

Guidelines¹ for Supporting Employee Spin-Offs

Catalogue of Measures

I. Aims

When supporting employee spin-offs, Leibniz institutions have the following aims:

1. To transfer research and development results through the translation of developed technologies into marketable products and services, to be carried out by spin-off companies.
2. To open up the possibility of putting into practice results and developments from research areas that are no longer being continued within the institution; including within the framework of strategic partnerships.
3. To open up prospects for employees to embark on an independent entrepreneurial future.
4. To create jobs in technology-oriented, knowledge-intensive fields that are important to Germany as a centre for business and science.

II. Conditions

1. As part of its budgeted institutional funding, the Leibniz institution can invest resources to check whether an R&D result is technically and commercially suitable as a basis for a spin-off company.
2. Support is permitted under the following conditions:
 - The products and/or services of the spin-off companies must be based on the know-how of the Leibniz institution and/or be closely linked to its research activities.

¹ Guidelines passed by the Executive Board of the Leibniz Association on 13/14 October 2014, on the basis of the Leibniz Association's proposals on the catalogue of support measures for employee spin-offs ("Vorschläge zum Katalog für Unterstützungsmaßnahmen zu Mitarbeiterausgründungen") and the guidelines of the German Federal Ministry of Education and Research (BMBF) of 1 June 2012 on investments by research institutions in spin-offs for the purpose of science and technology transfer ("Beteiligung von Forschungseinrichtungen an Ausgründungen zum Zwecke des Wissens- und Technologietransfers") (IV. 4).

- In order to avoid conflicts of interest between the business partners, the business relationships between those involved must be clearly set out in a contract.
- Infrastructure and personnel support measures are contingent on the existence of a business plan.
- There should be sufficient compatibility between the spin-off and the aims of the Leibniz institution.

There is no legal entitlement to funding. Decisions on the type and scale of support are taken on a case-by-case basis.

III. Advisory services

The Leibniz institution endeavours to advise employees on spin-off activities, as far as capacity allows, and regularly offers the following services:

- Organisational/technical advice and support for finding business partners;
- Facilitating contacts with external advisory bodies, including in particular for advice on funding and financing;
- Offering and funding further training measures for start-up founders.

IV. Support measures

Support measures can take place in a range of different areas. The following in particular come into consideration:

1. Personnel measures;
2. Infrastructure support;
3. Business-related measures;
4. Besides new spin-off companies, Leibniz institutions also support spin-offs in the form of equity or quasi-equity investment models in an existing or start-up company.

1. Personnel measures

Personnel measures enable employees of the Leibniz institution to invest all or part of their working hours in setting up and developing a spin-off company for a certain length of time. Subject to compliance with the ban on preferential treatment, the permitted personnel measures are:

1.1 Secondary employment

Employees can be given permission to undertake secondary employment to start up a company in compliance with the applicable collective wage agreement, with or without a part-time employment agreement, if this is compatible with their important interests. Details can be found in the relevant secondary employment provisions. Permission to engage in a secondary occupation must not normally exceed three years, so as to avoid conflicts of interest in the long term. An extension is only approved if the secondary employment remains compatible with the

interests of the service (performance of functions in the case of senior staff in accordance with their employment contract).

1.2 Part-time employment

Employees can be authorised to work part-time to set up a company if this is compatible with their specific service interests (“main employment”). The approval for secondary employment and part-time employment must be withdrawn if adverse effects on the service interests become apparent.

1.3 Leave of absence and return-to-work arrangement

Employees can be granted leave of absence for up to three years without pay for the purposes of starting up a business. A return to a specific post cannot be guaranteed.

1.4 Severance pay

Departing employees may be awarded severance pay of up to one month’s salary per year of employment.

1.5 Promise of rehire

Departing employees can be made a promise of rehire lasting up to five years on the condition that a vacant position is available. Any severance pay awarded must be repaid if the individual is rehired.

1.6 Secondments

The Leibniz institution can temporarily assign personnel to the spin-off company if the legal requirements are met, in return for reimbursement of the costs incurred.

2. Infrastructure support

The Leibniz institution can grant the spin-off the temporary right to use its scientific and technical infrastructure at market rates during the start-up phase, as far as capacity allows. The details must be contractually agreed.

Infrastructure that can be made available includes e.g.:

- Office and meeting rooms, library, conference and presentation facilities
- Laboratory rooms/spaces and facilities
- Equipment
- Services

3. Business-related measures

In addition, the Leibniz institution can support spin-offs through the following measures, where capacity allows.

- Applying for (scientific and technical advice on funding applications) and carrying out joint innovation projects based on cooperation agreements;
- Involving the company in research and development projects of the institutions;
- The transfer of rights to use research results and/or patents and other institution know-how by concluding licence and know-how agreements at usual market conditions;

- Considering the company when awarding research contracts, within the legal provisions;
- Granting the company first-reading rights for results in specific research fields of the institute;
- Informing each other about planned research projects;
- Granting right of first refusal to the company founders for licences in specific narrowly defined research areas;
- Developing joint marketing strategies

4. Equity investments

In addition, equity investments in spin-offs are an effective way for a research institution to intensify knowledge and technology transfer in areas of high-risk commercial exploitation. In line with the guidelines of the German Federal Ministry of Education and Research (BMBF) of 1 June 2012 on investments by research institutions in spin-offs for the purpose of science and technology transfer, a Leibniz institution can make investments in the following circumstances:

4.1 Conditions for investments

The Leibniz institution can make or increase equity and quasi-equity investments within the framework of its tax-privileged asset management on its own responsibility and authority under the following conditions (a–e).

If the conditions are not met in a particular case, approval must be obtained from the awarding authority.

- a. The equity investment serves to transfer knowledge and technology from a research institution to a company (spin-off).
- b. The investment (cash and non-cash contribution) does not exceed an ownership stake of 25 per cent or a total investment of EUR 2,500,000. Non-cash contributions refer to the appropriate provision of know-how (technology transfer); they can, where necessary, be supplemented by cash contributions to capital stock or capital reserves. A liability limitation for the amount of the total agreed investment is secured through the legal form of the company (especially joint-stock companies, partnerships in the form of a GmbH & Co. KG and comparable foreign legal forms with limited liability).
- c. The Leibniz institution does not, as a result of making/increasing the equity investment, enter into any other obligation towards the new spin-off company, the other stakeholders or other individuals or bodies, beyond the agreed cash and non-cash contributions (total investment as per 1.b). This applies in particular to any kind of financial obligations or assurances (e.g. assumption of risks, unpaid contribution of further know-how or infrastructure, credit insurance, guarantees).
- d. The Supervisory Board of the Leibniz institution has approved the equity investment or increase, or has authorised the management team of the Leibniz institution to carry out these kinds of activities up to a certain budget.
- e. It has been ensured – if necessary by requesting an advance ruling from the relevant tax office – that the equity investment will not jeopardise the public-benefit status of the

Leibniz institution. The Leibniz institution must comply with existing public funding and budget law provisions and the provisions of public and private sector employment law.

4.2 Investment management

Successful investment management requires professionalism and a critical mass of engagement. With a view to ensuring optimum clarity in the division of responsibilities between publicly funded research and commercial exploitation, the investment management tasks must be clearly separated from the other administrative tasks, e.g. the administration of third-party funding. Depending on the number of spin-offs and the interests of the Leibniz institution, a number of different forms of investment management can be considered:

a. Investment management by the institution itself

If the total number of investments remains manageable for the Leibniz institution, investment management can take place internally within the scope of asset management.

b. Management companies

If equity investments are used as a strategic component of knowledge and technology transfer and if there are a significant number of investments, the management of investments in spin-offs should usually be transferred from the Leibniz institution to independent management companies, provided this is practical and economically viable.

c. Holding and IP exploitation companies

In individual cases, the management of equity investments in spin-offs and the commercial exploitation of know-how can be taken over by private-law holding and IP exploitation companies owned by the Leibniz institution or by an alliance of research institutions involving the Leibniz institution, if this is practical and economically viable. These companies should, where necessary, pool the activities of several institutions and be open to smaller research institutions or universities. For their business operations they should secure the know-how and experience of investors, e.g. by involving investors and thereby gaining access to venture capital at the same time.

Provided the Leibniz institution, in consultation with the awarding authority, considers the establishment of, or investment in, such a holding and IP exploitation company to be practical and financially appropriate, the relevant provisions of the BMBF guidelines of 1 June 2012 on investments by research institutions in spin-offs for the purpose of science and technology transfer apply (see 2. c of said guidelines).

4.3 Investment controlling

The Leibniz institution must have an investment controlling system, developed with the Board of Trustees on the basis of these guidelines, which takes account of the following key points:

- a. A report must be submitted to the Supervisory Board each year, informing it of the size and type of the investment, the name of the company and its legal form, and the start and likely duration of the investment. The report should include information about the

investment management income and its use, and assess the investments, including their risks.

- b. The Supervisory Board has an unlimited right to information on all investment matters.
- c. An internal clearing office should be instructed in advance to prevent the misuse of publicly financed benefits through appropriate internal controlling processes. In particular, conflicts of interests must be avoided by, for instance, excluding employees who are involved in spin-offs, or who work for spin-off companies in a secondary employment arrangement, from contracts awarded to these companies.