

PRINCIPLES of SAS
*for the establishment and support of spin-off companies by
public research institutions of the Slovak Academy of Sciences*

Article 1.
Purpose and subject

1.1. An important activity of a public research institution established by the Slovak Academy of Sciences (hereinafter referred to as "PRI" or "organization") is the transfer of created knowledge so that it can be used practically. The transformation of knowledge into a practically usable product or technology often exceeds the capacity and financial capabilities of the organization itself, which is why Act No. 243/2017 on Public Research Institution (hereinafter referred to as "Act on PRI") allows, if certain conditions are met, the transfer of knowledge created in a PRI with the help of public resources to the commercial business environment in the form of establishing a legal entity or acquiring an ownership interest in a legal entity that meets the characteristics of a spin-off company. In the interest of a uniform framework procedure of all public research institutions, the "PRINCIPLES of SAS for the support and establishment of spin-off companies by PRI established by the SAS" (hereinafter referred to as "Principles") are established.

1.2. The purpose of the Principles is to guide and motivate public research institutions, their bodies, and employees towards good practice in connection with the establishment of spin-off companies and the acquisition of participation in spin-off companies.

1.3. The subject of the Principles is to define the rights and obligations of public research institutions, their bodies, and employees in relation to the establishment of spin-off companies and the acquisition of participation in spin-off companies.

1.4. The Principles are issued by the Slovak Academy of Sciences as the founder of public research institutions as a binding annex to the founder's internal regulation pursuant to Section 38(1)(f) of the Act on Public Research Institution entitled "Rules of management of a public research institution, including rules for the conduct of business activity". The Principles are approved by the Presidium of the Slovak Academy of Sciences [Article XXIII(14) of the Statute of the Slovak Academy of Sciences]. The Principles apply to all public research institutions within the competence of the Slovak Academy of Sciences, are binding on them, and are directly applicable.

Article 2.
Definitions of some terms

Existing intellectual property (Background IP) – intellectual property, including industrial property and including filed applications or know-how (hereinafter referred to as "IP" or "intellectual property"), the owner, applicant or holder of which is the public research institution as of the date of establishment of the spin-off company, and which directly relates to the subject of activity of the spin-off company, or which the spin-off company needs to use in its activity.

New intellectual property (Foreground IP) – intellectual property created by the spin-off company independently or in collaboration with other partners (including PRI) as a result of its activity, regardless of who owns it (typically it will be the spin-off).

Sideground intellectual property (Sideground IP) – intellectual property, created by the PRI without cooperation with the spin-off after its establishment, and is also its owner. If this IP is also beneficial to the activity of the spin-off, it is treated in a similar manner to the Background IP.

Spin-off or Spin-off company – a limited liability company (s.r.o.) pursuant to Section 105 et seq. of the Commercial Code or a joint-stock company (a.s.) pursuant to Section 154 et seq. of the Commercial Code established by a public research institution or with an ownership interest of a public research institution, provided that such company serves the specific purpose of implementing technology transfer.¹

Technology transfer – the process of transferring knowledge into commercial practice, including ensuring industrial-legal protection of objects of industrial rights, as well as the transfer of research and development results into commercial practice, typically up to the stage of introducing a product or service to the market. In the case of the transfer of knowledge created by a PRI with the help of public funds into commercial practice, a certain benefit for the PRI is expected, which should appropriately correspond to the value of the created knowledge.

Unless expressly stated that the time limits referred to in these Principles are to be understood as working days (according to the meaning in the Slovak Republic), such time limits shall be deemed to refer to calendar days. Unless expressly provided otherwise, the time limits referred to in these Principles by the term “without undue delay” shall be considered observed if the relevant action is carried out no later than on the fifth working day immediately following the day on which the event decisive for the commencement of the time limit occurred.

Terms and abbreviations used in these Principles that are not expressly defined herein shall have the meaning as established in other internal regulations of the Slovak Academy of Sciences or as would be normally attributed to them by a person with appropriate knowledge.

Article 3.

General rules, procedure, and support

3.1. Each public research organization is entitled to establish a spin-off or acquire an ownership interest in a spin-off, provided that the conditions and procedure set out in the Act on Public Research Institution, defined in particular in Section 34 and 35, and in accordance with these Principles, are met.

3.2. The basic prerequisites for establishing a spin-off or acquiring an ownership interest in a spin-off are in particular (in chronological order, except for the last negative point):

- 3.2.1 preparation of the spin-off’s business plan,
- 3.2.2 definition of the contribution of the public research institution,
- 3.2.3 definition of the share of the public research institution,
- 3.2.4 definition of the extent of future cooperation between the public research institution and the spin-off, in particular the use of existing infrastructure of the PRI, including equipment and personnel capacity:
 - assumption of employment or temporary assignment of employees of the public research institution or employees of another public research institution established by the same founder,²

¹ Other types of commercial companies (except for limited liability companies or joint-stock companies) are not eligible as spin-offs, both due to the explicit legal prohibition [Section 32(1)(d) of the Act on Public Research Institution] and due to the legal restrictions on the purpose of spin-off [Section 34(2) of the Act on Public Research Institution].

² See Section 58 of the Labor Code.

- assumption of use of the assets of the public research institution or the assets of another public research institution established by the same founder,³

3.2.5 proposal of the director of the public research institution,

3.2.6 prior written approval of the supervisory board of the public research institution [Section 35(3)(b) of the Act on Public Research Institution],

3.2.7 prior written approval of the Slovak Academy of Sciences as the founder of the public research institution in cases defined by law [Section 35(1)(c) of the Act on Public Research Institution],⁴

3.2.8 performance of legal acts aimed at the establishment of a spin-off or the acquisition of an ownership interest in a spin-off,

3.2.9 the establishment of a spin-off or the acquisition of an ownership interest in a spin-off shall not endanger the main activity of the public research institution [Section 34(4) in conjunction with Section 1(4) of the Act on Public Research Institution].

3.3. The director of the public research institution shall be responsible for the proper and timely fulfillment of the basic prerequisites under paragraph 2. The director of the public research institution shall designate a person or persons who will participate in negotiations on the establishment of a spin-off or the acquisition of an ownership interest in a spin-off, while this option shall generally also be offered to the employees of the public research institution who are the inventors of the Background IP. The director of the public research institution may authorize another person to perform specific obligations arising from Articles 4, 5, 6, and 8 of these Principles.

3.4. Administrative support for the entire process of establishing a spin-off or acquiring an ownership interest in a spin-off shall be provided by TTO SAS in cooperation with the director of the public research institution. The scope of support provided by TTO SAS is determined by competences of TTO SAS arising from the internal regulations of SAS as well as by the budgetary possibilities of SAS. The costs associated with this process shall be borne primarily by the public research institution, unless otherwise agreed through TTO.

³ A public research institution may conclude a loan agreement or agree in a lease agreement, even without a public tender, on a lower rent than the rent for which, at that time and in that place, such or comparable asset is usually leased for the agreed purpose, only if it leases its temporarily unused asset for a maximum of five years to a legal entity in which the relevant public research institution or a public research institution established by the same founder holds a share in the voting rights, in the registered capital or in management, and 1.) was established by the relevant public research institution or by a public research institution established by the same founder, 2.) the relevant public research institution or a public research institution established by the same founder has contributed its assets to it under the conditions set out in this act, or 3.) the relevant public research institution or a public research institution established by the same founder has acquired a majority ownership interest in it. [Section 33(12)(d) of the Act on Public Research Institution].

⁴ In the case where the value of the contribution of the public research institution would exceed 30-times of the so-called decisive amount, currently EUR 51,000, or if the subject of the contribution of the public research institution is the right of the public research institution to immovable property [Section 35(4) of the Act on Public Research Institution], whereby it applies that a public research institution may not use immovable property as a contribution to a spin-off [Section 32(1)(f)(2) of the Act on Public Research Institution]; the legal exception for joint ventures shall not apply.

Article 4. **Spin-off's business plan**

4.1. The spin-off's business plan is prepared by the director of the public research institution or by the person or persons authorized by the director.

4.2. The spin-off's business plan is a strategic document of the spin-off project and mainly includes

- 4.2.1 the reasons, starting points, and objectives,
- 4.2.2 the type of commercial company⁵, the corporate structure and organization of the spin-off,
- 4.2.3 definition of the product, business model, market, and competition,
- 4.2.4 key milestones,
- 4.2.5 assumption of employment or temporary assignment of employees of the public research institution or employees of another public research institution established by the same founder,
- 4.2.6 assumption of use of the assets of the public research institution or the assets of another public research institution established by the same founder,
- 4.2.7 assumption of benefits for the public research institution,
- 4.2.8 identification of strengths,
- 4.2.9 identification of risks,
- 4.2.10 financial plan and involvement of investors,
- 4.2.11 marketing plan,
- 4.2.12 exit strategies,
- 4.2.13 other important information

4.3. The spin-off's business plan must be based on real data and verifiable assumptions. The annex to the business plan can be tables, graphs, calculations, statements, contracts, options, etc.

Article 5. **Definition of the contribution of the public research institution**

5.1. The standard for defining the contribution of the public research institution to a spin-off company is a non-monetary contribution, namely the so-called Background IP, which can be (i) an intellectual property right or (ii) a license to use or exploit an intellectual property object, or (iii) other assets capable of monetary valuation (e.g., know-how) that are the results of research and development.⁶ A monetary contribution is only permissible in exceptional cases.⁷ The contribution becomes the property of the spin-off company. The definition of the contribution is the result of an agreement between all partners, taking into account all circumstances; the contributions should appropriately correspond to the s partners' shares in the registered capital of the spin-off company (Article 6 of these Principles); significant deviations should be justified in writing.

⁵ The standard is a limited liability company (s.r.o.); the use of a joint-stock company (a.s.) is considered only in exceptional cases and must be justified in writing.

⁶ See also Section 35(3)(b)(2) of the Act on Public Research Institution.

⁷ The public research institution may not use research and development support funds as a contribution to the spin-off [Section 32(1)(f)(1) of the Act on Public Research Institution].

5.2. The standard for defining the non-monetary contribution of the public research institution is a license to use or exploit an intellectual property object, rather than the intellectual property right itself, although this form of contribution is not excluded⁸. The main parameters of the license, i.e., territory, duration, material scope, exclusivity/non-exclusivity, remuneration/free of charge, disposal of the license, or the possibility of granting sublicenses, should appropriately take into account, in particular, the following facts:

- 5.2.1 the value of the license in question according to an expert opinion,
- 5.2.2 contributions of other partners,
- 5.2.3 agreements between partners,
- 5.2.4 legitimate interests of other partners,
- 5.2.5 specific features of the particular business model for the given product,
- 5.2.6 the need to use the license also outside the spin-off company,
- 5.2.7 participation of the spin-off company in the costs associated with maintaining the protection of the licensed intellectual property object

In exceptional cases, if, instead of granting a license, it is appropriate in view of all circumstances to transfer the intellectual property right itself to the spin-off company as a non-monetary contribution, i.e., transfer of a patent (patent application), transfer of know-how, etc., it is necessary that this is reflected in a correspondingly higher share of the public research institution in the registered capital of the spin-off company (Article 6 of these Principles) and, at the same time, that effective guarantees are provided against undesired subsequent disposal of the intellectual property object by the spin-off company. A co-ownership arrangement, where the public research institution would be a co-owner of the intellectual property object together with the spin-off company, should be avoided, and if this is not possible in view of all the circumstances, a detailed co-decision-making mechanism should be agreed upon.

5.3. A non-monetary contribution may consist only of assets whose economic value can be determined. The non-monetary contribution must be paid up before the amount of the registered capital is entered in the Commercial Register [Section 59(2) of the Commercial Code].

5.4. The non-monetary contribution to the spin-off company and the determination of the monetary amount at which the non-monetary contribution is credited to the partner's contribution must be specified in the memorandum of association, foundation agreement, or in the foundation deed, unless the Commercial Code provides otherwise. The value of the non-monetary contribution shall be determined by an expert opinion,⁹ which must also include a description of the non-monetary contribution, the method of its valuation, and information on whether its value corresponds to the issue price of the subscribed shares paid up by this contribution or to the value of the assumed obligation to contribute to the spin-off company [Section 59(3) of the Commercial Code].

5.5. If a spin-off company acquires assets on the basis of a contract concluded with its founder or partner for consideration amounting to at least 10% of the value of the registered capital, the value of the subject matter of the contract must be determined by an expert opinion. This contract cannot take effect before it has been filed together with the expert opinion in the collection of deeds. If the effectiveness of the contract requires registration in a special register under a specific act, the contract together with the expert opinion must be filed in the collection of deeds before registration in the special register [Section 59a(1) of the Commercial Code].

⁸ It should be noted that the change of ownership is associated with significant financial claims due to changes in the entries in the patent registers.

⁹ The expert opinion should not be older than 6 months prior to the payment of the non-monetary contribution, unless the value of the non-monetary contribution has changed significantly in the meantime [Section 59b(1) of the Commercial Code].

5.6. The relevant provisions of the Commercial Code [Section 59 et seq. of the Commercial Code] shall apply to the contribution of the public research institution, with particular emphasis on the prohibition of return of the contribution [Section 67j of the Commercial Code].

Article 6.

Definition of the share of the public research institution

6.1. The standard when defining the share of a public research institution in a spin-off company is at least 10%. A share below this threshold is permissible only in exceptional cases and with written justification. However, a majority (i.e., more than 50%) share of the public research institution in a spin-off company is not generally a condition for a successful spin-off. When defining the share of the public research institution in a spin-off company, it is also necessary to take into account the shares of other partners, especially those who are employees of the public research institution.

6.2. A share is the extent of a partner's participation in the company's net asset value [Section 61(1) of the Commercial Code].

Article 7.

Proposal of the director of the public research institution

Approval of the supervisory board of the public research institution

Approval of the Slovak Academy of Sciences as the founder of the public research institution

7.1. The director of the public research institution shall submit to the supervisory board of the public research institution the proposal to establish a spin-off or the proposal to acquire an ownership interest in a spin-off, which shall include, in particular

7.1.1 Spin-off's business plan pursuant to Article 4 of these Principles,

7.1.2 Definition of the contribution of the public institution pursuant to Article 5 of these Principles,

7.1.3 Definition of the share of the public research institution pursuant to Article 6 of these Principles,

7.1.4 Drafts of contractual and other documents, such as memorandum of association or foundation deed, articles of association, business share transfer agreement, license agreement, intellectual property rights transfer agreement, etc.

When preparing the necessary documentation, the director of the PRI may use the services of the TTO.

According to the submitted drafts of contractual and other documents, the spin-off company must demonstrably meet at least one of the legal conditions [Section 34(2) of the Act on Public Research Institution]:

- it carries out research, development, or innovation (may or may not),
- it uses the results of activities of the public research institution (this is standard),
- it is a joint venture (not currently applicable),
- it is a specialized science and technology organization pursuant to a special regulation (may or may not), or
- it acquires, processes, and disseminates information in the field of science and technology, including knowledge from its own research and development (may or may not).

Documents evidencing any of the above facts shall also be attached to the proposal.

7.1.5 According to the submitted drafts of contractual and other documents, other partners in the spin-off may also be

- employees of the public research institution, typically those who are the inventors of the Background IP [Section 34(3)(a) of the Act on Public Research Institution],
- other suitable natural persons or legal entities

7.1.6 According to the submitted draft of contractual and other documents, the statutory body, member of the statutory body or supervisory body, or employee of the spin-off company may be [Section 34(3)(b) of the Act on Public Research Institution]:

- the director, a member of the management board, scientific board, supervisory board, or an employee of the public research institution,
- the director, a member of the management board, scientific board, supervisory board, or an employee of another public research institution established by the same founder,
- a member of the scientific board, presidium, or an employee of the Slovak Academy of Sciences as the founder of the public research institution,
- another suitable natural person.

Professional CVs of the persons concerned shall also be attached to the proposal.

7.1.7 The supervisory board shall submit the director's proposal to the TTO for assessment and request a written opinion thereon, which it may, but is not required to, take into account when deciding on the proposal. However, it must inform the director of the TTO's opinion.

The supervisory board of the public research institution is entitled to

- request additions or explanations to the submitted proposal,
- approve the submitted proposal together with any comments or recommendations,
- return the submitted proposal to the director of the public research institution together with a written justification.

7.2. If, in addition to the approval of the supervisory board of the public research institution according to the law¹⁰, the approval of the Slovak Academy of Sciences as the founder of the public research institution is also required, the director of the public research institution shall request such approval only after the approval of the supervisory board of the public research institution has been granted [Section 35(2) of the Act on Public Research Institution]. Point 7.1 of these Principles applies *mutatis mutandis* also to the decision of the Slovak Academy of Sciences as the founder of the public research institution.

7.3. The director of the public research institution shall take into account the time requirements for the above-mentioned approval processes and shall factor them into the overall process of establishing a spin-off or acquiring an ownership interest in a spin-off, in particular in relation to negotiations with other partners, business partners, and other interested parties. If, in view of all the circumstances, a particular matter cannot be postponed, the director of the public research institution is obliged to notify this fact in writing without undue delay and request in writing for an expedited discussion of the matter in question.

¹⁰ In the case where the value of the contribution of the public research institution would exceed 30-times of the so-called decisive amount, currently EUR 51,000, or if the subject of the contribution of the public research institution is the right of the public research institution to immovable property [Section 35(4) of the Act on Public Research Institution], whereby it applies that a public research institution may not use immovable property as a contribution to a spin-off [Section 32(1)(f)(2) of the Act on Public Research Institution]; the legal exception for joint ventures shall not apply.

7.4. Legal acts related to the establishment of a spin-off or the acquisition of an ownership interest in a spin-off are invalid without the prior written approval of the supervisory board and (if required by law) without the prior written approval of the founder [Section 35(5) of the Act on Public Research Institution]. In view of the serious negative consequences, the director of the public research institution is obliged to prevent such invalidity.

Article 8.

Performance of legal acts aimed at the establishment of a spin-off or the acquisition of an ownership interest in a spin-off

8.1. After obtaining the necessary approvals pursuant to Article 7 of these Principles, the director of the public research institution shall without undue delay ensure the commencement of the process of finalizing the contractual and other documents that formed part of the proposal, by appropriately incorporating any comments and recommendations of the supervisory board of the public research institution (or founder) and subsequently

8.1.1 in the case of establishment of a spin-off company, the director shall agree with the other partners on the place and date of the founding general meeting of the spin-off company and shall ensure its proper conduct,

8.1.2 in the case of acquisition of an ownership interest in a spin-off company, the director shall agree with the statutory representative of the spin-off company on the place and date of the general meeting of the spin-off company and shall co-ensure its proper conduct,

8.1.3 the director shall ensure the fulfillment of any additional conditions, documents, contracts, consents, etc., that are necessary for the establishment of the spin-off or the acquisition of an ownership interest in the spin-off.

8.2. After fulfilling all obligations under point 8.1 of these Principles, the director of the public research institution, unless another person has been authorized to do so, shall without undue delay ensure the fulfillment of all obligations arising therefrom, in particular the submission of a proposal for the entry of data (or changes) in the Commercial Register and, where applicable, also proposals for the entry of a non-monetary contribution (license or transfer of intellectual property rights) in a special register, which are usually registers kept by the Industrial Property Office of the Slovak Republic.

8.3. After fulfilling all obligations under point 8.2 of these Principles, the director of the public research institution shall, within 30 days, inform in writing the supervisory board of the public research institution and the Slovak Academy of Sciences as the founder of the public research institution about the results of the entire process of establishing the spin-off company or acquiring an ownership interest in the spin-off company. Subsequently, the director of the public research institution shall ensure that information on the activities of the spin-off company is provided in the annual report of the public research institution, in the Central Information Portal for Science, Technology and Innovation, and also at the request of the Slovak Academy of Sciences as the founder of the public research institution [Section 2(3) of the Act on Public Research Institution].

8.4. The public research institution may not dispose of its assets other than in accordance with the procedure laid down in the Act on Public Research Institution; otherwise, the relevant legal act shall be invalid. All legal acts related to the disposal of the assets of the public research institution must be in writing, otherwise they are invalid [Section 32(4) of the Act on Public Research Institution]. In view of the serious negative consequences of such invalidity, the director of the public research institution is obliged to prevent such invalidity.

Article 9.
Common and final provisions

9.1. These Principles apply only to spin-off companies established after these Principles take effect.

9.2. Rights and obligations not expressly regulated in these Principles are governed by generally binding legal regulations as amended, in particular Act No. 243/2017 Coll. on Public Research Institution, Act No. 513/1991 Coll., the Commercial Code, Act No. 40/1964 Coll., the Civil Code, and other generally binding legal regulations.

These Principles were approved on at the meeting of the Presidium of the Slovak Academy of Sciences by Resolution No.

These Principles shall take effect on the day following the day of their publication on the SAS website.

In Bratislava on

Prof. RNDr. Pavol Šajgalík, DrSc., v. r.
President of the Slovak Academy of
Sciences