular:</p> <ul style="list-style-type: none"> (i) Is the activity within the powers of the institution? What steps must be followed to ensure the validity of the arrangements? (ii) Are there any implications in respect of the charitable status of the institution? (iii) What are the implications in respect of taxation (both direct and indirect) and other legislation? 		
<p>A6 Has the outline business plan been approved by the governors?</p>		
<p>A7 Have any restrictions within the constitution of the institution been considered and resolved in respect of the formation of a company?</p>		

	Yes, No or N/A	Comments
A8 Is the company being set up to exploit the commercial potential of technology and/or intellectual property? If so, have the matters set out in Appendix G been considered?		

CHECKLIST B: COMPANY FORMATION

Checklist B should be completed once the decision to set up a company has been approved by the Governors. It is intended to ensure that the formation of the company has been properly planned and controlled.

	Yes, No or N/A	Comments
<p>B1 Has a comprehensive business plan been prepared by the proposed directors of the company? The following should be included:</p> <ul style="list-style-type: none"> (i) the objectives of the company; (ii) management structure; (iii) management teams; (iv) detailed financial projections, including key assumptions and the working capital requirement; (v) risks and sensitivity analysis; (vi) the permanent capital required ; (vii) an understanding of the true costs, contribution to overheads, and rates of return required; (viii) the return of profits to the institution; (ix) the intended exit; (x) the expectations of the institution in the event of any unexpected losses. 		
<p>B2 Has the institution validated the business plan? (This may be through independent professional advice or by suitably qualified personnel within the institution.)</p>		

	Yes, No or N/A	Comments
<p>B3 Has the comprehensive business plan, together with the financial backing required (for example in equity, loan and guarantees), been approved by the governors?</p>		
<p>B4 Has independent professional advice been taken on:</p> <ul style="list-style-type: none"> (i) the company's constitution; (ii) the impact of the proposed company on the charitable status of the institution; (iii) the impact of taxation on the company and on the institution; (iv) loan agreements; (v) the impact of the proposed company on the financial position of the institution; (vi) the protection of assets, including intellectual property and copyright; (vii) potential risks to the institution and others for which the institution may become liable; (viii) the potential impact of product liability or other possible litigation, where the impact or cost of such litigation could flow through to the institution itself; (ix) the impact of any guarantees? 		

	Yes, No or N/A	Comments
<p>B5 Are there formal loan agreements covering the following:</p> <p>(i) security of loans;</p> <p>(ii) rate of interest (which should be at a commercial rate);</p> <p>(iii) payment of interest;</p> <p>(iv) repayment of capital?</p>		
B6 Has the appointment of the directors been ratified by the governors?		
B7 Has a Chairman of the Board of Directors been appointed?		
B8 Has a Company Secretary been appointed?		
B9 Have external (and if appropriate) internal auditors been appointed?		
B10 Has the year-end of the company been established and Companies House notified?		
<p>B11 Has a Memorandum of Understanding been prepared, setting out clearly defined and understood responsibilities and the scope within which the activities of the company can be carried out?</p> <p>Does the Memorandum of Understanding include the items set out in Appendix D(ii)?</p>		

	Yes, No or N/A	Comments
<p>B12 Is the constitution of the board fit for purpose?</p> <p>Has it been well constituted, with an appropriate balance of executive directors, governors, executive officers of the institution and non-executive officers?</p>		
<p>B13 Has the Board of Directors set down written procedures and management structures for the conduct of its business?</p>		
<p>B14 Is there a need for appropriate written operating procedures?</p>		
<p>B15 Are the directors aware of their legal responsibility to act in the best interests of the company?</p> <p>Are any directors of the company also officers of the institution? If so, is there a written requirement for the directors and other senior officials to report to the governors any conflicts which may arise from their duties to the Board or to the institution?</p> <p>Is there a Register of Interests set up by the company to record any conflicts which may arise?</p> <p>Is this Register of Interests reviewed from time to time by the internal auditors?</p> <p>Has legal advice been taken in respect of any situation (such as the conflicts set out above) which may put at risk the institution's charitable status or directors as individuals?</p>		

	Yes, No or N/A	Comments
B15	Are there any other persons attached to the company who are so closely involved that they might be considered shadow directors?	
B16	Is there a suitable mechanism in place to remove directors from office? Is there a requirement in the Articles for the directors to retire by rotation? Are there any other restrictions which should be imposed on the directors? (For example, it may be appropriate for the institution to have a right to appoint and remove directors at will.)	
B17	Has the issue of directors' remuneration been considered?	
B18	Are there laid down instructions in respect of the management information to be produced by the company? Does this management information include instructions to produce: (i) budgets and forecasts; (ii) management accounts?	
B19	Are there clearly defined approval procedures for the following: (i) strategic decisions; (ii) contracts of employment; (iii) subsidiary companies (of the company)?	

	Yes, No or N/A	Comments
<p>B20 Are the respective responsibilities of the following clearly defined:</p> <p>(i) the Board of Directors;</p> <p>(ii) the institution's Finance Committee;</p> <p>(iii) the institution's Audit Committee or equivalent;</p> <p>(iv) the governors?</p> <p>These responsibilities should be clearly set out in the Memorandum of Understanding between the institution and the company.</p>		
<p>B21 Is there a mechanism in place for holding accountable key related company executives?</p>		
<p>B22 Are there suitable indemnities in favour of institutional officers or employees acting as directors of related companies?</p>		

	Yes, No or N/A	Comments
<p>B23 Are maximum authority limits set down in the Memorandum of Understanding, and clearly understood by officials both at the company and at the institution?</p> <p>Do these limits cover the following:</p> <ul style="list-style-type: none"> (i) capital expenditure; (ii) resource planning; (iii) employment decisions; (iv) investment decisions; (v) sale of assets; (vi) external financing (involvement of third parties); (vii) alterations to the proposed activities of the company? 		
<p>B24 Are the directors satisfied that there are no arrangements which may prevent the company carrying out its planned activity or proposed exit?</p>		
<p>B25 Has suitable directors' and officers' liability insurance been taken out by the institution and by the company?</p>		
<p>B26 Has the company arranged suitable insurance cover?</p>		
<p>B27 Has an appropriate timetable of Board meetings been established (including the Annual General Meeting)?</p>		

	Yes, No or N/A	Comments
B28	Has the company been given authority to disclose information to the institution's Audit Committee (ie has the institution right of access to the company's records)?	
B29	Have the internal auditors been given instruction as to their responsibilities in respect of the company and given rights of access?	
B30	Has the institution considered whether it is appropriate for the company to adopt the recommendations of the Cadbury Committee, the Greenbury Committee on Corporate Governance, the Combined Code and Turnbull?	
B31	Has Checklist III(C) in respect of management issues been reviewed and completed where appropriate?	
B32	Is the company a joint venture company? If so, has a Shareholders' Agreement been prepared setting out the obligations and liabilities of the shareholders and the company to each other? Does the Shareholders' Agreement address the issues set out at Appendix D(iii)?	
B33	Is the company being set up to exploit the commercial potential of technology and intellectual property? If so, have the matters set out in Appendix G been addressed?	

CHECKLIST C: MANAGEMENT

Checklist C should be completed once the company has been set up and has commenced trading. It is intended to ensure that management procedure is being adequately maintained, and that the business issues arising out of the performance of the company are understood by the institution.

	Yes, No or N/A	Comments
C1	Has Checklist III(B) in respect of formation issues been completed and reviewed?	
C2	Have any profits arising been passed back to the institution in accordance with agreed procedure?	
C3	Are the protocols by which the directors conduct the business of the company in line with the law? In particular has each director, on appointment, been given sufficient information by the Board to enable him/her to perform his/her duties?	
C4	Has the company suitable procedures in place to ensure that there are regular Board meetings and that formal minutes are prepared and approved by the Board which clearly detail: <ul style="list-style-type: none"> (i) business which can only be conducted at Board meetings by company law; (ii) other relevant business issues? 	
C5	Are decisions regarding the content of the agenda for individual meetings of the Board, and the presentation of agenda items, taken by the Chairman in consultation with the Company Secretary?	

	Yes, No or N/A	Comments
<p>C6 Do the directors monitor the executive management of the company?</p> <p>Is this procedure subject to internal audit review?</p>		
<p>C7 Does the Board of Directors formally record its compliance with the written procedure for the conduct of its business?</p>		
<p>C8 Is appropriate financial and non-financial motivation given to key company personnel, to ensure that the performance of the company is optimised, where this is relevant?</p> <p>Advice on the use of the following might be sought:</p> <ul style="list-style-type: none"> (i) remuneration packages; (ii) bonus schemes; (iii) share ownership schemes. 		

CHECKLIST D: REVIEW

Checklist D should be completed at regular predetermined times once the company has been set up and has commenced trading and thereafter. It is intended to ensure that the performance of the company is subject to appropriate review procedures.

	Yes, No or N/A	Comment
D1		
D2		

D1 Has the Nominated Officer reviewed Checklist III (C) in respect of management?

D2 Has the institution (the Nominated Officer in the first instance) reviewed on a regular basis the performance of the company and understood the results?

In particular, the following factors should be included in this review:

- (i) the sharing of resources between the institution and the company, for example staff and premises;
- (ii) the contribution by the company to the institution's overheads;
- (iii) whether transactions between the institution and the company are carried out on a full cost basis;
- (iv) whether the level of profitability of the company and other performance criteria are meeting the agreed targets.

The frequency of this review will depend on the specific circumstances of the company and the scale of its operations. In most cases a review performance against budget at least quarterly would be appropriate

	Yes, No or N/A	Comment
D3	Has the lifespan of the company been predetermined in any formal documentation or contract? If so, consider appropriate course of action, for example completion of Checklist E.	
D4	<p>Does the institution's assessment of the company's performance give a clear understanding of its current and future financial exposure? In particular:</p> <p>(i) Is there an approved business plan which is still appropriate to the operations and environment of the company?</p> <p>(ii) Do the management accounts show that the company has operated in accordance with the approved business plan?</p> <p>(iii) Is the risk exposure of the institution clearly defined and reported?</p> <p>(iv) Has the value of the underlying net assets been ascertained?</p> <p>(v) What are the future financing requirements?</p> <p>(vi) Will these future financing requirements be met?</p> <p>(vii) Has the impact of the company's activities and performance on the institution been considered?</p>	
D5	Are sufficient reserves earmarked by the institution to cover any contingent liabilities which may exist?	

	Yes, No or N/A	Comment
D6 Does the Audit Committee have clear terms of reference in respect of the company?		
D7 Do the external auditors formally report to the Audit Committee in respect of the company?		
D8 Do the internal auditors include the company in their cycle of work, and formally report to the Audit Committee?		
D9 Is there adequate disclosure in the institution's accounts of the following: (i) company activities; (ii) company performance; (iii) the financial position of the company; (iv) institutional liability for company debts; (v) related party transactions; (vi) any material relationships which may exist?		
D10 Has the company been consolidated into the institutional accounts? If not, have the governors received summary information on the company and the reason for non-consolidation?		

	Yes, No or N/A	Comment
<p>D11 Does the institution maintain a record of the related company profits to date, and contributions to the institution since formation?</p> <p>Note: a record may be maintained for internal purposes only - it will enable the institution to determine the level of reserves generated from commercial investment.</p>		
<p>D12 Do the institution and its related companies maintain adequate records of transactions with related parties, as required by Financial Reporting Standard 8 "Related Party Disclosures"?</p>		
<p>D13 Has the institution satisfied itself that the company has taken appropriate steps in respect of the following:</p> <p>(i) health and safety procedures;</p> <p>(ii) quality control procedures;</p> <p>(iii) environmental impacts?</p>		
<p>D14 Has a review of the company been carried out by the institution to consider the:</p> <p>(i) financial performance;</p> <p>(ii) performance of management;</p> <p>(iii) future working capital requirements;</p> <p>(iv) assessment of risks?</p> <p>Has the institution committed to its ownership of the company for a further year? If not, then Checklist III(E) should be completed.</p>		

	Yes, No or N/A	Comment
D15 Where the company is a joint venture company, have the provisions of the Shareholders' Agreement been complied with by all relevant parties?		

CHECKLIST E: EXIT/REALISATION OF INVESTMENT

Checklist E should be completed once the decision has been taken by the institution to dispose of its investment or wind up the company.

		Yes, No or N/A	Comments
E1	Has the institution's decision to dispose of its investment in a related company been ratified by the governors?		
E2	Has the institution considered the potential costs in respect of: <ul style="list-style-type: none"> (i) closure; (ii) redundancies; (iii) contingent liabilities; (iv) guarantees; (v) product liability? 		
E3	Has suitable independent professional advice been taken? <p>Such advice should cover:</p> <ul style="list-style-type: none"> (i) tax planning (both corporate and capital taxes); (ii) valuation of the company; (iii) the terms of the disposal and any warranties or guarantees given; (iv) contractual matters, including rights of employees; (v) public relations/announcements. 		
E4	Is the institution satisfied that it has obtained the best price possible (in the context of its goals) for its investment?		

	Yes, No or N/A	Comments
E5	In the event that the institution has determined to withdraw its financial support from a company, has this information been formally passed to the Board of Directors of the company?	
E6	Where the company is a joint venture company the disposal of a shareholders' investment or the winding up of the company will depend upon the terms of the joint venture, and in particular any Shareholder Agreement between the parties. Have these been considered and independent professional advice taken on them?	