



# The Founding and Operation of Masaryk University Spin-off Companies

*(in the version effective from 1 April 2018)*

*In accordance with Art. 15 of the Organisational Regulations of Masaryk University, I hereby issue this Instruction:*

## Part One Introductory Provisions

### Article 1

#### General Conditions

The purpose of this Instruction is to support the transfer of technology and knowledge at Masaryk University in order to enable and support the emergence of spin-off companies (hereinafter referred to as "spin-offs") as a form of the practical utilisation of intellectual property originating at Masaryk University and to regulate how intellectual property is dealt with after the founding of the spin-off.

### Article 2

#### Definition of the Term Spin-off

- (1) A spin-off is a business founded:
  - a) directly by Masaryk University,
  - b) by another entity controlled by Masaryk University pursuant to Section 74 et seq. of Act No. 90/2012 Coll., on Business Companies and Cooperatives (Business Corporations Act), as later amended (hereinafter the "Business Corporations Act"),
  - c) a person who was an employee of Masaryk University at the date of establishment of this company, or
  - d) by another entity controlled by an employee of Masaryk University in accordance with business groupings as referred to in Section 71 et seq. of the Business Corporations Act,in connection with the use of the intellectual property of Masaryk University under the Intellectual Property Directive at Masaryk University.
- (2) Only public companies, limited partnerships, limited liability companies, public limited companies, European companies or European economic interest groups (Section 1, paragraph 2 of the Business Corporations Act) based in the Czech Republic and established under the laws of the Czech Republic can be spin-offs.
- (3) Masaryk University spin-offs are spin-offs that were established by Masaryk University or an entity controlled by Masaryk University in connection with the use of intellectual property of Masaryk University and in which Masaryk University or an entity controlled by Masaryk University continues to own (a business) interest; spin-offs with the participation of Masaryk University cannot be public limited companies and limited partnerships, as stated in the second sentence of Section 20, paragraph 3 of Act No. 111/1998 Coll., on Universities and Amending and Supplementing Other Regulations (on universities), as later amended (hereinafter referred to as the "Higher Education Act").
- (4) Spin-offs without the participation of Masaryk University are those spin-offs established by a person who was an employee of Masaryk University on the date of

incorporation of this company or another entity controlled by an employee of Masaryk University in connection with the use of intellectual property of Masaryk University.

#### Article 3

##### **Jurisdiction**

The MU Technology Transfer Office (TTO) is a specialised workplace for the management, protection and use of intellectual property and related technology and knowledge transfer, cooperation with the application sphere and the establishment of spin-off companies.

## Part Two

### **Spin-offs with the Participation of Masaryk University**

#### Article 4

##### **Proposal for Founding a Spin-off with the Participation of Masaryk University**

- (1) A proposal to establish a spin-off with the participation of Masaryk University, including attachments (hereinafter referred to as the "proposal") may only be submitted in writing. The TTO director shall reject a petition submitted other than in writing.
- (2) The proposer may be the Bursar, the head of an economic unit of Masaryk University or another employee of Masaryk University. If another person submits the proposal, the TTO director shall reject the proposal.
- (3) If an employee of Masaryk University submits a proposal, he/she must enclose the opinion of the head of the economic unit of Masaryk University to which the employee belongs. This opinion shall also include a description of the resolution of the potential conflict of interest resulting from the potential spin-off of the proposer.
- (4) The proposal shall include in particular:
  - a) specification of reasons, purposes, benefits and goals of establishing a spin-off with the participation of Masaryk University,
  - b) specification of the material and intangible benefits that Masaryk University can gain from such spin-offs,
  - c) a proposal for a founding legal act establishing a spin-off with the participation of Masaryk University,
  - d) proposal of the ownership structure of spin-off with the participation of Masaryk University, i.e. proposal of the amount of deposits and shares of individual founders, including an assessment of the return on investment. Masaryk University is not authorised to invest into a company or cooperative state-owned real estate acquired by public higher education institutions provided with a contribution pursuant to Section 18, paragraph 3 of the Higher Education Act and a subsidy pursuant to Section 18, paragraph 4 of the Higher Education Act (Section 20, paragraph 3, third sentence, of the Higher Education Act),
  - e) proposal of the personnel representation of Masaryk University in spin-off bodies with the participation of Masaryk University, with the obligation to inform about spin-off activities in justified cases and in advance,
  - f) analysis of the legal and economic implications of Masaryk University's participation in a spin-off with a share held by Masaryk University (including the duties of persons representing Masaryk University in spin-off bodies with a share held by Masaryk University),

- g) a proposal to modify contractual relations between Masaryk University and a spin-off with a share held by Masaryk University,
  - h) a business plan,
  - i) a management audit,
  - j) examination of the integrity and potential conflicts of interest and interconnection of individual partners or participants in a legal entity.
  - k) if the spin-off with the participation of Masaryk University is to be a joint-stock company, the method of subscription of shares, their form and type, the internal structure of the company (monistic or dualistic) as well as the justification of such a system, information on the management and administration code of the company (a comparison for example of the Corporate Governance Code based on OECD principles) which is mandatory for spin-offs and information on where to consult the code; where appropriate, information that the spin-off will not comply with a provision of such a code or with any code, including appropriate justification,
  - l) identification of persons on the part of the proposer authorised to establish a spin-off.
- (5) The business plan, the structure of which is attached to Appendix No. 1 to this Instruction, includes in particular:
- a) an executive summary,
  - b) a project description
  - c) analysis,
  - d) a summary - SWOT
  - e) a design part,
  - f) financing,
  - g) investment.
  - h) identification of success factors, risk minimisation measures.
- (6) The business plan may contain other possible documents and documents supporting the plan.

#### Article 5

##### **Consideration of the Proposal**

- (1) The TTO will verify that the proposal contains all the required elements.
- (2) The TTO director shall invite the proposer to correct or supplement a proposal, which does not contain all the required particulars, or which is unintelligible or indeterminate, in accordance with the alleged deficiencies stated in the call of the TTO director. The TTO director shall set a deadline appropriate to the deficiencies allegedly needing to be corrected or supplemented.
- (3) If, despite a request from the TTO director, the proposal is not properly corrected or completed, the TTO director shall reject the proposal. The proposer must be advised by the TTO director of these consequences in the call.
- (4) The TTO director shall submit the proposal containing all the requisites to the Legal Office as well as the Accountancy Office of the Rector's Office of Masaryk University, for them to express their opinion on the proposal, in particular pursuant to Appendix No. 3 to the Statutes of Masaryk University. He/she shall set a time limit for each of these departments.

## Article 6

### **Decision on the Proposal**

- (1) The TTO director, taking into account the observations of the Legal Office and the Accountancy Office of the Rector's Office of Masaryk University, shall decide on the proposal after receipt of such observations or after expiry of the time limit(s) for the observations; such a decision by the TTO director on establishment of a spin-off will be:
  - a) recommended
  - b) recommended with changes, or
  - c) not recommended.
- (2) The TTO director is not bound by the opinions of the Legal Office and the Accountancy Office of the Rector's Office of Masaryk University when deciding on the proposal. The justification shall always form part of the decision on the proposal pursuant to Article 6, paragraph 1, and may also include the justification of any inconsistency with the statements of the Legal Office and the Accountancy Office of the Rector's Office of Masaryk University or the steps necessary to deal with recommended changes.
- (3) The decision ends the discussion of the proposal to establish a spin-off with a share held by Masaryk University.

## Article 7

### **Confidentiality of Information**

- (1) All information relating to the proposal and the existence of such a proposal is confidential.
- (2) The persons concerned are obliged to maintain the confidentiality of confidential information.

## Article 8

### **Deciding on the Founding of a Spin-off with a Share Held by Masaryk University**

- (1) If the TTO director recommends the establishment of a spin-off, or if he/she recommends its establishment with changes pursuant to Art. 6, paragraph 1, letter b), the TTO director shall submit a proposal to establish this spin-off (hereinafter referred to as the "TTO director's proposal") to the Rector of Masaryk University in accordance with Appendix No. 3 to the Statutes of Masaryk University.
- (2) The proposal of the TTO director consists of the proposal, the opinion of the Legal Office and the Accountancy Office of the Rector's Office of Masaryk University, the decision on the proposal (including any reservations of the TTO director) according to Art. 6 et seq. as applicable. The proposal of the TTO director must also contain particulars according to Appendix No. 3 to the Statutes of Masaryk University, if they are not part of the proposal.
- (3) A proposal from the TTO director with which the Rector of Masaryk University agrees, is submitted by the Rector for an opinion to the Academic Senate of Masaryk University according to Appendix No. 3 to the Statute of Masaryk University.
- (4) Following the statement of the Academic Senate of Masaryk University, the Rector submits the proposal of the TTO director together with the statement of the Academic Senate to the Board of Trustees of Masaryk University.
- (5) The Board of Trustees of Masaryk University is obliged to notify the Ministry of Education, Youth and Sports within seven days of its issuance of prior written consent to the legal action by which Masaryk University intends to establish a spin-off and to make monetary and non-monetary deposits into this spin-off (Section 15, paragraph 6 of the Higher Education Act).

- (6) The Rector of Masaryk University decides on the establishment of a spin-off, changes to its form and on monetary or non-monetary deposits into this spin-off after the prior written consent of the Board of Trustees of Masaryk University and after notification to the Ministry of Education, Youth and Sports in accordance with Appendix No. 3 to the Statutes of Masaryk University.

## Part Three

### Spin-offs without the Participation of Masaryk University

#### Article 9

##### Spin-offs without the Participation of Masaryk University

- (1) If there is an urgent interest in this, the TTO director decides whether or not a company is a spin-off without a share held by Masaryk University.
- (2) In doing so, the TTO director shall take particular account of:
  - a) whether the company in question was founded by a person who was an employee of Masaryk University or another entity controlled by an employee of Masaryk University at the date of incorporation of this company;
  - b) whether the company in question was established in connection with the exploitation of intellectual property of Masaryk University.
- (3) The decision must specify how the intellectual property of Masaryk University will be used (pursuant to the Intellectual Property Directive at Masaryk University) for future use within the given company for the benefit of Masaryk University.

## Part Four

### Operation of the Spin-off

#### Article 10

##### Operation of the Spin-off

- (1) In order to ensure the compliance of spin-offs with a share held by Masaryk University with the regulations of Masaryk University and in a manner not contrary to its statutes, Masaryk University must, through the personal representation of Masaryk University in spin-off bodies with a share held by Masaryk University in accordance with Art 4, paragraph 4, letter e) the possibility to coordinate and control such spin-off meetings, with an emphasis on the management of the intellectual property of Masaryk University (Article 11), also in the event of a vote; the specific form is always given in the proposal.
- (2) In justified cases, especially in cases of violation of the intellectual property of Masaryk University (Art. 11) or in cases of acts against good morals damaging the good name and reputation of Masaryk University, but also in cases of breach of general duties in the spin-off, the TTO director shall decide, after a prior written request to remove an undesirable condition, or after expiry of the deadline for removal of such an undesirable condition, that:
  - a) in the case of spin-offs with a share held by Masaryk University, to initiate negotiations aimed at getting rid of the share of Masaryk University in the given spin-off and withdrawing the possibility of disposing of the intellectual property of Masaryk University,
  - b) in the case of a spin-off without a share held by Masaryk University, it will remove the status of spin-off, including the possibility of disposing of the intellectual property of Masaryk University.

- (3) The request for the removal of an undesirable situation shall include, in particular, a statement of reasons and specification of the infringement of the intellectual property of Masaryk University, as well as a reasonable period for such removal.
- (4) The decision must always state how the intellectual property of Masaryk University will be used for the future management of this intellectual property within the given company, with an emphasis on licensing the intellectual property of Masaryk University.

## Part Five

### Management of the Intellectual Property of Masaryk University

#### Article 11

##### Management of the intellectual property of Masaryk University

- (1) The management of the intellectual property of Masaryk University means in particular its use in accordance with the Intellectual Property Directive at Masaryk University, and in accordance with the measures of Masaryk University to ensure the sustainability of outputs in the field of intellectual property.
- (2) In justified cases, the TTO will support the dissemination of intellectual property of Masaryk University through an individual approach to newly-established and existing spin-offs.

## Part Six

### Interim and Final Provisions

#### Article 12

##### Interim Provisions

- (1) This Instruction governs rights and obligations arising from the date of its entry into force; this Instruction does not create any rights and obligations for the period before its entry into force.
- (2) Relations established before the date of entry into force of this Instruction, as well as the rights and obligations arising therefrom, shall be governed by existing regulations.
- (3) This Instruction also applies to proposals submitted before this Instruction becomes effective. Negotiations that have occurred before this Instruction becomes effective shall be maintained.
- (4) By prior agreement, the TTO will assist proposers in negotiations related to the establishment of spin-offs as well as their management.
- (5) The TTO is responsible for checking compliance, interpreting individual provisions and updating this Instruction.

#### Article 13

##### Final Provisions

- (1) This Instruction cancels the TTO Methodological Instruction - Establishment of Spin-off Companies by Masaryk University dated 1/9/2014.
- (2) I authorise the TTO director to interpret the various provisions of this directive.
- (3) This Instruction belongs to the area of methodological management "Cooperation with the application sphere and establishment of spin-off companies".
- (4) Compliance checks are performed by the TTO director.
- (5) This Instruction comes into force upon signature.

(6) This Instruction comes into effect on 1 April 2018.

**Appendices:** No. 1 - Structure of the Business Plan

Brno, 14 March 2018 *Marta Valešová*

*Bursar*

## **Structure of the Business plan**

1. Executive summary
2. Project description
  - i. Description of the company product and its benefits
  - ii. Definition of customer segments
  - iii. Intellectual property protection
  - iv. Team
  - v. Definition of project objectives,
3. Analyses
  - i. Market
    1. Individual segments - nature of customers, market potential and development
    2. Competitive products - occupied segments, price and quality
    3. Strength of competitors
    4. Essential factors for market entry in a given segment – legislation and certification
  - ii. Suppliers
  - iii. Customers
  - iv. Production process and cost balance
  - v. Research and development - environmental factors, e.g. legal norms
4. Summary - SWOT
5. Design part
  - i. Identification of milestones - development of objectives
  - ii. Strategy
    1. Products
    2. Prices
    3. Distribution
    4. Promotion
    5. People
    6. Processes
6. Finance
  - i. Opening balance sheet as of the date of incorporation
  - ii. Costs
    1. Before starting the project
    2. During the project
    3. Fixed
    4. Variable
  - iii. Assumption of revenues
  - iv. Proposal (estimate) of Balance Sheet and Profit and Loss Statement always as of 31/12 for a period of three years from the establishment of the company (or until it becomes profitable)
  - v. Cash-flow projection
7. Investment
  - i. Required investment and its structure
  - ii. Pre-investment project valuation
  - iii. Return on investment, exit
8. Identification of success factors and risk minimisation measures