

# BRNO UNIVERSITY OF TECHNOLOGY

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## GUIDELINE No 2/2020

### ESTABLISHMENT AND PARTICIPATION OF BUT IN LEGAL ENTITIES

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## PART ONE INTRODUCTORY PROVISIONS

### Article 1 Subject and purpose

1. This Guideline, in accordance with Annex 6 of the Statute of BUT, regulates the rules based on which the BUT:
  - a) establishes or participates in the establishment of other legal entities;
  - b) enters into another legal entity with its assets (i.e. becomes a member or a partner);
  - c) becomes a member with the precondition of payment of a membership fee;
  - d) supports the creation of spin-off companies to ensure knowledge transfer;
  - e) periodically reviews and evaluates the management and activities of legal entities, particularly with respect to the contribution of its participation in relation to the duties and objectives of the public university.
2. The purpose of this Guideline is to create a functional and transparent system on the basis of which the BUT establishes and/or enters into other legal entities both financially and non-financially, and also to establish obligations for specific BUT employees so that any participation of the BUT in a legal entity is always in accordance with the duties of care of a proper manager and professional care of a public university managing public funds, as well as with its mission, i.e. in particular with the educational, scientific, research, development, artistic or other creative activities of the BUT, or in particularly justified cases, to serve for a more efficient use of human resources and assets of the BUT within the framework of complementary activities in accordance with §20 of the Higher Education Act.

### Article 2 Key terms

For the purposes of this Guideline:

- a) **The proposer** is an employee of the BUT submitting a proposal for the establishment of a legal entity or a proposal for entry into a legal entity in accordance with the procedure set out in this Guideline;
- b) **The proposal** for establishment and/or **the proposal** for entry into a legal entity is a written document prepared by the proposer in accordance with the requirements set out in this Guideline;
- c) **A business corporation** is a trading company or a cooperative;
- d) **An association** is any legal entity except a corporation;
- e) **Department of Technology Transfer** is the Department of Technology Transfer of the Rector's Office of the BUT, a professional workplace of the Rector's Office in charge of technology transfer activities;
- f) **The Vice-Rector** of the BUT is the Vice-Rector for the development of scientific research activities, the Vice-Rector in whose competence is the technology transfer process of BUT;
- g) **Spin-off company of the BUT** is a business corporation which, on the basis of an agreement concluded with the BUT, uses the name Spin-off BUT, and which is usually simultaneously established for the purpose of trading technologies and/or know-how developed at the BUT;
- h) **The administration of the participation of the BUT** is a comprehensive and regular activity consisting in particular of providing relevant information about the legal entity and its activities in order to fulfil the purpose of this Guideline as defined in Article 1 of the Guideline. The administration of participation according to the preceding sentence includes, among others, monitoring and informing the BUT management about financial activities of the legal entity, as well as about the convened meetings of the bodies of the legal entity and ensuring that minutes of such meetings are taken and provided to the authorized BUT workplaces. The administration of BUT's participation also includes a proposal to terminate BUT's membership in a particular legal entity.

## **PART TWO**

### **RULES FOR THE ESTABLISHMENT AND JOINING ASSOCIATIONS**

#### **Article 3**

##### **Proposal for establishing or joining associations**

1. The proposal for the establishment of an association must include at least:
  - a) specification of the reasons, purpose, meaning and objectives of the establishment of the association in relation to the mission of the BUT as a public university;
  - b) the proposal of the articles of the association or the articles of the existing association;
  - c) proposal of the staffing of the statutory body of the association to be founded or its composition, or the expected staffing of this body by BUT employees;
  - d) specification of the technical, financial and personnel security of the association's activities, including the amount of any membership contribution or the information on the association's management;
  - e) defining the potential benefits (material and immaterial) arising from the participation of the BUT in the association;
  - f) basic information on other members, associates or participants of the association (in particular integrity, potential conflict of interest, interconnectedness);
  - g) proposal of a natural person administering the participation of the BUT in the association.

#### **Article 4**

##### **Approval of the proposal**

1. The proposer shall submit the proposal containing the elements in Article 3 through the Head of its Economic Unit to the BUT Bursar.
2. The Bursar shall examine the proposal and provide a written opinion, in which he/she explicitly states whether or not he/she recommends the proposal, as well as the reasons for such decision. The Bursar may use independent experts to assess the proposal. At the same time, he/she may request the proposer to provide additional supporting documents.
3. The opinion of the Bursar pursuant to the preceding paragraph shall be discussed by the Bursar with the Rector; while deciding on the proposal, the Rector is not bound by the opinion of the Bursar.
4. If the Rector expresses preliminary approval the proposal, he/she shall submit it within one month to the Academic Senate of the BUT for its opinion and then to the Board of Trustees of the BUT for a written approval. In the case of approval, the Rector shall issue a written resolution on the approval or disapproval of the proposal after notifying the Ministry of Education, Youth and Sports.
5. In case that the Rector issues a negative resolution, the Rector shall inform the Academic Senate of the BUT and the proposer of the resolution, together with its justification.

#### **Article 5**

##### **Exercise of rights and obligations of a member of the association**

1. In the case of the association, the administration of the participation of the BUT according to Article 2(h) of this Guideline is carried out by an employee authorized by the Rector, usually the proposer.
2. In exercising the rights and obligations arising from participation in the association, the Rector is the person authorized to act on behalf of the BUT. The Rector may be represented in such actions by the Bursar to the extent determined by him. The Rector may authorize another person or persons to act on behalf of the BUT, in a written form specifying the scope of the authorization of such persons.

3. The person authorized to the administration of BUT's participation pursuant to paragraph 1 shall be obliged to forward all documents, in particular annual reports, annual financial statements (balance sheet, profit and loss statement, cash flow statement, if applicable), as well as reports on planned loans and borrowings and the fulfilment of obligations arising from them, as well as other information concerning the activities of the association, to the Legal Department of the Rector's Office immediately upon their receipt.

## **PART THREE**

### **RULES FOR THE ESTABLISHMENT AND ENTRY INTO BUSINESS CORPORATIONS**

#### **Article 6**

##### **Proposal to establish a business corporation**

1. The proposal for the establishment of a business corporation must include at least:
  - a) specification of the reasons, purpose, meaning and objectives of the establishment of the business corporation in relation to the mission of the BUT as a public university, including the expected benefits of participation;
  - b) conditions and prerequisites for establishing a business corporation and the expected role of BUT in the business corporations;
  - c) identification of any other potential co-founders;
  - d) proposal of articles of association and/or bylaws of the corporation;
  - e) detailed information on the BUT's membership contribution to the business corporation;
  - f) the course of activity, or business plan of the business corporation with an analysis of its economic potential, technical, economic and personnel sustainability of the corporation, including a qualified projection of the revenue and cost plan for at least the next 5 years;
  - g) opening balance sheet of the business corporation to be established;
  - h) assessment of the return on the investment, i.e. the contribution of the BUT;
  - i) determination of the manner in which any profits from the activities of the business corporation to be established will be distributed among the shareholders, unless this fact follows from the articles of association;
  - j) defining any other benefits (material or immaterial) arising from participation in the business corporation;
  - k) design of the staffing of the bodies of the established business corporation;
  - l) basic information about other partners or participants in the business corporation (in particular integrity, potential conflict of interest, interconnectedness).
2. If the intention under paragraph 1(e) is to make an in-kind contribution, the proposal must, in addition to the particulars referred to in paragraph 1, also include:
  - a) the specification of the in-kind contribution and its valuation based on an opinion prepared by an independent expert;
  - b) a detailed justification for the in-kind contribution;
  - c) an extract from the title deed and an image of the cadastral map or geometric plan if the in-kind contribution is a real estate.

#### **Article 7**

##### **Proposal to join an existing business corporation**

1. A proposal to join an existing business corporation must include at least:
  - a) specification of the reasons, purpose, meaning and objectives of acquiring a share in a business corporation in relation to the mission the BUT as a public university, including the expected benefits from the participation;
  - b) current extract from the Commercial Register;

- c) the articles of association or the bylaws of the business corporation;
  - d) conditions and prerequisites for BUT's entry into a business corporation and the expected role of BUT the business corporation;
  - e) a business plan of the corporation with an analysis of its economic potential and the technical, economic and personnel sustainability of the corporation, including a qualified projection of the revenue and cost plan for at least the next 5 years;
  - f) data on business operations of the corporation, to the extent of the published financial statements, balance sheet, profit and loss statement and cash flow statement for at least the last three financial years;
  - g) detailed information on the BUT's share contribution to the business corporation;
  - h) assessment of the return on the investment, i.e. the contribution of the BUT;
  - i) an audit management, or a comprehensive review of management by an independent auditor;
  - j) determining the manner in which any profits from the activities of the business corporation to be formed will be distributed among the members, unless this information is provided in the articles of association;
  - k) defining any other benefits (material or immaterial) arising from participation in the business corporation;
  - l) basic information about other members, partners of the business corporation (especially integrity, potential conflict of interest, interconnectedness).
2. If the intention under paragraph 1(e) is to make an in-kind contribution, the proposal must, in addition to the particulars referred to in paragraph 1, further include:
- a) the specification of the in-kind contribution and its valuation based on an opinion prepared by an independent expert;
  - b) detailed justification for the in-kind contribution;
  - c) an extract from the title deed and an image of the cadastral map or a geometric plan if the in-kind contribution is a real estate.

## **Article 8**

### **Approval of the proposal**

1. In the case of a proposal to establish or join a business corporation, except for cases defined in Part Four (spin-off company of the BUT), the proposer is the Head of the BUT Economic Unit in whose interest the establishment of a new or entry into an existing business corporation is.
2. For the approval of the proposal, the procedure in Article 4, paragraphs 2 - 5 shall be applied.

## **Article 9**

### **Exercise of rights and obligations of a shareholder of a business corporation**

1. Unless otherwise stated by the Rector's measure, the administration of the participation of the BUT pursuant to Article 2(h) in the case of a business corporation is performed by the Legal Department of the Rector's Office, which is responsible for the administration of all documentation of the business corporation. In a specific case, the Rector may, after prior consultation with the Dean, entrust the proposer with the administration of BUT's participation according to the previous sentence. In the case according to the previous sentence, the proposer is obliged to inform the Bursar regularly, but at least once a year, about the performance of the administration of BUT's participation through the Legal Department of the Rector's Office.
2. While exercising the rights and obligations arising from the participation of the BUT in a business corporation, the person authorized to act on behalf of the BUT is the Rector.

## PART FOUR

### SPECIAL PROVISIONS ON SPIN-OFF COMPANIES OF BUT

#### Article 10

##### Spin-off company of the BUT without equity participation

1. A spin-off company of the BUT without equity participation is a business corporation that:
  - a) has entered into a **written license agreement** with the BUT, whereby the BUT under specified conditions grants a permission to the business corporation to use intellectual property of the BUT, in particular technologies and/or know-how developed at the BUT, and at the same time
  - b) under a license agreement or other written agreement, has obtained the permission of the BUT to use:
    - **logos and other intellectual property relating to the identification of the BUT or its units** and/or
    - the designation "**Spin-off company BUT**" or
    - the designation "**developed on the basis of the research results of the BUT**" for the promotion of a business corporation or its products or services, under specified conditions.
2. The proposal for the conclusion or termination of contracts under the previous paragraph is submitted by the Head of the Department of Technology Transfer to the Vice-Rector, who requests the written opinion on the proposal from the Bursar. Together with the opinion of the Bursar, the Vice-Rector shall then discuss the proposal with the Rector, who is not bound by the opinion of the Bursar in making his/her decision.
3. The registration of BUT spin-off companies without equity participation is performed by the Department of Technology Transfer, which is obliged to hand over all documents related to the activities of the BUT spin-off company to the Bursar immediately after their receipt.

#### Article 11

##### Spin-off company of the BUT with equity participation

1. A spin-off company of the BUT with equity participation is a business corporation that meets the conditions of Article 10, paragraph 1 of this Guideline and at the same time the BUT is one of its partners (or shareholders), on the basis of:
  - a) **an in-kind contribution**, typically the subject of intellectual property rights of the BUT, to the share capital, whether at the time of establishment or when increasing the share capital of a business corporation after its establishment;
  - b) **a cash contribution** to the share capital, whether at the time of establishment or when increasing the share capital of a business corporation after its establishment;
  - c) **a combination** of in-kind and cash contributions.
2. The proposal for the establishment of a BUT spin-off company with equity participation or the proposal for entry into a future BUT spin-off company with equity participation must include, in addition to the formalities specified in Article 6(1) or the formalities specified in Article 7(1), the following:
  - a) specification of the BUT's exercise of control over the spin-off company;
  - b) proposal for the transfer of intellectual property the BUT to the emerging spin-off company;
  - c) a statement by the BUT employee waiving the right to bonus for the creation and use of the subject matter of the intellectual property rights, if this is a relevant requirement of the BUT in a particular case.
3. For the approval of the proposal for the establishment of a BUT spin-off company with equity participation or the proposal for entry into a future BUT spin-off company with equity participation, the procedure according to Article 4 of this Guideline applies accordingly, whereby the proposer submits the proposal through the Head of the Department of Technology Transfer, who ensures the opinion of the Vice-Rector.

4. Unless stated otherwise by the Rector's Office, the Department of Technology Transfer shall administer the participation of the BUT according to Article 2(h) in the case of spin-off companies of the BUT with equity participation. In a specific case, the Rector may, after prior consultation with the Dean, entrust the proposer with the administration of the BUT participation according to the previous sentence. In the case according to the previous sentence, the proposer is obliged to inform the Bursar regularly, but at least once a year, through the Department of Technology Transfer, about the performance of the administration of the BUT participation.

## **PART FIVE FINAL PROVISIONS**

### **Article 12**

#### **Reports on financial management and activities**

1. Persons or departments entrusted with the administration of the participation of the BUT in a legal entity are obliged to annually prepare a report on the activities and financial management of a specific legal entity in which the BUT has a participation. This annual report shall always be accompanied by an annual activity and financial management report, if the legal entity prepares one, otherwise by accountant's statements (balance sheet, profit and loss account or cash flow statement).
2. If the following information is not included in the documents referred to in the preceding paragraph, the person or department responsible for the administration of the BUT's participation in a legal entity is obliged to include in its report pursuant to paragraph 1:
  - a) reports on planned and existing bank and other loans and borrowings and the fulfilment of obligations arising therefrom;
  - b) reports on planned changes in the structure and amount of capital and changes in shareholdings;
  - c) reports on the legal entity's receivables in other entities and the status of their repayment;
  - d) reports on restrictive measures, e.g. insolvency, bankruptcy, etc.;
  - e) other information that pose risks, including damage to the reputation of the BUT resulting from participation in a legal entity or requested by the BUT Bursar.
3. These reports are submitted to the BUT Bursar at least two weeks before the meeting of the statutory bodies of the legal entity where the annual report or financial statements are to be approved and in other cases by 31 March of the following calendar year.
4. The Bursar, on the basis of the Rector's mandate and according to the documents submitted according to the previous paragraph, prepares at least an annual summary report on the activities and financial management of legal entities in which the BUT has a participation.

### **Article 13**

#### **Final Provisions**

This Internal Standard shall enter into force the date specified its heading.

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Rector