

COLLECTION OF DECISIONS AND ORDINANCES OF THE UNIVERSITY OF SOUTH BOHEMIA IN ČESKÉ BUDĚJOVICE

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Rector's ordinance issuing the Rules for the Establishment of Spin-off Companies at the University of South Bohemia in České Budějovice

Article I Subject matter

1. The purpose of this ordinance is to enable and support the establishment of spin-off companies of the University of South Bohemia in České Budějovice (hereinafter referred to as 'USB') and to optimise the practical use of intellectual property arising at USB through them.
2. The subject of this ordinance is the definition of the procedure for the establishment of spin-off companies, the rights and obligations of USB employees in this procedure, in performing acts related to the participation of USB in spin-off companies and the rights and obligations of employees ensuring the transfer of USB knowledge and technology through spin-off companies.
3. This ordinance also sets out the general framework for the relationship between USB and spin-off companies as well as the basic principles for the commercialisation of USB intellectual property through spin-off companies.
4. The commercialisation of intellectual property created at USB is regulated in detail by the Rector's ordinance on the handling of intellectual property and the protection of confidential information at the University of South Bohemia in České Budějovice.

Article II Incorporation of legal entities at USB

When establishing legal entities and making monetary and non-monetary contributions to legal entities, USB shall proceed in accordance with generally binding regulations, in particular, Act No 111/1998, on Higher Education Institutions and on Amendments and Supplements to Other Acts (the Higher Education Act), as amended (hereinafter referred to as the 'Higher Education Act'), Act No 89/2012, the Civil Code, as amended (hereinafter referred to as the 'Civil Code'), and Act No 90/2012, on Commercial Companies and Cooperatives (hereinafter referred to as the 'Act on Commercial Corporations'), as amended (hereinafter referred to as the 'Act on Commercial Corporations'), as well as in accordance with its internal regulations, in particular the Rules of the University of South Bohemia in České Budějovice on the Establishment of Legal Entities and Contributions to Legal Entities (hereinafter referred to as the 'Rules on the Establishment of Legal Entities').

Article III

General characteristics of spin-off companies

1. A spin-off company is a term usually used to describe an entity established for the purpose of commercialising intellectual property or transferring knowledge generated by the activities of a research organisation. A spin-off company is typically a legal entity – a commercial corporation within the meaning of the Act on Commercial Corporations or another legal entity.
2. A spin-off company uses the intellectual property of a research organisation to further develop it to the stage of a marketable product or service and all business activities related to its commercialisation or other transfer of knowledge into practice are usually transferred to it.
3. Compared to other knowledge transfer transactions, setting up a spin-off company can be a relatively more time, administrative and capital (cost) intensive process. On the other hand, the commercialisation of intellectual property (knowledge transfer) through a spin-off company may be more efficient and yield greater financial gain or other economic benefits than commercialisation (knowledge transfer) through licensing or transfer of intellectual property.
4. It can be concluded that it is usually advisable to establish a spin-off company at an early stage of intellectual property development, most often in the following cases:
 - a) relatively easy entry into the existing market,
 - b) the technology has several applications,
 - c) there is a portfolio of patents,
 - d) to achieve relevant market entry, further investment is needed, the technology still needs to be adapted into a marketable product,
 - e) there is a high probability of getting an investor for the project,
 - f) the motivation of the originator/group of originators to set up the spin-off company is clear,
 - g) the method of return of capital (exit) for investors and the research organisation can be defined,
 - h) the technology is of such a nature that there is no existing market for it and no parties interested in obtaining a licence can be found,
 - i) the spin-off company is a tool to overcome market obstacles.

Article IV

Definitions of terms

1. For the purposes of this ordinance, the definitions of terms set out in the Annexe to the Rector's ordinance on the handling of intellectual property and the protection of confidential information at the University of South Bohemia in České Budějovice shall apply.
2. Commercialisation of intellectual property means its introduction into commercial practice, i.e. its commercial exploitation and financial valorisation. Knowledge transfer refers to a wider range of activities including the transfer of knowledge into practice on a non-commercial basis.

3. A USB spin-off company is understood as a legal entity,
 - a) which is entitled to use the designation 'spin-off company of the University of South Bohemia in České Budějovice' or a similar designation on the basis of an agreement with USB and/or
 - b) in whose business/activities USB participates
 - by contributing its intellectual property right as a non-monetary contribution to the share capital of a business corporation or other type of contribution of intangible property to a legal entity; or
 - by transferring its intellectual property; or
 - by granting a licence to its intellectual property; or
 - in any other way, provided that the object of the business/activity of the legal entity in question is commercialisation or other forms of transfer of USB intellectual property objects into practice.
4. A spin-off company will not normally be considered to be a legal entity established or previously existing outside the context of the knowledge transfer process to USB.

Article V **Scope of the USB Technology Transfer Office**

1. In the preparation of a proposal for the establishment of a legal entity or for the acquisition of a participation in a legal entity within the meaning of Article 4 of the Rules on the Establishment of Legal Entities (hereinafter referred to as 'Proposal'), the USB Technology Transfer Office (hereinafter referred to as 'TTO') is responsible for the completeness of the Proposal together with the initiator of the Proposal and provides assistance to the initiator until the Proposal is submitted to the Rector. The TTO accepts Proposals and other documents in accordance with this ordinance and provides or facilitates advice and information to USB employees on the necessary requirements of the relevant documents, on the legal and economic context of the establishment of a spin-off company, or on other possibilities of commercialisation of USB intellectual property.
2. After its establishment, a legal entity may use the services of TTO in accordance with the rules of public aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union (hereinafter also referred to as 'public support').

Article VI **Spin-off status of USB companies**

1. A contract must be concluded with each legal entity that is to become a USB spin-off company, which will, among other things, allow it to use the designation 'spin-off company of the University of South Bohemia in České Budějovice' or another negotiated designation.
2. A prerequisite for the conclusion of the agreement under the previous paragraph is the approval of the proposal for granting spin-off status to USB. The purpose of approving this proposal is to carefully consider the potential consequences for the business and reputation of USB that could result from granting USB spin-off status to the legal entity.
3. The proposal for granting the USB spin-off status is prepared by the initiator (i.e. the Bursar or Dean) in cooperation with the TTO. This proposal is approved by the USB Rector, to whom it is submitted by the initiator.

4. The proposal for granting the status of a USB spin-off company must contain in particular the following elements:
 - a) designation and description of the object of the USB intellectual property to be commercialised (transferred into practice) through the legal entity,
 - b) a summary of expected revenues (or other economic benefits) and their comparison with other forms of commercialisation,
 - c) a feasibility study (in the structure according to Annexe 1 of this ordinance),
 - d) a business plan of a legal entity (in the structure according to Annexe 2 of this ordinance) or other non-commercial activity,
 - e) analysis of the property structure of the legal entity,
 - f) information on the previous economic activities of the legal entity (if it already exists),
 - g) information about the persons who are or are to be members of the statutory body (in particular information about previous business and criminal record) or other bodies of the legal entity,
 - h) a proposal for the regulation of contractual relations between USB and the spin-off company (e.g. cooperation agreement, licence agreement, etc.),
 - i) a draft agreement under which the spin-off company will commercialise the object of the USB intellectual property (or put such subject matter into practice in another way).

Article VII

Employee spin-off companies (employee start-up companies)

The establishment of an academic or employee spin-off company, possibly labelled as a spin-off or start-up in all languages and graphic versions, i.e. a legal entity founded by USB employees, or a legal entity in which employees have acquired shares or rights, which is oriented towards the exploitation of results obtained at USB, provided that (i) issues relating to possible conflicts of interest, and (ii) the possible participation of USB in such a company are first resolved by agreement with USB, is allowed. Once the relevant approvals have been granted, the establishment or acquisition of a participation in such a company shall be the responsibility of the employee(s) concerned. The use of the designation 'USB spin-off' or 'USB start-up', etc., is subject to the prior written consent of USB. On the USB side, a transaction with such a legal entity may be treated as a normal knowledge transfer transaction, with the caveat that in such cases there is typically an increased need to investigate and possibly resolve any existing conflict of interest (in particular at the negotiation stage of the transaction or at the stage where the employee concerned is both at USB and at the academic spin-off/start-up company).

Article VIII

Spin-off company with equity or other USB participation: general definition

1. USB may acquire an ownership or other interest in a business corporation or other type of legal entity under the conditions set out in the Rules for the Incorporation of Legal Entities, this ordinance and the Act on Commercial Corporations or other applicable legislation. A prerequisite for the acquisition of a USB interest in a business corporation at incorporation is generally the fulfilment of a deposit obligation by payment in money (cash deposit) or by the contribution of another thing valued in money (non-cash deposit). It may also involve the purchase of shares of stock or interests in an existing business corporation or other forms of acquiring a property or other involvement in the legal entity in question. Deferral of the repayment of the deposit obligation is possible only on condition that the means to fulfil the obligation have been secured.



2. The amount of the share and/or the extent of other rights and obligations of USB shall be determined by negotiation between USB and the other founders of the legal entity or the legal entity itself, taking into account the valuation, importance and stage of development of the object of intellectual property as the object of USB's contribution to the share capital, as well as other contributions of USB to the legal entity. Negotiations on behalf of USB shall be conducted by the respective initiator and the TTO. USB may acquire a majority or minority interest/rights in the legal entity. In case the USB shareholding is also established as a vehicle to profit from the transfer of knowledge, it is advisable to take appropriate measures in order to prevent the USB from crowding out or 'diluting' the USB shareholding in the company.
3. USB may participate in the business or activities of a spin-off company in which USB has acquired an interest in any of the ways set out in Article IV(3)(b) of this ordinance. The terms of participation shall be adjusted so as not to prevent the application of this Rector's ordinance.
4. In the case of spin-off companies with equity or other USB involvement, the following scheme of procedure is recommended:
 - preparation of an analytical document, the so-called business plan, which can be continuously refined and updated;
 - the proposal, its discussion and the decision to establish a spin-off company within USB and in accordance with its internal standards;
 - before establishing a spin-off company, it is usually necessary to resolve conflict of interest situations;
 - setting up a spin-off company (including the possibility of buying a stake in an existing company);
 - entering into a licence agreement or other agreement (e.g. transfer of property rights);
 - a cooperation agreement with a spin-off company;
 - monitoring the activities of the spin-off company.

Article IX

Spin-off companies with equity or other USB involvement: the drafting process

1. USB may take the steps necessary to acquire shares or other rights in the legal entity in question only on the basis of a Proposal approved by the USB Rector. Pursuant to Article 4(2) of the Rules on the Establishment of Legal Entities, the Proposal is submitted to the Rector by the Bursar, Dean, Director of the higher education institute or Director of the USB Dormitories and Refectories, or may be initiated by the Rector himself (hereinafter referred to as the 'Initiator').
2. The Initiator may withdraw the Proposal, including the submitted required documents, at any time up to the time of its submission to the USB Academic Senate in accordance with Article 5(1) of the Rules on the Establishment of Legal Entities. The withdrawal must be justified in writing. The Initiator shall submit the Proposal to the Rector after discussion with the TTO and with the recommendation prepared by the TTO.
3. In addition to the content requirements set out in Article 4 of the Rules on the Establishment of Legal Entities, the Proposal must also include the opinion of the Initiator and the opinion of the TTO.
4. The Initiator's opinion must include, inter alia, a solution to any potential conflict of interest arising from the possible involvement of USB employees in the legal entity or a statement that no conflict of interest exists in the case in question.
5. The TTO will verify that the Proposal contains all the elements required by this ordinance or the Rules on the Establishment of Legal Entities and, if necessary, request their completion. The TTO shall forward the complete Proposal with a draft of its statement to the Bursar, the Vice-Rector for Research and the Legal





Office of the USB Rectorate After receiving their comments, the TTO will prepare a final version of its statement and attach it to the Proposal. The TTO may invite independent external evaluators to assess the Proposals.

Article X

Approval of the proposal to establish a legal entity with equity or other USB involvement

1. If the Rector agrees with the Proposal, in accordance with Article 5 of the Rules on the Establishment of Legal Entities, he/she will submit it to the USB Academic Senate and the USB Board of Trustees, whereupon he/she will decide on the establishment of the legal entity, on the acquisition of involvement in the legal entity, or on the insertion of a contribution into the legal entity.
2. The Rector then authorises the TTO to perform all necessary acts for the establishment of the legal entity and its registration in the relevant public register or similar official register.

Article XI

Implementation of the entry into a legal entity

1. The value of the non-monetary contribution must be stated in the founding legal act within the meaning of Section 122 of the Civil Code, by which USB establishes or co-founds the legal entity, or in another legal act, on the basis of which USB is obliged to make a contribution to the legal entity unless otherwise provided for by applicable legislation.
2. A non-monetary contribution to a cooperative shall be valued in the manner specified in the statutes or in the manner agreed upon by all members at the time of the cooperative's formation.
3. The head of the TTO has the right and duty to check the management of the legal entity, is obliged to monitor the fulfilment of the legal obligations of the legal entity, in particular compliance with the reporting obligation to the state administration authorities, and further monitors the results of the management of the legal entity and the fulfilment of the objectives for which it was established.

Article XII

Spin-off company with no equity or other USB involvement

1. In the case of a spin-off company without a USB share, the Proposal under Article 4 of the Rules on the Establishment of Legal Entities does not apply.
2. USB may participate in the business of a spin-off company in which USB does not have an interest by transferring its intellectual property, by licensing its intellectual property, or in any other way, provided that the subject of the business/activity of the legal entity in question is commercialisation or other forms of transfer of USB intellectual property into practice.
3. In the case of spin-off companies without equity or other USB participation, the following procedure is recommended:
 - preparation of an analytical document, the so-called business plan, which can be continuously refined and updated;
 - the next step is the approval or decision to establish the spin-off company and the necessary approvals, prior approvals and other processes at the public research institution or partner organisations;
 - before establishing a spin-off company and before starting negotiations on a license or other similar agreement, it is usually necessary to resolve conflict of interest situations





- entering into a licence agreement or other agreement (e.g. transfer of property rights) with the spin-off company;
- a cooperation agreement with a spin-off company;
- monitoring cooperation with spin-off companies.

Article XIII

Developing and deepening cooperation between USB and spin-off companies

1. Further forms of cooperation between USB and the spin-off company will be established in accordance with the approved proposal for granting the status of a spin-off company to USB or according to the specific needs for further development of the cooperation.
2. A contract may be concluded with the spin-off company to allow it to use USB's research infrastructure (e.g. laboratory facilities and equipment), or other contracts may be concluded to deepen the links between USB and the spin-off company and to facilitate the commercialisation of USB's intellectual property or to ensure the necessary degree of control by USB. The preparation of such contracts is the responsibility of the TTO.

Article XIV

Record of documents related to spin-off companies

1. The TTO records and archives all documents related to the establishment of spin-off companies and USB's involvement in their activities.
2. These documents include but are not limited to:
 - a) a proposal for the establishment of a legal entity or for the acquisition of involvement in a legal entity, including the formalities required under this ordinance, i.e. the statement of the Initiator pursuant to Article IX(4) and the statement of the TTO pursuant to Article IX(5),
 - b) a proposal to grant spin-off status to USB,
 - c) an approval of proposals by the USB Rector or his/her request for refinement or modification,
 - d) a statement of the USB Academic Senate,
 - e) prior written approval of the USB Board of Directors,
 - f) the constituent documents of the legal entity and their amendments,
 - g) contracts for the transfer of shares, business holdings or other forms of participation,
 - h) documents documenting changes in the statutory bodies and changes in the participation of persons on the USB side in other bodies,
 - i) documents documenting the transformation of spin-off companies,
 - j) documents documenting the dissolution, termination of the spin-off company, its liquidation, settlement of the share of the liquidation balance,
 - k) annual reports, ordinary, extraordinary and consolidated financial statements, a proposal for the distribution of profit and its final form or the settlement of losses if they are not part of the ordinary financial statements, the auditor's report on the verification of the financial statements and other documents pursuant to Section 66 et seq. of Act No 304/2013, on public registers of legal and natural entities and on the registration of trust funds, as amended,
 - l) other contracts between USB and the spin-off company.
3. The archiving of these documents is governed by the USB Document Management Code.



Article XV

Evaluating the commercialisation of USB intellectual property

1. The TTO will annually prepare an analysis of the results and benefits of the commercialisation of intellectual property or other forms of transfer of USB knowledge through individual spin-off companies. The analysis shall also include a detailed assessment of the economic situation of the legal entity concerned or the economic situation of the cooperation in the case of a spin-off or start-up company without USB participation.
2. The TTO will forward this analysis to the Vice-Rector for Research and the USB Bursar as a basis for the preparation of a summary report on the management of legal entities in which the USB has an interest (Article 6(4) of the Rules on the Establishment of Legal Entities).
3. The analysis prepared pursuant to paragraph 1 of this Article TTO for the past calendar year is submitted to the Rector's Board for discussion together with the statement of the Vice-Rector for Research.
4. If the TTO discovers facts of a serious nature concerning the management or other significant circumstances in the activities of these legal entities, it is obliged to inform the Vice-Rector for Research immediately.

Article XVI

Information protection

1. Any information relating to the formation of spin-off companies and USB's share of their business unless disclosed by USB or with its consent, is considered confidential.
2. Employees who become aware of confidential information within the meaning of the preceding paragraph shall be obliged to maintain confidentiality and prevent third parties from gaining access to such information.

Article XVII

Special types and legal forms of spin-off companies, establishment and entry into spin-off companies governed by different legal systems, establishment of spin-off companies in cooperation

1. This ordinance does not restrict the initiator in principle as to the type and legal form of spin-off companies unless the establishment of or acquisition of a participation in such type or legal form of spin-off company would be contrary to the applicable legislation of the Czech Republic or the European Union or in clear, irreconcilable conflict with the express provisions of the Rules on the Establishment of Legal Entities or this ordinance.
2. In the event that the procedure under this ordinance would constitute a formal obstacle to the establishment of or acquisition of involvement in a spin-off company with respect to the specific legal regulation of the types and legal forms of spin-off companies within the meaning of this Article (for example, the establishment of a legal entity under the law of another state), the procedure under this ordinance shall be followed appropriately with the necessary modifications, so as to allow the establishment or acquisition of involvement of USB in such type of spin-off company and to preserve the purpose and intent of the provisions of this ordinance.



3. Similarly, the procedure under this ordinance shall be modified where necessary in view of the necessary coordination of the procedure between/with entities (e.g. partner research organisations) that jointly establish or acquire involvement in a spin-off company with USB, so as to enable the establishment or acquisition of involvement in a spin-off company.

Article XVIII Final Provisions

This ordinance shall come into force and effect on the date of issuance.

prof. PhDr. Bohumil Jiroušek, Dr., v. r.
Rector

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Annexes: Annexe No 1 Feasibility Study
Annexe No 2 Template for the Business Plan Structure

