

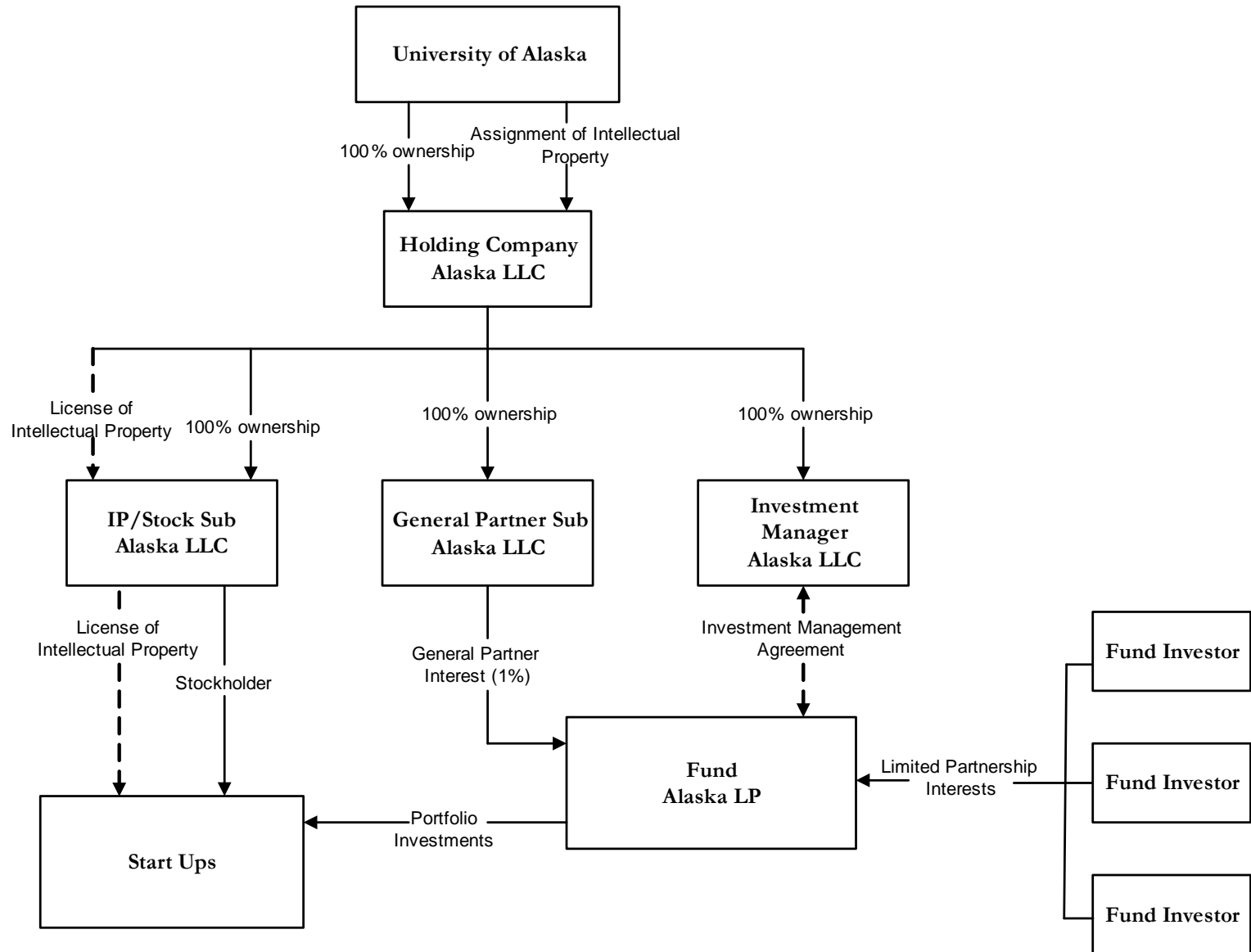


# Proposed Structure of Technology Commercialization and Sponsorship of Private Investment Fund

University of Alaska  
Anchorage Project

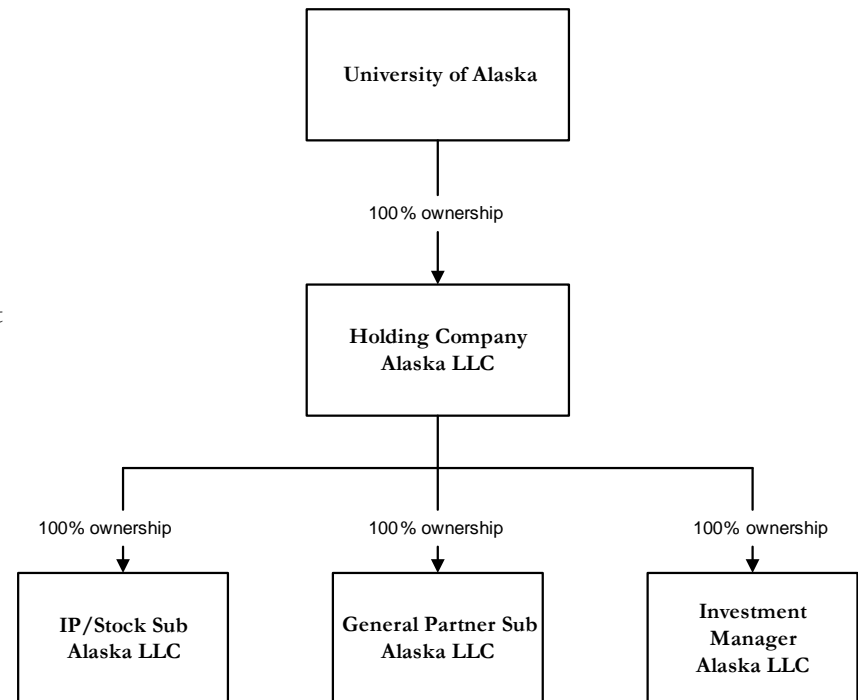
PATTON BOGGS<sub>LLP</sub>





# Holding Company and Subsidiaries—Corporate Separation

- Top-level holding company wholly-owned by UA
- Holding Company wholly-owns underlying subsidiaries
- Purposes:
  - The IP/Stock Subsidiary will hold the intellectual property rights pursuant to a license from Holding Company and any stock received from the start-up ventures
  - The intellectual property rights and the stock will be housed in the same entity and accordingly the assets would be available to satisfy any debts, liabilities, obligations, and risks associated with licensing the intellectual property and holding the stock
  - The contractual agreements will be drafted to minimize, to the extent possible, the exposure of the intellectual property assets to potential claims or losses
- Corporate separateness and formalities must be respected and practiced on a consistent and thorough basis to reduce or mitigate risk of a court looking through the structure and treating UA as the entity actually conducting the function, rather than a subsidiary or subsidiaries (also known as “piercing the corporate veil”).
- Each entity should:
  - have its own governing documents
  - take its own corporate actions
  - keep its own corporate books and records
  - operate within its own defined business areas
  - have at least some board members not in common with the other boards

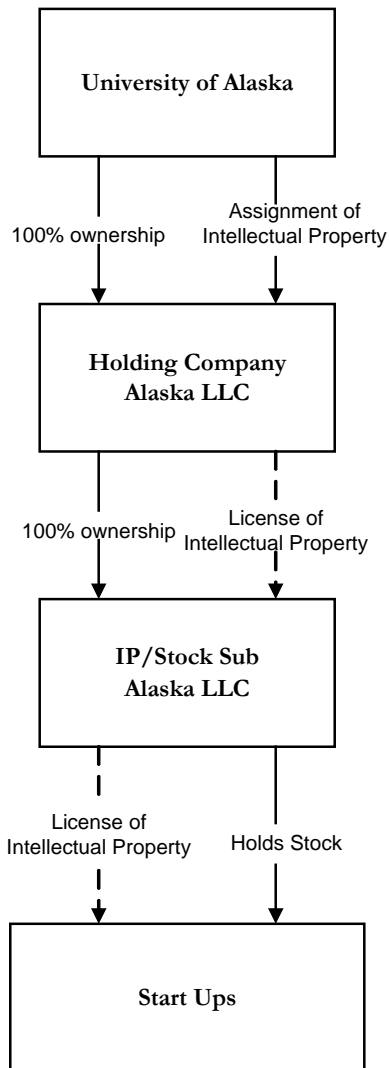


## Unrelated Business Taxable Income

- Income to the University of Alaska (“UA”) is not generally subject to federal income tax, except for income generated from unrelated trades or businesses, which is taxed at the highest corporate income tax rates
- Unrelated business income tax (“UBIT”) is imposed on gross income received by UA from an unrelated trade or business, less directly related expenses
- Income is taxable if
  - derived from a trade or business
  - the trade or business is regularly carried on
  - the regularly carried on trade or business is not related to UA’s charitable, educational, scientific, literary, etc. purposes
- Whether an activity is an unrelated trade or business is determined based on all the **facts and circumstances**

## Unrelated Business Taxable Income (cont.)

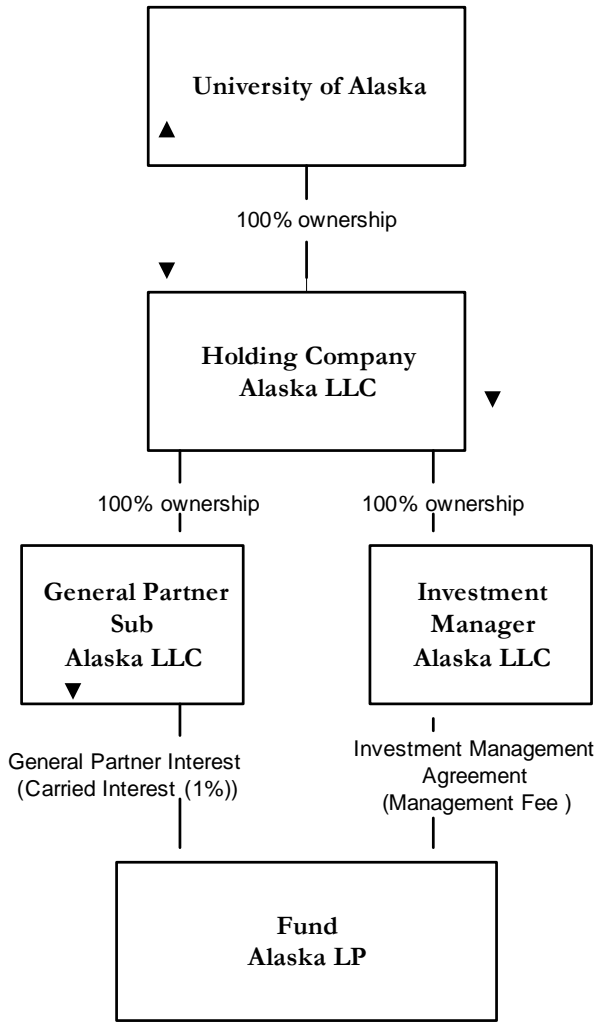
- Although exceptions may apply, certain types of income are not subject to UBIT, including
  - dividends
  - interest
  - royalties
  - rents
  - capital gains
  - income derived from research
  
- Income may be subject to UBIT even if it falls into one of the above categories in certain circumstances—for example:
  - In certain cases if the income is derived from debt-financed property
  - certain types of income from controlled subsidiaries if the subsidiary is able to deduct such amounts and thereby reduce its taxable income, or if the payment would allow the subsidiary to take a loss that may be used against income earned by it in subsequent years
  
- Income derived from research activities of a university is not generally subject to UBIT but to qualify, such research must be conducted by the university and may not be conducted through a separately incorporated entity
  - Research conducted by a single-member limited liability company that is treated as a disregarded entity and owned by a university will be treated as conducted by the university



## IP/Stock Subsidiary

- The IP/Stock Subsidiary holds the intellectual property rights (issued patents, trade secrets, and patent applications) pursuant to a license from Holding Company and licenses such property to the various start-up companies and also holds stock ownership interest of the start up-companies in exchange for the contribution of such licenses
- The intellectual property rights and the stock are being held in one corporation in order to ease the administrative costs and burdens
- The easing of the administrative costs and burdens will result in all of the corporation's assets being subject to any claims or losses
- To the extent possible, the contractual agreements for the intellectual property will try to reduce and minimize such risks

## General Partner and Investment Manager Subsidiaries



- The General Partner Subsidiary will serve as the general partner of the Private Investment Fund (“Fund”) and receive a share of the profit from investments (“carried interest”)
- The Investment Manager Subsidiary will serve as the investment manager of the Fund and receive a management fee
- Purposes for forming separate entities to serve as general partner and investment manager of the Fund:
  - taxation
    - carried interest currently categorized as capital gains (although there are efforts in Congress to have carried interest treated as ordinary income)
    - management fees categorized as ordinary income
    - having different revenue streams flow to separate entities reduces risk that both revenue streams will be treated as ordinary business income, which would create a larger tax burden
  - protection from Fund-related liabilities
    - the general partner has general liability for the debts and obligations of a limited partnership

## General Partner Subsidiary—Purpose and Existence

- The General Partner Subsidiary should be a single purpose vehicle dedicated solely to the Fund that would:
  - wind down its affairs following liquidation and wind down of the Fund (a new General Partner Subsidiary should be established if a successor investment fund is established)
  - limit the scope of any incentive compensation schemes that may be established for UAA personnel with respect to carried interest generated by the Fund or the sharing of carried interest with third parties (to ensure that any incentive compensation or other carried interest participants that may be terminated would not have a role with and receive similar incentive compensation in respect of the successor fund)



## Investment Manager Subsidiary—Purpose and Existence

- The Investment Manager Subsidiary serves as investment manager of the Fund
  - has no ownership interest whatsoever in the Fund
  - enters into an investment management agreement with the Fund under which it will provide investment management and advisory services to the Fund
  - receives management fees from the Fund
- does not have general liability for the debts and obligations of the Fund since there is no ownership interest in the Fund (unlike the General Partner Subsidiary)
- does not need to wind down when the Fund and the General Partner Subsidiary are wound down, so long as other business opportunities exist for continued operation
- may, if successful, serve as an operating business and exist beyond the life of the Fund to sponsor, raise and manage successor funds and engage in other similar business activities
- as day-to-day manager of the Fund's operations, employs/pays the investment professionals and provides the overhead necessary to run the operations.

