Joint Venture Evaluation and Development Guidelines

November 2022 – This document is rescinded. See the University Partnerships Policy and University Partnerships Procedure for current information.

Section 1 - Purpose

(1) The document sets out Charles Sturt University's guidelines on evaluation and development of joint ventures.

Section 2 - Glossary

(2) Nil.

Section 3 - Policy

(3) Nil.

Section 4 - Procedures

(4) Nil.

Section 5 - Guidelines

Part A - Introduction

Characteristics of a Successful Strategic Joint Venture

(5) A successful joint venture is likely to be:

a. strategic and require long-term commitment by parties to each other;
b. based on partners with complementary attributes, for example parties who may be operating in distinct markets but who bring distinct strengths or market advantage to the partnership (i.e. who are not direct competitors);
c. involve partners that bring benefits other than cash to the joint venture, e.g. unique technology or skill, access to markets etc.;
d. have a well-defined scope with shared objectives that serve each of the parties' separate goals;
e. be based on each party developing existing strengths, or compensating for existing weaknesses;
f. involve an equitable relationship between the resources (capital, skills etc.) contributed by each member and their equity in and return from the project;
g. be based on trust while requiring partners to be accountable for their individual contributions to the enterprise;

h. yield a benefit to the partners that is not possible for any of the partners alone, and that is not likely with a different choice of partners; and
i. have a high level of senior management support within each partner.

(6) A joint venture might involve:

a. establishing a third entity that is a separate legal entity wholly owned by the parties;
b. a strategic joint venture is unlikely to:
    i. be a short term agreement; and
    ii. involve a party that could easily be substituted by a different party.

(7) Strategic joint ventures are part of a continuum in which mergers or amalgamations are at one end, and tactical relationships (e.g. franchises, value-added resellers, service provision) are at the other.

Kinds of Strategic Joint venture

A Consortium

(8) Each partner should have a different skill set so that the parties together can pursue an opportunity or achieve an outcome that would not be possible on their own.

A Third Entity

(9) Similar to a consortium, except that an independent third entity, wholly owned by the parties, is formed to pursue the opportunity and consequently, requires greater commitment from the parties.

A Licence Agreement

(10) Where one party has unique technology, course programs or service skills that it licences the other parties to use, offer, market or distribute through a licence agreement, usually with some exclusivity and limitations.

Characteristics of an Effective Joint Venture Agreement

(11) It is important that any process for the development of a joint venture agreement ensures that:

a. a senior officer of Charles Sturt University (the University) coordinates the development of the joint venture agreement;
b. a comprehensive, unambiguous and operational agreement is developed;
c. all sections of the University that will need to contribute to the fulfilment of the agreement are consulted and support what the agreement commits them to;
d. the University is protected both legally and financially;
e. where necessary, there is consistency in agreements between the University and the same or similar organisations; and
f. responsibility for project management of the agreement is assigned.

Senior Officers

(12) In order to ensure that agreements meet the requirements specified in above, responsibility for coordinating the development and monitoring of a third party agreements should be vested in a designated Senior Officer of the University. (See Attachment I - Delegated Senior Officers for the Development of Joint Venture on Third Party Agreements).

(13) Note that, where the joint venture applies to a contract that would normally be covered by the Outside Professional Activities Policy for consultancies and research contracts, the provisions of the Outside Professional Activities Policy must be applied in conjunction with this Policy.

Part B - Feasibility - Preliminary Cost Benefit and Due Diligence Assessment

(14) This Part of the Guidelines is intended to provide a basis for deciding whether to continue with the development of the venture to the stage of a formal agreement and/or contract. The senior officer responsible for the assessing the feasibility of the joint venture is expected to:

a. identify the principal activity/s and benefits of the venture and provide details on the external party/s and the relative strengths that the parties will bring to the venture;
b. develop a preliminary cost-benefit statement detailing the likely contributions by each of the parties and the costs and benefits to the University from the alliance; and
c. conduct a preliminary risk assessment of the venture and arrange for a due diligence to be conducted on the external party/s.

Does the proposed joint venture have a well-defined scope with shared objectives that serve each of the parties goals?

(15) Who are the external parties to the venture? What is legal status of each party?

(16) What are the primary objectives and activities of the venture?

(17) How will achievement of the objectives of the joint venture advantage the University and the other proposed party/s?

a. Examples:
    i. increase market share;
    ii. open a new market;
    iii. share costs and risks of research and development;
    iv. take advantage of economics of scale;
    v. access more capital;
    vi. increase competitiveness;
    vii. increase profitability or some other beneficial outcomes;
    viii. stretch into new geographic territories;
    ix. provide a comprehensive start-to-finish service;
    x. enable long-term high-quality research;
    xi. enable expensive facilities/equipment to be shared.
b. How will the objectives of the venture fit with the University's Strategic Plan and priorities? Is there any inconsistency?
c. If the joint venture were to be successful for a period of time, is it expected that there will be saleable assets at the end?
d. What will be the saleable assets?

Would the proposed parties have a complementary business?

(18) In what way will the gain from this joint venture be greater than if we did it alone?

(19) What is unique about the proposed external party/s? Could the proposed member be easily substituted by another party? (i.e. if this party were not involved, would we have difficulty finding another similar party to progress the joint venture?)

Would each of the party/s bring to the joint venture at least one of their key strengths?

(20) What are the business capabilities, specialist knowledge and skills, technology, etc. that we bring to the joint venture?

(21) What does the other proposed external party/s bring?

(22) What evidence is there that the other party/s can provide their contribution to the venture?

(23) How complementary are the parties to the joint venture?

(24) Are there any conflicts of interest for University staff who will be involved in the venture?

Is the proposed time frame appropriate?

(25) What is the proposed start-up date of the venture and can it be achieved without placing undue pressure on the University?

(26) What is the expected duration of the proposed joint venture? Why has that length of time been specified?

(27) Will the joint venture enable achievements that would not be possible on a similar time-scale outside the joint venture?

(28) Is it considered that the joint venture might be self-sustaining after an initial start-up period?

What is the opportunity cost of entering the relationship?

(29) Is the proposed venture likely to infringe on or support existing University ventures and other activities?

(30) Does it prevent/harm other possible strategic joint venture/s in the future that might be more suitable to the University?

(31) Are there other (better) ways that the same objectives could be realised?

What are the outcomes of a preliminary Cost-Benefit assessment?

(32) Are the resources we would contribute to the joint venture (this could involve personnel time, accommodation, intellectual property and know-how, cash, specified skills, technology, access to market etc.) clearly specified?

(33) Where a joint venture is being established to offer University Award Courses and/or Award Subjects, then the identification of the activities, tasks and resources to be contributed by each of the members should be developed as per the following Guidelines:

a. Joint venture agreements Involving University Award Courses or Award Subjects (Attachment II).
b. Services Provisions in a Joint Venture involving University Award Courses or Award Subjects (Attachment III).

(34) Are the resources the other parties would contribute to the joint venture clearly specified?

(35) What evidence is there that the other parties can provide the resources identified in clause 33b?

(36) From what resources will our contributions come? Can we still continue our core activities given our resource contribution? (Particularly relevant in respect of staff resource contributions).

(37) If intellectual property is involved with the venture, is there an agreement on ownership of intellectual property resources brought into and developed from the joint venture? Whose laws will govern issues of intellectual property if there is an international venture being proposed?

(38) What is the relationship between the proposed contribution of each member to the venture and their share of outcomes (profits, intellectual property etc.)?

(39) Will there be tangible outcomes? Who will own the outcomes that are capable of being legally owned (products, intellectual property etc.) when they are first developed/protected? What will be the mechanisms for and costs of transferring ownership to eventual beneficiaries?

(40) Does the preliminary cost-benefit assessment indicate that the outcomes will justify the investment?

What are the outcomes of the risk assessment?

(41) What does the external risk assessment tell us?

a. What are the identifiable risks (financial and non-financial) to the University of being associated with this venture?

   Note: the risk assessment should examine the risks associated with the business environment (e.g. what external factors - government, political, legislative, demographic, economic - might change and hence change the attractiveness of the potential joint venture?), and associated with the parties to the venture.
b. Who has undertaken the risk assessment and how was it done?

   Note: Government and political risk assessment is more important when international members are involved

What are the outcomes of the due diligence?

(42) Has the Division of Financial Services provided a due diligence clearance on the external parties? (If a venture proposal involves the receipt or expenditure of in excess of $50,000 per annum it should be referred to Finance Manager (Revenue) for due diligence and probity check.)

a. What do we know about the proposed member/s? Are they reputable? Have they been involved in other successful joint ventures?
b. What are the results of a:
   i. financial background check?
   ii. analysis of other agreements that the proposed member has?
   iii. check on whether there is any record of legal actions against the proposed member/s?
   iv. evaluation of the calibre of the proposed member's management and governing body?

(43) Do the CEOs (or other formally delegated officers) of the external parties and the Vice-Chancellor (or other formally delegated officer) support the proposed venture?

(44) Is there already any degree of trust between the parties? If so, is it likely to continue? If not, is it likely to develop?

Part C - Development of the Formal Agreement and/or Contract

(45) If after completing the feasibility assessment, the decision is taken to proceed with the venture, then the following steps should be taken in developing the formal venture agreement and/or contract. In the case of a contract or legal agreement involving annual receipts or expenditure in excess of $50,000, approval to proceed to develop a formal agreement or contract must be given by the Contracts Review Board.

(46) The Senior Officer responsible for developing the agreement and/or contract for the joint venture should:

a. develop an agreed position with proposed the external party/s about the potential outcomes, and the governance, management, financial accountabilities and administration of the venture;
b. complete a detailed cost-benefit statement on the venture, including a full risk assessment;
c. develop a formal Legal Agreement between the parties in conjunction with a Business Plan/Strategic Plan;
d. develop an Implementation Plan; and
e. designate a University manager for the implementation of the project.

Are the proposed governing, management, risk management, communication, accounting and audit structures for the joint venture appropriate?

(47) Is an incorporated or unincorporated model proposed?

(48) What is the proposed composition of the board and does it reflect the proportional contributions of the members?

(49) Will senior management be properly represented on the board (or equivalent)?

(50) How will the board get direction from the parties?

(51) Will there be an autonomous operating team, headed by a Director/CEO with appropriate management and leadership skills? (Who is the proposed Director/CEO or how will that person be selected/appointed?)

(52) Will there be a clear division of responsibilities and authorities between the members? How will this be achieved?

(53) How will the members' various interests be protected (Board voting rights etc.)? What will be the monitoring and reporting process from the board to the members (through member representation on board or direct to members)?

(54) Who will hold the equity participation documents (i.e. share certificates etc.)?

a. In terms of administering the venture, has a clear division of responsibilities and authorities between the parties been agreed? This should involve a detailed specification of what each of the parties administrative responsibilities are, the processes by which the responsibilities will be met and an annual schedule detailing when each responsibility will be met.
b. All the Faculties and Divisions that will support the venture must sign off on the terms and conditions under which they will provide the services as specified in clause 54a.

(55) If intellectual property is involved, does its management comply with the University's Intellectual Property Policy? Describe the process and management control.

(56) Will there be proper financial accountability, in accord with prevailing joint venture accounting standards? Who will be responsible for this, what are their credentials and undertakings?

(57) Will delegations to University representatives on the Board, and to University participants in the joint venture 's programs be well defined so as to avoid conflict? Describe how this will be achieved.

(58) What will be the arrangements for employment/secondment of University staff?

(59) Are all the above incorporated in joint venture documentation?

Are there appropriate Review/Termination mechanisms?

(60) What review mechanisms are built into the joint venture and when do they come into effect?

(61) On what grounds might the joint venture be changed or terminated and by whom?

What are the outcomes of a detailed Cost Benefit Analysis and Risk Assessment?

(62) This should involve revisiting and formally addressing in detail the issues in clause 32 to 41.

Have cultural/communication issues been appropriately addressed?

(63) Are the business cultures of the members similar? If not, how will cultural differences be addressed, particularly in respect of communication between members?

a. Relevant issues are: at what level are decisions made; the formality of communications; the speed of decision-making; the values and priorities of each member; the role of women; the influence of religion; the attitude to over-time.

(64) What communication protocols will be put in place?

a. Are there appropriate IT communication systems in place (important for projects say in China, India, etc.).

Prepare a formal legal agreement, including a Strategic Plan/Business Plan with time frames for joint venture projects.

(65) The Agreement must specify:

a. the formal objects of the joint venture and the way it is intended that they be achieved;
b. agreement on the contributions by each member to achieve the project results;
c. agreements on how progress will be assessed, with details;
d. milestones for review with time lines with details;
e. performance measures to be used and indication that measures align with the project's goals;
f. agreements on how risk will be managed;
g. provision for a Communication Plan to facilitate communication between the members;
h. provision for conflict resolution processes;
i. protection of the parties' interests and rights;
j. the conditions for regular review and termination of the agreement;
k. warranties and indemnities.

Has the Contracts officer in the Division of Financial Services certified that the agreement complies with taxation requirements?

Has the University Legal Officer provided a written clearance that the agreement can be proceeded with?

Part D - Academic Senate

(66) Where a joint venture involves the offering of a University award course or award subject, has Academic Senate given approval for the course to be offered? (See Attachment IV , DETYA National Protocols for Higher Education Approval Processes (2000) Part Five - Delivery arrangements for higher education institutions involving other organisations pp 19-21.)

Part E - Contracts Board

(67) Has the contract been approved by the Contract Review Board (if contract or other agreement involves annual receipts or expenditures in excess of $50,000, it must be referred to the Contract Review Board for approval, see

Attachment V).

Part F - Implementation Plan

(68) Has a project manager been designated for this venture? Has a detailed Implementation plan for the venture been prepared? The plan must cover all steps to effect and operate the venture.

Part G - Approval to Proceed with a Joint Venture

(69) Final approval to proceed with a joint venture must be obtained from the delegated authority within the University.

Status and Details

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