

## Foreign Interactions Due Diligence Tool

This Due Diligence Tool is to be used to evaluate the risk and/or identify any reporting or regulatory obligations related to foreign interactions. Anyone engaging in any activity or partnership on behalf of or with a foreign government, foreign university, foreign business or any other foreign organisation or entity as part of University business must evaluate the proposed activity or partnership for the risk of foreign interference, foreign influence and/or statutory reporting or regulatory obligations using this tool – see [Due Diligence](#).

### ARRANGEMENT DETAILS

Title or purpose

College / Portfolio

Choose an item.

Requestor name

Name of other party

Start date

### QUESTION ONE

#### Is a foreign entity or individual involved or influential in the arrangement?

- Foreign government including a foreign national or sub-national government, including a department, agency or other public authority of that government<sup>#</sup>

*Note: some foreign tertiary education institutions, such as government military academies, would be considered part of the foreign government.*

- Foreign university in respect of which a foreign government is in a position to exercise substantial control<sup>#</sup>

*Note (1): a foreign government is considered under relevant legislation to be in a position to exercise substantial control over the university if, and only if:*

- *a majority of the members of the university's governing body are required, by law or the university's governing documents, to be members or part of (however described) the political party that forms the foreign government*
- *education provided or research conducted at the university is required, by law or the university's governing documents, to adhere to, or be in service of, political principles or political doctrines of (i) the foreign government or (ii) the political party that forms the foreign government, or*

- the university's academic staff are required by a law or the university's governing documents, to adhere to, or be in service of political principles or political doctrines referred to in paragraph ( b ) in their teaching, research, discussions , publications or public commentary.

For these purposes, the **governing documents** of a university are the constitution, rules or other official documents by which the university is constituted or according to which the university operates.

Note (2): as an interim measure, refer to the Compliance Officer (Governance, Legal and Risk) or the International Engagement team for an assessment of whether substantial control exists

- Foreign political organisation primarily concerned with pursuing political objectives, including a foreign political party
- Foreign government-related entity, including those with substantial government ownership or control
- An entity or individual (whether or not an Australian citizen or permanent resident):
  - accustomed, or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of any one of the above, or
  - substantially controlled by any one of the above.

#### # NOTIFICATION UNDER FOREIGN ARRANGEMENTS SCHEME

If you ticked an item marked with a #, the counterparty is likely to be a "foreign entity" as defined in the Australia's Foreign Relations (State and Territory Arrangements) Act 2020. This is the Act that governs the Foreign Arrangements Scheme. Ensure the proposed arrangement is notified as a foreign arrangement as required under that Act, unless an exemption applies (see [Foreign arrangements](#)).

## QUESTION TWO

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### Is one of the foreign risk thresholds applicable to the proposed arrangement?

- Production of research or knowledge considered proprietary information including trade secrets, confidential information and other intellectual property rights, which is commercially valuable or would be considered dual-use technology that could be used inequitably.

- Foreign funding or rewards for control over or benefit from university operations, decisions or staff.

*Example (1): All expenses paid international trip to tour a research facility offered to staff member as part of the proposed arrangement, or as part of consideration of whether to enter into the arrangement*

*Example (2) Offer to fund a course at Flinders, on condition of sign-off on course content*

- Research that requires an Australian Government Defence Trade Controls or Sanctions permit.

*Note: the Defence and Strategic Goods List (DSGL) and list of Australian Autonomous Sanctions and UNSC Sanctions Regime (Consolidated List) should be checked, as required. Liaise with Hendryk Flaegel, Manager, Research Ethics and Compliance or Tony Kyriacou, Defence Partnerships Director, as required.*

- Substantial political influence objective.

*Note: in particular, necessitating Foreign Influence Transparency Scheme notification (see [Foreign influence](#))*

- Engagement of Flinders' staff to produce advice or work on Australian politics.

- Interaction with foreign-sponsored talent recruitment program.

## RISK MITIGATION

If you ticked a box under both questions, refer to Legal Services for review and advice on risk mitigation as regards any potential foreign interference or foreign influence arising from the proposed arrangement.

Note: according to the [Guidelines to counter foreign interference in the Australian university sector 2019](#):

- *Foreign interference* occurs when activities are carried out by, or on behalf of a foreign actor, which are coercive, covert, deceptive or corrupting and are contrary to Australia's sovereignty, values and national interests
- *Foreign influence* are the activities of foreign governments to influence deliberations on issues of importance to them, and which, when conducted in an open and transparent manner, are a normal aspect of international relations and diplomacy and can contribute to the public debate

While what risk mitigation measures are appropriate will depend on the circumstances and are to be assessed by Legal Services on a case by case basis, those measures could include:

1. Undertaking further due diligence on the counterparty e.g. (paid) ASIC search, search of Australian Government Register of Lobbyists, FITS register, Australian Government Grants Register (GrantConnect), further desktop research in the language of the proposed foreign counterparty or other enhanced due diligence, for example by referral to a risk advisory firm.

Note: a non-exhaustive list of issues to consider:

- *Is the proposed partner well-established and what is its business history?*
  - *How long has the proposed partner been incorporated?*
  - *What is the proposed partner's structure, and are there any real, perceived or potential conflicts of interest?*
  - *Does the proposed counterparty or persons associated with it (e.g. members of its governing board) have:*
    - *any known or suspected association with military institutions or foreign intelligence service*
    - *a history of bankruptcy or insolvency*
    - *a history of litigation*
    - *past involvement in corruption, bribery, theft or other unethical conduct*
    - *a history of intellectual property infringement or theft*
    - *any known or suspected association with organised crime groups, money laundering or terrorist groups?*
2. Inclusion of additional intellectual property protections in the proposed arrangement, including a clear expression about the agreed focus and purpose of any research contemplated by the arrangement and a prohibition on unethical, inequitable etc. use of potential "dual-use" IP.
  3. Ensuring that researchers involved have fully declared membership of any foreign talent programme or equivalent commitments to foreign institutions that oblige them to disclose or transfer the research, and ultimately the IP.

4. Generally, ensuring that any conflicts of interest are identified and addressed under the University's Conflict of Interest Policy.
5. Inclusion of adequate provisions in the proposed arrangements to ensure proper monitoring of changes of counterparty personnel involved, or to the effect that prior agreement to such changes is required.
6. If the proposed arrangement involves a governing board or similar, ensuring it is advisory only and accountable to Flinders.
7. Addressing concerns about academic freedom and free speech.

*Note: Under the Higher Education Support Amendment (Freedom of Speech) Act 2021, academic freedom means the following:*

- a. *the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research*
  - b. *the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research*
  - c. *the freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled*
  - d. *the freedom of academic staff to participate in professional or representative academic bodies*
  - e. *the freedom of students to participate in student societies and associations*
  - f. *the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted.*
8. Affirming the primacy of Australian law for all relevant activities taking place in Australia, including confirmation the parties will comply and will ensure their staff comply, with Australian law and Flinders' policies and procedures in relation to such activities.
  9. Including clear and, where appropriate, enhanced rights of termination of the proposed arrangement.
  10. Seeking a Defence Trade Controls permit or Sanctions permit.
  11. Registering the proposed activities under the Transparency Register under FITS.
  12. Ensuring the proposed foreign arrangement complies with Flinders' IT policy or agreed procedures.
  13. Reconsider proceeding with the proposed arrangement. Any such consideration should be reported to the Vice-President and Executive Dean of the relevant College and/or the Portfolio Head, as well as the General Counsel.