

BRNO UNIVERSITY OF TECHNOLOGY

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GUIDELINE No. 8/2022

ESTABLISHING OF SPIN-OFF AND START-UP COMPANIES AT THE UNIVERSITY

Preamble

1. BUT actively supports the commercialization of its intellectual property and the transfer of the results of science, research and related knowledge into practice in order to obtain resources for development and to cover its other activities of general benefit.
2. BUT considers establishing of spin-off and start-up companies as one of the ways to actively promote the commercial use of its intellectual property.
3. The BUT supports the commercial use of its intellectual property by another person, taking into account the circumstances of the particular case, if it concludes that this is an appropriate way to fulfill the premises defined above.
4. The key role in the commercialisation of BUT intellectual property through BUT spin-off and start-up companies is played by the faculties and units that carry out the activities under this Guideline, and who are obliged to ensure that the commercialisation of intellectual property under this Guideline complies not only with legal regulations, but also with the moral and ethical standards of the academic environment.
5. The specifics of the establishment and administration of private equity companies are set out in Guideline no. 2/2020.

Article 1

Basic concepts

1. The term Spin-off BUT means a legal entity registered in the Commercial Register, or similar registration in the case of a foreign legal entity (hereinafter referred to as "other entity")

- a) which is entitled to use the designation Spin-off BUT, or other designations specified therein, on the basis of a written agreement with the BUT, and at the same time;
- b) which uses intellectual property or know-how created at the BUT on the basis of a written agreement;
- c) and in which the BUT may have an ownership interest.

2. The term Start-up BUT means another person:

- a) which has not been registered for more than 10 years ,¹
- b) which is entitled to use the Start-up BUT designation, or other designations specified therein, on the basis of a written agreement with the BUT, and at the same time
- c) that develops knowledge or skills acquired at the BUT in their other business;
- d) and in which the BUT may have an ownership interest.

3. The subject of the intellectual property rights of the BUT means:

- a) patented invention
 - b) industrial design,
 - c) utility model,
 - d) topography of semiconductor products a,
 - e) trademark,
- the aforementioned always if they are registered in the relevant register and registered for the BUT as its owner or co-owner, and
- f) a work of authorship to which the BUT exercises proprietary rights, and
 - g) BUT know-how.

4. BUT property participation

The BUT may implement its ownership interest in another person

- a) by a contribution in kind of an object of intellectual property rights of the BUT to the share capital of another person, whether on the incorporation of the other person or on an increase in its share capital after its incorporation,
- b) by making a cash contribution to the share capital of another person, whether at the time of incorporation of another person or when increasing its share capital after its incorporation.

5. Use of intellectual property

The use of intellectual property or know-how created at the BUT may occur:

- a) by entering into a written licence agreement by which the BUT grants permission to another person to exercise the right to use the subject matter of the BUT's intellectual property rights under the terms and conditions set out in the licence agreement, or

¹ Time used by Czechinvest

- b) by transferring the right to the subject matter of the BUT's intellectual property rights to another person in a manner other than that referred to in (a);
 - c) in other ways in accordance with generally binding legal regulations and internal regulations of the BUT.
6. The provisions of this Guideline shall also apply mutatis mutandis in cases of Spin-off or Start-up companies established by employees of HEIs and other units of the BUT. In such cases, the competences expressly conferred on the Dean by this Guideline shall be exercised by the Director of the unit.

Article 2

Basic division of company designations

1. When submitting a proposal according to Article 6 and when deciding on the intention to commercialise intellectual property in the form of a Spin-off or Start-up company, the proposer and the faculty authorities shall follow the division of company designations below.

	The Company uses intellectual property or Know-how created at BUT		The Company does not use intellectual property or Know-how created at the BUT, the company develops knowledge or skills acquired at the BUT in its other business	
	BUT company with equity participation	Company without BUT participation	BUT company with equity participation	Company without BUT participation
The company is founded by employees/students	Spin-off BUT	Spin-off BUT	Start-up BUT	Start-up BUT
The company is not founded by employees/students	Spin-off BUT	Spin-off BUT	--	--

Article 3

Contracts conferring the right to use the Spin-off or Start-up designation

1. The BUT may enter into a written agreement with another person in whose business it participates, or intends to participate, or through whom it intends to commercialize the intellectual property of the BUT, granting it permission under specified conditions to use
 - a) the designation Spin-off BUT or Start-up BUT or
 - b) a sign developed on the basis of the results of research of the BUT or developed on the basis of the BUT's know-how for the promotion of such person and/or his/her products or services.
2. The Rector signs the contract on behalf of the BUT. Provided that this is required by a generally binding legal regulation, such a contract shall not become effective in relation to third parties until it is entered in the relevant public list or register or other legal record.
3. Contracts contain provisions on
 - a) marketing cooperation;

- b) conditions of use of the designation Spin-off BUT or Start-up BUT and the designation Developed on the basis of BUT research results or developed on the basis of BUT know-how;
 - c) further cooperation in research and development;
 - d) remuneration for the right to use the said signs;
 - e) duration of the contract, max 2 years with the possibility of renewal;
 - f) protection of confidential information;
 - g) checking compliance with the conditions;
 - h) sanctions and dispute resolution procedures.
4. Draft contracts are submitted for signature by the Department of Project Support and Knowledge Transfer (hereinafter referred to as "OPPTZ") through the Vice-Rector for Knowledge Transfer

Article 4

Contracts authorising the use of intellectual property or know-how

1. The BUT may enter into a written agreement with another person in whose business it participates or intends to participate, or through whom it intends to commercialize the BUT's intellectual property, granting it permission to use the intellectual property or Know-How under specified conditions
2. The Rector signs the contract on the right to use intellectual property on behalf of the BUT. The agreement on the right to use Know-how is signed by the Dean. Provided that this is required by a generally binding legal regulation, such an agreement shall only become effective in relation to third parties upon its entry in the relevant public list or register or other legal registration.
3. Contracts signed on behalf of the BUT by the Rector are submitted for signature through the Vice-Rector for Knowledge Transfer and are administered by the OPPTZ.

Article 5

Contracts with companies in which the BUT has an ownership interest

1. If another person is established as a person with the BUT's equity participation (Article 1), or if the BUT makes a contribution to such a person after its establishment in connection with the increase of its registered capital and at the same time concludes an agreement with it on the right to use the designation Spin-off BUT or Start-up BUT, the establishment of such another person or the procedure for increasing its registered capital shall also be governed by the BUT Statutes and the Guidelines on the Establishment of Legal Entities .²
2. A spin-off BUT or Start-up BUT with BUT's participation shall not be entitled to any advantage or preference in negotiations with BUT compared to other applicants for the granting of a licence or transfer of the subject of BUT's intellectual property rights. Notwithstanding the provisions of the preceding sentence, the BUT may, in accordance with the provisions of law, grant to the Spin-off BUT or Start-up BUT with BUT's equity participation, pursuant to a written agreement:
 - a) an exclusive license to the subject of the BUT's intellectual property rights,
 - b) option to purchase the subject of the BUT's intellectual property rights,
 - c) the right of first refusal to use the subject of the BUT intellectual property rights, which is yet to be created as a result of science and research at the BUT by the originator who is a partner of a BUT spin-off company or a BUT start-up with BUT participation.

² Guideline No 2/2020

Article 6
Procedure for Establishing Spin-off and Start-up Companies at the BUT

1. The proposer submits a proposal for the establishment of a Spin-off and/or Start-up company to the Dean of the Faculty where the intellectual property in question was created and/or where the originator (co-originator) of the intellectual property is employed. If more than one faculty is involved in a particular case, the proposer is obliged to secure the positive opinion of all the deans of the faculties concerned. In such a case, the faculties shall agree among themselves which of them will coordinate the procedure and guarantee the fulfilment of the obligations under this Guideline.
2. The proposal must contain the elements defined in Guideline 2/2020 and Annex 3 of this Guideline.
3. If the proposal does not have the prescribed requirements or suffers from other defects, the dean, through the authorised department of the faculty, will help the proposer to eliminate the defects or invite him/her to eliminate them and will give him/her a reasonable time limit for doing so.
4. The dean may reject the proposal by decision. Otherwise, he/she forwards it with his/her positive opinion through the OPPTZ and the Vice-Rector for Knowledge Transfer to the Rector.
5. The Rector is not bound by the positive opinion of the Dean. In the event that he/she rejects the proposal by decision, he/she shall notify the Dean of this fact together with the reasons for his/her decision

Article 7
Rights and Obligations of

1. Each faculty from which the affected BUT intellectual property, Know-how or from where the rights to the BUT Spin-off or BUT Start-up designation originate, shall comment on the intention to grant the BUT Spin-off or BUT Start-up designation. The BUT shall not allow a legal entity to use the designation Spin-off BUT or Start-up BUT in the event of a disagreement pursuant to the previous sentence. The second sentence of Article 6(1) shall apply mutatis mutandis.
2. In the event that the rights to use the designation referred to in Article 3(1) are granted, the Faculty shall ensure the proper management of the BUT's share in accordance with Guideline No. 2/2020. In this context, all potential revenues as well as costs and liabilities associated with the management of the share or the use of the designation referred to in Article 3(1) shall be charged in full to the Faculty.
3. The Faculty is obliged to record the income and expenditure referred to in the preceding paragraph in a separate element as income or expenditure associated with a non-economic transfer of knowledge.
4. The faculty shall conclude a contract with the applicant for the designation of Spin-off BUT or Start-up BUT, which shall regulate the use of equipment, services or premises
5. The faculty will independently set the rules for the concurrence of employment and other relationships between the BUT and the applicant for the designation of Spin-off BUT or Start-up BUT.
6. The faculty is obliged to conduct regular evaluations of cooperation and compliance with the terms of the contracts.
7. The faculty maintains documentation on the collaboration with each company having the right to be designated as a Spin-off BUT or Start-up BUT. The provisions of Part Three of Guideline 2/2020 shall apply mutatis mutandis.
8. The faculty shall regularly, but at least once a year on the anniversary of the Spin-off BUT or Start-up BUT agreement, inform the Vice-Rector for Knowledge Transfer about the status of cooperation with the company.

9. The renewal of the rights to use these signs is possible upon request of the applicant. In the case of renewal, the provisions of Article 6 shall apply mutatis mutandis. Renewal shall be limited to 10 years from the company's formation.

Article 8

Role of the OPPTZ

1. OPPTZ performs the role of
 - a. Methodological where in particular include
 - i. Preparation and assessment of contracts for the rights to use the designations Spin-off BUT and Start-up BUT;
 - ii. Preparation and review of contracts regulating the relationship to the intellectual property of the BUT;
 - iii. Regular school-themed spin-offs of BUT and Start-up companies;
 - iv. Collaboration in the valuation of intellectual property;
 - v. Assistance in negotiations with those interested in using the designation rights, if requested by the faculty.
 - b. Analytical
 - i. It monitors trends in the creation and support of spin-off and start-up companies in the Czech Republic and the EU.
 - ii. Conducts questionnaire and other investigations related to the establishment and functioning of Spin-off BUT and Start-up BUT companies.
 - iii. Prepares or participates in the preparation of documents according to the assignment of the BUT management.
 - iv. It follows the conditions set in the contracts.
 - v. Carry out management checks on compliance with the rules set out in this Guideline.
 - c. Coordination
 - i. It keeps a register of companies entitled to use the designations Spin-off BUT and Start-up BUT.
 - ii. It gives suggestions to the management of the faculties in case of unequal treatment of candidates for these designations.
 - iii. Convenes ad hoc meetings on current topics related to Spin-off and Start-up topics.
 - iv. He is involved in cooperation with JIC on topics related to spin-offs and start-ups.
 - d. Protective
 - i. It informs the BUT management and faculty management about identified risks.
2. OPPTZ is also a contact point providing methodological support in all areas related to Spin-off and Start-up companies.
3. The OPPTZ is also entitled to request, to the extent necessary, the cooperation of all departments of the Rector's Office in the framework of activities under this Guideline

Article 9

Transitional and repeal provisions

1. Until 31 December 2022, the current Department of Technology Transfer shall carry out all activities imposed by this Guideline on OPPTZ.
2. Part Four of Guideline No. 2/2020 Establishment and Participation of BUT in Legal Entities (Special Provisions on Spin-off Companies) is repealed.

Article 10
Final provisions

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

doc. Ing. Ladislav Janíček, Ph.D., MBA, LL.M.
Rector

Attachments:

Annex 1: Unified visual style of the BUT Spin-off

Annex 2: Unified visual style of the BUT Start-up

Annex 3: Information to be submitted for the intention to obtain the designation Spin-off BUT or Start-up BUT

Annex 4: Procedure for obtaining the rights to the designation Spin-off BUT or Start-up BUT