

Text approved by the UOC's Executive Board on 13 June 2022

REGULATIONS ON THE CREATION OF UNIVERSITAT OBERTA DE CATALUNYA SPIN-OFFs

Preamble

The aims of the Statutes of the Universitat Oberta de Catalunya (UOC) include "creating, transmitting and disseminating culture and scientific, humanistic, technical and professional knowledge". In particular, they state that the UOC will strive to "enrich Catalonia's cultural and scientific intellectual heritage for the general advancement and sustainable development of society and the economy". This is as well as, among other things, "the dissemination of knowledge and the transfer of technology, know-how and innovation in the fields of training and culture linked to an intensive use of ICT".

The UOC's aims include fostering and facilitating participation by the academic community, composed of teaching staff, researchers and project staff and the UOC's administrative staff in research, development and innovation (hereinafter "R&I") projects, as well as facilitating the transfer of knowledge between the world of business and the world of research and academia in accordance with Article 83 of Organic Law 6/2001 of 21 December on Universities (hereinafter the "LOU").

The university must thus establish the necessary services to manage the creation and dissemination of results and the transfer of knowledge and technologies to society, in particular among the appropriate dissemination channels for these purposes, and the creation of technology-based companies to carry out the academic, commercial and industrial exploitation of the R&I results arising from the UOC's research activities.

The UOC, in compliance with its Statutes, therefore approves these regulations laying down the terms of the creation process for such companies as a way to transfer the results of the R&I activities carried out within the university.

Preliminary title

Article 1. Objective scope

1. The aim of these regulations is to lay down the terms governing:

(i) The rules applicable to the creation of technology-based companies (hereinafter "spin-offs") for the commercial or industrial exploitation of the results of R&I activities carried out at the UOC.

(ii) The management of such companies and the rules on the involvement of the UOC and its administrative and academic staff (teaching staff and researchers) in them.

2. Any matters not covered by these regulations shall be governed by the applicable national or regional provisions.

Article 2. Subjective scope

1. These regulations apply to all administrative and academic staff (teaching staff and researchers) (hereinafter "staff") at the UOC who have taken part in the UOC's R&I activities and wish to be involved in the exploitation of their results by creating a spin-off.

UOC staff involvement in the activities governed by these regulations shall be subject to the fulfilment of their academic obligations or of their duties at their workplace, respectively. Furthermore, in relation to the activities governed by these regulations, UOC staff shall be subject to the incompatibility rules for UOC staff and the university's Conflict of Interest Policy.

2. Any UOC staff members wishing to be included in the spin-off's workforce so they can be involved in the exploitation of the UOC's R&I results must first obtain authorization, which shall be processed through the UOC department in charge of managing the research and innovation activity, and must obtain leave of absence as provided in the UOC's internal regulations where applicable.

Title I. UOC technology-based companies (spin-offs)

Chapter I. Recognition and involvement in spin-offs

Article 3. Recognition as a spin-off

These regulations apply to the following technology-based companies:

(i) UOC spin-offs: These are technology-based companies promoted by the UOC, generally with the involvement of UOC staff members, created for the purpose of carrying out the commercial or industrial exploitation of the R&I results arising from the university's research activities.

(ii) Spin-offs in which the UOC has a holding: These are UOC spin-offs in relation to which the UOC has reserved the right to take a shareholding, either directly or indirectly through a capital company in its corporate group established for that purpose.

Chapter II. UOC staff involvement in spin-offs

Article 4. Shareholdings and board membership of spin-offs by UOC staff

1. The UOC may facilitate UOC staff involvement in spin-offs with a percentage of dedication that must be authorized in accordance with the internal procedures established for that purpose.

UOC staff members involved in spin-offs must inform the UOC of any significant circumstances that may result in a conflict of interest between their work at the UOC and their involvement in the company.

2. UOC staff members with holdings in the spin-off's share capital or membership of its management body may request, if applicable, a voluntary leave of absence for the maximum time envisaged in the applicable regulations in order to join the spin-off.

Their job at the UOC shall be reserved for them during the leave of absence, and its duration shall be taken into account when calculating their length of service at the UOC. Before the end of the maximum period of leave permitted, each UOC staff member must inform the UOC of whether they wish to continue working at the spin-off or resume their work at the UOC. Failure to make such communication within the stipulated time shall be construed as a decision to continue working for the spin-off, which shall result in an ex officio declaration of voluntary leave of absence for private reasons.

Article 5. Founding team in the creation of an R&I spin-off

The following persons may be involved in the creation of a spin-off as members of its founding team after informing the UOC and subject to its approval:

- a) UOC staff. Members of the academic community, composed of teaching staff, researchers and project staff, and the UOC's administrative staff, through the faculties, institutes and research and/or investigation groups or centres recognized by the UOC, may be part of a spin-off's founding team.

Researchers or project team members in training, working with a grant or with their own or external funding on any of the UOC's doctorate programmes at the recruitment stage who wish to be involved in a spin-off must have a favourable report from the director of the doctoral programme responsible for their doctoral thesis.

- b) Persons outside the UOC.

Chapter III. Spin-off creation process

Article 6. Requests for authorization to create a spin-off

1. The department in charge of managing the research and innovation activity is responsible for providing information and advice on the spin-off creation procedure, compliance with the laws and regulations applicable to the field in which the company operates and the procedure for formalizing all the legal agreements and resolutions that may be necessary to create and incorporate the spin-off in accordance with these regulations.

2. Any UOC staff member wishing to be involved in the creation of a spin-off must inform the UOC department in charge of managing the research and innovation activity, with a proposal for the creation of the spin-off (hereinafter the "request").

The following information must be included in the request:

- a) The names of the members of the founding team, specifying whether or not they are UOC staff members, and the proposed type of relationship between the founding team and the UOC.

If any members of the founding team are not UOC staff members, those who are UOC staff members must submit a report on the non-UOC third-party entrepreneurs, attaching their respective CVs and information on their expertise and explaining why their involvement is desirable.

- b) A description of the UOC's R&I results to be exploited by the spin-off, and the names of the author(s).
- c) An explanation of the business project to be turned into a spin-off. This must consist of a business plan summary and draft, setting out the main aspects of the business opportunity, strategic orientation, a market study, the business model and the financial plan. A proposed business plan outline is attached hereto as Appendix I.

Article 7. Assessment of the request

1. Following receipt of the request, the UOC department in charge of managing the research and innovation activity will assess the request and issue an assessment report containing:

- (i) an analysis of the scientific, technological and commercial nature of the business project;
- (ii) a feasibility study on the involvement of the UOC staff members and third-party entrepreneurs; and
- (iii) its proposed amendments to the request.

The request assessment process shall take into account the innovative nature and business feasibility of the request, and the founding team will be asked, if applicable, to provide any further documents and information that may be deemed necessary. Furthermore, internal advice from other UOC bodies or external advice from other entities or third parties may be sought.

2. The UOC department in charge of managing the research and innovation activity shall issue, within 60 days from the date of receipt of the request, a report for or against the creation of the spin-off, which shall be provided to the founding team.

If the report is in favour of its creation, the internal procedure for the creation of the spin-off can be started with the submittal of the necessary legal documents to create the spin-off.

3. If the report is against the creation of the spin-off or proposes amendments to the request, the founding team may, within 30 days from the date of receipt of the report, submit arguments or amend the request based on the proposed changes.

Following an assessment of the arguments submitted or changes made to the request, the unfavourable report will be ratified or amended, and a favourable report will be issued within a maximum of 30 days from the date of receipt of the arguments or changes.

Article 8. Authorization of the request

1. The report in favour of the request issued by the UOC department in charge of managing the research and innovation activity, as well as the other documents attached to the request, shall be sent to the office of the vice president with responsibility for UOC R&I transfer matters for assessment and analysis and for submitting to the Executive Board, which shall issue a final report assessing the request with the conditions for approval, which shall in turn be sent to the Board of Trustees.

2. Based on the favourable report of the Executive Board, the UOC's Board of Trustees shall resolve to authorize the creation of the spin-off through a UOC group company incorporated for that purpose.

The resolution authorizing the creation of a spin-off must state the percentage of the spin-off's share capital that is to be held by the UOC group company.

3. The UOC department in charge of managing the research and innovation activity, the founding team making the request and any interested UOC departments shall be informed of the Board of Trustees' resolution so that the formal procedures required for the creation of the authorized spin-off and the conclusion of the appropriate framework and specific contracts or agreements with the spin-off that are to govern its relationship with the UOC can be carried out.

4. If the request to create the spin-off is denied, the founding team will be informed that they may carry out the planned business initiative independently. In such case, the team must submit a signed statement to the UOC department in charge of managing the research and innovation activity duly proving their compliance with the current legislation, particularly the applicable intellectual and industrial property legislation, and providing proof of their employment or contractual relationship with the UOC where applicable.

Article 9. Incorporation of the spin-off

1. Once the proposed creation of the UOC spin-off has been approved, the necessary procedures and public and private documents for its incorporation and the start of operations can be started and executed.
2. At the time of incorporation of the spin-off with its chosen legal structure, its shareholders and the company itself shall sign with the UOC the relevant legal documents and contracts establishing the legal terms that are to govern the relationship between the spin-off and its shareholders:
 - A contract for the transfer of the UOC's R&I results transferring the commercial or industrial use and exploitation rights in the technology, knowledge or innovation (R&I) results required for the company to operate, as well as, where applicable, providing for the use of any trademarks belonging to the UOC.
 - If the UOC is a shareholder of the spin-off, a shareholders' agreement shall be concluded to supplement the basic provisions of the articles of association. This shall lay down the terms governing relations between the shareholders and the company, the parties' rights and obligations and the operation of the company.
 - Contracts for the provision of services and support by the UOC.
3. The addition of any other members at the time of creation of the spin-off must be authorized by the UOC's Board of Trustees and fulfil the requirements of the current legislation.

Title II. Involvement in spin-offs

Chapter I. Involvement in spin-offs

Article 10. Shareholdings in spin-offs

1. The resolution of the UOC's Board of Trustees authorizing the incorporation of the spin-off may stipulate the percentage of the shareholding to be held in it by the UOC in accordance with the terms and conditions set forth in the favourable report issued by the Executive Board.

As a general rule, and save in duly justified exceptional cases, the UOC's stake shall always be a time-limited minority shareholding.

Additional funding in the event of subsequent capital increases of the spin-off shall be governed by the UOC's internal procedures and the specific applicable laws and regulations, with prior authorization from the UOC's Board of Trustees.

2. For spin-offs in which the UOC has a shareholding, the UOC may decide whether it also wishes to form part of its board of directors. In such case, the members of the UOC who are to form part of the board (with or without voting rights) in accordance with the UOC's shareholding percentage and the provisions of the shareholder' agreement shall be appointed by the UOC's Executive Board.

3. The UOC's contribution in exchange for its shareholding in the spin-off may consist of direct cash contributions or properly valued rights or assets, including the rights to use and exploit the technology, knowledge or innovation (R&I results) needed by the spin-off to carry out its activities.
4. The UOC shall reserve the right to dispose of its shares in the spin-off if the said company or the entrepreneurs are in breach of their contractual obligations with the UOC, if it ceases to carry out its activity, or if the activity carried out by the spin-off in which the UOC has a holding is contrary to the UOC's aims and principles.
5. Furthermore, the UOC shall reserve the right of reversion of the contract transferring the R&I results to the spin-off in which it has a shareholding in order to protect its interests in the event of breach of the latter's obligations.
6. Corporate operations to promote the conclusion of contracts and agreements with financial institutions, venture capital firms or business angels to facilitate capital increases or help the UOC spin-off obtain credit shall eventually be carried out through the UOC group company incorporated for the purpose of taking part in spin-off business projects.

Article 11. Shareholders' agreement

All shareholders of the spin-off must sign a shareholders' agreement, either before or at the time of incorporation, establishing, among other matters:

- a) The rules on the adoption of resolutions by the spin-off's corporate bodies, as provided in these regulations and in the resolution authorizing its creation.
- b) The rules on transfers of shares, pre-emption rights and new shareholders.
- c) Tag-along and drag-along rights and anti-dilution provisions to protect the UOC's shareholding.
- d) Undertakings by key staff regarding their dedication to the project and non-competition undertakings.
- e) The UOC's right of information regarding the spin-off's financial, commercial and technological progress.

Article 12. Obligations of the founding team

In addition to the specific undertakings relating to the business development of the spin-off, the founding team makes the following undertakings to the UOC, through the UOC department in charge of managing the research and innovation activity:

- a) To carry out their activities strictly in compliance with the UOC's Code of Ethics so as to contribute to the UOC's good reputation. The UOC will therefore have no liability for any breach of these duties.
- b) To refrain from harming the achievement of the UOC's institutional aims.
- c) To refrain from using the UOC's name or distinctive signs outside the company's activities.
- d) To take the training courses that may be made available to it by the UOC.

- e) If the UOC decides, by means of a resolution of the Board of Trustees, to divest itself of its holding in the company, the founding team must purchase the shares for a price established as provided in the shareholders' agreement.
- f) To submit an annual report on the progress of the spin-off's research and commercial activities.
- g) To report any changes to the spin-off's articles of association which, if the UOC is not a shareholder, must be approved by the Board of Trustees following the issue of a report by the Executive Board.
- h) To carry out and respect any duties and obligations to which the shareholders may be subject under the commercial legislation.

Article 13. Undertakings of the spin-off

1. In order to facilitate its monitoring, the spin-off undertakes to the UOC, through the UOC department in charge of managing the research and innovation activity and while the UOC has a direct or indirect shareholding in the spin-off and the contract for the transfer of the results remains in force:

- a) To obtain before starting operations, and keep up to date, all the permissions required by the current legislation, and to carry out the business activity as provided by law.
- b) To submit the general budget of the company for the following year on an annual basis, so that it may be discussed by the board of directors of the UOC group company incorporated for that purpose.
- c) To send the annual accounts, together with a report of the management carried out, with details of the progress of the company's activities, particularly regarding its financial, technical and scientific aspects, before 30 March of each year.
- d) To report, before carrying them out, on any proposed corporate operations capable of affecting the structure of the share capital or the percentage of the UOC's shareholding or any changes to the company's articles of association.
- e) To submit an annual report on the achievement of the purposes for which the company was created, with figures for the company's activity indicators, such as turnover, number of employees or the amount of funding obtained.
- f) In the case of investee spin-offs, to provide any other information requested by the UOC for comprehensive monitoring purposes.
- g) To submit the documents set forth in the UOC's internal investment instrument procedure, and in any event those agreed in the shareholders' agreement if the UOC has a holding in the spin-off.
- h) Unless otherwise agreed with the UOC, there shall be no contractual relationship between the spin-off's employees and the UOC. To refrain, when carrying out its activities, from acting in any way that implies that it is acting on behalf of the UOC.
- i) To register in, and provide information to, the UOC's Register of spin-offs provided that: (i) the UOC has a shareholding in it; or (ii) persons with a contractual relationship with the UOC are involved in it as provided in Clause 5 of these regulations.

2. In addition, if deemed appropriate in view of the information provided by the spin-off, the UOC may ask it to carry out internal (financial and/or technical and scientific) or external (financial, technological and of any other kind) audits whenever deemed appropriate in order to ascertain the spin-off's financial and technological situation.

3. If the spin-off ceases to be scientific or technological in nature, or in the event of serious breach by it of its obligations to the UOC, the UOC may withdraw all its support and, if applicable, sell its shareholding in the spin-off. In such case, the company will lose the right envisaged in Article 18 of these regulations. These resolutions must be adopted by the UOC's Board of Trustees at the Executive Management Committee's proposal.

Article 14. Undertakings of the UOC

Regardless of any minority holding it may have in the spin-off's share capital, the UOC undertakes as follows:

- a) To decide whether or not to form part of the company's management body. If it does, it shall propose the members of the UOC who are to be its members (with or without voting rights), in the appropriate number according to its percentage holding and the shareholders' agreement, who shall be appointed by the Executive Management Committee.
- b) To use any profits of the spin-off to which the UOC is entitled for the purpose of carrying out its R&I activities.
- c) To admit the spin-off into the entrepreneurship support programme coordinated by the UOC department in charge of managing the research and innovation activity.

Article 15. Spin-off monitoring and records

The UOC department in charge of managing the research and innovation activity will be in charge of monitoring the spin-off's activities and looking after the university's interests in the spin-offs in which it has holdings in accordance with these regulations, and of overseeing the proper performance of the framework and specific contracts or agreements that may be concluded with them. It shall thus draw up an annual monitoring report covering the spin-offs' activities and the status of the UOC's shareholding in them, and it must also keep an up-to-date register of spin-offs, whether or not the UOC has holdings in them.

Each register entry must include the following information:

- a) The request to create a spin-off, whether it was approved or denied by the UOC.

- b) The acquisitions and transfers of shares in the spin-off by the UOC either directly or through the entity linked to it for investment purposes.
- c) The UOC's R&I results in which the spin-off has commercial use and exploitation rights.
- d) The UOC's membership of the spin-off's management body, where applicable.
- e) Any UOC staff members who are working at the spin-off while on leave of absence from the UOC.
- f) The spin-off's registered address, incorporation documents and shareholders' agreement.

Chapter II. Financial return

Article 16. Distribution of profit from the UOC's involvement

1. The financial return obtained by the UOC as a result of its direct shareholding in the spin-off shall be used for the pursuit of the university's own R&I activities and shall be governed by the following rules:

- a) The provisions of the shareholders' agreement concluded between the UOC and the spin-off. These may provide for the distribution of dividends or sale of shares or shareholdings (divestment).
- b) The provisions of the technology transfer contract concluded with the spin-off for the commercial exploitation of the industrial or intellectual property of the R&I results.
- c) A combination of the above.

The distribution of the financial return of the UOC's shareholding, validated by the UOC department in charge of managing the research and innovation activity, shall be governed by these regulations and shall be subject to the UOC's specific internal rules.

Article 17. Divestment

1. The UOC may decide to sell its holding in the spin-off at any time. The UOC department in charge of managing the research and innovation activity shall submit a draft report attaching an explanatory report, which shall be sent to the vice president's office with responsibility for the UOC's R&I transfer matters. The Executive Board shall approve the report validated by the office of the vice president, which shall be ratified by the UOC's Board of Trustees.

2. The agreement for the sale of the UOC's shares in the spin-off shall be carried out as provided in the shareholders' agreement.

Title III. Miscellaneous

Article 18. Use of the UOC logo and of the term "UOC spin-off"

1. The UOC may authorize the spin-off, if appropriate, to use the designation "UOC spin-off", together with its own corporate image and brand. The use of these by the UOC spin-off does not mean in any event that it is acting on behalf of the UOC or in its name or that the UOC endorses or is involved in its business activities.

2. The UOC, through the UOC department in charge of managing the research and innovation activity, shall therefore conclude with the spin-off a non-exclusive, non-sublicensable, non-transferable licence for the use of the "UOC" corporate brand and the "UOC spin-off" designation, with the conditions, and for the term, that may be established by contract.

3. The UOC may revoke the above licence of use at any time. In such case, the spin-off must stop using the items belonging to the UOC that were authorized by the now-revoked licence within a maximum of 10 days from the date of receipt of the UOC's request sent by reliable means.

Article 19. Intellectual and industrial property

The specific aspects relating to the intellectual and industrial property rights of the activities governed by these regulations shall be governed by each framework or specific contract or agreement concluded by the UOC in accordance with the Regulations on the Intellectual and Industrial Property of R&I Activities and the applicable legislation.

Transitional provision

These regulations apply to all spin-offs created after their date of entry into force.

Repealing provision

The Regulations on the Creation of Technology- and Knowledge-Based Companies (spin-offs) approved by the UOC's Executive Management Committee in 2014, as well as any other provisions that are in conflict with these regulations, are now repealed.

Final provision. Entry into force

These regulations shall enter into force the day after their publication in the UOC's e-services portal, subject to approval by the university's Governing Council.



APPENDIX I. Outline of the basic content of a spin-off business plan

The proposed business plan outline for the creation of a spin-off must cover, among others, the following matters:

- Distribution of the share capital proposed on the date on which it started operations.
- The names of the founding team members, including UOC staff, with the shareholding held by each of them, expressed as a percentage.
- The products or services to be commercially produced or provided by the spin-off, and its development plan.
- The technology or knowledge to be commercially exploited by the spin-off (patents, know-how, utility models, etc.), as well as the holders of their exploitation rights.
- A study on the commercial possibilities and target market.
 - a. Volume and trends.
 - b. Analysis of the competition.
 - c. An analysis of the main companies in the industry.
- An investment and expenditure plan (minimum 3 years).
- A cash flow forecast (minimum 2 years).
- A financial feasibility study (minimum 3 years) containing: internal rate of return, net present value and payback period.
- A study of the personal and material resources needed.
- The social impact envisaged: The highly qualified jobs to be created (e.g. people with bachelor's degrees and doctorates), the results to be generated, whether or not they are subject to industrial and intellectual property protection, the contribution to be made to innovation and to society's use of UOC-generated knowledge, and so on).