

KANSAS STATE UNIVERSITY
FOUNDATION

Title	Joint Venture Policy	Version	6
Committee:	Governance Committee	Approval Date	10/08/2021
Approved By	Board of Directors	Approval Date	10/08/2021

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Rationale

Joint ventures represent an opportunity and a risk to the Kansas State University Foundation (“Foundation”). The purpose of this policy is to establish standards for the Foundation’s participation in Joint Ventures which advance the Foundation’s mission while preserving its tax-exempt status.

Applies to

This policy applies to members of the Board of Directors of the Foundation, Foundation investment department employees and any other Foundation employees who are involved with the management of a Joint Venture activity.

Policy

The Foundation has received 501(c)(3) exempt organization status by the Internal Revenue Service and therefore is to be operated exclusively for religious, charitable, scientific, literary, and educational purposes. Without limiting the generality of the foregoing, the purposes of the Foundation shall be to help, assist, promote, support, and advance the interests of Kansas State University (“University”), a land grant university that is operated by the state of Kansas.

Additionally, the Foundation’s mission provides that:

1. It is organized and operated exclusively for purposes that are described in Internal Revenue Code section 170(b)(1)(A)(iv). Therefore, the Foundation is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the University.
2. Notwithstanding any other provision provided in the Amended and Restated Articles of Incorporation, the Foundation shall not carry on any activities that are not permitted to be carried on by an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code or that are not permitted to be carried on by an organization for which contributions to it are deductible under section 170 of the Code.

This policy is intended to cover those situations whereby the Foundation invests in, contributes assets to, or otherwise participates in a joint venture or similar arrangement (or a "Venture" or "Arrangement"). For purposes of this policy a Venture or Arrangement means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity, without regard to (1) whether the Foundation controls the Venture or Arrangement, (2) the legal structure of the Venture or Arrangement, or (3) whether the Venture or Arrangement is treated as a partnership for federal income tax purposes, or as an association or corporation for federal income tax purposes.

If the Foundation contemplates entering into a Venture or Arrangement, the following tenets will be followed:

1. **Protection of Tax-exempt Status and Control.** This policy requires that the Foundation negotiate, in its transactions and arrangements with other members of the Venture or Arrangement, such terms and safeguards as are adequate to ensure that the Foundation's exempt status is protected. Such terms shall be in writing in the operating agreement or other governing instrument of the Venture or Arrangement and shall include the following minimum requirements:
 - With respect to any Venture or Arrangement in which the Foundation contributes a significant portion of its assets or a significant activity to the Venture or Arrangement, the Foundation shall maintain control over the Venture or Arrangement sufficient to ensure that the venture furthers the exempt purpose of the Foundation. This will include the Foundation's control over the Venture or Arrangement through 51% or more of all voting rights and retain veto power over the Venture or Arrangement;
 - With respect to any ancillary Venture or Arrangement in which the Foundation contributes an insignificant portion of its assets or an insignificant activity to the Venture or Arrangement, the Foundation would, at a minimum, maintain sole control over the tax-exempt aspects of the Venture or Arrangement and would have voting and ownership interest in the Venture or Arrangement that are consistent with the Foundation's capital contributions; and
 - A prohibition on activities that would jeopardize the Foundation's tax-exempt status.
2. **Priority of Tax-exempt purpose.** The Venture or Arrangement shall give priority to the Foundation's tax-exempt purposes over maximization of profit for the participants of the Venture
3. **Arms' Length Standard.** All Venture or Arrangement contracts entered into with the Foundation shall be on terms that are at arm's length or more favorable to the Foundation. Any contracts entered into with the Foundation's partner in the Venture or Arrangement must be negotiated at arm's length and for fair market value.
4. **Reputation Investigation:** The Foundation shall undertake such steps as may be

prudent or necessary to make a reasonable and good faith determination that the Participants and their activities will not have an adverse impact on the reputation, image, mission or integrity of the Foundation or the University.

5. **Reporting:** The Venture or Arrangement operating agreement shall require that the Foundation receive timely and properly prepared information as is necessary for the Foundation to prepare and timely file its annual IRS Form 990 and 990T.

A decision to enter into such Venture or Arrangement will be made only in consultation with legal and/or tax counsel.

Ventures or Arrangements do not include arrangements that meet both of the following conditions:

1. 95% or more of the Venture's or Arrangement's income for its tax year ending with or within the Foundation's tax year is described in Internal Revenue Code sections 512(b)(1)-(5) (including unrelated debt-financed income). Section 512(b) income is
 - a. Dividends and interest
 - b. Royalties
 - c. Rents from real property and incidental related personal property, and/or
 - d. Gains or losses from sale or disposition of property; and

Even if such income may constitute unrelated business income tax under the Internal Revenue Code as a result of debt-financing.

2. The primary purpose of the Foundation's contribution to, or investment or participation in, the Venture or Arrangement is the production of income or appreciation of property.

Definitions

Term	Definition
Joint Venture or similar arrangement	Joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment or exempt-purpose activity.

Procedures

The following procedures will be followed:

1. **Negotiation:** The Venture or Arrangement will be negotiated by the Foundation's management who will further consult with legal and tax counsel.
2. **Proposal:** A written proposal for entering into a Venture or Arrangement shall include:

- a. A statement as to why it is important for the Foundation to participate in the Venture or Arrangement.
 - b. Why the Venture or Arrangement furthers the Foundation mission.
 - c. Statement as to the scope of the relationship with other venture members and how financial risks and rewards will be shared.
 - d. Analysis as to whether the transaction is subject to treatment as unrelated business income and
 - e. Analysis as to whether any Venture or Arrangement real property will be subject to state and local property taxes.
3. **Severance of Relationship:** Any contract entered into should provide for the ability for the Foundation to sever the relationship in the event any venture participant falls into disrepute or commits actions that could damage the Foundation’s reputation.
 4. **Approval:** The Venture or Arrangement proposal will be approved by the Governance Committee (in consultation with the Finance & Audit Committee as needed). The Governance Committee will submit the recommended Venture or Arrangement proposal to the Board of Directors for its final approval.

References & Links

The consideration of the Venture or Arrangement and any related contracts are subject to the [Conflict of Interest and Confidentiality Policy](#) .

Investment funds or investment vehicles are governed by the Asset Management Committee of the Foundation and subject to the [Investment Policy for the Long-term Investment Pool](#) .

Contact

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