

REGULATION 42

Formation of New Companies

1. Introduction

- 1.1 The University actively encourages the professional management of its intellectual property, both in terms of fulfilling its obligations to transfer knowledge and research outputs, to the benefit of industry and the wider community, and wishing to generate a financial return through the commercial development of intellectual property as an asset. One method of achieving these goals is by setting up a new company to implement the commercial development of University intellectual property, including know-how. The University encourages such new company formation where the circumstances suggest this is a suitable way forward.

2. Definitions

- 2.1 The following definitions are used in this regulation:
- (a) technology includes knowledge, methodology, know-how and any other intellectual property rights.
 - (b) a spin-out company is a company whose principal object is the development and exploitation of the technology owned by the University.
 - (c) a service company is a company whose principal object is the use of technology or facilities created or provided by the University.

3. Authorisation

- 3.1 A member of staff of the University or a wholly owned subsidiary of the University shall require authorisation from the University before setting up a spin-out company or service company, or becoming an officer (Director or Company Secretary) of such a company. To obtain such authorisation, the member of staff shall inform Technology and Research Services or its successor organisation which shall be responsible for making such arrangements as are necessary for determining whether authorisation may be granted.
- 3.2 In determining whether authorisation should be granted, issues which the University shall consider shall include:
- (a) the interests of the University
 - (b) the interests of the member(s) of staff seeking authorisation
 - (c) the interests of the spin-out company or service company
 - (d) the impact on existing and future duties of members of staff
 - (e) the use of technology owned by the University or any subsidiary company
 - (f) the use of University resources, such as space and equipment
 - (g) any relevant legal issues.

4. General Provisions

- 4.1 [REPLACE] *The University shall have an equity stake in each spin-out company or service company. Such equity shall be agreed on the basis of the value of the technology to the University and the contribution made by the University to the generation of such technology.*
[SUBSTITUTE AS APPROVED BY PME]The University shall have a 24% dilutable equity stake in each spin-out company or service company.
- 4.2 The University may offer an equity stake to a member of staff which shall take account of his or her contribution to the creation of the technology. The University may refuse to offer any equity stakes to a member of staff who has contributed to the creation of the technology, after adequate consultation with all interested parties.
- 4.3 The University shall retain the right to appoint a Director [INSERT] *of its choice* or to have Observer status at Board meetings of a spin-out company or a service company. Furthermore, at the request of such a company, the University may nominate a Director or Company Secretary whose fees (if any) and expenses shall be borne by the spin-out company or service company.
- 4.4 A full-time member of staff of the University may not be an employee of a spin-out company or service company. However, the University may permit a full-time member of staff to become part-time in order to allow the member of staff to be employed part-time by the spin-out company or service company.

- 4.5** The University shall be entitled to recoup from a spin-out company or service company the cost of legal and other professional fees incurred in the creation of that spin-out company or service company and the costs of intellectual property protection incurred in the development of the relevant technology.

5. Staff

- 5.1** Subject to University regulations and codes of conduct (see Financial Regulations and Conflict of Interest Policy) and with the permission of the University, members of staff may

- (a) own shares or share options in a spin-out company or service company
- (b) act as directors of a spin-out company or service company
- (c) act as paid consultants to a spin-out company or service company.

- 5.2** *Conflicts of interest for members of staff of the University, which arise, or may arise, as a result of the creation of a spin-out company or service company shall be declared and addressed through the University's policy on Conflict of Interest.*

Paragraph 5.2 to be inserted once the conflict of interest policy has been approved.

- 5.3** No individual member of staff of the University shall have the authority to incorporate or dispose of a spin-out company or a service company.

- 5.4** Any member of staff of the University who has been refused permission to set up a spin-out company or a service company may not set up a company having similar objects outwith the University.

6. Procedure for company formation

- 6.1** The procedure for forming a spin-out company or service company is attached as Appendix 1 to this regulation. This regulation should be read in conjunction with the procedure.

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Procedure for the incorporation of a University spin-out company or service company

This Appendix seeks to set out a clear and unambiguous procedure for the incorporation of a University spin-out company or service company.

Aims of Procedure

- To provide a clear line of authority and communication regarding the formation and dissolution of spin-out companies or service companies from the University.
- To provide an unambiguous procedure for members of staff of the University.
- To provide an appropriate audit trail for Technology Research Services (TRS).
- To provide a standard method of incorporating spin-out companies and service companies.

Outline of Procedures

- A member of staff of the University or any wholly-owned subsidiary of the University who has an idea for a company should contact TRS to arrange an informal discussion with a member of the commercialisation team about the incorporation of a University spin-out company or service company.
- If incorporation is not the best way to proceed, the idea will be evaluated by TRS for other exploitation opportunities.
- If incorporation is seen as the best way to proceed, the member of staff will be invited to meet with the TRS team for an in-depth exploration of the proposed Spin-out company with a view to highlighting potential issues and questions so these can be dealt with early on.
- The member of staff will then be asked to confirm the University's share of equity in the Spin-out Company as 24% by signing the Equity Allocation Form (Appendix 2).
- The member of staff will then meet with his/her Head of School/Institute/Section to discuss the use of School/Institute/Section facilities by the Spin-out Company and agree, complete, and sign a Consent to use Heriot Watt University Resources Form specifying the people, equipment, & space agreed upon (Appendix 3).
- The member of staff will be encouraged to seek advice and assistance from people (especially Heriot Watt University members of staff) involved in previous Spin-out Companies and appropriate external bodies (e.g. SMART)
- The member of staff will then complete an Application to Incorporate Form (Appendix 4) and Business Plan Form (using the supplied template – Appendix 5) which may be obtained from TRS.
- The completed application form should be returned to TRS together with the following:
 - (a) a Business Plan using the supplied template outlining the proposed activities of the company, and

- (b) a signed Consent to use School Resources Form and a letter from the appropriate Head of School agreeing to the involvement of the member of staff and the use of facilities and resources of the School and the University, including staff time, and an estimate of their costs. The letter should also state whether or not there is any conflict of interest between the interests of the University and the proposed company.
- TRS will evaluate the proposal and if supported the Technology Transfer Manager will then submit this to the Innovation Exploitation Board (IEB).
 - IEB will review the information received and make a recommendation on whether or not to incorporate. The recommendation of the IEB will be communicated to the member of staff and the appropriate Head of School.
 - If the recommendation is positive, IEB will also make recommendations about appropriate directors.
 - If the recommendation is negative, the member of staff and the Head of School will be informed of the reasons and the member of staff may be given an opportunity to resubmit.
 - If the recommendation from the IEB is positive, the application will be referred to the Commercialisation Policy Group (CPG) or its successor which may reject or approve the recommendation.
 - The Commercialisation Policy Group (CPG) or its successor may require the member of staff to make a short presentation about the proposal in order to facilitate the approval process.
 - If the Commercialisation Policy Group (CPG) or its successor does not give approval to the idea, the member of staff and the Head of School will be informed of the reasons and the member of staff may be given an opportunity to resubmit.
 - If the Commercialisation Policy Group (CPG) or its successor subsequently approves the incorporation of the company, it shall consider the recommendations of the IEB for the appointment of directors.
 - The application and recommendations of the Commercialisation Policy Group (CPG) or its successor will then be passed to the Secretary of the University for final approval.
 - If the Secretary of the University approves the proposal he or she will instruct the Legal Services Manager to prepare the incorporation documentation and any ancillary agreements for execution by the appropriate individuals and take such steps as necessary to incorporate the company. The Legal Services Manager will then submit a report to the PME.

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Heriot Watt University Equity Allocation Form

This completed document is to be attached to the Application to the Innovation Exploitation Board for Incorporation of a Spin-out Company.

The applicant wishes to set up a Spin-out Company and assigns an equity in this company of 24% to Heriot Watt University. These shares are dilutable in subsequent transactions.

Signed:

Date:

Witness:
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.....
.....
.....
.....

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Consent to use of Heriot Watt University Resources by a Spin-out Company

This completed document is to be attached to the Application to the Innovation Exploitation Board for Incorporation of a Spin-out Company. Once the Spin-out Company is formed a separate agreement will be entered into for the use of School Facilities.

School/Institute/Section:
Head of School:
Applicant:

Use of the following facilities by the Spin-out Company has been agreed by the Head of School/Institute/Section:

TYPE OF FACILITY	DETAILS	CHARGE (£)
1. Accommodation/Space
2. Equipment
3. Personnel

For a period of Years

Date:

Signed:

Applicant:

Head of School/Institute/Section :

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Application to Innovation Exploitation Board for Incorporation of a Spin-out Company

PLEASE COMPLETE AND RETURN THIS FORM TO TECHNOLOGY & RESEACH SERVICES, ATTACHING ANY DOCUMENTS WHICH ARE REQUIRED AND/OR PROVIDE SUPPORT FOR YOUR APPLICATION.

Proposed name of company: _____

Member(s) of Heriot-Watt Staff involved:

Proposed business sector:

Potential conflict of interest with existing University activity? Yes No

Proposed timescale:

Please attach the following:

- Business Plan, using Template supplied
- Consent to use School Resources Form
- University Equity Share Form

FOR OFFICIAL USE ONLY

Received on _____ by _____

Submitted to IEB on _____

Decision _____

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Business Plan Template

To be used with an Application to Innovation Exploitation Board for Incorporation of a Spin-out Company

1. Executive Summary

- Why a Spin-out Company is the best way forward
- Mission of the Spin-out Company (e.g.. Purpose /Differentiating Activity/Sector)
- Summary of Vision of the Spin-out Company (5 years hence)
- Summary of key aspects of Spin-out Company and evidence for its likely success

2. Company Structure

- Equity split, including any held in trust for future key appointees (e.g. CEO)
- Company employees & their roles
- Key assets required by Spin-out Company to operate

3. Product or Service to be provided

- Unique Selling Proposition – what is different about this product or service
- Sustainable competitive advantage – what will stop the competition catching up
- List of benefits and drawbacks of product or service
- List of minimum performance requirements expected by the market place
- Outstanding technical issues to be resolved

4. Marketing

- Drivers for change to this product or service - why the status quo is not acceptable
- Blocks to adopting this product or service (e.g. switching costs, entrenched competition, testing requirements, etc)
- SWOT (Strengths, Weaknesses, Opportunities, & Threats) analysis of this product or service vs. the competition (both in-kind competition and not-in-kind competition)
- What is the likely competitive response and how will this be contained?
- Route to market
- Targeted market segment
 - Target market share and resultant estimated size of market
 - Target geographical market segment (UK? World wide?)
 - Key potential customers identified and initial feedback from these on the product or service
- Potential price
 - Price sensitivity & Opportunity to Value Price
 - Comparison of target price of this product or service with competition, with reasons for any expected differences
- Projected sales volumes and value over first 5 years of operation.
 - Expected/target projection and evidence for this
 - Best case scenario, if everything goes in your favour
 - Worst case scenario
- Exit strategies
 - If unsuccessful
 - If successful (IPO (Initial Public Offering – floatation on stock market)? Sale to larger company?)

5. **Intellectual Property**

- Confirm ownership of intellectual property and highlight any issues
- Confirm freedom to operate and that infringement of other's patents is not expected
- Outline the intellectual property strategy
 - Which aspects will be patented (typically products)
 - Which aspects will be kept as Trade Secrets (typically process details)
 - What other IP protection is appropriate (e.g. design registration, copyright, etc)
- List patents applied for and granted with countries covered and summary of main claim.

6. **Manufacturing**

- Can the product be produced on existing equipment using existing processes or do these need to be developed?
- Outline the plans to manufacture the product
- List any capital equipment required, together with estimated cost, supplier, and lead time on delivery
- Specify which aspects of manufacturing can be outsourced or subcontracted
- List all raw materials required and suppliers, together with any special requirements or potential issues
- Are supplier contracts in place? Will you need to buy raw materials to a specification?
- Is there reliance on a single supplier or subcontractor?

7. **Financial**

- Outline the plan to obtain the necessary funding (e.g. SMART award, private investors/Business Angels, Venture Capitalists, etc)
- What is the estimated time until the first sales, and how will the Spin-out Company be funded during this initial period?
- Provide a Cash Flow summary detailing income and expenditure during the first 3 years of operation, together with the underlying assumptions.

8. **Risk Analysis**

- List each of the uncertainties or risks and indicate how these will be addressed & reduced, particularly potential deathblows.
- Will testing, approvals, clinical trials, export licenses, etc have to be undertaken/obtained?

9. **Long Term Vision for Spin-out Company**

- What is your long term (5 & 10 year) Vision for the Spin-out Company in terms of:
 - Markets & market share
 - Sales volume & value; profit
 - Geographical operation
 - Number of employees
- What are your own personal long-term goals & aspirations?

10. **Plan**

Provide an outline plan of activities in the first 3 – 5 years