

Title of policy			
Access Validating Agency (AVA) consideration and adoption of alternative corporate forms			
Policy statement			
This document sets out the procedures that AVAs must follow, and the actions that the Quality Assurance Agency (QAA) for Higher Education will take when an AVA decides to adopt an alternative corporate form.			
Strategic aim of the policy			
To safeguard the security of arrangements for the recognition and quality assurance of Access to HE provision and to protect students' interests in the event that an AVA adopts an alternative corporate form.			
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Link to other policies/procedures and guidelines:			
<ul style="list-style-type: none"> • Access Validating Agency (AVA) licence withdrawal procedures • Access Validating Agency (AVA) licence surrender procedures • Access Validating Agency (AVA) cessation of trading procedures • Access Validating Agency (AVA) merger procedures AVA licensing agreement <p>Please refer to: https://qaa.moodle.school</p>			
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V1.0	April 2018	A Karadia	First published version
V2.0	November 2018	J Mizon	Updated links to Conditions and Licensing criteria (See points 6, 7.1 and 7.2)

Procedure when an Access Validating Agency (AVA) decides to adopt an alternative corporate form

Purpose of the procedure

1 The purpose of this procedure is to ensure that when an AVA decides to adopt an alternative corporate form:

- 1.1 plans are in place to protect students' interests
- 1.2 action is taken to ensure the security of the AVA licence under the new corporate form
- 1.3 course, Diploma and provider recognition and effective quality assurance is maintained.

Circumstances in which these procedures apply

2 These procedures apply when an organisation that holds an AVA licence ('the AVA') voluntarily decides to adopt an alternative corporate form, for example, by joining a consortium or group structure ('the group').

Application of these procedures

3 These procedures may need to be adapted according to the circumstances under which they are initiated, and all applications will be considered on a case-by-case basis.

4 The procedures may be restarted or varied at any point if QAA considers that the facts or evidence under consideration indicate the nature of the changes being implemented is materially different from the model initially proposed, and QAA considers that any such developments affect the AVA's ability to comply with the licensing criteria or has the potential to put the interests of students at risk.

5 QAA may, at its sole discretion, require the parties to follow one of the other processes applicable to merging organisations, as might be appropriate for the circumstances. These include but are not limited to: merger AVA with AVA; merger with non-AVA awarding organisation; or surrender of licence.

Relationship with regulatory requirements

6 Under the terms of the standard conditions of the AVA licence (condition 9) and licensing criterion 28, AVAs are required to inform QAA of 'proposed changes' before those changes are made, in a number of circumstances, including proposed changes to (a) its legal identity; and (b) the name under which it operates. Licensing criterion 27 also requires AVAs to inform 'QAA at the earliest opportunity of any decision or imminent decision to merge with another organisation or in any other way change its organisational form or ownership'.

7 Under the terms of the standard conditions of the AVA licence:

- 7.1 AVAs are required to take legal advice before adopting a new legal identity (condition 9.7)
- 7.2 AVAs must not sub-license, assign or otherwise dispose of any rights granted under these Conditions to any third party other than Providers (condition 9.11)

- 7.3 QAA 'may terminate the licence at any time on written notice to the AVA with immediate effect if:
- 7.3.1 the AVA is in breach of any of these Conditions or licensing criteria and, if the breach is capable of remedy, the AVA has failed to remedy such breach within 30 days of the date of the notice from the QAA requiring such remedy
 - 7.3.2 a resolution is passed or an order is made for the winding up of the AVA (otherwise than for the purpose of solvent amalgamation or reconstruction)
 - 7.3.3 in QAA's reasonable opinion, by reason of the use being made of the Access to HE trademarks by the AVA, there is a risk that the Access to HE trademark may become devalued by its generic use or application; or that the trademark has been used in such a way as to suggest QAA's approval has been given to activities that are unrelated to Access to HE.'

8 In cases where an AVA is unable to continue trading as an organisation, the AVA cessation of trading procedures will instead be followed.

9 The key principles informing consideration of different corporate forms are:

- 9.1 student interest, which must be taken into consideration by all parties
- 9.2 compliance with QAA's regulatory requirements as set out in the licensing criteria
- 9.3 clarity about controlling interests to ensure continued financial viability and prevent regulatory conflicts
- 9.4 clarity about the locus of authority for AVA licence.

Informal stages

10 The stages set out below describe the procedures involved for AVA and QAA once an AVA has made a formal decision to take action to move towards an alternative corporate structure. If the AVA wishes to take QAA's advice about the process or broader implications of its plans, it should request a confidential discussion at an early stage, without commitment. AVAs considering such changes are encouraged to contact QAA as soon as possible in their deliberations - early informal discussions will help to expedite the formal stages.

Formal stages

11 If the AVA decides to move towards an alternative corporate form the AVA must go through the following stages.

Stage 1

12 The AVA must inform QAA of its intention to move towards an alternative corporate form, indicating the rationale for its intentions and the immediate actions planned. It must do this before it takes action which assumes a definite change date¹ and before it makes the information public.

13 Following the informal discussion, QAA will invite the AVA to a formal discussion of its plans and provide information about the process to be followed. This will include any constraints that may influence the date at which the structure change may occur. The outcome of these discussions will inform Stage 2.

¹ The most convenient effective date for changes is the end of an academic year, but this may not always be possible. Where the effective date is other than at the end of an academic year, the AVA will not be entitled to any refund on its financial contribution.

14 If the AVA then decides not to pursue its plans, it may do so without penalty. In these circumstances, the AVA must inform QAA immediately of its decision.

Stage 2

15 Once all parties have made a formal decision² (as approved by their respective governing bodies) to take actions, the AVA must notify QAA of its decision to change its corporate form.

16 The notification must be made in writing and must be signed by the Chair of the AVA's governing body and the Chief Officer and be dated. It should indicate the date of the meeting at which the AVA's governing body confirmed the decision and the intended date for the change. The names of all other organisations involved should also be confirmed.

17 Written confirmation is also required from these other organisations to accept the AVA into the new corporate form; this must include the date the new corporate form will be established.

18 The notifications can be sent to QAA by post, or by email as a PDF attachment, and should be addressed to QAA's Access Manager.

19 QAA will acknowledge receipt of the notifications and will confirm the requirements, including an outline schedule for Stages 3 to 6. QAA will also confirm the expected date, by when all stages will have been completed.

Stage 3

20 The AVA and other organisations develop and submit an integration plan. The purpose of this plan is to demonstrate how, under the new corporate form, the AVA will continue to meet its licence obligations to QAA.

21 Execution of this plan is the responsibility of the AVA and these other organisations.

21.1 The plan must cover, among other things:

- company and governance structures
- resources, including human resources
- management processes
- Diploma development, validation and approval
- centre approval
- moderation and standardisation
- certification
- proposed schedule of progress reports to QAA.

22 The plan must also:

22.1 confirm the completion date

22.2 state the date(s) on which the AVA's members will make final formal approval of the new corporate form, where such an approval is required

22.3 state the common stakeholder notification date, when the AVA plans to inform its providers and others of the plans (including points detailed under Stage 4)

² Depending on the precise terms of the AVA's constitutional documents and legal advice obtained, the decisions on the changes may require formal approval by its members, in which case such final approval will need to be incorporated into the AVA's plan in Stage 3 - see point 22.2.

- 22.4 specify the main stages and proposed timeline for the processes associated with any changes to the AVA's corporate structure to ensure locus of authority for the AVA licence remains with the organisation it was awarded to
- 22.5 explain how the interests of students AVA will be protected.
- 23 Where changes or adaptations of the AVA's constitution, company structure, processes and procedures are planned to accommodate the integration, the timing of such changes should be included.
- 24 The AVA will also provide:
- 24.1 diagrammatic outlines of the proposed governance structures, including membership of all Boards and the names of all senior officers within the new structure
- 24.2 details of the proposed locus of authority for the AVA licence, for quality assurance for Access to HE, and for the development of Access to HE provision within the new corporate structure
- 24.3 diagrammatic outline of organisational and staffing structures, with responsibility for Access to HE under the new corporate structure highlighted
- 24.4 copies of proposed constitutional documentation to demonstrate continued compliance with the licensing criteria and to show how any agreements between the parties involved have been formalised
- 24.5 details of any delegated authority agreements together with details of how these have been formalised constitutionally.
- 25 QAA will consider the AVA's submission and inform the AVA if additional information is required. Where approval is granted, QAA will confirm:
- 25.1 approval of the integration plan (with or without required amendments)
- 25.2 approval of the draft constitutional structure (with or without required amendments).
- 26 QAA may require an AVA to provide additional information and assurances relating to the locus of authority of the licence before approval for changes to corporate forms are approved.
- 27 Any proposed change to the stakeholder notification date, or to any aspect of the integration plan, must be confirmed by QAA.

Stage 4

- 28 On the date identified as the 'common stakeholder notification date', the AVA must inform its providers and other stakeholders of its plans, including:
- 28.1 the key dates leading to this point
- 28.2 the arrangements made to protect the students' interests
- 28.3 further communications that the AVA's stakeholders can expect to receive before the date of completion.

Stage 5

- 29 Throughout the period leading to completion of the alternative corporate form, the AVA must keep QAA informed of progress against its implementation plan and provide copies of amended of constitutional documentation.

30 The AVA must continue to carry out its responsibilities as a licensed AVA, including:

30.1 maintaining all quality assurance arrangements

30.2 meeting all requirements of the AVA licensing agreement and licensing criteria.

Stage 6

31 The AVA must provide information to QAA, as requested, including a final statement that all required actions have been completed and there are no other outstanding matters of which QAA should be aware, by a date prior to completion of the new corporate form and agreed with QAA.

Stage 7

32 The risk status of an AVA working within a new corporate form will normally increase to medium for the first year of operation.

33 QAA will arrange a review visit to the AVA at an appropriate date to review completion of the integration plan and any future plans consequent upon changes to the corporate form. Any concerns raised by this review that the AVA is not compliant with the AVA licensing criteria could lead to a reconsideration of the AVA's risk rating or a full review.

34 Charges will be imposed to cover the cost of the review visit and any subsequent activity where non-compliance is identified, and visits are required.

Other considerations

35 It is the AVA's responsibility to ensure that it follows due process in relation to matters such as compliance with its governing documents, staff employment, the dispersal of assets and notification to other regulators.

AVA monitoring submissions to QAA

36 QAA will require the AVA to include an evaluation of the changes in its statement of compliance, or next AVA monitoring submission to QAA, depending on the timing of the completion of the process. Additional information may also be requested at each submission point throughout the monitoring year during the first year of operation under the new structure. The AVA should therefore consult QAA about this requirement before finalising the AVA monitoring submission after the completion of the formal stages of these procedures.

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QAA manages the national framework for the recognition and regulation of Access to HE Diplomas.

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