FORMATION OF SPIN-OUT COMPANIES POLICY

Section	Research
Contact	Office of the Provost
Last Review	May 2019
Next Review	May 2024
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Purpose:

The University actively encourages the professional management of its Intellectual Property (IP) as a way of fulfilling its obligations to transfer knowledge and research outputs for the benefit of industry and the wider community and generating a financial return through the commercial development of intellectual property as an asset. This approach aligns with the *Massey University Strategy 2022-2027* goal to maximize the commercial benefit of IP and other outcomes derived from research, and the commitment in *He Rautaki Rangahau Massey University Research Plan 2024-2027* to draw on appropriate structures to bring to market the intellectual property arising from the University's research activities, to derive social, cultural, economic and environmental benefits.

One way of achieving these goals is to set up a new company[1] to implement the commercial development of University intellectual property.

The University encourages the formation of new companies where the circumstances suggest this is a suitable way forward.

This policy aims to ensure that spin-out companies are formed in such as manner as to optimise the opportunities for success of the new venture, and to manage the risks inherent in the initiative.

Policy:

Members of staff must obtain approval from the University before setting up a spin-out company, and also before becoming an officer (director, secretary and/or shareholder) of a spin-out company.

As part of the authorisation process, they must first consult the Enterprise Office. The Enterprise Office will in turn involve Massey Ventures Ltd (a company wholly owned by the University and formed to manage such activity) where appropriate.

The interests of the University, the individuals and the spin-out company must all be considered, and legal issues must be addressed. Issues to be considered by the University include:

- the impact on existing and future duties of members of staff.
- the use of intellectual property owned by the university.
- the use of University resources, such as space and equipment, and
- the business case for the spin-out company and expected financial and other benefits, and any associated risks.

[1] The terms 'company' and 'companies' includes partnerships, joint ventures and other commercial entities.

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General provisions

- The University may require an equity stake in a spin-out company, either directly or via Massey Ventures Ltd, in consideration for facilitating the company's formation and contributing the IP.
- The University reserves the right to appoint a director or have observer status at board meetings.
- No full-time University employee may also be an employee of a spin-out company, and
- Where members of University staff own shares or share options in a spin-out company they waive their right to a share of any licence, share-sale, or dividend income received by the University from the spin-out company.

Staff

Subject to University regulations and codes of conduct, members of staff may:

- own shares or share options in a spin-out company,
- act as directors of a spin-out company, or
- act as paid consultants to a spin-out company.
- but may not act in all three capacities, and
- no staff member of the University in a position to influence the relationship between the University and a spin-out company (with the exception of the Creator of the IP, as defined in the Intellectual Property Policy) may own shares or share options in a spin-out company, nor act as a director of a spin-out company except as the University's nominee.

Approvals and consultation required.

Staff must carry out the following steps when forming a spin-out company:

1. Contact the Dean, Enterprise. With advice from the Enterprise Office, prepare a business case outlining the financial requirements of the spin-out, the expected financial and other benefits, and a risk assessment (which covers compliance risk, operational risk, reputational risk, and financial risk) and how these risks will be monitored and/or mitigated.
2. Gain approval and support from the relevant line manager or head of academic unit. The involvement of the staff member in the spin-out company is one of the key activities that the University supports and rewards. Forming a spin-out company will, however, necessarily impact on the employee's existing research/teaching/professional activities (potentially including PBRF measures). The line manager or head of academic unit therefore must provide a signed statement that the work in the spin-out company is supported, that these impacts have been recognized and can be managed effectively, and that the work in the spin-out company is part of the employee's contributions to the University in fulfilling research commercialisation goals. The line manager or head of academic unit is not asked to comment on any other aspects of the business development plan for the company.
3. Gain approval from the relevant member of the Senior Leadership Team (SLT) (for example College Pro Vice-Chancellor, Deputy Vice-Chancellor, or Provost). The relevant SLT member must provide a signed statement addressing similar issues to those in step 2, but from a whole-of-portfolio perspective. The SLT member is not asked to comment on any other aspects of the business development plan for the company.
4. Gain final approval and support (where appropriate) from the Board of Massey Ventures Ltd.

Definitions:

Spin-out Company is a new company involving the development and exploitation of University intellectual property.

Audience:

All staff

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Relevant legislation:

Companies Act 1993

Legal compliance:

All obligations of the Companies Act 1993 will apply to University spin-out companies.

Related procedures / documents:

Conflict of Commitment and Interest Policy
Conflicts of Commitment and Interest Manager Guidelines
Conflicts of Commitment and Interest Disclosure Form
Delegations of Authority Policy
Intellectual Property Policy
Research and Consultancy Activity Proposals Policy
Massey University Research Plan 2024-2027

Document Management Control:

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