

STARTING A SPINOUT COMPANY



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These guidelines have been written for researchers at the University of Oxford to guide you through the process of setting up a spin-out company with Isis Innovation Ltd.

This booklet is one of a series of five Guidelines to Researchers available from Isis Innovation Ltd (and at www.isis-innovation.com). These are:

- * Intellectual Property, Patents and Licences
- * Starting a Spinout Company
- * Consulting Agreements
- * University Proof of Concept & Seed Funds
- * Isis Software Incubator

I welcome any comments you have on how these guidelines could be made more helpful.

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The Technology Transfer Company of the University of Oxford

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INTRODUCTION TO ISIS

Isis Innovation Ltd is the University of Oxford's wholly owned technology transfer company. Isis was established in 1988 and in 1997 started a major expansion phase. Isis manages the University's intellectual property portfolio, working with University researchers on identifying, protecting and marketing technologies through licensing, spin-out company formation, consulting and material sales.

Isis provides researchers with commercial advice, funds patent applications and legal costs, negotiates exploitation and spin-out company agreements, and identifies and manages consultancy opportunities. Isis works on projects from all areas of the University's research activities: life sciences, physical sciences, social sciences and humanities.

Patents & Licensing Isis files, on average, one patent application each week and manages over 400 patent application families and 200 licence agreements. Isis licenses technologies to companies who invest in developing and selling products in a timely and ethical manner. Licensees are sought from all technology and business sectors on an international basis.

Creating New Companies Isis has assisted in the formation of more than 40 University spin-out companies since 1997, generating significant value in equity holdings for the University of Oxford. Isis works with University researchers to develop new business opportunities, identifying and sourcing investment, management and professional services.

Consulting Oxford University Consulting (OUC) offers access to the expert knowledge of University researchers and departmental services within the University. OUC is part of Isis, providing a professional service dedicated to finding cost effective solutions to consultancy needs. Areas of expertise include problem solving, data analysis, expert evaluation, due diligence, management and business development. OUC's activities meet the ISO 9001 quality assurance standard.

Material Sales Isis manages the negotiation of sales agreements for biological and physical science materials developed within the University.

The **Oxford Innovation Society**, founded in 1990, enables industrial companies to benefit from Isis' activities by having a 'window' on Oxford science. Members enjoy advance notification of all patent applications marketed by Isis, a regular newsletter, customised benefits, including seminars and needs analysis, and attend meetings and dinners, which provide a unique environment for constructive interaction between business leaders, investors and top University scientists.

The **Isis Angels Network** introduces private investors and seed/venture capitalists interested in investing in spin-out companies from the University of Oxford to investment opportunities. IAN is a not-for-profit company limited by guarantee, established by Isis in 1999. Members of IAN may also be interested in serving as non-executive directors, nominated by the University, on the boards of the new spin-out companies.

Isis has strong **University links** with all the parts of the University involved in technology commercialisation and enterprise. These include Research Services; Begbroke Science Park; Oxford Science Enterprise Centre; and Entrepreneurship Said at the Saïd Business School.

Isis Enterprise is a division of Isis, offering consulting expertise and advice in technology transfer, based upon Isis Innovation Ltd's success as Oxford University's technology transfer company. Isis Enterprise helps universities, research organisations and governments develop their technology transfer activities.

DECIDING WHETHER TO START A SPIN-OUT

Setting up a Spin-out is a stressful activity and will distract you from your research. You will need to work with business managers and investors whose objectives may be different from your own.

Not all research is suited to becoming the platform for a new business. Isis staff will help evaluate the business opportunities arising from your research.

Business and management skills will be needed for the spinning out, as well as running the subsequent business. Therefore it is important to identify a source of these early on.

If you intend to remain an employee of the University, you will need various consents from the University to participate in a spin-out. The University will not generally give permission for its employees to take executive directorships in spinout companies. Therefore, if you take a directorship it should be non-executive. Also, some funding agencies do not allow researchers to be directors.

There are potentially onerous legal responsibilities attached to being a director of a limited company. Before deciding to spin out you must understand these, and decide whether the benefit is worth the potential risk.

THIS IS WHAT YOU DO: Decide what the company is to do, what is it going to sell, where is it going to get it, who is it going to sell to and how? Decide on who is going to own the company, decide on who is going to work in it, what funding will be needed, and where will it come from?

A SUCCESSFUL SPIN-OUT REQUIRES:

- **Time** - which you may prefer to spend on research
- **Skills and Resources** – which are not generally available in universities
- **Mundane Work** - which you may prefer not to do (printing, stationery, premises, insurance, many meetings etc.)
- **A Measure of Luck.**

IMPORTANT INFORMATION

There are many aspects of company formation which require up to date legal, taxation, accountancy and financial expertise from fully qualified and regulated professionals.

We have prepared this information to assist you in understanding the process of starting up a spin-out company. Isis Innovation Ltd and its staff are, however, not regulated or approved to give advice on these matters. Accordingly, you should conduct your own investigations and **obtain independent professional advice.**

We have taken care to try and make these guidelines accurate and reliable, but as with any summary of complex provisions which are defined in more detail elsewhere, this guide is offered without liability for any errors or omissions.

ISIS INNOVATION'S CONTRIBUTION

Isis has assisted University of Oxford researchers in setting up over 40 spin-out companies. Isis' contribution is in three main areas:

- Business Planning
- Identifying Management
- Identifying Investment.

Business Planning

Isis can help with the preparation of the business plan, which will provide the basis on which your investors will construct their proposals. Isis can assist in deciding how best to structure the new company (debt/equity; shares, share options etc).

To help define the business of the company we have developed the questionnaire which is included in these notes on pages 13 and 14. Although some of the questions appear trivial we have found that discussing them with researchers (particularly if there is more than one involved) is very helpful in stimulating discussion, and clarifying exactly what the spin-out is to do. Isis staff will be pleased to go through the questionnaire with you if you so wish.

Management

During the spinning out process, as well as in the subsequent running of the business, it is important that the team has a leader. This may be a researcher, or possibly one of the investors or an identified manager. Isis can compensate to some extent for lack of leadership in the spin-out team; but Isis will not be involved in the management of the resulting company (unless a member of Isis staff becomes involved as the University's appointed director). It is therefore important to establish a leader at an early stage. It may or may not be the case that the early leader eventually becomes the Managing Director of the company. Isis has a list of lawyers and accountants we have used before and can introduce you to them as well as to potential investors.

Investment

Isis can assist in identifying sources of investment finance through the Isis Angels Network (IAN) and other contacts. IAN is a group of private investors (often called 'business angels') and venture capital companies with a keen interest in investing in university spin-out companies. It is not uncommon for business angels to take an active role in their investee companies which can bolster the spin-out team. Investment opportunities are presented to IAN members through direct mailings, meetings and formal presentation events held throughout the year.

Although it is the University which must approve all spinout companies, Isis is involved in the approval process; and the University will consider the recommendations of Isis when deciding whether to accept an investment proposal.

OXFORD UNIVERSITY RULES

Although Isis Innovation is a wholly owned subsidiary of the University of Oxford, the conditions of employment of University staff are a matter for the University, and Isis cannot adjudicate on them. Nevertheless, Isis has been given responsibility for presenting spin-out opportunities to the University for approval. We can direct you towards the relevant University Statutes, Decrees and Regulations if you need advice. Isis will make every effort to guide you through the relevant procedures, in conjunction with the appropriate University officers.

ACTION PLAN

1 Initial Decision to Proceed

Refer to the Spin-out Questionnaire (pages 13 and 14) and discuss with your colleagues (and Isis if you wish) whether you want to start looking at the possibility of starting a spin-out company.

2 University Permission

If you wish to proceed, because you may become a shareholder, director, and/or consultant to the spin-out, you will need to consider the University's rules about its employee's holding external appointments and conflicts of interest. You will probably need consent from: your Head of Department, your Head of Division, and the Conflict of Interest Committee. Isis will guide you through all this. You may also require clearance from any external funders of your research.

Your Isis Technology Transfer Manager will present the business plan and proposed structure of the spin-out, including the suggested equity split, to the Isis Spin-out Review Panel, the Managing Director of Isis and the University Finance Director (also a director of Isis), who will either seek more information or approve the proposals.

3 University and Founder Researchers Equity

The University expects to be a significant shareholder in the spin-out company because of the resources and permissions it makes available to the spin-out. Isis will provide advice about the division of the equity split between the University, the researchers and the investors. The University expects that its shareholding be the same as the founder researchers. There are a number of factors to be taken into account: for example, the roles of the individual researchers, the amount of capital required, the involvement of the University in reaching the stage where a spin-out is possible, and the importance of the association with the University. If there is a disagreement between the University and the researchers on this issue, the people involved will be asked to put their points of view to the University's Intellectual Property Advisory Group, which will consider it and attempt to resolve an agreement acceptable and fair to all parties.

The division of spin-out equity between all those involved and the management and employees is a key issue and must be addressed early in the procedure. Since it will be a multi-party negotiation it is rarely easy. Having agreed their respective shareholdings, the researchers and the University can then negotiate together with the investors as to what percentage of the company they wish to sell to the investors for their cash investment. In practice it is rarely as simple as this and an iterative, three-way negotiation usually results. Isis has assisted in several of these negotiations and, although our responsibility is primarily to our own shareholder (the University), our interest in helping to complete the deal as rapidly as possible has proved helpful to the researchers spinning out.

The University's royalty-sharing rules do not apply to Spin-out equity. If there are multiple researchers, their individual entitlements must be covered by agreed equity shares or in some other way.

4 Technology Licence

If the spin-out intends to use any intellectual property owned by the University or Isis it will need appropriate licenses to the intellectual property (patents, copyright, know-how etc). The technology licence will not be free of licence fees and royalties. However, the licence terms will be sympathetic to the circumstances of the new company, due to the importance of cash to the spin-out in its early years.

5 Business Plan

This describes what the business will do and how the investors will get a return. With some spin-outs the business is at too early a stage for numerical projections to be meaningful. In these cases the investment decision will be made on the basis of confidence in the researchers, proposed spin-out managers and the technology.

It is rare for the business plan which is initially prepared by the spin-out team to be identical to the final plan which is used by the company as it goes forward. Typically the plan goes through a series of iterations as new facts and ideas emerge and it is common for investors and managers to impact the thinking as the plan evolves.

Whilst it is good practice to prepare a formal plan with detailed financial projections, the initial approach to investors is often based on a short executive summary which should be one page in length. Some investors will expect to receive more detailed information in the form of a business plan presentation backed up by a more formal document.

Isis can provide templates for the business plan document and presentation. Presentation practice can be arranged through the Isis Angels Network.

6 Raising Investment Finance

Investors prepared to risk cash on early stage companies seek to generate profits well in excess of their initial outlay. They need high levels of return because they understand that due to the risks involved many of their investments will perform poorly.

Private investors and venture capitalists have investment preferences in terms of sector (e.g. biotechnology or nanotechnology), levels of available funds and methods of working. In particular some investors will expect to be very closely involved in decisions made by the developing company. Other discriminating factors are the capacity of some investors to invest larger amounts in subsequent investment rounds and the capacity to lead an investment round involving more than one investor.

Once an investor has indicated their interest in providing funds a process of due diligence will commence. Typically an investor will seek confirmation of all the main assumptions set out by the company in its business plan. Particular areas of interest will be patents, details of the financial plan and evidence of market interest. Responding to due diligence enquiries can be time consuming and a degree of patience will need to be exercised by all parties.

7 Documentation

Heads of Agreement

This sets out the key provisions of all aspects of the spin-out company and provides a summary upon which lawyers can build full documentation.

Shareholders/Investment Agreement

This addresses the relative shareholdings between the founding researchers, the University, management, and investors, and the protections which each shareholder seeks. The University has a standard shareholders agreement which is a useful starting point in discussions.

Technology Licence Agreement

This will authorise the company to use any specified intellectual property owned by the University/Isis which the company wishes to use and which the University is able to make available to the company.

'Oxford' Trade Mark Licence

The University trading as Oxford University Press has trademarked the word "Oxford". If the spin-out company wants to use the word "Oxford" in its name, it will need permission from the University which has a standard licence agreement. Isis can help asking the University for the necessary licence.

Consultancy Agreement

The company will want to secure access to the services of the founding researchers. The arrangements between those individuals employed by the University and the company need to be approved by the University, via Research Services.

Managing Director's Service Contract

This contract will be supplied by the company's lawyers and, whilst it does not need University approval, it is advisable to ensure the University has no objections to it.

Memorandum & Articles of Association

These documents are standard company documents which set out the nature of the company's business and its operations. These will be supplied by the company's lawyers.

Share Option Scheme

All spin-out companies are likely to establish an incentive scheme at some stage. There may be advantages, relating to the option exercise price, in setting up a share option scheme at the spin-out stage.

8 Final Approval and 'Completion'

The necessary documents will be signed by the researchers, the University, Isis (if Isis technology is involved) the external investors and any other shareholders. In order to optimise the taxation position of the company and those involved current legal and tax advice is followed.

WHERE DO I START?

ACTION	WHO	REFERENCE	4
Complete Spin-out Questionnaire	Researchers	Isis Spin-out Questionnaire Isis Technology Transfer Manager	
Develop Business Plan		Isis Technology Transfer Manager Advisers (e.g. accountant)	
University Approvals (Academic)	Head of Department Faculty Board Appointments Committee Conflict of Interest Committee	Isis will assist with these if necessary	
Approach Investors	Isis Researchers	Isis Angels Network	
Identify Management	Researchers Investors Isis		
Decide proposed equity split	Researchers Investors University (IPAG)	Isis Technology Transfer Manager Possible appeal	
Heads of Agreement	Isis Researchers Investors	Lawyers	
Isis support & approval	Isis Researchers Investors	Isis Technology Transfer Manager Isis Managing Director	
University Approval (Commercial)	University Finance Director		
Prepare final legals	All parties	Lawyers	
Sign off - 'Completion'	All parties	Lawyers	

Each of these steps is likely to take at least a week (the business plan is likely to take many more) and experience shows that the overall process is likely to take many months.

FURTHER POINTS

ADVISERS

The company will need various professional advisers to assist it in its business.

Lawyers	Human Resource Advisers	Accountants
Public Relations Firms	Banks	Business support networks

Isis can help in identifying appropriate advisers. In terms of documentation, it is important that the company has appropriate legal representation of its own when putting in place the agreements described above. As founding individuals you should seek personal legal representation in your capacity as consultants to the company and also as shareholders. When engaging advisers you must always consider who will pay them if the company is not formed. Many may work on a contingency basis whereby if the investment is not made, they will not be paid. Do not sign a letter of engagement with an adviser until you have agreed who is going to pay. Isis has deliberately not expressed preferences or recommendations and has refrained from even general comments. The University and Isis will always use their own lawyers.

INSURANCE

The spin-out will need to obtain a number of insurance policies including: directors and officers insurance; building and contents insurance; employer's liability insurance; public liability insurance and product liability insurance.

TAX

There is a plethora of taxes and tax schemes relevant to the various aspects of the spin-out company.

Company	Individuals
Value Added Tax	Capital Gains Tax
Corporation Tax	Income Tax
National Insurance	Enterprise Investment Scheme
R&D Tax Credits	Enterprise Management Incentives
	Inheritance Tax

These change frequently as do the optimal ways of managing the tax liabilities. Up to date professional advice is essential.

COMPANY CONSTITUTION

The spin-out company will be a limited liability company incorporated under English law. A limited liability company protects the owners from creditors; it will be a separate legal person that can sue and be sued in its own right. It will consist of:

Shareholders – These will include the researchers, the University and the investors. Shareholder's liability will be limited to the amount that each shareholder has fully paid up on their shares. The number of shareholders will increase with every round of funding (see Share Dilution below).

Board of Directors – The directors of the company (of which there must be at least one) will be appointed by the shareholders. The directors are responsible for strategic management of the company and will be personally liable for their actions as directors of the company. The Directors elect one of themselves to be the Chairman.

Managing Director – The managing director will be a member of, and will be appointed by, the board of directors. The managing director will generally be given power by the board to run the company on a 'day-to-day' level.

Company secretary – The company secretary reports to the directors and is responsible, along with the directors, for the records of the company, including: notices and minutes of meeting, company house returns etc. The company's lawyers or accountants will quite often be the company secretary. The rules of the company will be set out in the memorandum and articles of association. These include: the number and type of shares which the company can issue; the rights of shareholders; and the powers of directors. The directors must manage the company in accordance with the articles and the law.

DIRECTORS RESPONSIBILITIES

The legal responsibilities placed on each director protect creditors from the owners. A limited company must have directors; directors must not continue trading when the company is insolvent; directors must keep accounts which reflect accurately; the company's financial condition; directors are like trustees of the company, and must not benefit personally at the company's expense. Directors are **PERSONALLY LIABLE** for the activities of the Spin-out

SHARE DILUTION

As a company grows it is likely to issue more shares to new shareholders to attract cash investment and people. Each time this happens existing shareholders may find their percentage shareholding reducing unless a shareholder uses previously agreed pre-emption rights to buy more shares and thereby maintain a percentage shareholding.

Illustration of Share Dilution						
	Stage 1		Stage 2		Stage 3	
	shares	%	shares	%	shares	%
Founders	50	50.0	50	33.3	50	29.4
University	50	50.0	50	33.3	50	29.4
Investors			50	33.3	50	29.4
Management					20	11.8
Shares	100		150		170	
%		100		100		100

SOURCES OF FINANCE

The spin-out company will need cash in order to operate and grow the business. Cash is available from a number of sources:

Bank Loans	Business Angels	Seed Capital
Venture Capital	Institutional Capital	Corporate Venturing

All of these sources want something in return (e.g. interest, assets, equity) and have different skills and expertise to offer your spin-out. The best source of funding will vary and Isis can advise you on the advantages and disadvantages of each source.

FURTHER INFORMATION

Further information is available from a wide range of sources, including:

Companies House	www.companies-house.gov.uk (good downloadable booklets)
Isis web site	www.isis-innovation.com/links/index.html
Institute of Directors	www.iod.com

SPIN-OUT QUESTIONNAIRE

Company / Project Name	
Researchers and Departments Involved	
Isis Project Number	Isis Technology Transfer Manager
Document Date	Target Investment Date

THE PROPOSED BUSINESS

PRODUCT / SERVICE OFFERING

What Product / Services will the company sell in the short, medium and long term?

SOURCE OF PRODUCTS/SERVICES

Where will the company get the products / services it sells (develop them, manufacture in house, buy in, already has them etc.)?

TARGET MARKET(S)

Estimate of market(s) size; whether they are growing, static or declining; potential competitors.

ROUTE TO MARKET

How will the goods/services be sold?

BUSINESS PROJECTION

What are the expected sales, margin, overheads and cash requirement for the first few years? (We could provide pro forma spreadsheets if required)

COMPANY PERSONNEL

Give the names of individuals if known and state whether full or part time (quantify part time). State specifically who will be responsible for the following key functions:

Product Development (R&D) / Procurement

Sales and Marketing

Finance / Accounting

Leadership / General Management

WHO ARE THE PROPOSED DIRECTORS AND COMPANY SECRETARY?

WHO ARE THE PROPOSED LAWYERS, ACCOUNTANTS AND BANKERS?

INVESTMENT

What is the total cash investment by external investors?

Who are the external investors?

What equity is offered to the University and the investors?

RISKS

What are the major sources of risk / uncertainty in this proposal?

(Technical risks, academic competition, commercial competition, management risks)

THE SCIENCE AND INTELLECTUAL PROPERTY

The purpose of these sections is to enable Isis and the University to understand and evaluate both the quality and the security of the science, in order to form an opinion of its potential value.

Please add a section, which will describe, to a suitably qualified person, the basis of the science, the relevant experience of the scientists involved, and likely developments in the field.

Also describe both the intellectual property and the know-how which will be going into the company (including patents, both filed and potential). Please identify any University Intellectual Property that will be needed by the Company.

ONGOING RESEARCH

Will the company place research contracts with the University? If so, enclose details of the duration and magnitude of the proposed projects. Have terms been agreed with the University?

THIS PROPOSAL HAS BEEN PREPARED BY:

NAMES:

DATE: