

University of St Andrews Spinout Guide



Your guide to starting a spinout company at the
University of St Andrews



University of
St Andrews

ST ANDREWS
INNOVATION
For Impact



Welcome

This guide gives an overview of the considerations that need to be given when establishing a new company, covering the basic planning and intellectual property considerations, through to company structure, governance, and documentation.

In itself, the guide does not seek to be a 'one stop shop.' It does however reference the whole of the journey from inception of idea through to company formation. Along this journey it does signpost to training opportunities provided by St Andrews Innovation and others, individuals to seek advice from, materials and other useful reference points. Through direct engagement with St Andrews Innovation, we will also seek to connect you, where needed, to our network of advisors, mentors and experts.

We are always keen to hear from staff and students about potential new ideas and provide advice and support from an early stage through to company formation and growth stages. Feedback on this guide and its content is always welcome.

Please refer to our website <https://innovation.st-andrews.ac.uk/> for more information or contact us directly.

St Andrews Innovation

For over 600 years the University of St Andrews has pursued knowledge for the common good. There is a wealth of expertise, ideas, and talent in our community.

St Andrews Innovation, the University of St Andrews commercialisation service, was created to put those ideas and the bright minds behind them to good use. We wrap experience, connections, and guidance from across the University around the most promising ideas from our community. And we collaborate with innovators, making it easy for enterprise to engage with our ideas, talent, and resources to find solutions to some of the biggest challenges of our time.

We help transform research into world-leading innovation by lending support and resources to nurture early-stage ideas and nourish their development. We call upon our expertise in intellectual property, funding, and strategic growth so our partners and people can flourish.

Derek Watson MBE
CEO, St Andrews Innovation

Entrepreneurial St Andrews

One of the University's key strategic themes is Entrepreneurial St Andrews. At St Andrews to be entrepreneurial in our culture is to see potential in existing and future activity and to translate that into enterprise for the benefit of wider society.

You are in academia, working on the frontier of your research. You have made an exciting discovery that could positively impact millions. Should you spin out and embark on an exciting and challenging journey?

Most University technologies are early-stage and require a significant investment of both time and money to bring them to the marketplace. Success depends on spinout founders having a driving passion that may at times resemble irrational optimism; faith in the technologies they seek to commercialise; and eagerness to commit their own time and resources to develop them.

St Andrews Innovation has developed a robust process for the creation of new companies. There is no guarantee of success and we do not claim to know from the outset which new companies will be successful – that is down to hard work and good timing – but we think that by working with us new University companies start from a strong foundation that gives them the best opportunity to succeed.



Whatever its nature and scale, the formation and ongoing management of a new spinout based on work undertaken at a research institution will involve similar principles and replicable steps.

This guide is intended to help you by providing an overview of the whole process of forming and managing a business. In particular, it aims to act as a resource and aide-memoire for individuals establishing a University spinout company, providing checklists and guidance with respect to the issues you are likely to face.

However, this guide is neither intended to be a stand-alone document, nor your only source of help. Staff from St Andrews Innovation will be available to advise you and work with you on a new spinout. You are likely to work with business people and specialists too. This guide will help you to manage and navigate those relationships. Overall, you should view this guide as part of the extensive network of support available to you as a spinout founder at the University of St Andrews.

Disclaimers

This guide is published for information only. Though we have taken pains to ensure the accuracy of the information it provides, legislation and regulations are subject to change, and it is therefore important that you conduct your own investigations and obtain independent professional advice alongside the information presented herein.

Policies and guidelines concerning University of St Andrews are subject to change from time to time and advice should therefore be sought directly from St Andrews Innovation in order to ensure you are acting on up-to-date information.

This guide is offered without liability for any errors or omissions. No responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this guide can be accepted by St Andrews Innovation Limited or any member of its group, University of St Andrews or their employees, agents, or advisers.

This guidebook is not provided on a commercial basis and is not intended for use beyond its target audience of employees of University of St Andrews who are considering becoming founders of a new spinout company. Such potential founders should seek independent professional advice. The information in this guide is not necessarily comprehensive and is not a substitute for professional advice.

Acknowledgements

This spinout guide has been developed with inspiration from various sources within the UK's vibrant innovation ecosystem. We extend our gratitude to:

- The TenU USIT Guides, which has provided valuable insights into best practices for university spinouts
- Leading universities, across the United Kingdom, all of whom have significantly informed our approach.
- The broader academic and investment community, whose collaborative efforts continue to drive innovation in the spinout sector.

The [Independent review of university spin-out companies](#) was published in late 2023. St Andrews has adopted the best practice guidelines laid out in the review along with aligning practice with the principles set out in the University Spinout Investment Terms (USIT) Guide. We continue to contribute to the ongoing dialogue on fostering successful university spinouts and accelerating innovation in the UK.

SECTION A: Starting a Spinout Company

1. What is a spinout company?	10
2. Should you spinout?	10
3. Our support	11
4. What will you need to form a spinout?	12
4.1. Intellectual Property	
4.2. A clear market opportunity or unmet need	
4.3. Management	
4.4. Money	
4.5. You (and your co-founders)	

SECTION B: Spinout Process and Support

5. How St Andrews Innovation can help at each stage	15
5.1. How does forming a spinout benefit the University?	
5.2. What is your commitment to the process?	
6. Securing the University's support	17
7. Conflict of interest	18
8. University and founder- researcher royalties and equity	18

SECTION C: Due Diligence, Funding, and Spinout Formation

9. The Journey begins	22
9.1. IP management	
9.2. Due diligence	
9.3. Ownership and freedom to operate	
9.4. Heads of terms	
9.5. Business planning	
9.6. What goes in the business plan?	
9.7. Business plan content	
9.8. Market research	
9.9. Building your team	
9.10. In summary	
9.11. Network, mentors, advisory board	
10. Funding	30
10.1. Customer funded	
10.2. Grants/Non-dilutive funding	
10.3. Business angels	
10.4. Crowd funding	
10.5. Venture capitalists	
10.6. Corporate venturing	
10.7. Bank loans	
10.8. How to pitch to potential investors	
10.9. Initial Due Diligence	
10.10. Future investment	
10.11. Exit strategies	
11. Establishing the company	34
11.1. How long does it all take?	
11.2. Company constitution	
11.3. Shares	
11.4. Liability	

SECTION D: Intellectual Property Management and Protection

12. Role of shareholders and directors	37
12.1. Shareholder	
12.2. Directors	
12.3. Shadow director	
12.4. Executive v non-executive	
13. Company documentation	39
13.1. Articles of Association	
13.2. Shareholders' Agreement	
13.3. Restrictive covenants	
13.4. Warranties	
13.5. Technology licence agreement	
13.6. Premises Agreements	
13.7. Secondment Agreements	
13.8. Employment contracts	
13.9. Share option scheme - why establish one?	
14. Tax matters	42
14.1. Income tax	
14.2. Corporation tax	
15. Insurance	43
15.1. Individual insurance	
15.2. Company insurance	
16. Ready to get started?	44
17. Appendix: useful links	45

Starting a Spinout Company

This guide outlines the essentials of creating a spinout company, highlighting why and how you might consider this path, the support available, and the key elements required for success. Spinouts offer a way to translate research into societal and financial impact, but the journey requires careful preparation, dedication, and collaboration.

1. Why Start a Spinout Company?

Spinouts enable you to commercialise intellectual property (IP) developed through research, driving innovation and societal benefits. This path can yield personal rewards and funding for future research. However, it demands significant effort, resources, and adjustments to your academic focus. Alternatives like licensing or partnerships may be more suitable depending on the nature of your innovation.

2. Should You Spinout?

Before committing, critically evaluate:

- The problem solved and market potential.
- Product viability and competitive advantage.
- Team readiness and willingness to transition.
- Whether the innovation can thrive outside the university.
- Uncertainty may indicate that other approaches, such as licensing or proof-of-concept projects, could be better. St Andrews Innovation offers advice on these options.

3. Support from St Andrews Innovation

The university provides expertise to help researchers navigate funding, partnerships, and business incubation. Early-stage advice, access to proof-of-concept funding, and long-term collaboration can prepare your idea for commercial success.

4. Essentials for a Successful Spinout

- Intellectual Property: Robust IP protection is critical.
- Market Opportunity: Research and validate demand for your innovation through extensive customer engagement.
- Management Team: Attract skilled professionals to complement your expertise. Investors prioritise strong, experienced leadership.
- Funding: Secure diverse financial resources through grants, investors, or even personal networks, underpinned by a strong business plan.
- Your Role: Be prepared to commit, adapt, and accept external expertise. Success depends on your involvement and openness to coaching and collaboration.

Key Considerations

Spinouts require:

- An entrepreneurial mindset and the ability to navigate risks.
- Skills and resources often unavailable within the university.
- Managing time demands, routine tasks, and potential conflicts of interest.
- Awareness of legal responsibilities, particularly for directorship roles.
- Thorough preparation, clear vision, and resilience will maximise your spinout's potential to thrive.

1 What is a spinout company?

If you have generated intellectual property (IP) as part of your research at the University, forming a spinout is one of the ways you can generate impact for your research, translating your work into real benefits for society, regardless of which field you are in, and generate income that can boost your research area and provide reward for yourself. Other options include; licensing to a third party, a joint venture or collaborating with external parties to develop the innovation and bring it closer to market. In cases where there are already third-party businesses or organisations in the area of your idea or innovation, it may be that licensing directly to those organisations might be the best option. For ideas when there is no existing business to approach the new IP, or because the innovation has clear potential to generate many products and engage multiple sectors, it may be a better option to create a business to commercialise it. Such opportunities are known as disruptive or platform technologies. By taking a disruptive innovation to market yourself, you can deliver real impact.

While the rewards can be significant (wealth creation, personal satisfaction, societal impact etc.), it is important to know that creating a new spinout company is a substantial undertaking, and a decision that will have a transformative impact on your life. It will have ramifications for you as a researcher which you may not have considered. It is a challenging and sometimes stressful activity that may distract you from your academic work. It will require you to gather a range of resources such as specialist management, facilities, and funding (typically from a combination of investors, grants, and customers). This may sound like a daunting list of reasons not to form a spinout company, but it is essential that you are aware of likely challenges from the outset.

2 Should you spinout?

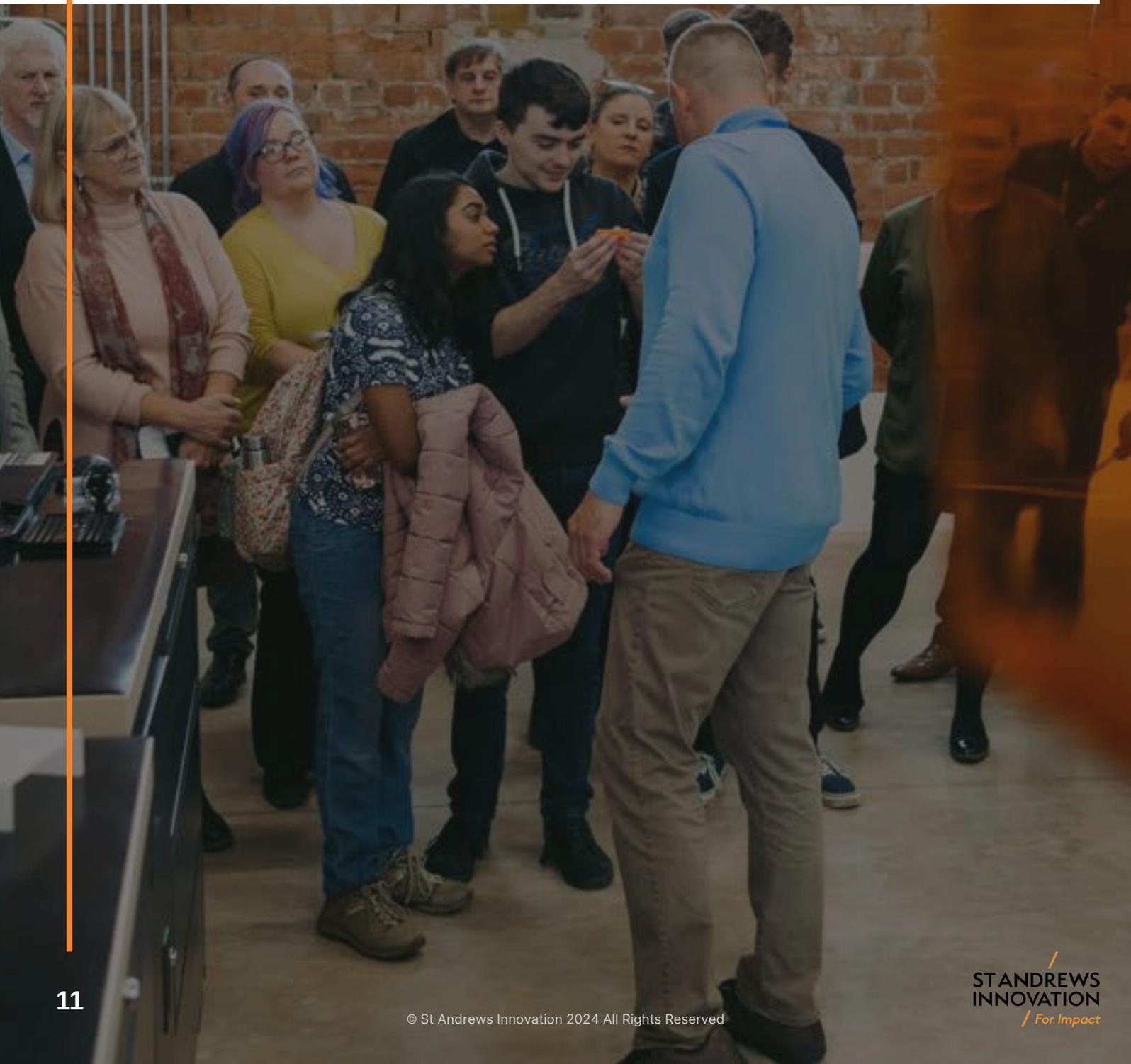
So, as you consider spinning out before you finally decide, continually ask yourself the following questions:

- What problem are you solving?
- What is the scale of the addressable market?
- Can you define the product or service and describe the market for it.
- What is your value proposition?
- Have you talked to potential customers and tested your assumptions?
- Have you studied other companies in your space and do you understand your point of differentiation?
- What team composition is required for the team to be a success? Are the key people willing to leave the university and commit to the new spin-out?
- Will this innovation advance faster by remaining in the university?
- Can your invention lead to an at least 10x improvement in how things are done today?
- What is the impact your spin-out could have?
- If you are not sure then an alternative approach should be considered. St Andrews Innovation can advise you on the best pathways to consider.

3 Our Support

St Andrews Innovation is dedicated to fostering innovation and entrepreneurship among the university's employees and students. We offer guidance and practical assistance to help you secure the funding and facilities to meet your business needs. Additionally, we support you in collaborating effectively with investors and experienced management whose long-term goals may differ from yours.

Not all research is suited for launching a new business, but St Andrews Innovation can help assess the potential of your research. It's never too early to discuss your ideas with us, and we encourage you to contact us. Your idea might benefit from a "proof of concept" project within the university to demonstrate its feasibility. We have access to in-house funding and can collaborate with you on long-term incubation projects, where additional university-led funding can help bring your innovation to market.



4 What will you need to form a spinout?

There are typically five essential ingredients for a successful spinout:

4.1. Intellectual Property

The innovation that you have created, and which is protected by IP rights will be indispensable to the spinout company. Expert groups such as the British Venture Capital Association (BVCA) rate IP protection as essential for university spinouts.

4.2. A clear market opportunity or unmet need

While IP is very important, you must also consider how IP and the ideas which it protects will be applied in the market. The innovation must form the basis of a sustainable business opportunity that can generate a return for investors. It is important to do your market research early. Establishing proof of market demand is as important as proving the technical principle. We recommend, as many others do, that you speak to 100 potential customers before launching a business. This thorough market research is essential to assess the commercial strengths and weaknesses before a spinout is formed.

4.3. Management

The team, not the invention, is the true foundation of your spinout company. Investors in your business will expect it to be led by a team with relevant management experience. You will therefore need to attract a range of individuals with a balance of top-class skills in fields such as management, finance, marketing, and sales. Many will have had previous successful experience within start-ups. In time you may need to take a back seat in terms of the spin-out's management, letting go of aspects of the business in which others have greater experience. A critical success factor is bringing in people with the requisite skills at various stages in the growth of the spin-out. Knowing your own limitations, and recognising where you or your business need help, are key attributes of successful entrepreneurs. This can be difficult to deal with but is essential to resolve early to ensure the greatest opportunity for a successful spinout.

4.4. Money

Your spin-out will require money to develop and grow. A range of sources for this funding exist including charitable translational funds, business angels, crowdfunding or from providers of patient or venture capital. Some researchers even raise money from family and friends, including charitable translational funds, business angels, crowdfunding or from providers of patient or venture capital. Some researchers even raise money from family and friends.

Whatever the potential source of finance, it will not be forthcoming in the absence of a robust and credible business plan..

4.5. You (and your co-founders)

As the generators of the IP, you will be essential to its transfer into the spin-out. Your continued involvement with the IP development and your commitment to the spin-out and support of the spin-out's business managers is vital. You cannot expect St Andrews Innovation to 'make it happen' for you. You will need to drive the process, but substantial support is available for you if you require and desire it.

If you intend to remain employed at the University of St Andrews while working on a spinout, you will need to obtain the necessary consents from the university for various related activities.

For example, employees generally do not take an executive directorship in a spin-out, and some funding agencies (e.g., the Wellcome Trust) do not allow researchers to be spin-out directors.

There are legal responsibilities attached to being a director of a company and before you spin out you must understand these and decide whether the benefit outweighs the potential risk.

Being involved in a spinout can lead to numerous demands on your time and potential conflicts of interest, which need to be managed properly.

Please see the University of St Andrews Declaration of Interests policy:

<https://www.st-andrews.ac.uk/policy/research-external-work/declaration-of-interests-policy.pdf>

In addition, a successful business also requires:

- **Time** - which you may prefer to spend on research and teaching.
- **An entrepreneurial mindset** – willingness to experiment and take risks; spot, explore and create opportunities; adaptability to constantly changing and unknown circumstances; dealing with uncertainty; ability to maintain flexible and pivot.
- **Skills & resources** – which may not be available at a university.
- **Willingness to be coached** – You will need to learn new skills, attitudes and adopt behaviours which differ from what you have done in the past. Coaching and advice will be available but you have to be open to acceptance of new ideas.
- **Mundane or routine work** – which you may prefer not to do (printing, stationery, document management, premises, insurance, meetings, travel, accounting, tax, HR and legal aspects).
- **A great deal of pitching** - over many months to investors and funders.
- **The ability to work with others** - with different skill sets (e.g., business and IP) and who may disagree with your vision for the business.
- **The ability to accept that the spinout will no longer be your ‘baby’** – it is a self-governing legal entity.
- **A measure of good luck and good timing.**

Spinout Process and Support

St Andrews Innovation provides expert support at every stage of creating a spinout, focusing on enabling growth and long-term success. This includes intellectual property (IP) protection, market evaluation, business planning, and incorporation support. The University's investment in spinouts includes infrastructure, resources, and guidance in exchange for equity and royalties, aligning with its commitment to the spinout's success.

1. Key Support Areas

1. Pre-company Support:

- IP protection and funding.
- Market research and evaluation.
- Assessing commercialisation options (licensing vs spinning out).

2. Business Formation:

- Assistance with incorporation, legal templates, and access to lawyers.

2. University Benefits

Successful spinouts contribute to:

- Research sustainability and impact.
- Enhancing the University's reputation and societal contributions.
- Expanding the entrepreneurial ecosystem and creating job opportunities for researchers and students.

3. Founder Commitments

Spinouts require substantial time and effort, especially in early stages. Key points include:

- Founders may take active or advisory roles (e.g., as directors or consultants).
- Business skills and external expertise are crucial for long-term success.
- University policies (e.g., Declaration of Interests) must be adhered to, including managing conflicts of interest.

4. Securing Approval

University support involves presenting a business plan to the Business Venture Group (BVG). Required elements include:

- Market assessment.
- IP evaluation.
- Head of School endorsement.

5. Equity and Royalties

The University retains IP ownership, offering licences to spinouts. Founding equity is distributed to contributors, with a focus on rewarding those critical to future success. Careful allocation is essential to ensure alignment with investor expectations and strategic growth.

Key Considerations

St Andrews Innovation offers crucial support in IP protection, market evaluation, and business formation. Spinouts drive research impact, enhance the University's reputation, and create jobs. Founders must commit time and expertise while adhering to University policies. Equity and royalties must be carefully allocated to ensure long-term success.

5 How St Andrews Innovation can help at each stage

St Andrews Innovation has the expertise to support you at every stage in the process of setting up a spin-out. Our goal is to help the spin-out achieve and sustain growth, so it has the best chance of long-term survival and success. Our contribution covers five main areas, each of which is discussed in more detail in section 9:

Our contribution to all new spinouts encompasses five main areas:

- Pre-company IP protection, management, and funding.
- Business planning.
- Pre-company market research and evaluation.
- Determining with you, the optimal route to market (Licensing vs spinning-out).
- Support with forming a new business (e.g., the process of incorporating, template legal documents, access to experienced lawyers etc.).

The University invests in both IP and significant infrastructure and resources to support the set up – and ongoing success – of a spinout company. In recognition of this and, as an ‘investor’ in IP and other resources, the University will require equity and a share of long-term royalties in the business. It means that we do not charge a fee for our services and advice, and since the University is invested in the spin-out’s success, you can rely on St Andrews Innovation to do all we can to help you to advance the spin-out’s interests.



“It is essential to protect your invention, which usually means obtaining a patent. Investors invest in people but they assign value to the venture based in part on breadth and robustness of the patent portfolio of the inventors.”

Eli Zysman-Colman, PhD, MCIC, FRSC
CEO and co-founder of SolOLED



5.1 How does forming a spinout benefit the University?

The creation of a successful spinout company is good for the individuals involved, the local and national economy, and the University. Spinout activity helps the sustainability of research, creates research impact, and enhances the reputation of the University, being one of the ways of demonstrating the contribution that it makes to society, the economy and the environment.

Spinouts offer valuable employment opportunities for post-doctoral researchers, only a small percentage secure full-time academic careers. Additionally, many undergraduate students now expect support for entrepreneurial activities, and spinout activities facilitate a network of experienced individuals who can offer valuable mentorship and guidance. This contributes to the growth of the entrepreneurial ecosystem, benefiting the University of St Andrews in the long term

also provide a valuable source of employment options for post-doctoral researchers, only a small percentage of whom enter full-time academia. In addition, many undergraduate students now expect and demand support for entrepreneurial activity and spinouts offer a network of experienced people willing and capable of providing valuable mentorship and advice. This supports the further expansion of the entrepreneurial ecosystem, to the lasting benefit of the University of St Andrews.



5.2 What is your commitment to the process?

Before embarking on the entrepreneurial journey, it is important that you understand the nature and extent of the commitment it entails.

As the originator of the research around which the spin-out is based, you will be at the centre of the spinout from the outset. You are likely to be an initial shareholder and may play a very active role in the spin-out.

While you do not need to be involved full-time, in the short-term it may be desirable for you (or one of your students or post-docs) to accept a part-time position in the spin-out to facilitate the early development of the innovation within the spinout. In line with the University's Declaration of Interests Policy, staff at the University may undertake or accept external interest with appropriate consent in line with this policy. If this interest is a consultancy with the spinout it can be administered through St Andrews Innovation who can ensure the appropriate insurance provisions and contractual arrangement are in place.

While your time commitment is likely to be substantial in the early stages, it is likely (and desirable) that it will tail off over time. Business and management skills are required for spinning out and subsequently running a spin-out and it is essential to identify these skills early on – usually in other people – which will enable delegation of more of the day-to-day management, finance, sales, and marketing work to experts.



Occasionally researchers do choose to leave the University in order to concentrate full-time on their spinout. If you intend to remain an employee of the University then you will require consent for your interest in the newly formed spinout from your Head of School. Involvement in the spinout can also pull you in many different directions and can result in possible conflicts of interest, which must be appropriately managed. Please see [University Declaration of Interests Policy](#):

You may be asked to participate in the Scientific, Technical or Research Advisory Board of the spin-out in the early stages of the spin-out's life. Though this is conventionally classed as a committee of the board of directors, you do not necessarily need to be a director of the spin-out to be a member. It is an important role, helping to ensure the directors of the spin-out understand its core competencies and any relevant issues, such as safety and regulatory issues, associated with the spin-out's innovation portfolio.

You may also take a non-executive director position on the board of the spin-out. Directors are typically concerned with the 'big picture' and strategic leadership of the business, and this is distinct from a management role. In an early-stage spinout spin-out, however, this role is likely to be much more 'hands-on,' requiring strategic direction of the spin-out and involvement in certain day-to-day business activities.

In such a role you will be involved in helping to set the long-term strategy of the spin-out, preparing plans to deal with and anticipate changes in circumstances and working hard to attract further sources of funding so that the spin-out can survive financially in the short term, and also continue to grow and fulfil its potential. There are also legal responsibilities attached to being a director of a spin-out and before you spin out you must understand these and decide whether the benefit outweighs the potential risk. It cannot be stressed too strongly that establishing and participating in a spinout spin-out can be very demanding both in terms of time and effort. Staff must therefore consider their involvement in a spin-out very carefully, as well as making sure they seek appropriate permissions from the University of St Andrews.

6 Securing the University's support

Once you have determined that forming a spinout company is for you and the bare bones of a business plan are in place, you will need to get the University to endorse the project to spin out the spin-out.

This is because you may:

- Require time off from regular duties to work on the business development.
- Need access to facilities and resources currently in the university.
- Require access to IP owned by the University.
- Have considerations around students and their contributions.
- Have conflicts of interests that need to be recognised, and managed.

Requests for spinout companies need to be made to the University's Business Venture Group (BVG). St Andrews Innovation can advise and support you during each stage of this process.

This group meets on a regular basis to consider and approve new requests.

Typically, the group will require to see:

- An outline business plan including initial market assessment.
- An initial assessment of IP by St Andrews Innovation.
- An endorsement from Head of School or Service Director.

If support is not forthcoming from your Head of School or Service Director, you will need to consider in conjunction with St Andrews Innovation, whether commercialisation can still proceed by using external lab or office space. In some circumstances support will still be available to help you achieve this.

You will be asked to give a brief presentation to BVG. If appropriate, BVG will give approval in principle and the detailed development of the spinout can begin.

7 Conflict of Interest

A conflict of interest occurs when an individual's private interests may compromise their professional obligations to University. It includes both perceived, potential and actual conflicts.

If you wish to participate in a spinout, you will need to consider the University's conflicts of interest policy since you may become a shareholder, director and/or be a consultant to the spinout company. You need to be clear about when you are working for the spinout company and when you are working for the University. This is particularly relevant in terms of having to determine who owns any IP rights which may be being developed.

This is further complicated if you are using students under your supervision or the University's facilities to work on projects related to the spin-out. The University Declaration of Interest Policy can be found [here](#).

8 University and founder- researcher royalties and equity

The University expects to be a shareholder in the spinout company because of the resources and environment it has made available to the founders to generate the IP going into the spin-out, and any support it may have provided (or which it continues to provide).

To access any intellectual property owned by the University, the spin-out will need to negotiate appropriate licences for the intellectual property, including patents, copyrights, and know-how etc.

Note that this includes copyright in software code. 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 spin-out - we understand the importance of cash to the spinout in its early years.

At the University of St Andrews all inventors share in any proceeds from the commercialisation of IP after recovery of initial costs incurred by the University. This includes founders of spinout companies who also receive equity in spinouts. In simplistic terms the policy is as follows:

- All inventors & creators can elect to receive founding equity in spinouts (relative proportions are determined through negotiation between the inventors)
- Any person receiving founder equity does not share University equity nor do they share in any proceeds from royalties or other payments received in connection with the licence grant (e.g., cash fees, milestone payments, minimum annual royalties etc.)
- Inventors and Creators who do not receive equity, will be entitled to receive a share of proceeds from royalties or other payments received in connection with the licensing of IP.

This advice represents guidance only and you should refer to the latest [University IP Policy](#) to ensure that you are reading the most up-to-date and accurate information.

The founding IP will be licensed into the spin-out by the University. This is different from an 'assignment' of IP which is essentially a transfer of ownership of IP from one party to another. The University does not assign IP immediately on spin-out, even though your investors or management team may request it.

It is important to understand that the University will not assign IP immediately on spin-out. You should ensure your incoming investors understand this and expectations are set appropriately during your fund-raising activities. This is a common deal breaker and an area of significant contention. As the University will not negotiate on this position it is a crucial area in which to manage the expectations of all parties in relation to this matter.

Some investors or lawyers may try to 'demand' IP assignment citing various reasons. However, an exclusive licence with the rights to control IP prosecution is, to all intents and purposes, as good as an assignment. It is important to the University that it licenses IP into spinouts to ensure that:

Royalties do not become 'decoupled' from the IP going forward.

The IP can be recovered & recycled if things do not go to plan in the future.

Spinout equity will need to be shared between all those involved in the spin-out such as the management team and (future) employees. This is a key issue that needs to be dealt with early in the process and can be partly addressed with a share option scheme to reward future input. It will be important to future investors that the division of the spin-out's equity (both current and any share options) recognises and rewards those people who are key to the strategic direction and growth of the spin-out.

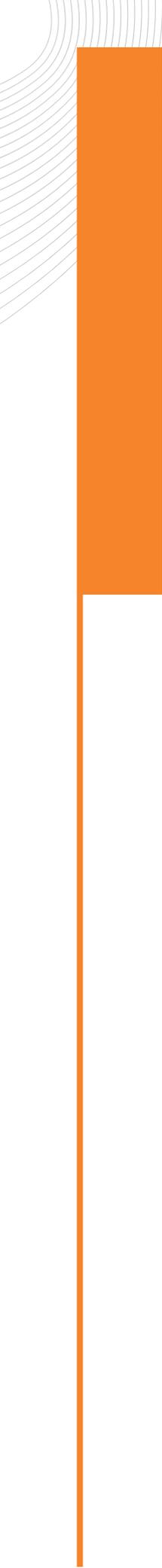
Inventors of the University-owned IP required by the spin-out, who are active in the spin-out prior to and subsequent to formation (founder-inventors), will usually take founding equity in the spin-out. Alternative arrangements where such staff share in the revenue received by the University in relation to the technology licence agreement can be discussed (see section 13.5). Inventors who are not founders, will normally benefit only through the benefit the University receives from the licence agreement.

IP will form a significant part of the early value of your spinout. So it is essential to understand what IP you need access to, how it was created and how you will access it.

Christian Ziar
Head of Technology Transfer



HM Revenue & Customs (see section 14.0) and the University view founding shares that are allocated for historical contributions as a benefit of your University employment. Therefore, if founders also received income from the technology licence agreement, as per the University's staff revenue sharing policy, they would be rewarded twice for the same activity (commonly known as 'double dipping'). As such, founder-researchers receiving equity are required to waive their right to receive income that may flow in the future under the technology licence agreement.



Founders may be able to purchase shares in an arm's-length transaction on a par with other investors without affecting their right to share in the University's future income.

It is typical for inventors who are actively participating in the spin-out to take founding equity in the spinout, while any inventors who are not actively participating usually share in the University's revenue.

Allocating founding equity in this way aligns with the expectations of investors who wish to see those critical to the spin-out being rewarded through the success of the spin-out (via an increased share price).

If the founding equity position is too heavily weighted in favour of historical contributions, investors are likely to 'correct' this (typically via the creation of a large option pool or via a spin-out restructure). This type of 'correction' can negatively affect the equity position of other founders.

The key message is that it is best practice to allocate the founding equity carefully and ensure that the people needed for the future success of the spinout are appropriately rewarded. St Andrews Innovation can advise you on this.

Due Diligence, Funding, and Spinout Formation

This section covers the essential aspects of managing intellectual property (IP) and securing funding for a spinout company. It outlines the importance of IP protection, the process of due diligence, and the types of funding available at various stages of development. Additionally, it provides guidance on pitching to investors, ongoing funding needs, and potential exit strategies for spinouts.

1. Intellectual Property (IP) Management and Due Diligence

- **IP Management:** Protect intellectual property (IP) early. The University owns IP created by its employees, requiring a licence agreement to transfer it to a spinout.
- **Due Diligence:** Identify and secure the necessary IP for each development stage. St Andrews Innovation can assist in ensuring the spinout has the required rights and respects external funders' rights.
- **Ownership & Freedom to Operate:** IP created at the University belongs to the institution. Ensure IP rights are secured for both existing and future developments.
- **Heads of Terms:** The IP licence agreement is outlined in a "Heads of Terms" document. Engage legal or commercial experts to help navigate this process and streamline negotiations.

2. Funding for Spinouts

Funding Sources:

- **Customer Funding:** Validate demand through models like subscriptions or pay-in-advance.
- **Grants:** Explore non-dilutive funding from sources like Innovate UK and Scottish Enterprise.
- **Business Angels:** Early-stage investment with equity exchange and valuable networks.
- **Crowdfunding:** Suitable for pre-seed and seed-stage funding.
- **Venture Capital:** High-risk finance with a focus on high growth.
- **Corporate Venturing:** Large companies invest for returns or strategic collaboration.
- **Bank Loans:** Possible with commercial contracts supporting cash flow.

Pitching to Investors:

- Focus on market opportunity, problem/solution, traction, and business model.
- Prepare for due diligence with meetings and industry feedback.

Future Funding & Exit Strategies:

- **Ongoing Investment:** Transition from equity to debt financing as the business matures.
- **Exit Strategies:** Plan for exits via sale or public listing, aligning investor timelines with business growth.

3. Establishing the Spin-out Company

- **Incorporation:** Register the company, appoint directors, and allocate shares.
- **VAT Registration:** Required for IP license payments, including share grants.
- **Business Bank Account:** Open for financial operations.
- **Securing Funding:** Obtain short-term funding for initial needs.

The process typically takes 6-9 months. Key considerations include structuring the company, managing share allocations, and understanding liabilities, including directors' potential personal responsibility.

Key Considerations

Protect IP early and ensure all necessary rights are secured. Engage St Andrews Innovation for support with due diligence, licensing, and funding. Founders must commit time and resources, adhere to University policies, and balance equity with long-term financial planning. Clear goals and strategic partnerships will maximise the spinout's growth potential.

The Journey begins

9.1 IP management

The IP is a key asset so identifying and protecting it should be the starting point. Without protected IP, there will sometimes be no spin-out worth forming. IP encompasses a range of different rights and protections. While patents are heavily emphasised by spinouts and investors, other types of IP are equally useful.

The forms of IP most relevant to your purposes are likely to be:

- **Copyright** - for software, reports, online content
- **Design rights** - for equipment and engineering designs
- **Patents** - for inventions
- **Trademarks** - for names
- **Data** - clinical trial information not in the public domain
- **Know** - how/trade secrets

Your spinout company will almost certainly be founded on a combination of the different rights listed above. Some rights must be registered (applied for) to be effective; others arise automatically.

Under UK employment law, where an employee creates IP in the course of his or her normal duties, the ownership of the IP rests with the employer. As such, if you are an employee of the University of St Andrews, it will own any intellectual property you create in the course of your duties. More details on this can be found in the [University's IP policy](#):

As an employee of the University, it is likely that you may already have worked with St Andrews Innovation to protect some IP if you are now thinking of forming a spinout.

However, if you have not yet done so please contact [St Andrews Innovation](#) as soon as possible, and ideally before any disclosure of the idea into the public domain (such as through a publication, abstract, poster, talk or presentation). We understand the pressures and procedures of academia and we can ensure that applying for IP rights does not cause a delay to publication or impact on your research or teaching activities.

The best way to protect the IP will be influenced by a range of factors, such as the type of products and services the spin-out will sell, your channels to market and the competitive advantage provided by the IP.

It is worth bearing in mind that the patent process involves publication of the invention (alongside a monopoly over its use for a set period) and therefore some companies choose instead to operate using trade secrets (e.g., Coca-Cola®) and/or copyright (e.g. software based data analytics companies). Non-disclosure agreements with the spinout's future employees are an important protection used in businesses reliant on trade secrets (St Andrews Innovation can advise you on when and how to put these in place).

Your name and branding can also help you to stand out. When thinking about IP, also consider a spin-out name that is unique, appropriate and memorable to the customers that you expect to engage with. To protect against others using that name, consider registering the name as a trademark in the territories in which the spin-out will be trading. Do not forget about the registration of domain names. If you want your spin-out to have a website (which you probably will), then you will need a domain name. Try to produce something memorable and distinctive. Search the internet for your chosen name to see if anyone else is using it.

It is always easier to swap over to a new name at this stage if there is a problem. Again, St Andrews Innovation can advise you on how to get started with this.

9.2 Due diligence

You need to identify all of the IP that the spinout company will need by working through each stage of your development and production processes methodically to see what IP is required at each stage. The spin-out may be reliant on a specific software package, manufacturing process, data set or technique for its success.

Write down every piece of IP that your investigations uncover – this list will be required for your discussions with St Andrews Innovation to ensure that the IP licence agreement transferring rights from the University into the spin-out covers what your business needs to operate as a separate entity. It is also important to clarify to potential investors the IP rights that your business needs to operate successfully, and that your spin-out has the necessary access rights.

If the innovation that led to the IP was funded externally, care will be taken to ensure that any funders rights to IP are respected.

9.3. Ownership and freedom to operate

Under normal circumstances, and where an employee creates IP in the course of his or her day-to-day work, the ownership of the IP rests with the employer. Transfer of the right to use IP created within the University to a spinout company will occur via an appropriate licence agreement (section 13.5).

While high-technology spinouts are usually founded based on a package of IP, they also tend to develop new intellectual property throughout their years of operation. Your spinout must retain the rights to IP developed and created within the spin-out in the future – sometimes called ‘downstream’ or ‘arising’ IP. You must ensure that all spin-out employees have adequate IP and confidentiality safeguards in their employment contracts.

Consultants are not classed as employees. Therefore, generally, IP created by a consultant will not automatically be owned by the spin-out.

You must ensure that individual consultancy agreements are put in place dealing with IP ownership with any consultants that you engage with. St Andrews Innovation can assist in this matter. However, beware a common mistake. A consultancy contract with an existing University employee may not override their employment contract with the University. New IP created by such employees in the course of their duties may continue to be owned by the University. You will need to put in place a separate legal arrangement to access IP arising from consultancy activities.

This is a common error that can cause anguish and commercial pains when discovered. As such we strongly advise that you address these matters in advance and do not ignore them or put them off until later - your investors will not thank you for it!

St Andrews Innovation can provide advice here if required.

If the spin-out wishes to continue to work with the University in the future it will also need to put in place obligations of confidentiality between itself and the University.

St Andrews Innovation can also advise on the use of University facilities, during consultancies, by spinouts:

[Get in contact here](#)

Agreement must be in place for the continued use of University or St Andrews Innovation resources by the spinout (this is more likely to occur with new companies that have few resources or employees – the ‘virtual spin-out’). The University should not be put in the position of being the research and development arm of a spinout company as this could endanger both its charitable status and agreements with funders.

You must also be clear about arrangements with the spin-out since the University does not wish to be placed in a position where all downstream IP automatically goes to the spinout via the original licence agreement. It will expect to freeze the original licence deal at a point in time and come to separate arrangements about accessing future IP or facilities via separate option contracts, sponsored research agreements or other arrangements.

If you think your spin-out will require access to future IP created at the University after it has been formed, you must talk to St Andrews Innovation about your options to ensure that this is addressed during the spin-out licensing negotiations.

It may be tempting to ‘turn a blind eye’ and let IP ‘leak’ into the company post spin-out over time from University employees via natural diffusion (i.e. frequent dialogue and interaction). However, your investors will require absolute certainty on the ownership of all of the IP by the spinout which will demand that you access future IP in an appropriate and watertight legal manner. They will not want to be exposed to misunderstandings or disputes about IP ownership in the future, especially as these types of issues are often discovered just at the point the spin-out is doing a major deal or being acquired.

It’s important to note that any IP accessed by the company post spin-out, will undergo the same due diligence process as the original IP.

It may be that other parties within the University, or further afield, have a stake in some of the IP that the spin-out needs. You should consider whether any contributors to IP linked to the spin-out are able to provide that IP to the spin-out to use commercially. You should also consider whether a third party working in a similar field already holds some of the rights that you will require. For example, you may need to access the rights to a production/manufacturing process that is crucial to the development of your unique product.

To go ahead with a spinout with confidence, find out exactly where you stand in this regard – otherwise your spinout might risk infringement of third-party IP rights.

You can search for existing patents and patent applications yourself using the European Patent Office’s Espacenet patent search website (see Appendix). You should at the very least check for patent applications filed by other researchers and companies active in your field.

St Andrews Innovation can assist you with general queries about IP and the required IP due diligence. We run regular, free-of-charge IP surgeries and we work with a number of patent agents and lawyers who give their time free to answer initial questions. Generally, specific detailed analysis of competing IPR will incur sometimes substantial fees, but independent IP advice can help to give investors comfort that the spin-out has the required freedom to operate.

9.3 Heads of terms

You will agree with St Andrews Innovation the terms of the IP licence to your spinout company, generally in the form of a non-binding IP Heads of Terms (HoT) document. This outlines the terms of the IP licence into the spin-out and addresses key investor questions, on topics such as milestones and royalties, inclusion of know-how, sub-licensing and clarity over the fact that the University will not assign IP at the outset to the spinout. A template IP licence may be attached to the HoT.

It is best practice to agree the HoT with St Andrews Innovation before approaching investors. St Andrews Innovation seeks to avoid a scenario of double negotiation (with the spin-out and again with the investor) so a robust and professional negotiation of the main terms, held once, up-front, and before any investor roadshow begins is required.

Based on experience, St Andrews Innovation has found it more effective to negotiate with spin-out advisers rather than exclusively with the founders. We encourage founders to work with/appoint experienced advisers to expedite the negotiation process. This approach minimises the risk or perception of conflicts of interests arising.

These advisers can be any of:

- Your appointed (or soon to be appointed) legal adviser
- An independent consultant (commercial champion) appointed by the spin-out
- Prospective management for the spin-out
- Other qualified parties who are there to independently represent the best interests of the new spin-out (not the founders)

Initial IP costs borne by the university will need to be repaid upon execution of the licence agreement or when the spinout has sufficient funding.

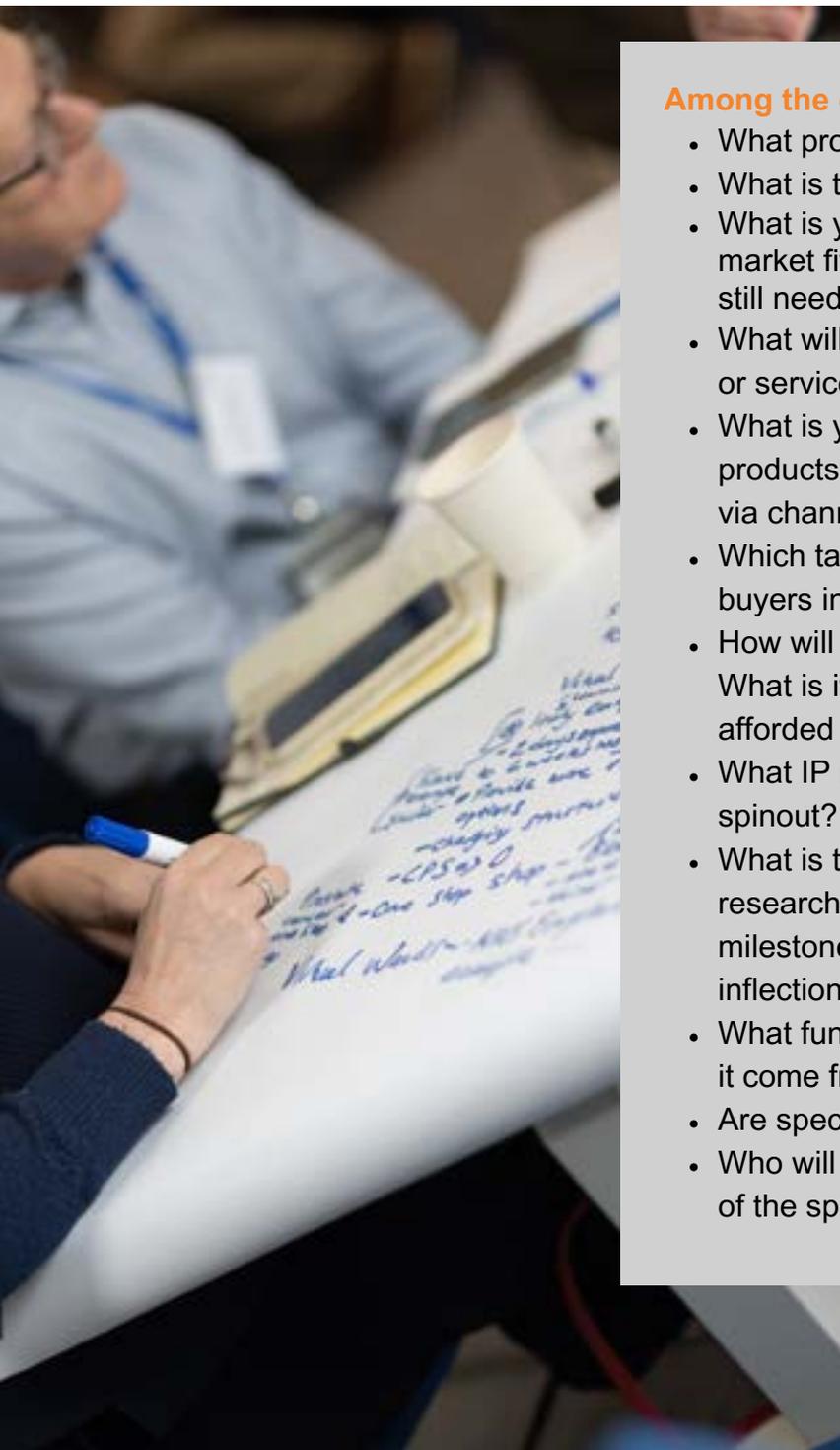
A similar arrangement will be used for other special costs incurred on behalf of the spin-out. Terms to this effect will be included in the IP Heads of Terms.

The licence agreement will be signed by the spinout company - i.e. post-incorporation and when the spin-out has sufficient reserves to be solvent and develop the innovation to a meaningful value inflexion point. The aim at this stage is to get everything ready to go without “pushing the button” until the incorporation and formation process is firmly underway.

It is important for inventors to understand that this approach to forming spinouts and licensing in the innovation is intended to enable inventors to succeed in translating their technologies into use without jeopardising the mission or funding status of the University.

9.5 Business planning

At the same time as conducting due diligence and protecting IP, you need to scope out the spin-out’s offer and how it will operate. You will not get your business plan right first time; it is an evolving process, and one in which St Andrews Innovation can lend a hand.



Among the questions we will consider together are:

- What problem are you solving?
- What is the scale of the problem?
- What is your offering? What assessment of product market fit have you been able to do and what do you still need to establish?
- What will the spin-out do? Specifically, what products or services will it sell?
- What is your business model? How will you get products and services to your customers –directly or via channels/distributors
- Which target markets will you aim for and who are the buyers in that market?
- How will the spin-out differ from its competitors? What is its unique selling point? What benefits are afforded by the IP?
- What IP must you transfer from the University to the spinout? And what kind of licence will you seek?
- What is the likely timescale between completion of research and going to market? What are the key milestones and deliverables/proof points/ value inflection points
- What funding will the spin-out require and where will it come from?
- Are specialist facilities required?
- Who will be involved in the day-to-day management of the spin-out? Team and Board composition

Answering these questions will also help you create your pitch deck for investors in your fund raising activities (See 10.8).

Putting your ideas down on paper is not only essential in demonstrating the spin-out's viability and your commitment to potential investors; it also provides clarity so that you can convey your ideas clearly to a wide range of stakeholders.

Additionally, any organisation licensing IP to the spin-out (be it the University or a third party) will want to see the business plan for reassurance that the spin-out will use the IP to good effect.

9.6 What goes in the business plan?

The business plan should be clear and concise. It will be easier to sell the vision to investors and attract management talent with a formal business plan (or even just a brief executive summary). Investors are interested in spin-outs with high growth potential and good people to manage them. The business plan should address what investors want to know: the compelling concept, competitive advantage (including patent and IP position), market and financial potential, and proven management team. The business plan should be carefully distributed.

The business plan is a structured approach to making something happen. Make it usable and action-orientated - what milestones need to be passed in each area to make it happen - and when? Set them out, assign priorities, responsibilities and deadlines - even if they are all down to you. How else will you track progress?

9.7. Business plan content

- **Executive summary** – ideally a one-page, clear and persuasive summary of the key points for your investors, and an opportunity to keep you focused. It may be that potential investors have allocated time to read only the executive summary, so make sure that it is succinct and lifts the key points from the rest of the plan.
- **Background** – brief details of what you have done so far, focusing on your research and the resulting IP
- **Problem /Solution /Benefit** – What unmet need will your product address, how is it better, cheaper, faster than existing solutions and what is the competitive landscape?
- **Market analysis**–Is the addressable market big enough? Is it controlled by a few players? Is there a healthy growth trend?
- **Business model** - how do you make money? How will the target market know about the product? Which sales and distribution channels will be used? How many prospective customers or other key players in the value chain have you actually spoken to?
- **Team** – a description of what each of the key people brings to the business, plus any plans to recruit further managers
- **Risk analysis** – set out your ideal scenario and how you will manage should the worst happen. You are likely to be asked what the spin-out will do should things go wrong; milestones be missed or funding run out. If you've already rehearsed answers to these and any other difficult questions likely to arise, you will be in a better position to respond effectively.
- **Financial information** – how much time and money is required to bring a product to market? Well thought out and clearly presented financials are essential. But think about what indicators are needed to drive the business and what information is needed to manage it. Usually, you should include at least a three year summary of the profit and loss account, balance sheet and cash flow projections. This should set out a month by month plan for the first year; quarterly thereafter. Show where the money will be spent. Say something about the likely timescales for returns on investment and the method of selling shares (the exit). This is how investors make their returns. Can they expect a sufficient multiple on their initial investment for example 5 times their initial investment over five years? What market share can be obtained? Is it worth the effort? Investors will be particularly interested in scrutinising the figures so make sure you know them inside out. Investors will be particularly interested in scrutinising the figures. They will be seeking assurances that they will see a return on their investment, and that this will be within an appropriate time frame.

9.8 Market research

St Andrews Innovation will help you independently qualify the value of an innovation to properly ascertain its commercial strengths and weaknesses.

St Andrews Innovation has access to many successful entrepreneurs – some of whom have sought our support in the past. We have also established a wide network of industry contacts by virtue of the volume of licence and co-development projects we undertake. Through these connections we have a broad range of real-world business expertise and mentors at our disposal.

When you come to us with your idea, we will help you to reach out to an early adopter for an impartial perspective on its chances of success and to pin down the business opportunity to focus the spin-out's efforts on the best route to market. Sometimes the initial market is not obvious, particularly when it is beyond the originator's field of research. Further, in-depth, independent market research may be commissioned following this preliminary stage. St Andrews Innovation has access to funds to support this.

9.9 Building your team

Essential components of a successful start-up include a compelling concept, a strong market opportunity, a competitive advantage, a sound business and financial plan, a strong IP position and an experienced management team.

While everything mentioned above is important, investors focus on management. You may be the world's leading expert in your area of research, but you will still need help to develop the innovation and the spin-out. Successful founders recognise the gaps in their skill set and understand the importance of bringing in complementary team members to complete the management team.

In the very early stages you may neither need nor be able to afford full-time senior managers in specialist fields such as marketing, finance or regulatory processes; but you will require access to that sort of knowledge if your business is to be credible and successful.

You should appreciate where your own skills lie and where, as a founder, you can add most value to the business. It is a fact that in many, if not most, successful innovation start-ups the founders have a clear business vision but also recognise the gaps in their own experience. They should therefore plan from the outset to recruit a skilled and experienced CEO-leader that can fill those gaps and manage the business day-to-day.

It can often make sense to recruit people from outside who are expert in their own particular area or can open doors to key contacts and markets. While building the proposition you will attend numerous trade shows and business meetings with potential customers/collaborators and pitch to a range of interested parties. This will give you some insight into the strengths and weaknesses of the current team. The make-up of the spin-out will change as the business grows and it becomes necessary to have other skills at management level.

Be sure that any research associates intending to move to the spin-out are able to fill some of the identified skills gaps. Prioritise their appointments early on to maintain enthusiasm and prevent commitment waning, and be clear that they are part of the founding team and will be fairly incentivised.

Making professional appointments can help at this stage – for example, appropriate legal counsel and tax advisers to assist with incorporation issues and licensing (section 13).

9.10 In summary:

- Create a core team with high potential.
- Carefully consider the diversity of your team and their complementary skills. You do not want a team of people who cannot get along, and nor do you want one in which everyone is very good at the same thing but there are skills gaps.
- Do not act alone. Seek partners, coaches and mentors to help you sell and market your product and engage with them early.
- Know your co-founders. Can you survive something like the equivalent of a marriage over several years with them? It will be intense.
- The best people cost money. Spend it wisely.
- Hire a team that is better than you. This is a scary proposition – what if they make you look stupid or undermine you? Get over it. The best team will make you look good and your spin-out successful.
- Always be the best prepared person in the room. This applies to all aspects of the business, not just the innovation. Make it your job to understand all the aspects (even if it is not your role to be CEO). The best founders have a good ‘helicopter’ view of the entire business (rather than just their specialism).
- Do not take bad professional advice just because it is cheap.
- Network sensibly. Do not talk to everyone about everything, but identify and talk to the people you really need to talk to. Do your research first, do not just turn up, ‘work the room’ and hope for the best.
- Listen well. Not just to your customers, but also to your team, your non-executive directors, your advisers and your consultants. Then draw your own conclusions, make a decision and act on it. Know when to change your plans and when to stick with your vision.

9.11 Network, mentors, advisory board

You may wish to consider building an advisory board at an early stage. Consider whether it is a scientific advisory board (SAB) designed to advise you purely on scientific matters, a commercial advisory board, or a mixture of the two.

Note that this board does not actually need to be in place until the spin-out is set-up, but beginning to network early and starting to line up some potential future members can pay off later. Try to identify individuals who have done something similar to what you are planning (and have been successful at it). Look for complementary skills, not ‘clones’ of yourself. Use your network to get introductions and then meet them for a coffee or lunch and quiz them not just on their knowledge, but also their ‘fit’ and whether you feel comfortable listening to their advice.

Do not try to convince them to join just yet. You will want to ensure that all the co-founders, your incoming management and your investors all buy into their appointment. You should make an effort to meet them at least twice before offering them a position on your advisory board – many people rush to sign them up after the first meeting and can suffer for it later through issues such as bad chemistry or not being valued by investors or management so take your time and get it right

10 Funding

Taking your idea to market, and operating and growing a business, will require an injection of cash in some cases considerable sums. Be realistic in the business plan about exactly what is needed; underestimating the funding required will just cause setbacks later. It may also be necessary to make an assessment of how time to market is dependent on the scale of funding that is raised.

Funding might come from any or all of the following:

- Customer funded
- Grants
- Business angels
- Crowd funding
- Venture capitalists
- Corporate venturing
- Bank loans



Each of these funding sources requires something in return, whether it be interest, equity, or products. St Andrews Innovation can advise on the pros and cons of each option and assist in presenting your idea to potential investors, supporting you throughout the process of securing their backing. With every success we achieve, we expand the network of investors eager to collaborate with us

Investment can, of course, mean more than simply providing access to funding. It can be hugely advantageous to your business if an investor is able to share contacts or other resources that could benefit the spin-out. Once an investor commits to the spin-out, it becomes much easier to attract additional interest.

10.2 Customer funded

Selling directly to customers provides an income stream that isn't impacted by the repayment or return obligations of debt and equity financing.

This is by far the best method of financing as it provides validation that the customer will pay for your innovation to solve their problem or unmet need. Depending on your innovation there are a number of models (these are not exhaustive) to support this:

- Matchmaker models (e.g. Airbnb, Uber, Expedia)
- Pay-in-advance models (e.g. Dell, Costco, Tesla)
- Subscription models (Amazon Prime, Dollar Shave Company, Adobe)
- Scarcity models (Nike limited release, Groupon, Supreme)
- Product as a service models (Volvo subscription, leasing, rentals)

10.2 Grants/Non-dilutive funding

External grants and non-dilutive funding can be a very effective way to fund early stage businesses and gain valuable proof points. The grant landscape is fluid but may include Innovate, Horizon, Converge and Scottish Enterprise (including Smart Grants). Founders should explore all grant opportunities on an ongoing basis. The University offers internal grants for Proof of Concept (PoC), competitions and fellowships. Note that pre-company awards may come with revenue sharing obligations to repay the amount borrowed from future royalties.

10.3 Business angels

Business Angels are successful, wealthy individuals, and have often acquired their money through business pursuits. They generally invest at earlier stages (e.g. pre-seed and seed) and with smaller amounts of money than Venture Capital providers (VCs) in exchange for equity.

Some angels invest on their own as individuals and others as part of syndicates. There may be significant value in their networks which can help your business. It is important to diligence the angels before you take investment to ensure they are aligned with your business objectives.

These high net worth individuals are keen to invest and can be located through Angel Capital Scotland (www.angelcapital.scot), the national association for business angels in Scotland and the UK Business Angels Association (www.ukbaa.org.uk). Both are home to successful business people and entrepreneurs who may be prepared to back a new spinout company.

10.4 Crowd funding

Crowd-funding companies enable entrepreneurial fundraising by pooling small investments (or payments for future products) from a network of individuals. Equity-based crowd funders targeting high innovation do exist. However, most crowd funding is suited for companies that require smaller amounts of capital investment, or are limited to investing at the pre-seed and seed stages (as they lack substantial follow-on capability). In this respect, they are an alternative to angel investors.

10.5 Venture capitalists

Venture capitalists (VC's) specialise in providing early stage 'risk' finance. While there are some generalist VCs, most have sector specialism and specific investment theses. Many will only invest in software businesses; some will invest in hardware too. Many focus on MedTech or therapeutics only. It's important to do your homework and research investment criteria before you approach a VC otherwise you may waste significant time.

VC are usually investing cash from funds which are time bound so need a very high growth and return from a small number of companies in their portfolio, offsetting typically high failure rates. Their networks and experience in particular sectors can add significant value to your business if you select carefully.



Investors will also be keen for your reward to come directly from increasing the value of your shares; for this reason they may not support you in receiving significant (if any) consulting fees (but they will want you to have a salary if you have joined the spin-out).

10.6 Corporate venturing

These are typically large life science or ICT companies who may invest in early stage businesses for investment returns or as part of a strategic alliance or commercial collaboration with that spin-out. The terms of investment will vary depending on the Corporate's strategy and it will be important to diligence their objectives to ensure alignment with your business strategy. There could be significant benefits from the involvement with the Corporate such as their commercial engagement and networks, but there may also be aspects which are less desirable including information rights and control provisions.

10.7 Bank loans

Loans are not usually available to early stage businesses as, without profits, they will struggle to give confidence around repayment. However, if your business has commercial contracts which would support future cash flows it may be possible to secure loan funding.

In discussions with potential lenders it may be possible for them to get support from British Business Bank through The Enterprise Finance Guarantee (EFG) is a loan guarantee scheme to facilitate lending to viable businesses that have been turned down for a loan or other form of debt finance due to inadequate security or lack of a proven track record. EFG is managed by British Business Financial Services, a wholly-owned subsidiary of British Business Bank plc. While the government provides a guarantee to the lender, they have no role in the decision making process and are not party to the loan agreement between the borrowing business and the lender.

10.8 How to pitch to potential investors

Before writing your business pitch, consider the specific investor you have in mind and their likely preferences and concerns around providing funding.

Make sure that you write a business pitch that inspires confidence and assuages any concerns. The focus is not on the innovation itself. It is all about the product or service that the spin-out is going to take to market and what it is about that product that will inspire people to buy it – not just once but repeatedly, and in ever greater volumes.

The pitch should be in the form of a slide presentation using clear schematics to explain business models, product lines, routes to market, and development and purchasing cycles.



The presentation should cover:

- One liner that explains which market you operate in and how you disrupt that market
- Problem - what problem are you solving
- Solution - how are you solving it. Keep it simple
- Traction - what progress have you made to date
- Market size - how scalable is the market/is it big enough
- Business Model - how do you make money?
- Roadmap - what does the future look like in terms of key milestones/value inflexion points that de-risk the venture
- Vision - what does the future look like when your solution is fully adopted in the market
- Team - explain why credible /detail experience
- The Ask -how much are you raising and what will you do with it
- Contact Details

10.9 Initial Due Diligence

This initial due diligence process (not to be confused with the University's IP due diligence process) can take some months and you will be expected to be available for meetings with their advisers and provide detailed information on request. You may also have follow-on meetings with investors. Investors will canvas key opinion leaders and industry specialists at this point to gather intelligence on your idea.

10.10 Future investment

Ongoing investment will be important as the spin-out will need access to cash at every stage. Over time, the spin-out is likely to move away from high risk equity finance towards debt finance and/or income from sales.

Securing grants that support ongoing product diversification (e.g., SMART grants) and enable collaboration (e.g., Knowledge Transfer Partnership and Innovate UK awards) is a good way to part-fund further developments. It is, however, important to use grant funding to complement the development of the core product and ensure it doesn't distract attention down new avenues before the spin-out is ready.

10.11 Exit strategies

Somewhere down the line, investors will wish to recoup their investments. The spin-out will have to be sufficiently stable to allow this. Exits can have many forms, but typically may take the form of all current shareholders selling to a new investor or existing business in the market, or a listing of shares publicly on a stock market.

When pitching to and accepting cash from investors, the spin-out should take account of any time sensitivities they have. Try to ensure that the investor's timeline aligns with the spin-out's ability to increase in value and its potential to be in a good position for the shareholders to benefit from an exit.

11 Establishing the company

Setting up a company involves a number of actions, the most immediate of which are:

- Incorporation of company – decide on registered office, directors, company secretary and shareholdings of founders
- Register for VAT – VAT must be charged by the University for the consideration paid by the spinout for the IP license, including when that payment is partly satisfied by the grant of shares
- Open a business bank account
- Obtain funding for short term needs as a minimum

This first stage will involve a lot of advisers, including business mentors, legal advisers, tax specialists and patent attorneys (where relevant). Each has an important role to play.

11.1 How long does it all take?

It is impossible to set a hard-and-fast timeline for spinning out a company from the University.

That said, around six to nine months, from the first thorough draft of the business plan to agreeing terms with the University, is fairly standard.

Delays most commonly result from difficulties in securing finance and negotiations with the University need to run in parallel and iterate at the same time to give comfort to both investors and the University .

In some case, intellectual property work may extend the time needed if there are multiple technologies, inventors and owners to be taken into account.

11.2 Company constitution

The company is most likely to take the form of a private company limited by shares. A company is a legal entity in its own right and can enter into contracts and undertake obligations.

The ownership of the company rests in the hands of its shareholders. Some may have a controlling stake in the company, others not. Either way, it is the directors who manage the company day-to-day, and they may or may not be different people to the shareholders. Directors tend to take a strategic role but in a small company will probably participate in the day-to-day management too. The shareholders are ultimately in control as they can veto decisions and recruit or remove directors.

11.3 Shares

Different rights can attach to different sorts of shares, with ordinary shares being the most basic form.

Keeping things straightforward and easily manageable is crucial at the start. Issuing shares with preferential rights at the start can be off-putting for investors at later stages, and professional advice should be sought to ensure the share allocations are not problematic later on.

In the future, investors may demand shares with preferential rights in return for their funding support. For example, a class of preferred ordinary shares may be issued with rights to a preferred dividend or enhanced voting rights.

Be sure that any decision to award shares to anyone outside the company is only made after first seeking legal advice and because you are certain that making such a move is in the interests of successfully growing the company. Investors and other stakeholders may view these shares as deadweight, which will impede the company.

11.4 Liability

As the company will probably be a private company limited by shares, the liability of shareholders if things go wrong will be limited to the amount, if any, unpaid on their shares – in other words, the capital they hold in the company.

Personal assets should not be at risk if the company gets into debt or is sued, except where a shareholder has agreed to take on a personal liability for the company.

Directors can sometimes be held personally liable for what goes on in the company, for example, if they recklessly run up debts that will not ever be repaid or otherwise act wrongfully such as failing to act if the company is headed towards insolvency. In such instances, a director might incur financial penalties, be temporarily relieved of any directorships, may have to contribute to the reimbursement of the company's creditors or may even receive a criminal conviction.

If you plan to become a director of the company, it is prudent to invest in directors' liability insurance to protect your personal wealth. Please speak to us and we may be able to assist you.

Intellectual Property Management and Protection

This section provides a concise overview of key factors to consider when setting up a spinout company, outlining the roles of shareholders and directors, necessary company documentation, tax matters, and insurance requirements. A successful spinout requires careful planning, strategic decisions, and adherence to legal obligations. By understanding these key considerations, you can ensure that your spinout is built on solid legal, financial, and strategic foundations, positioning it for long-term success.

1. Role of Shareholders and Directors

- Shareholders control the company, appoint directors, and vote on key matters. They can alter the Articles of Association, allocate shares, and remove directors.
- Directors manage day-to-day operations and set the company's strategic direction. They are accountable to shareholders and must act in the company's best interest, adhering to duties of care, skill, and diligence.

2. Company Documentation

- Articles of Association define the company structure, shareholder rights, and the powers of directors. They also include restrictions on share transfers and provisions for the University's involvement in the company.
- Shareholders' Agreement details the terms of investment, shareholder rights, and obligations, ensuring transparency and protection for all parties.
- Technology Licence Agreement allows the company to use University-owned IP, with royalty payments and shareholder protections for the University.

3. Tax Matters

- Income Tax: Shares acquired at less than market value may result in taxable benefits. Directors and employees should seek advice on tax implications.
- Corporation Tax: The company's tax liability will increase once it starts turning a profit. Early-stage tax credits, such as R&D tax relief, may be available.

4. Insurance

- Individual Insurance: Directors should consider obtaining liability insurance to protect themselves against claims arising from their duties.
- Company Insurance: Keyman and employers' liability insurance are essential, alongside coverage for potential business risks like public and product liability.

Key Considerations

Careful planning and consideration of these factors will ensure the spinout's success.

- A clear legal structure, including Articles of Association and Shareholders' Agreement.
- Protection and management of intellectual property, particularly if linked to the University.
- Awareness of tax implications, including income tax and corporation tax.
- Adequate insurance coverage for personal and company risks.
- Securing diverse funding sources and investor alignment.
- Effective use of share options to incentivise key employees.
- Ongoing compliance with legal and financial regulations.

12 Role of shareholders and directors

12.1 Shareholder

As a private company limited by shares, ownership rests with the shareholders, who control the company by their ability to appoint and remove directors. The vast majority of powers relating to the day-to-day running of the business do, however, lie with the directors. The directors also have certain duties or responsibilities to protect the company's best interests.

Shareholders exercise their voting rights via the passing of ordinary or special shareholder resolutions:

- Ordinary resolution – passed by shareholders who hold more than 50% of the voting shares
- Special resolution – passed by the holders of at least 75% of the voting shares and equity required for certain key matters.

Shareholders also have it in their powers to:

- Vote at general meetings
- Alter the Articles of Association (which govern how the company is run internally and set out the rights that attach to the shares)
- Give directors permission to allocate shares – whether to existing or new shareholders
- Revise the company's share capital
- Elect new directors and remove existing directors

In addition, some shareholders may receive a portion of the company's profits in the form of a dividend, normally given on an annual basis.

More often than not, by the time the company is a profitable concern, the shareholders' goal – particularly in venture capitalist or business angel backed companies – will be to sell it for a substantial capital gain rather than siphon off smaller annual dividends.

12.2 Directors

The main difference between the directors and the shareholders of the company is that the directors are responsible for the day-to-day management of the company and as such are answerable to the shareholders.

Together, the directors form the board of the company, which leads the strategic direction of the company. The board will meet regularly to review the company's finances and its ability to meet its obligations, objectives and responsibilities. Crucial decisions about how the company is managed are generally made by a vote. The chair of the board will have the casting vote in the event that there is no majority.

If you become a director of the company, you will need to file personal details such as your address and specifics of any other directorships (past or present) on a public register at Companies House (see Appendix).

12.3 Shadow director

Even if you are not officially a director, you may nevertheless advise the board as though you were one and the board may tend to follow your advice. In such cases, you could be considered a 'shadow director,' which brings with it the same liabilities and obligations as officially appointed as such. Make sure that you know where you stand. A distinction is also made between executive and non-executive directors of the company.

12.4 Executive v non-executive

Executive directors have a specific role such as chief executive, finance director or sales director, although their involvement at board meetings spans the full array of company matters.

A non-executive director, in contrast, is a generalist chosen to augment the skills of the board. Often an investor will stipulate that at least one non-executive with extensive business expertise is appointed.

A non-executive chair of the board will generally be chosen to complement the chief executive and ensure a well-rounded view.

Otherwise, the powers of executive and non-executive directors are much the same. For the avoidance of doubt, these are set out in the company's Articles of Association.

All directors are expected to adopt an approach of active and diligent participation. It is important that the whole board is involved in decision-making processes in order to arrive at sensible and appropriate judgements that draw on all of the available expertise.

Directors have duties to:

- Exercise independent judgement
- Operate with reasonable care, skill and diligence
- Avoid conflicts of interest
- Refuse benefits from third parties
- Declare any interest in proposed transactions or arrangements
- Promote the success of the company
- Act within their powers

Directors must always consider the bigger picture, paying particular attention to:

- Employees' best interests
- Customer and supplier relationships
- Commercial reputation
- Community engagement
- Environmental responsibility
- Fairness in dealings with everyone in the company
- Long-term impact of strategies adopted
- Corporate governance, for example holding regular board meetings and issuing company information to shareholders

13 Company documentation

Setting up a new spinout company involves a lot of paperwork and it is important to do everything by the book. The company documentation is important to protect the business and its investors.

13.1 Articles of Association

This document sets out the basic management and administrative structure of the company and establishes the different rights held by ordinary and other classes of shareholder. Investors may subscribe to different types of shares to the management team and may have preferential rights such as greater voting rights or the right to collect dividends.

The Articles regulate the internal affairs of the company, such as the issue and transfer of shares, board meetings, shareholders' meetings, borrowing powers and so on.

Shareholders' powers to recruit and dismiss directors, and the powers of executive and non-executive directors themselves, are detailed in the Articles. The Articles should deal appropriately with the circumstances under which directors leave the company, for example due to personal circumstances (sometimes referred to as a good leaver) or down to misconduct (sometimes referred to as a bad leaver). This can be especially important in the early stages of the spinout where changes of director can happen as the business evolves.

Shareholders generally frown upon the transfer of shares in the company. It is likely that they will be keen to stipulate certain restrictions on this in the Articles. It is typical to distinguish between permitted transfers and compulsory transfers, and perhaps provide for exit strategies in the Articles.

Any spinout from the University of St Andrews will include in its Articles details of the rights pertaining to the University. These generally include:

- At a minimum, observer status on the board and the right to appoint a director
- The right to receive board papers and other relevant shareholder information such as the management accounts and written details of any offer to buy the Company
- The right for the University to transfer its shares within the University group
- Standard pre-emption rights, and appropriate 'drag along' and 'tag along' exit provisions

St Andrews Innovation is able to provide template Articles, which meet these requirements and may help to get the company started. However, the company will inevitably need to take its own legal advice.

13.2 Shareholders' Agreement

Generally, a Shareholders' Agreement sets out the terms by which the shareholders invest in the company, both in respect of the number and price of shares purchased and also the company's obligations to the shareholder. It is, therefore, usually only put in place at the time of external investment (companies typically rely on the Articles of Association until this time).

Every shareholder must, for instance, receive regular financial and management reports in order that they may scrutinise the progress of the company. This information might include monthly accounts reports and board minutes. The Agreement will also cover any rights shareholders have either to appoint an investor director as their representative at board level or to nominate an observer to attend board meetings on their behalf.

13.3 Restrictive covenants

Shareholders will wish to see in the Agreement a list of actions that the company – and sometimes also key personnel – agree to refrain from without first securing their consent. These are known as Restricted Acts and protect against the company taking on excessive borrowings or appointing an alternative auditor, for example.

Additionally, it is fairly common to restrict key personnel from working with and/or setting up a competing company, usually for an agreed period. It is important to take independent advice regarding any restrictions that you personally agree.

Although the motivation of a Restrictive Act – in the context of those who remain University employees – is well founded in its aim of preventing conflicts of interest between company and University activities, it may inadvertently affect your research activities and career. It is therefore important to take advice before entering into any such agreements.

13.4 Warranties

Any warranties made by the directors will be included in the Shareholders' Agreement. These are not generally a key issue at the spinout stage, but you must remember that making any form of warranty could leave you open to financial and criminal liabilities. Company founders and directors must be quite certain of any facts that they warrant and must be sure to disclose all relevant information to investors in order to mitigate this risk.

The Shareholders' Agreement will evolve in line with the company, in particular when new investors become involved.

13.5 Technology licence agreement

This will authorise the company to use any specified IP owned by the University that the company wishes to use and which the University is able to make available.

The technology licence will not be free of licence fees and royalties partly because, as a charitable organisation in receipt of public funding, the University has an obligation to act in an arm's-length way that encourages exploitation of the technology for the public good, and ensures the innovation is exploited by the most appropriate party at market rates. That said, the licence terms will be sympathetic to the circumstances of the new company due to the importance of cash in the early years of a spinout's life.

In addition, because part of the licence consideration will be satisfied by issuing shares to the University, the University will require some standard shareholder protections to protect its position as a (usually minority) shareholder in the company. Generally in the initial stages, the University's consent as a shareholder, will be required before the company can:

- Issue shares, or options to acquire shares, in the company (other than those agreed in the share option scheme) in a non-arm's-length way. In other words, the company would be free to take in third-party investment at an arm's-length share price without reference to the University
- Create or acquire subsidiaries
- Diverge to a material extent from the business plan.

13.6 Premises Agreements

St Andrews Innovation may be able to facilitate access to space and other facilities across the University.

13.7 Secondment Agreements

It is likely that the company and its investors will want to secure access to the services of the founding researchers. The arrangements between those individuals employed by the University and the company will need to be approved by the relevant Head of School or Service Director.

Arrangements should be documented in a secondment agreement and the secondee will be expected to maintain a separation between University and company duties.

Typically, under a secondment agreement, the company pays the University for an agreed proportion of the secondee's time and the secondee continues to receive his or her basic University salary. The secondee's input to the company is rewarded by shares or an option scheme, as agreed within the company.

13.8 Employment contracts

The company must make certain that any new IP generated by its employees/consultants remains the property of the company. Non-disclosure agreements and suitably watertight employment contracts should be put in place, and the use of independent consultants carefully managed.

13.9 Share option scheme - why establish one ?

All spinout companies are likely to establish an incentive scheme at some stage. Issuing shares in a new company at nominal value involves giving away an equity stake in the company immediately to certain named individuals. However, while you are building the company you may wish to provide shares for future employees. You may also wish to distinguish between those founders that will receive shares because of their past contribution to the creation of the IP, and those founders that will remain actively involved in the business going forward.

A share option granted to an employee will give the employee the right at a future date to acquire a specific number of shares in the company. This may be upon the occurrence of a certain event, e.g. exit, time served or performance. This has the advantage of incentivising the employee without immediately giving away equity.

Share options are useful:

- To attract and retain key employees for the company
- To incentivise founders to remain with the company over a critical period
- To provide benefits with modest initial outlay for the company –useful for spinouts
- Certain types of share option can be particularly tax efficient and there can be advantages to setting up the scheme at the spinout stage.

14 Tax matters

Tax breaks offered to higher risk, small companies may also help to attract investors, particularly if it is business angel funding that you seek. Explore how the UK Government's Enterprise Investment Scheme (see Appendix) could help the company – and you if you are also investing in the company. You are also investing in the company.

Additionally, Business Asset Disposal Relief (see Appendix) may enable you and other shareholders to claim some relief from capital gains tax upon disposal of shares. Currently Business Asset Disposal Relief means you pay tax at 10% on all gains on qualifying assets. may enable you and other shareholders to claim some relief from capital gains tax upon disposal of shares. Currently Business Asset Disposal Relief means you pay tax at 10% on all gains on qualifying assets.

You should also seek specialist tax advice to be certain of your position and that of the company.

14.1 Income tax

You may be required to pay income tax on any shares you acquire in the spinout company – but only if you pay less than the market value for them. In such instances, HMRC will deem the shares to be a taxable benefit of your employment. It makes no difference whether it is the University or the company that is considered your employer here – the outcome will be the same. If you will be contributing cash and/or assets to the company, you should ensure that these are used as payment for shares.

Your income tax liability in respect of the shares may be greater where assets and cash have been injected into the company, e.g. by the University or an investor.

Your situation may be more complicated if you hold 'restricted shares' in the company. For example, a compulsory transfer arrangement may restrict your ability to retain the shares if you leave.

The effect of 'restrictive share' legislation is to increase the tax levied on the 'gain' to align with income tax rather than capital gains tax. You should seek specific legal advice before accepting restricted shares.

If you are not a shareholder and instead receive a proportion of the University's revenue as reward, such income payments will be subject to income tax and National Insurance contribution (NIC) deductions.

14.2 Corporation tax

As a separate legal entity, the company will have its own tax liability. Corporation tax for the company's accounting period is calculated annually by means of a self-assessment tax return.

The company is unlikely to pay much, if any, corporation tax in the first few years of trading as turnover probably will not surpass the allowable expenses for some time.

The situation needs to be carefully monitored and future tax payments budgeted appropriately. Once tax losses turn into profits, the company will become liable for corporation tax.



It is worth seeing if the company qualifies for Research and Development Tax Credits (see Appendix). Your company must also deal with PAYE and NIC commitments and VAT.

Employing an accountant, and possibly a bookkeeper, can help the company to maintain the meticulous accounts and tax records that are so crucial for auditing and compliance purposes.

15 Insurance

15.1 Individual insurance

When you are involved in setting up a business and particularly if you serve as a director – or even as a ‘shadow director’ – you leave yourself open to significant personal financial risk from claims made against the directors in relation to their duties.

To protect yourself, your family and your personal wealth, it is worth sourcing a quality directors’ or officers’ liability insurance policy to protect yourself in respect of claims from which the company does not indemnify you. Your legal counsel should inspect any such cover carefully to ensure that it guards you sufficiently against the specific risks that you face.

You cannot protect yourself against criminal liability: you and your fellow board members must ensure that conduct within the company always remains above reproach.

15.2 Company insurance

It is likely that the company will rely on a number of key people across the company. Taking out ‘keyman’ insurance for such colleagues will protect the company from the costs associated with their illness, incapacity or death. The company’s investors may even insist upon it.

Employers’ liability insurance is one of a number of compulsory insurances that will certainly apply to the company. It might also be prudent or necessary to cover yourself against such things as public and product liability, and material damage.

Pinpoint where the company is exposed to liability and other risks, and seek appropriate professional advice.

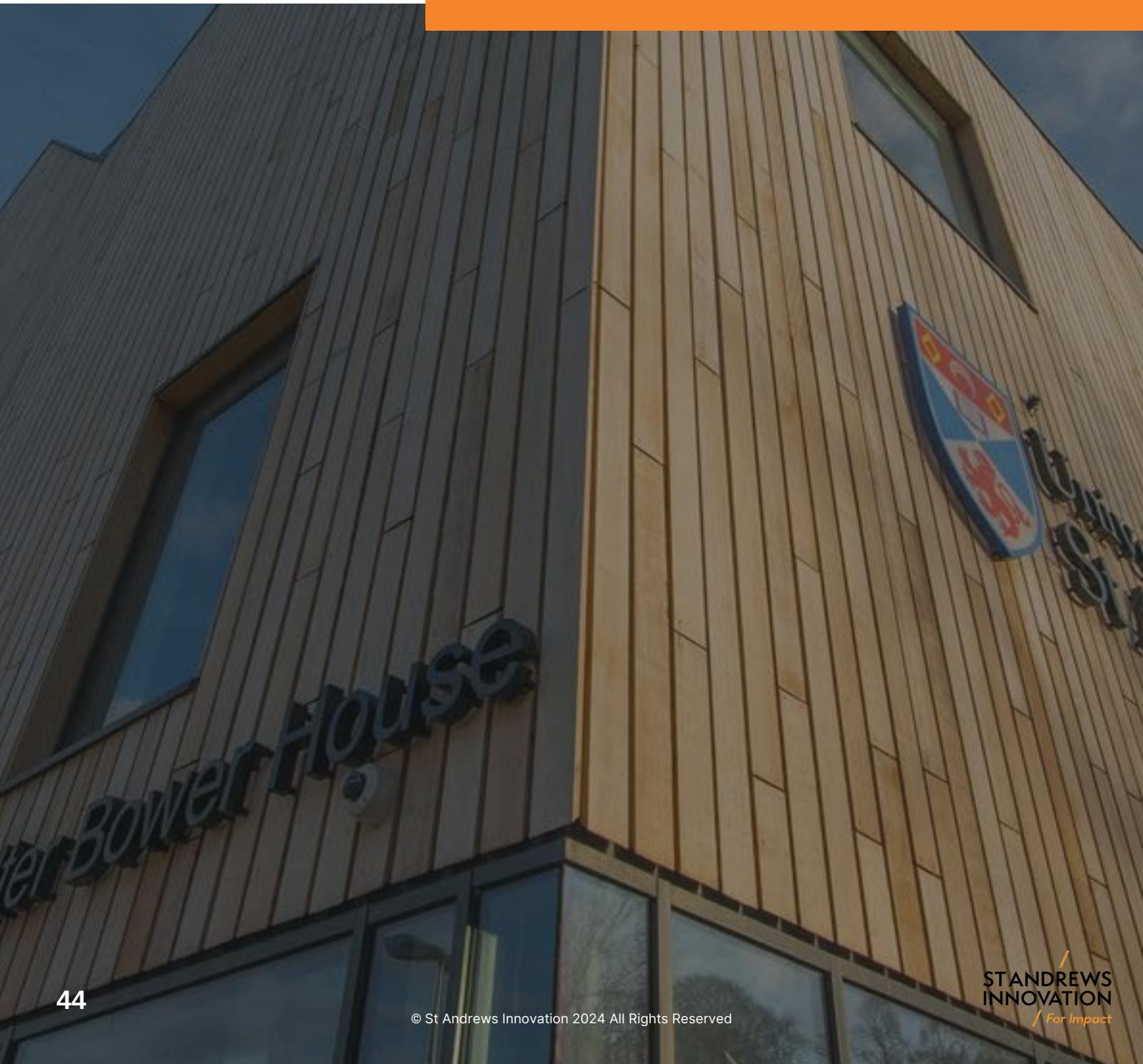
As with all aspects of establishing a spinout company, you cannot know exactly what is around the corner, but you can make some educated guesses and protect yourself against the worst negative outcomes.

16 Ready to get started?

More information can be obtained by contacting the Entrepreneurship Centre at St Andrews Innovation at Walter Bower House.

Keith Millican
Director of Enterprise
St Andrews Innovation
+44 (0)1334 466016
info@innovation.st-andrews.ac.uk

St Andrews Innovation Limited
Walter Bower House,
Main St,
Guardbridge,
St Andrews KY16 0US



17 Appendix: useful links

University Policy on 'Conflict of Interest'

<https://www.st-andrews.ac.uk/policy/research-external-work/declaration-of-interests-policy.pdf>

IP management

European Patent Office Espacenet

<https://www.epo.org/en/searching-for-patents/technical/espacenet>

Funding

Angel Capital

www.angelcapital.scot

UK Business Angels Association

www.ukbaa.org.uk

Directors

Companies House

www.companieshouse.gov.uk

Tax matters

Enterprise Investment Scheme (EIS)

www.hmrc.gov.uk/eis

Business Asset Disposal Relief

www.hmrc.gov.uk/cgt/businesses/reliefs.htm

Research and development tax credits

www.hmrc.gov.uk/ct/forms-rates/claims/randd.htm



University of
St Andrews

ST ANDREWS
INNOVATION
/ For Impact



innovation.st-andrews.ac.uk



innovation@st-andrews.ac.uk