
Creation of a Legal Entity Procedure

Policy Sponsor:	Office of the President
Name of Parent Policy:	Creation of a Legal Entity Policy
Policy Contact:	Vice-President, Finance and Administration
Procedure Contact:	Vice-President, Finance and Administration
Effective Date of Procedures:	March 24, 2014
Review Date:	These procedures to be reviewed annually.

Purpose

These procedures outline the processes that must be followed and the approvals that must be obtained prior to the Athabasca University (AU) becoming involved in the creation of a legal entity.

Definitions

Legal Entity	An association, charitable organization, society, corporation, partnership, joint venture, proprietorship, trust or similar structure that has legal standing or a structure where AU has a significant influence in its operations.
Significant Influence	Where AU is a founding member of a legal entity, has the power to appoint directors or can set the strategic or operating policies and directions of a legal entity.

Procedure

Prior to a Legal Entity being created at AU, the unit proposing to create the Legal Entity must perform the appropriate due diligence and prepare a written proposal, for submission to the Office of the Vice-President, Finance and Administration.



The proposal will include the following items:

- type of legal structure to be created;
- purpose of the Legal Entity;
- linkage to AU's strategic documents;
- governance structure of the Legal Entity;
- governance process of the Legal Entity;
- financial implications;
- any applicable research funding involved or being acquired;
- the strategic, financial, operational, compliance and reputational risks associated with AU's involvement in the Legal Entity;
- identify and assess the risk tolerance level associated with the creation of the Legal Entity;
- outline risk mitigation strategies to address the identified risks;
- term and termination provisions for the Legal Entity; and
- issues involving:
 - Human Resources;
 - Intellectual Property;
 - Procurement Activities;
 - Facilities and Operations;
 - Research Ethics and compliance with AU's Research policies;
 - External Relations; and
 - FOIP and Confidentiality concerns.

The Office of the Vice-President of Finance and Administration will review the proposal and supporting documents to:

- determine if a Legal Entity is in fact being created by assessing the proposal against the definition of 'Legal Entity';
- undertake the appropriate due diligence to ensure that it has assessed the strategic, financial, operational, compliance and reputational risks associated with its involvement in the Legal Entity;
- determine whether or not it is appropriate to proceed into the approval process;
- determine whether it is a requirement to receive an Order-in-Council from the Government of Alberta for the creation of the Legal Entity as outlined in *the [Post-Secondary Learning Act](#)*.

If the Office of the Vice-President of Finance and Administration determines that it is appropriate to proceed with the creation of the Legal Entity, it will forward the proposal to the Executive Group for review and recommendation.

If the proposal is recommended for approval by the Executive Group, it will be forwarded to the Board of Governors for approval.



If the proposal is recommended for approval by the Board of Governors and involves the incorporation of an entity, the Board of Governors will forward the proposal and their recommendation to the applicable Government of Alberta Ministries for approval as per the [Post-Secondary Learning Act](#) and other relevant legislation.

All costs involved in the creation of the Legal Entity (such as cost of incorporation) will be borne by the unit proposing the creation of the Legal Entity.

The Office of the Vice-President of Finance and Administration will be responsible for maintaining a list of all Legal Entities created by AU. This list will be forwarded the Executive Group and onto the Board of Governors for review annually.

The Office of the Vice-President of Finance and Administration will be responsible for informing the Director, Finance and Administration of the creation of a Legal Entity, who will in turn ensure appropriate financial reporting.

Applicable Legislation and Regulations

[Alberta Post-Secondary Learning Act](#)

[Alberta Financial Administration Act](#)

Related References, Policies, Procedures and Forms

[Creation of a Legal Entity Policy](#)

[Partnerships Policy](#)

History

The Governors of Athabasca University, March 24, 2014, Motion # 187-06 (Associated policy approved)