A Founder’s Guide to spinouts

Your guide to starting a spinout company at Imperial College London
Foreword

Imperial College London has a rich and vibrant entrepreneurial ecosystem that has generated hundreds of spinouts and student-founded start-ups. The ecosystem and its successes are testament to the entrepreneurial attitude of staff, student and alumni at Imperial.

Imperial Innovations supports inventors and creators at Imperial, whether their journey takes them towards forming a spinout or licensing a technology to industry. We believe that through increased cooperation and support we can facilitate a greater level of activity, generating greater societal impact.

A Founder’s Guide to Spinouts
This guide has been prepared by Imperial Innovations and is designed to help entrepreneurs at Imperial who feel that starting a new company is the best way forward for their technology. It contains a wide range of information about the process of starting a business at Imperial College London and supplementary material focused on general principles of business formation and management.

Imperial Innovations
Imperial Innovations Limited (“Imperial Innovations”) is the IP commercialisation company for Imperial College London. The College has charitable status, and, as such, Imperial Innovations was established originally as a separate company whose goal is to commercialise the College’s Intellectual Property for societal benefit, wealth creation and economic development.

Imperial Innovations is part of the Touchstone Innovations group. Touchstone Innovations provides early-stage, patient capital for high technology ventures derived from the outstanding scientific research arising from the UK’s ‘Golden Triangle’, the geographic region broadly bounded by London, Cambridge and Oxford. Imperial Innovations will discuss spinout ideas with Touchstone Innovations, which manages millions of pounds of investment capital and which has a track record of successfully investing in university start-ups and spinouts. However, there is no obligation for you to work with Touchstone Innovations (or for them to work with you).
Entrepreneurship at Imperial

Considerations before starting a new company

12 Why start a spinout company?
14 What will you require to form a spinout?
16 How Imperial Innovations can help
18 Your commitment to the spinout
20 The journey you are likely to experience
24 Benefits to Founders
26 Your share of founding equity and Founders Choice™
28 Sharing in royalties and other IP-related revenues

12 months before company formation & investment

32 Secure the intellectual property
34 IP Due Diligence: what IP exists and who owns it?
36 Future Intellectual Property
38 Developing the IP Strategy
40 Securing support from Imperial College London before you start
43 Pre-company ground rules
46 Select a law firm to act for the company
48 Agree on how to split founding equity
50 Decide whether to create founding share options
52 Options - a guide
53 Start recruiting & building your team
57 Network and seek input from mentors and advisers
58 Prepare your business plan
Table of Contents

Raising finance

66 Raising finance for your spinout
68 Different types of funding
70 Sources of finance for early stage companies
78 How to get equity investment

Three months before company formation

92 Essential procedures pre-company formation

Company formation

98 The Company formation process

The first few months of operation

116 The first few months

The first year and beyond

124 The first year and beyond

Exiting the business

136 Exiting the business
140 Why do you need an exit strategy?
142 Dos and Don’ts of running a spinout
Appendices

146 Appendix one: Jargon buster and glossary of key terms
155 Appendix two: Useful Links and Resources
158 Appendix three: Templates and forms
159 Appendix four: Understanding shares
161 Appendix five: Understand dilution
163 Appendix six: Understanding non-dilution
165 Appendix seven: Understanding liability
166 Appendix eight: Shareholders and Directors
168 Appendix nine: Health & Safety

A note on URLs in this document
We have replaced many full URLs in this guide with shortlinks that start with inno.im. These will take you the correct destination but are preferred because they take up less room.

All of the URLs in this online version of the guide are clickable. Your PDF reader will likely ask if you wish to allow the link to open after you click on one.

URLs are formatted like this.
Entrepreneurship at Imperial

Imperial College London has a proud history of successful spinouts and start-ups. The ‘big bang’ graphic overleaf highlights both successful and growing companies founded by Imperial staff, students and alumni.

You are about to embark on a challenging and exciting journey. Most Imperial 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.

Based on many years of successful experience Imperial Innovations has developed a proven 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’s down to hard work and good timing – but we think that by working with us new Imperial 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 an Imperial 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 Imperial College London and Imperial Innovations 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 Imperial College London.

We will regularly update this guide and therefore seek feedback from its users. If you would like to share anything with us, please contact us at info@imperialinnovations.co.uk
Imperial and its staff and ecosystem have generated hundreds of spinouts; those shown in this graphic represent just a few of our successes and companies working towards a breakthrough.
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 Imperial College London are subject to change from time to time and advice should therefore be sought directly from the College or from its websites, such as www.imperial.ac.uk/research-and-innovation/research-office/ 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 Imperial Innovations Limited or any member of its group, Imperial College London 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 Imperial College London 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 guide could not have been prepared without valuable input and help from other universities and their technology transfer teams. We gratefully acknowledge such help, assistance and the ability to use and modify existing prose from the following organisations listed below. All extracts and content have been used with the kind permission of the organisations listed.

This document has been supplemented by information derived from the following documents:

- **The Stanford Universities Start-up Guide** which in turn contains information derived from *An MIT Inventor’s Guide to Startups: For faculty and students*. This guide was written in December 2012 and updated in March 2016.


- The University of Oxford’s **Starting a Spinout Company**, a guide that was originally commissioned and created by Oxford University Innovation and is the copyright of the University of Oxford 2007-2016.

- Nottingham University’s **A Guide to Internal Processes around Spin-out company formation**, a guide that was originally commissioned and created by Business Engagement & Innovation Services at the University of Nottingham and is the copyright of Nottingham University July 2011.


- [www.inc.com/young-entrepreneur-council/your-startup-exit-strategy-how-soon-is-too-soon.html](http://www.inc.com/young-entrepreneur-council/your-startup-exit-strategy-how-soon-is-too-soon.html)
Considerations before starting a new company  

12 Why start a spinout company?  
14 What will you require to form a spinout?  
16 How Imperial Innovations can help  
18 Your commitment to the spinout  
20 The journey you are likely to experience  
24 Benefits to Founders  
26 Your share of founding equity and Founders Choice™  
28 Sharing in royalties and other IP-related revenues
Key Information

- Why start a spinout?
- What is the problem you are solving?
- Who will pay for your solution?
- What will you require?
- Ways Imperial Innovations can contribute
- How does it create “Impact” for Imperial College London?
- What commitment will you need?
- Your experience
- Getting independent support and advice
- How do you want to benefit as a founder?
  - Equity and founding shares
  - Royalties
Why start a spinout company?

Why Spinout?

- To create an impact on society
- To transfer knowledge into practice
- To become an academic entrepreneur
- To contribute to the global knowledge economy
- To improve the UK’s economic profile
- To enhance Imperial College London’s reputation
- To attract investment to the spinout and/or your research group
- To create wealth for the inventors and Imperial College London
- To experience considerable personal satisfaction

Novel research may provide many exciting new commercial opportunities and forming a spinout is just one way to take advantage of these. Usually this route is considered when there is no existing company that could acquire and use the technology, or when the technology has clear potential to generate many products and engage multiple market sectors. Such opportunities are known as platform or disruptive technologies. By taking a disruptive technology to market yourself, you can deliver real impact and benefit from both the experience and personal gain associated with a successful venture.

However, 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.

Imperial Innovations exists to encourage and support enterprise among Imperial College London employees. Where we agree that there is a market for the new idea, we will always help you protect the IP, evaluate the market for the proposition and determine commercialisation options. We also help you get your business up and running if it is a viable
When is spinning out appropriate?

- There is a platform technology, significant competence or critical mass of similar technologies
- A clear value proposition exists
- You have clear initial customers and a plan to reach them
- Greater potential for commercial or societal returns exist than by licensing
- Clear benefits to founders, funders and the university
- Expected benefits outweigh risks
- The academic founders are enthusiastic and committed to the venture

Commercialising IP

Various ways of commercialising IP exist. These include spinning out the IP into a company or licensing it to industry. A guide to determining whether it is best to spinout or licence can be found here: [www.imperialinnovations.co.uk/spinoutorlicense](http://www.imperialinnovations.co.uk/spinoutorlicense)

As well as commercial considerations, there are other reasons you may wish to consider a spinout. It is sometimes perceived to be the case that benefit is derived by distancing new IP from the research environment of the College and that this can best be achieved by creating a spinout company around it. However, this should not be a primary driver of spinout formation as ultimately the value proposition (a willing market for your product) is much more important.

If you choose to form a spinout then the IP will be licensed into the spinout company (not assigned) on commercial terms. When this occurs it will be available for you to use for academic research or teaching purposes, including accepting external sponsorship for such activities.

Effective spinout companies require a range of assets and resources to commercialise IP. These are likely to include money, specialist management, facilities such as laboratories or manufacturing provision.

Proposition (i.e. it has a business plan and access to funding to develop the IP towards the market). Depending on the level of support you elect to receive (under Founders Choice™), we can also advise and offer practical help to find the funding and facilities the business needs. We can also help you to work successfully alongside investors and experienced management whose longer-term objectives may be different from your own.

Not all research is suitable as the platform for a new business and Imperial Innovations will help you to evaluate the opportunity arising from your research. It is never too early to speak to us about your ideas. We welcome your call or email at any stage and we can help you consider the different pathways to commercialisation you could choose.

Part of spinout development may include access to Proof of Concept (PoC) funding within the College in order to establish the feasibility of your idea before a company is formed. We can facilitate applications to Innovations’ PoC funds and Imperial College PoC funds, and also work with you to access other sources of translational funding for longer-term projects where further funding would be beneficial to de-risk the technology before spinning-out or licensing.

Please speak to your relationship manager at Imperial Innovations if you would like to know more about gap funding available to progress early stage ideas.
What will you require to form a spinout?

Setting up and running a spinout can be an extremely rewarding experience, but it is likely to be stressful and may distract you from your research and ‘day job’. It’s therefore likely that you’ll need to work with business managers and investors in order to maintain and run the company. Their objectives may be different to yours and it will be important that you manage these relationships effectively.

Five essential ingredients for a successful spinout

1. Intellectual Property
The invention 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.

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 technology 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.

Lean Canvas techniques (www.leanstack.com/leancanvas/) expect that you consult at least 100 potential customers before launching a business.

It’s amazing how many people think that exciting technologies sell themselves. History has shown repeatedly this is not the case, and inferior technologies can and will win the race if they are marketed more effectively to the correct audiences, or the teams behind them execute more effectively.

You must therefore undertake thorough market research before you embark on your spinout journey. A big part of Imperial Innovations’ role in spinout creation is to help to independently qualify the value of new inventions to potential customers: ascertaining commercial strengths and weaknesses before a spinout is formed.

Sometimes the initial market isn’t 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. Imperial Innovations has access to funds that may help to support this.

3. Management
Investors in your business will expect it to be led by a team with proven and 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.

You may need to take a back seat in terms of the company’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 company. Knowing your own limitations, and recognising where you or your business need help, are key attributes of successful entrepreneurs.

4. Money
Your company will require money to develop and grow. A range of sources for this funding exist (see Step Three). Funds could come from the College’s own resources, from 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 (see Step Two).

5. You (and your co-founders)
As the generators of the IP, you will be essential to its transfer into the company. Your continued involvement with the IP development and your commitment to the enterprise and support of the company’s business managers is vital.

You cannot expect the College or Imperial Innovations to ‘make it happen’ for you. You will need to drive the process, but substantial support is available for you if you require or desire it.

If you intend to remain an employee of Imperial College London, you will need consents from the College for various activities undertaken in relation to a spinout. Please see Imperial’s Register of External Interests and Annual Declaration policy: http://inno.im/2wleBum

Some funding agencies do not allow researchers to be executive directors. Therefore if you are in receipt of funding from such agencies, you should only accept non-executive directorships.

Before deciding to form a spinout you must understand the wide range of requirements and potential hurdles, and decide which approach works best for you.

Remember: a successful business also requires

- Time - which you may prefer to spend on research and teaching
- Skills & resources – which may not generally be available at a university
- 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
How Imperial Innovations can help

“Ideas are easy. Implementation is hard.”

Guy Kawasaki, Alltop co-founder & entrepreneur

Imperial Innovations has supported Imperial College London researchers and students to establish over 150 spinouts and start-ups. We have the expertise to support you at every stage in the process of setting up a company.

In each case, our goal is to help the company achieve and sustain growth, so it has the best chance of long-term survival and success. From the very start, you will benefit from active guidance from your assigned relationship manager at Imperial Innovations. Whatever level of support you select under Founders Choice™, our contribution to all new spinouts encompasses five main areas:

- Pre-company IP protection, management and funding
- Pre-company market research and evaluation
- Determining, with you, the optimal route to market (Licensing vs. spinning-out)
- Utilising Founders Choice™ (choosing whether you would prefer to drive the formation of a new spinout yourself, or with assistance from Imperial Innovations). Detailed guidance on the Founders Choice™ process can be found at www.imperialinnovations.co.uk/founderschoice/
- Our “Imperial Spinout Pack” which includes
  - Support with forming a new business (e.g. the process of incorporating, template legal documents, access to experienced lawyers etc.)
  - A copy of this Founders Guide
  - Basic aftercare package

Founders Choice™ in ten seconds

Founders Choice™ is a pilot programme launched by Imperial College London and Imperial Innovations on 1 August 2017.

It lets Imperial researchers choose between two levels of support that they receive from Imperial Innovations - Enhanced Support (Jointly Driven) or Basic Support (Founder Driven).

Researchers who select the Founder Driven route will receive 90-95% of the founding equity in the company. Researchers who select the Jointly Driven route will proceed with negotiations as normal.

More information is available here: www.imperialinnovations.co.uk/founderschoice/
How does forming a spinout benefit Imperial College London?

The creation of a successful spinout company is good for the individual involved, the local and national economy, and, as importantly, Imperial College London. Imperial’s position as a global top-ten universities relies on its proficiency in generating pioneering research. If the College can also commercialise the IP that is generated from this research then it stands to enjoy long-term financial benefits and a boost to its reputation, as well as creating positive societal impacts.

Through Imperial Innovations, the College invests its IP as well as significant infrastructure and resources to support the creation and support of Imperial spinouts. In return, as an investor in its staff, IP and other resources, the College receives equity in spinouts and a share of long-term royalties.

Importantly, spinouts also provide a clear demonstration of societal impact, highly relevant for the REF assessment whereby 20% of government funding is assigned on this basis. Though there are other routes to societal impact, spinouts tick a lot of boxes in terms of moving products towards market, creating employment and fostering local economic development.

Spinouts 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 Imperial College London.

Forming a spinout could help your research become a new treatment that helps patients around the world.
Your commitment to the spinout

Before embarking on the spinout 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 company 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 company.

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 company to facilitate the early development of the technology within the spinout. In line with Imperial’s Register of External Interests and Annual Declaration Policy, staff at Imperial may undertake or accept external interest with the agreement of their Head of Department. If this interest is a consultancy with the spinout it can be administered through Imperial Consultants who can ensure the appropriate insurance provisions and contractual arrangements are in place.

Occasionally researchers do choose to leave the College in order to concentrate full-time on their spinout. If you intend to remain an employee of the College then you will require consent for your interest in the newly formed spinout from your Head of Department (see Step Two). 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 Imperial’s Conflict of Interest Policy: http://inno.im/2t7ZocV

You may be asked to chair the Scientific, Technical or Research Advisory Board of the company in the early stages of the company’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 company to be a member. It is an important role, helping to ensure the directors of the company understand its core competencies and any relevant issues, such as safety and regulatory issues, associated with the company’s technology portfolio.

You may also take a non-executive director position on the board of the company. 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 company, however, this role is likely to be much more ‘hands-on’, requiring strategic direction of the company and involvement in day-to-day business activities such as negotiating contracts, dealing with employees and managing cash flow.
In such a role you will be involved in helping to set the long-term strategy of the company, preparing plans to deal with and anticipate changes in circumstances and working hard to attract further sources of funding so that the company 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 company and before you spinout 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 company can be very demanding both in terms of time and effort. Academic staff must therefore consider their involvement in a spinout company very carefully, as well as making sure they seek appropriate permissions from Imperial College London.

“Don’t worry about failure; you only have to be right once.”

Drew Houston, Dropbox Founder
The journey you are likely to experience

You will have a better experience starting a spinout if you are armed with some expectations about your likely spinout journey. You should keep these points in mind:

- You may need to adapt to a changing role within the company as it grows and expands. In the early days your role may be fairly hands on, but, as previously noted, this may not be desirable or appropriate in the future when more experienced, specialist managers may be required to take the company to the next stage. Should you wish to continue in an active role, be prepared to invest the time to learn necessary business and management skills.

- Though in exceptional circumstances a researcher may continue to hold a leadership role in a spinout, in practice, the demands of the business and investors will mean you are more likely to take a different role such as Chair of the Scientific Advisory Board or as an occasional consultant. Indeed, within three to five years from the formation of the spinout you may simply be a shareholder. Some later stage investors (which may be required for substantial company growth) will not become involved with companies in which the research staff have significant management influence.

- No matter what role you take or how active you are in the spinout, you will need to appreciate that rapid and frequent changes in direction and circumstances are not unusual in a commercial environment. You should also seek to learn as much as you can about business in general and the industry you operate in. Even if you do not hold a key leadership position, you are key to the business and investors will be keen to see you demonstrate an ability and desire to keep learning.

- For a spinout in which the research idea is novel and the market is clear, the most likely factors determining its success are the ambition, persistence, marketing skills and effective management of resources by those involved. This will be especially demanding and stretching for you if you are still carrying out duties for the College. This is a key reason why you should be open to forming productive partnerships with experienced people, who can add value to the spinout and share your commitment and workload.

- The people who become involved in the spinout will come from many and quite different cultures. They will be woven in progressively as the spinout advances through its various business phases. They may not always understand or be patient about your wider goals or duties as a researcher, especially if you are still employed full-time by the College. The spinout will be their only focus and concern. They will be more interested in the products, services, revenues and profits that are to flow from the IP and technology than in the research behind the IP itself. Such cultural differences can be overcome in time and with effort and communication.

- If you are creating a business that needs to raise
money, you should expect your shareholding (equity stake) in the business to be diluted. For cash intensive businesses that require many millions of pounds of investment you should expect this dilution to be substantial. Don’t worry - it’s better to have an ounce of gold than a ton of mud. Your Imperial Innovations relationship manager can put you in touch with experienced mentors who can advise you on dilution and what you should expect. See Appendices four and five for more information.

- Remember that you will share in any negotiated royalties under the College’s Rewards to Inventors scheme. This means that if the company requires the original IP to sell a product you will benefit from the royalty stream even if your equity percentage is heavily diluted. We believe that the mixture of equity and royalties together provides the best balance to Imperial founders in terms of maximising the chance of sharing in future commercial upside.

- Even if you’ve done the most meticulous research, bolted down the IP, targeted your customers and generated piles of investor cash, there may still be trouble ahead. The harsh reality is that more than half of all spinouts fail in their first year, and it’s crucial you’re equipped to get through this early period.

- Perhaps the most important thing to appreciate is that, once your company is formed, you’re no longer solely a team of university researchers – you’re now a serious business. Some founders can struggle with the concept of losing control and you should carefully consider how you might feel about that. Imperial Innovations can provide advice if you have any concerns about this.

I compare running a start-up with a roller coaster ride. There are ups and downs, and most of them come in the same week.

Katharina Klausberger - Cofounder of Shpock
Independent advice for researchers

Despite the challenges, forming a spinout company can be nonetheless an intensely fulfilling and enjoyable experience. One way to approach the journey is to embrace the lifelong learning opportunities you will have and remember that forming a spinout gives you a way to learn new skills and make new contacts. Indeed, embracing the advice of mentors and entrepreneurs and seeing them as complementary to your own skills may well be the most important factor in the overall success of the spinout company.

Mentors & advisers are generally engaged early in the process prior to incorporation and can help you formulate your business plan and shape the proposition. You can access mentors and advisers through both Imperial Innovations and Imperial Enterprise Lab:

- [www.imperialinnovations.co.uk](http://www.imperialinnovations.co.uk)
- [www.imperialenterpriselab.com](http://www.imperialenterpriselab.com)

―From *Tech Transfer Tactics* (Dec 2016): [http://inno.im/2uVoW2q](http://inno.im/2uVoW2q)

Never stop learning

According to several academic studies, start-up investors don’t want to invest in founding entrepreneurs who aren’t willing to learn more about running a business. In fact, studies show that willingness to be mentored is more important to most investors than how good you are at running a business in the first place.

A 2010 study from Northeastern University shows that a founding entrepreneur’s willingness to learn influences whether angel investors decide to move forward with a start-up after a pitch. More recent research from Babson College finds that the more open an entrepreneur is to feedback and mentorship, the more likely it is that investors will be attracted to his or her company. The study shows that this is true no matter how strongly investors rank a start-up’s fundamental business case. As venture capitalist Christian Hernandez Gallardo puts it, “We are backing the founders as much as, if not more than, the business itself.”

―From *Tech Transfer Tactics* (Dec 2016):
[http://inno.im/2uVoW2q](http://inno.im/2uVoW2q)

**“**

Successful people do what unsuccessful people are not willing to do. Don’t wish it were easier; wish you were better.

Jim Rohn
Both Imperial Innovations and Imperial Enterprise Lab can connect you to experienced entrepreneurs to advise you on your company’s needs and future development.
Benefits to Founders

Many founders remark that among the main benefits of forming a spinout are those non-financial in nature. The ability to see your invention have an impact on society, benefit the public, or be used in the treatment of patients can often be the single biggest motivator and reward to founders.

You will also gain useful experience in business, sitting on a board of directors, pitching to investors and developing a commercial product.

Nonetheless, there may be significant financial rewards such as holding a founding shareholding (equity) and a share of future benefits and royalties. The rest of this section describes these benefits in more detail.
Founding a start-up

Enacting change
Societal impact
Public benefit
New treatments for patients

Financial benefits
Equity
Shareholding
Intellectual Property
royalties

Personal & professional development
Business experience
Board of Directors
Product development
Pitching your own business
Your share of founding equity and Founders Choice™

When you have begun to work with us on a project that could be the basis for a spinout, you reach the point of your first major decision: whether to ‘go it alone’ or continue your journey with Imperial Innovations, taking advantage of our comprehensive support package. Your relationship manager at Imperial Innovations will help you to make this decision under the Founders Choice™ programme.

Founders Choice™ is a programme designed to ensure that those founders who are capable of finding the necessary resources, finance and expertise to make a success of a spinout company, with minimal assistance from Imperial Innovations, are given the opportunity to do so.

For example, some founders are on their second or even third spinout and have built up an extensive network of trusted advisers, investors and service providers. Others may feel that they are well networked enough to succeed even ‘first time around’. Under Founders Choice™, you have the ability to decide which level of support you require and work with Imperial Innovations to put the correct programme of support in place to suit your needs.

Founders who choose a lower level of support will receive less assistance from Imperial Innovations but will consequently share a smaller proportion of their founding equity with the University (University equity is shared between Imperial Innovations and Imperial College London). These founders will be given a period of time in which they may test the market to identify customers, attract finance and recruit management. At the end of this period, and following evidence of successful engagement and sufficient interest, IP will be licensed into the new company on reasonable commercial terms. This is a similar process to that used by a number of US universities and it reflects the growing maturity of the innovation ecosystem around Imperial and London.

This spinout guide does not provide an in-depth description of your options or the process behind Founders Choice™. Please consult the Founders Choice™ mini-guide for more information: www.imperialinnovations.co.uk/fcmg/

Whatever level of support you adopt under Founders Choice™, both the University and the academic founders will receive an equity stake in any companies from or associated with Imperial. The reasons for this equity share are shown overleaf. Imperial Innovations will always licence the intellectual property into the new venture on arms-length commercial terms (including milestones and royalties). This enables you to legitimately describe the company as an “Imperial College spinout”.

Imperial’s stake is held by Imperial Innovations Limited. The formation of a spinout company starts from the premise that it is founded on intellectual property generated by the academic founders working for Imperial. This is distinct from start-ups, which may be created without intellectual property from Imperial (either existing or future).

Please note that under Founders Choice™ you are still bound by Imperial’s IP policy and this is not a way of opting out of working with Imperial’s
commercialisation partner, Imperial Innovations. It is simply a means of selecting between levels of support provided, which in turn affects the level of equity received by Imperial Innovations and the College in the new company.

If you are unsure about Founders Choice™, please speak to your relationship manager at Imperial Innovations or the Imperial College Research Office. A detailed description of how Founders Choice™ works can be found at either:

www.imperialinnovations.co.uk/founderschoice/ or http://inno.im/2vi3Ooa

Why do the College and Imperial Innovations receive spinout equity?

Imperial becomes a shareholder in the spinout because of the resources and environment it has made available to the founders to generate the IP going into the company, and any support it may have provided (or which it continues to provide). Imperial Innovations receives a percentage of the College’s shareholding under the terms of its partnership agreement with the College. The size of the shareholding that Imperial Innovations agrees to with the founding team is dependent on which route the founders have elected to take under Founders Choice™ and a number of other factors (see below). The equity stake is negotiated between the founding academics and Imperial Innovations on a case-by-case basis and takes into account:

- The employment and research environment provided by the College
- The association with the College’s reputation that may assist with grant-funding
- Assistance with company formation and development – depending on the support package chosen under Founders Choice™
- Existing IP and Knowhow
- Any negotiated pipeline relating to future IP and knowhow
- Specific investment received prior to company formation (such as PoC funding from College, Government, Charity, Innovations or other schemes accessed through the College ecosystem).
- Advice and assistance through College support schemes

“The way to get started is to quit talking and begin doing.”

Walt Disney
Sharing in royalties and other IP-related revenues

If the spinout intends to use any intellectual property owned by the College or Imperial Innovations it will need appropriate licences to that intellectual property (patents, copyright, 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 company - we understand the importance of cash to the spinout in its early years.

At Imperial, all inventors share in any proceeds from the commercialisation of IP. This includes founders of spinout companies who also receive equity in spinouts. In simplistic terms the policy at Imperial is as follows:

- All inventors & creators receive founding equity in spinouts (relative proportions are determined through negotiation between the inventors)
- Inventors & creators receiving equity do not also share in the University equity (shared between the College/Imperial Innovations) as they have their own, personal stake. This also applies to dividend payments on such shares.
- Inventors & creators receiving equity also share in any proceeds from royalties or other payments received in connection with the licensing of IP (e.g. cash fees, milestone payments, annual fees etc.). Some universities do not allow inventors to ‘double dip’ by sharing in such royalties, but Imperial considers it an important part of the rewards mix and inventors do share in such proceeds (which are non-dilutive in nature).

This advice represents guidance only and you should refer to the latest Imperial IP Policy to ensure that you are reading the most up-to-date and accurate information: http://inno.im/2ujMYk6

The founding IP will be licensed into the company by Imperial Innovations. This is different from an ‘assignment’ of IP which is essentially a transfer of ownership of IP from one party to another. Imperial Innovations does not assign IP, even though your investors or management team may request it.

It is important to understand that Imperial Innovations will not assign IP. 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 Imperial Innovations 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 Imperial 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 don’t go to plan in the future
If your investors or their lawyers have difficulty with this concept, it can be helpful to point out that this system is frequently used in the USA, a country in which there exists a vibrant ecosystem of spinouts and venture capital. In the USA, IP is generally licensed because assignment is normally prevented by statute (federal and state level). US spinouts and start-ups are regularly funded and exited for high valuations on a routine basis.

Checklist: step one

<table>
<thead>
<tr>
<th>Before Spinning Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decide if you want to spinout or go down the licensing route</td>
</tr>
<tr>
<td>Consider whether you have established proof of market demand for your business idea</td>
</tr>
<tr>
<td>Make sure you are committed and have the time to spend to make a success of it</td>
</tr>
<tr>
<td>Understand how you stand to benefit in the future</td>
</tr>
</tbody>
</table>
Step two

12 months before company formation & investment

32 Secure your intellectual property
34 IP Due Diligence: what IP exists and who owns it?
36 Future Intellectual Property
38 Developing your IP Strategy
40 Securing support from Imperial College London before you start
43 Pre-company ground rules
46 Select a law firm to act for the company
48 Agree on how to split founding equity
50 Decide whether to create founding share options
51 Negotiate IP licence
52 Options - a guide
53 Start recruiting & building your team
57 Network and seek input from mentors and advisers
58 Prepare your business plan
**Key Points**

- Your relationship manager at Imperial Innovations is your primary contact for all company related issues
- You should work with Imperial Innovations to secure the intellectual property if this is not already in place
- You should, prior to accepting an interest in the spinout, secure approval from your Head of Department and ensure any conflicts are cleared
- Agree with Imperial Innovations the level of service and support you want to receive and sign the appropriate Founders Choice™ documents as early as possible
- Identify an entrepreneur or law firm to act on behalf of the company in negotiations around IP
- Agree with your fellow founders and Imperial Innovations about ownership and roles in the prospective spinout and construct the capitalisation table
- Agree the ‘Heads of Terms’ for the IP licence from Imperial Innovations into the spinout (your financiers will likely want to know these terms before they commit to invest)
- Seek quality advice from mentors/advisers and begin to consider what your team needs to look like to succeed.
- Prepare your outline business plan and determine your detailed development plan and initial funding requirements (which you will need to raise money)
- Identify a source of funding for the new company so it is ‘ready to go’ from day one
- Plan the company finances. How much money do you need to raise and by what time?
Secure the intellectual property (IP)

The IP is a key asset so identifying and protecting it should be the first thing you do. Without protected IP, there will sometimes be no company 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
- Trade marks – 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 Imperial College London, it will own any intellectual property you create in the course of your duties. More details on this can be found in Imperial’s IP policy: [http://inno.im/2ujMYk6](http://inno.im/2ujMYk6)

As an employee of Imperial, it is likely that you will already have worked with Imperial Innovations to protect some IP if you are now thinking of forming a spinout. However, if you have not yet done so please contact Imperial Innovations 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 company 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 (your Imperial Innovations relationship manager 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 memorable company name. To protect against others using that name, consider registering the name as a trade mark in the territories in which the company will be trading. Don’t forget about the registration of domain names. If you want your company to have a website (which you probably will), then you will need a domain name. Try to come up with 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, your Imperial Innovations contact can advise you on how to get started with this.

Patenting and other forms of IP can help protect your invention and business idea.
IP Due Diligence: what IP exists and who owns it?

It is rare for a company to be formed around a single, monolithic piece of IP. Often there are a range of complementary ideas and inventions that work in concert to enable the operation of a spinout company.

You should work closely with Imperial Innovations to identify all the IP that your spinout company requires, by methodically assessing each stage of your development and production processes and noting IP requirements at each stage. The company may be reliant on software packages, manufacturing processes, data sets or know-how techniques for its success.

Write down every piece of IP that your investigations uncover. Ultimately this list will be required for your discussions with Imperial Innovations to ensure that the IP licence agreement transferring rights into the company covers exactly 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.

You may find that other parties within the university, or researchers from other institutions, have a stake in some of the IP your company requires.

It might also be the case that individuals have joined your research group from another research institution. Will any IP still be owned by that former organisation? Consider any individuals who have left the research team to go elsewhere. Check the terms of any research collaboration agreements. Could the IP be tied up with other members of the collaboration? Is there any of the IP which may be jointly-owned? Check grant funding documents as they sometimes contain some unusual terms through which certain rights are claimed. Keep a file of all the documents which are discovered.

“
You need to have your IP locked down. It’s the only thing investors can put a value on in the early stages.

Dr Arnab Basu, CEO of Kromek

It may be that a third party working in a similar field already holds some of the rights that you’ll 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, you need to work with Imperial Innovations to find out exactly where you stand in this regard – otherwise your spinout might risk infringement of third party IP rights.

You should also work with Imperial Innovations to check where the IP has been developed. You will

© Imperial Innovations 2017 All Rights Reserved
need to fill out an ‘IP due diligence’ form to help the Research Office conduct the appropriate checks – please note that this is a pre-condition of licensing the IP into a spinout so you should start this process as soon as you can (and keep Innovations updated if any new IP emerges en-route).

The Research Office will then review any obligations to funders of the research.

Imperial Innovations 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. Imperial Innovations will also do the initial patent searches for you, but you can do your own search for existing patents via the Espacenet website (http://gb.espacenet.com), Google Patents (https://patents.google.com/) or at the British Library. If the company is likely to trade outside the UK, you should work with Imperial Innovations to check whether there are existing, similar patents outside the UK. These searches will help to identify any patents that may be held by third parties and therefore whether the company would be at risk of infringing such third party rights. Note however that this is not the same as a ‘formal’ freedom-to-operate search – these are conducted by qualified patent attorneys and can be very expensive.

You must also consider what will happen if your company infringes IP that belongs to a third party. This could be much more expensive than a freedom-to-operate search! You will also need a strategy for enforcing any IP rights and handling infringement of the spinout’s intellectual property. This can be equally expensive.

Depending on how critical the founding IP is to your business, you may wish to consider obtaining IP insurance coverage to protect against these negative outcomes. There are a number of options available and advice can be sought from a number of specialist insurance brokers which Imperial Innovations can recommend.

Transferring IP to the new company

Your new spinout will be a separate legal entity from both you and Imperial College London. It must therefore obtain the legal right to use Imperial’s IP (known as a licence) before it begins trading. Exactly which rights are being transferred should be set out in schedules to any licence agreements; this will make it clear exactly what is being transferred.

It is more difficult to identify unregistered IP and know-how; however, you should try to record in the schedules as much detail as possible. Make a note of any particular laboratory notebooks with dates, results books, papers or any other materials which you think will be required by the company in the future. The Imperial College Research Office will require this information in detail to finish its due diligence process before granting rights to the IP can occur.
Future Intellectual Property

Your spinout may, in the future, require access to IP that does not yet exist

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 company in the future – sometimes called ‘downstream’ or ‘arising’ IP. You must ensure that all company 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 company.

You must ensure that individual consultancy agreements are put in place dealing with IP ownership with any consultants that you engage with. However, beware a common mistake. A consultancy contract with an existing Imperial employee does not override their employment contract with the College. New IP created by such employees in the course of their duties will continue to be owned by the College. 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! Imperial Innovations and Imperial College Consultants Limited (ICON) can both provide advice here if required.

If the company wishes to continue to work with Imperial in the future it will also need to put in place obligations of confidentiality between itself and the College.

ICON can also advise on the use of College facilities, during consultancies, by spinouts: www.imperial-consultants.co.uk

Imperial will be particularly concerned if its resources
are used to benefit your spinout company (this is more likely to occur with new companies that have few resources or employees – the ‘virtual company’). The College should not be put in the position of being perceived to be 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 extremely clear about arrangements with the company, since the College 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 company will require access to future IP created at the College after it has been formed, you must talk to Imperial Innovations about your options to ensure that an appropriate legal agreement is put in place.

It may be tempting to ‘turn a blind eye’ and let IP ‘leak’ into the company over time from Imperial employees via natural diffusion (i.e. frequent dialogue and interaction). However, your investors will expect 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 company is doing a major deal or being acquired.

You should also note that any new IP accessed by the company will be subject to the same due diligence, that the initial IP went through.
Developing your IP Strategy

**IP Strategy Key Questions**

- Patents are important but expensive and time-consuming to obtain. Is patent protection the right approach for your technology? Where will you seek protection? What sort of protection will you need?

- Do you need to protect or manage any know-how or trade secrets?

- Are you preserving the copyright that you create?

- Have you considered your corporate image and brand identity? This can quickly become your trademark, which, in a rapidly developing environment, can take on its own value. You only get one chance to make a first impression.

- Have you, or do you need to, license any IP in from outside the company? How secure is it as a commercial asset?

- If you are licensing out technology, how do you plan to control it?

Your new business is a commercial organisation that needs to make money from the intellectual property which it has access to or which you plan to develop. This IP is where the potential value in your business lies, and it is critical that you understand it from a commercial perspective, protect it, guard it and appreciate the associated costs and timelines which should be properly incorporated into your plan.

Because the IP may be your key asset at the point of spinning out, you require a detailed and well thought out IP strategy which addresses legal and commercial aspects of IP management. You should take professional advice and be prepared to allocate adequate resources to the portfolio of intellectual property. It is very unlikely you will have all the specialist knowledge that an experienced IP professional can bring to the table. Be prepared to acknowledge gaps in your knowledge, in the long run it will strengthen your skills and earn you respect – you can’t ‘wing it’.

While the basics of IP protection are straightforward, it can be tricky to apply them. You may wish to appoint a member of your team as IP Manager for your company. Alternatively, Imperial Innovations may be able to supply an IP service as part of its enhanced service offering under Founders Choice™.

If your company has any registered IP rights, such as patents, they will require periodic renewal and must be kept up to date. You can pay for a reminder service from your company patent attorney.
Adopt practices for the identification of new patentable inventions or other IP, which may arise from your employees. This could be included as a standard item at project meetings. This is very important as it is a good idea to enhance the strength of the spinout continuously through a growing portfolio of IP.

You should also set up procedures for the accurate recording of know-how in notebooks and the secure storage of information which will be confidential to the spinout. A ‘sign-off’ system can be initiated, particularly in relation to information which is to be published.

Look around widely for other relevant or supporting IP. In addition to potentially working with colleagues at Imperial, do you have colleagues at other institutions with whom you could collaborate to develop IP or is there IP elsewhere which could be acquired? New patents can extend the lifetime of the spinout’s IP base, as patents have a time limit (usually 20 years). Ensure that you develop an IP strategy that is a distinct and robust part of your business planning. Your patent attorneys can often provide useful advice here.

Check collaboration agreements, confidentiality agreements, materials transfer agreements or similar to ensure the company does not release important IP. Your designated IP Manager will likely arrange regular IP training sessions to ensure all employees/workers are aware of the procedures in place. Imperial Innovations provides a range of training, including on IP matters, under its Innovation Academy programme: [www.imperialinnovations.co.uk/innovation-academy/](http://www.imperialinnovations.co.uk/innovation-academy/)

Training could also be provided to employees of the company in relation to the release of information over the internet and the use of copyright materials on the internet.

As your spinout develops it may no longer require elements of founding IP; the company’s research may shift into different areas. You should closely monitor this as the company may be able to make this non-core IP cash-generating (through licensing if permitted) or cash-saving by either returning IP to Imperial Innovations or letting registrations lapse.

You should carefully consult the original IP licence that you have signed with Imperial Innovations before taking any action to ensure you do not inadvertently breach the provisions of the licence agreement. Please consult with Imperial Innovations if you are unsure what your options are.

Having an IP strategy will help you protect your business’ key asset; make sure to consult with IP professionals to avoid missing anything.
Securing support from Imperial College London before you start

Once you have taken the decision to form a spinout company, you must focus on getting buy-in and support from Imperial College London. This will include informing your Head of Department at the earliest possible opportunity that you intend to start a company. As previously noted, all Imperial employees must gain specific permission from their Head of Department before they can accept a position or equity in a spinout.

All academic staff should be aware of this, but you will need to ensure that documentation has been completed properly. An electronic copy of the Register of External Interest form can be found on the College website at: http://inno.im/2wlbzXZ

Imperial Innovations is the contractual technology transfer partner for Imperial College London and cannot adjudicate on the conditions of employment of Imperial staff: these are a matter for the College. The relevant policies are handled by Imperial Human Resources, and information for staff is available here: http://inno.im/2hnITeM

Imperial Innovations will make every effort to guide you through the relevant procedures, in conjunction with the appropriate Imperial College London officers.

Avoiding conflicts of interest at Imperial

An Imperial College London spinout is defined as a company where the original intellectual property was developed by an Imperial employee, and where the employee becomes a founder and has an equity position in the company, and often has an influential role in determining the direction of the company.

At the same time, Imperial is a Higher Education Institution (HEI), with education and research as its mission, and a requirement to maintain openness in research. Therefore, entrepreneurial activity must be balanced by careful review of the proposed relationships, which may or may not be allowed. These relationships may require active management to assure openness in research, academic freedom for trainees, and clear understanding about how conflicts of interest are to be managed.

In the early stages the company may not have sufficient financial resources to allow you to take a full-time role, or you may not want to leave your position at the College. You can, therefore, be left in a situation where you are balancing your time and energies between fulfilling your research role as an employee of the College as well as devoting time to getting the spinout off the ground. This may potentially give rise to conflicts of interest.
A conflict of interest occurs when an individual’s private interests may compromise their professional obligations to Imperial College London. It includes both perceived, potential and actual conflicts.

If you wish to participate in a spinout, you will need to consider the College’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 College. 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 College’s facilities to work on projects related to the company. Imperial’s Conflict of Interest Policy can be found here:

http://inno.im/2f7ZocV

Further useful information for academics may be found on the College website here:

http://inno.im/2uVfUSB

"No Conflict. No interest."

John Doerr, Partner, Kleiner Perkins Caulfield & Byers.
Avoiding conflicts of commitment at Imperial

Imperial researchers owe their primary professional responsibility to the College and furthering its research and teaching objectives. Their primary commitment of time and intellectual energies should therefore be to the education, research, and teaching objectives of the institution.

Time conflicts are also conflicts of interest. If a situation raising questions of conflict of commitment arises, the staff member should discuss the situation with their Head of Department. It is important to the College that spinouts do not result in researchers having to make ‘choices’ between research & teaching commitments and spinout related activity.

If you have any concerns in this regard please talk to your Head of Department, your local HR representative, or Imperial Innovations. Experience has shown that spinout success correlates well with the commitment of the founders. If you are concerned in this regard it is far better to raise and discuss such concerns sooner rather than later.

Common sense rules to avoid conflicts of interest at Imperial College London

- Separate and clearly distinguish on-going Imperial College London research from work being conducted at the company.

- Ensure your duties for the spinout company are carried out under a consulting (or other form of) contract.

Securing support from Imperial (continued)
Pre-company ground rules

We advise that the following activities are not carried out without first checking with the Imperial College Research Office. This list is not exhaustive and if in doubt, please check with your local HR representative or the Research Office, as appropriate.

Imperial College Staff Should Not:

- Receive gifts or benefits-in-kind from the company
- Involve research staff or other Imperial staff (including any junior or supervised staff members that maybe co-founders and/or equity holders) in research activities at the company unless under a formal arms-length sponsored research agreement or consultancy agreement arranged through Imperial Consultants.
- Involve research staff or other Imperial staff in consultancy activities with the company unless under a consultancy agreement arranged by Imperial Consultants.
- Allow company staff to be affiliated with Imperial, without all of that individual’s external Imperial interests (including their position and other interests in the spinout) being declared as per Imperial’s Register of External Interests and Annual Declaration policy. In addition, there must be clear delineation between the roles (including the research activities) that individuals will undertake in their Imperial College London and spinout capacities.
- Involve company personnel in Imperial research, unless there is a formal agreement between Imperial and the spinout governing that collaboration.
- Involve current PhD students in company activities. Students are at Imperial primarily to study. If they wish to get involved in a spinout then this needs to be approved and managed via their Head of Department and PhD supervisor
- Use Imperial facilities for company purposes unless governed by a sponsored research agreement with Imperial or a consultancy contract arranged by Imperial Consultants.
- Be the PI/protocol director of a human clinical trial, if you have a financial interest in the product/novel treatment being investigated or an interest in the company that has an interest in the product/novel treatment being evaluated in that trial. Note it is strongly advised that you seek prior advice from the Research Office of Imperial if you feel this is a possibility.
**Initial Paperwork**

The prospect of filling out paperwork during the company building process probably fills you with dread – you only have so many hours in the day, and you want to use them to build your business! However, it is vital that some documents are completed before you go too far down the spinout path.

These non-binding ‘pre-spinout’ documents help all parties to set expectations, agree on the direction of travel, adopt general ground rules, agree how to share in future rewards and determine what the overall IP licence into the company might look like. Investors will expect that you have thoroughly considered these aspects.

Imperial Innovations has put hundreds of such documents in place over the past decade. Whichever level of support you have elected for under Founders Choice™, Imperial Innovations will help you to put these documents in place and will provide the templates to set the ball rolling. At this point it is advisable to start seeking out a law firm to act for the company.

---

Paperwork can seem like a distraction, but tackling it early helps make sure everyone is on the same page.
1. Founders Choice™ Letter of Intent (LoI)
You should work with your Imperial Innovations contact to determine how much support you want with forming your new spinout. You will then be asked to sign a non-binding letter of intent which explains to you what support you can expect under your chosen route and in which you acknowledge that you have agreed to this. This is to prevent situations where a founder may inadvertently receive lots of support from Imperial Innovations, only to wish to elect the Founder Driven/basic support option at the 11th hour before formation. We ask founders to choose early in the process to avoid situations like this or other misunderstandings from occurring. The Founders Choice™ provides more in-depth advice on your options and support provided under each tier of service: www.imperialinnovations.co.uk/founderschoice/

2. IP Standstill Letter
This is only relevant for founders electing to take the “Founder Driven/basic support” option under Founders Choice™. The purpose of this IP Standstill Letter includes ensuring that the IP is ‘parked’ (i.e. not marketed or licensed to anyone else) for a period of time until Imperial Innovations licenses the IP into your company. This will enable you to reassure potential investors and prospective management teams that the IP will be accessible solely by the company and will not be offered to anyone else during this period.

3. Founders Memorandum of Understanding
A non-binding document signed between Imperial Innovations and all the founders that sets out what the spinout exists to do, the share of equity between the founders (see Agree on how to split founding equity), the types of company formation documents you are going to be asked to sign, the warranties (guarantees) that investors will expect from founders, among other things.

4. IP Licence Heads of Terms (HoT)
A non-binding document that sets out the main terms of the IP licence into the company and addresses the questions that investors will ask e.g. what milestones and royalties will be due, is know-how included, what happens if the company sub-licences the IP, clarity over the fact that Imperial Innovations will not assign the IP etc. It will be negotiated between Imperial Innovations and the founders’ designated advisers (consultants, mentors, entrepreneurs, prospective management, lawyers etc.) early in the process because it is highly advisable that this has been agreed before you approach any investors.
Select a law firm to act for the company

Spinout company founders need to select and appoint lawyers to act on behalf of the company (not the founders). Imperial Innovations’ lawyers will then be able to work with these appointed lawyers to agree and enact the spinout terms and other initial documents. These lawyers can also act as the company secretary in the early stages and as such be responsible for filing all initial and future Companies House documentation. For your reference the crucial first documents are briefly described in Step five. In the future, you should consider engaging a professional company secretary (who can be a qualified individual or your law firm representative).

You must deliver a clear and unambiguous brief to your spinout’s lawyers at the outset so they understand the extent of their involvement and their responsibilities. This will also allow you to budget successfully and control legal costs.

Imperial Innovations maintains a panel of firms (the Imperial Innovations Legal Panel) that have agreed to provide benefits to Imperial-related spinouts including discounted fees and payment terms to suit the financial circumstances of the spinout. Please contact Imperial Innovations for further details of the services and terms offered to Imperial spinouts. The full details of all our panel of service providers and their range of services can be found on the Imperial Innovations website: www.imperialinnovations.co.uk/

While it is advisable to consider selecting your spinout’s legal representation early in the process (so they are ready when you need them), you may consider you do not need to formally engage them until the process of negotiating documents occurs, typically around three months before formation. The decision as to when you formally sign-up and engage them is yours, and you will often find that they will answer a few queries in advance of being formally engaged as ‘goodwill’ on their part.
Avoid the legal horror stories

So many companies have now been formed at Imperial that it’s inevitable we look back on a few of them with some regret at things that went wrong. There have been a couple of cases where company founders have run up very large legal bills and consumed a great deal of time unnecessarily during the formation process resulting in substantial billable hours for the law firm which are then charged back to the company, usually as debt to be recovered from future funding rounds. This is not inevitable, though; it’s straightforward to avoid surprise bills by ensuring you take sensible steps which Imperial Innovations can advise you on.

What usually causes these negative experiences? Generally:

- Founders or incoming management insisted on using a law firm that had been recommended to them, rather than one drawn from the Imperial Innovations Legal Panel (all of which are trusted law firms that have worked with many universities and spinouts before).

- The chosen law firm may have been very well known, but lacking experience (despite claiming it) in dealing with universities. This leads to ‘learning on the job’ and can add time and expense to the process while they argue points unnecessarily.

- Founders fail to negotiate a proper start-up package with the law firm. Start-up packages can defer payment until after funding rounds, cap exposure and ensure future payments are proportionate to investment funding. Law firms on the Imperial Innovations Legal Panel will all negotiate such packages with you, but if you wish to engage a different firm then please negotiate such a deal first.

We have seen first hand that when spinouts use law firms that have experience dealing with UK university spinouts, the whole process is faster and cheaper for the new company, with less ‘angst’ all round.

While we do not insist that you use lawyers drawn from the Imperial Innovations Legal Panel, we strongly advise you select a law firm that has a proven track record of working on multiple spinout formations from top 20 UK universities in the past five years.
Agree on how to split founding equity

Whatever level of support you have selected under Founders Choice™, the College and Imperial Innovations will always take an equity stake in a new spinout, and will always license intellectual property into it on arms-length commercial terms (including milestones and royalties). This will enable you to legitimately describe the company as an ‘Imperial College spinout’. In all cases, the University and academic founders will both receive an equity stake in any company from or associated with the College.

Therefore three things must be agreed upon in advance:

■ **Split of equity between the founders and the university**
  You must agree with Imperial Innovations the level of equity taken by the ‘university’ group (Imperial Innovations, the College, and any funders). This should take into account the fact that the university group holds equity on behalf of, or revenues shares with, third-party funders of the research.

■ **Division of equity between founders**
  You must agree between yourselves (the company founders and any non-inventive contributors) how to divide up the founders’ allotment of equity.

■ **Share options**
  Decide on the size of a share option pool to incentivise future employees (see next section).

The agreed split of equity will be constructed in the share capitalisation table or cap table as most people call it. This cap table will be included in the founders Memorandum of Understanding, referred to in the previous section, so that there is a written record that all inventors have agreed to the division of equity.
**Equity distribution: key points**

- In the event of disagreement between Imperial Innovations and a spinout’s founders on the issue of fair and reasonable equity split between these groups, the Imperial College Research Office will request submissions from both parties and attempt to mediate between the parties to reach a fair position.

- Founders must, between themselves, decide how to allocate the founders’ share of equity. Imperial Innovations and the College can provide guidelines and tools to help in this process but an agreement must be reached between all founders.

- The College’s policy is that all inventors should receive founding equity in Imperial College London spinouts.

- Founders may choose, if they wish, to allocate some of the founding equity in a spinout to non-inventive contributors to the development of the technology. This may include a lab technician or post-doc, for example, who may have done a substantial amount of the basic work that contributed towards the invention and eventual spinout.

- The key message is to allocate the founding equity carefully and ensure that the people you need for the future success of the spinout are adequately rewarded. Imperial Innovations and the Research Office can provide you with advice on this.

- Spinout equity will also need to be shared with people involved in the company in the future, such as management and future employees. This can be addressed in part through a share option scheme (see page 52) to reward input in future. Investors will be keen to see that the company’s equity is divided in a way that will appropriately recognise and reward those people who are key to the strategic direction and growth of the company.

- Dividing equity must be addressed early in the process of forming a spinout. It is a complex multi-party negotiation and will never be easy, but it will only get harder the later it is done.

- Following the division of founding equity, it will still be necessary for the founders and Imperial Innovations (acting together) to negotiate with investors what percentage of the new company will be sold in exchange for investment funding. In practice this will be an iterative, three-way negotiation. Imperial Innovations has assisted in hundreds of these negotiations and it is in our interests to conclude a deal as rapidly as possible in order that all parties receive a fair and reasonable share in the future success of the spinout.
Decide whether to create founding share options

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.

The alternative to issuing ordinary shares is to use share options. Share options give employees the right at a future date to acquire a set number of shares in the company depending on the achievement of milestones. Another alternative is for employees to return founding shares if they fail to achieve certain agreed targets.

This may be triggered by a certain event, for example, a sale or takeover of the company or they may be part of a vesting plan in which the shares are given out over a defined period to recognise the founders’ continuing contribution to the company. This will have the benefit of incentivising the individual without giving any of the equity away immediately. In other words, if the individual leaves before he or she is entitled to exercise the option, the option will lapse, and they lose their right to earn further shares (or have to return some of their founding shares). Certain types of share option can be particularly tax efficient. Imperial Innovations can put you in touch with a panel of different tax advisers to give you advice on this (or you can select your own).

Please note that if you elected for the Founder Driven/basic support option under Founders Choice™, you and your co-founders will receive a large majority of the equity in the company. As such, it is expected that any share options you plan to issue will be created from the founders’ equity pool. As the University equity stake under this model is subject to a non-dilute protection mechanism, the issuance of new options will not affect the University equity stake until the non-dilute expires.

Why use share options?

- 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
Negotiate the terms of the IP licence agreement

You will agree with your relationship manager at Imperial Innovations 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 company and addresses key investor questions, on topics such as milestones and royalties, inclusion of know-how, sub-licensing and clarity over the fact that Imperial Innovations will not assign IP to the spinout. A template IP licence may be attached to the HoT.

You should agree the HoT before approaching investors. Imperial Innovations is reluctant to undergo a double negotiation (with the company 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.

From experience Imperial Innovations has found it better to negotiate with advisers to company, rather than negotiating solely with the founders. This does not exclude the founders, who may be represented and present during all negotiations and whose buy-in and agreement to the negotiated position is vital. However, many academics are not expert commercial negotiators for complex IP provisions and hence our preference is to negotiate with experienced representatives alongside the founders to avoid or minimise the need for any revisiting of terms later.

These advisers can be any of:

- An independent consultant appointed by the company
- Prospective management for the company
- Other qualified parties who are there to independently represent the best interests of the new company (not the founders)

Initial IP costs borne by Imperial Innovations will need to be repaid when the new spinout has sufficient funding. A similar arrangement will be used for other special costs incurred by Imperial Innovations on behalf of the company. 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 company has sufficient reserves to be solvent and develop the technology 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 technology is intended to enable inventors to succeed in translating their technologies into use without jeopardising the mission or funding status of Imperial College London. Imperial has a rich history of translating inventions, and these practices are designed to build on that strong base.
A guide to different types of options

You will hear the word option in many contexts during the formation of a spinout. At Imperial, the most common uses of the word relate to the following three scenarios:

**Share options plan**
- A share option scheme allows founders and management to receive additional ‘top-up’ shares in the future, in recognition of their continued contribution to the company.
- Share options allow participating individuals to buy shares at a pre-agreed price in the future, based on certain conditions being met. You may hear them referred to as option schemes or option plans.

**IP Option (standstill letter)**
- This is only applicable when founders have elected for the Founder Driven/basic support package under Founders Choice™.
- It provides a formal understanding that Imperial Innovations will not market or commercialise the founding technology and will maintain any associated IP rights for a set period of time in order to allow the founders time to find managers, investors and early customers for their spinout.
- You may hear this referred to as an IP Option agreement, though technically it is a letter of understanding between Imperial Innovations and the founders of the new company.

**IP Option (pipeline agreement)**
- This is a contract granted to a new spinout by Imperial Innovations that states any unencumbered intellectual property in a predefined space (for example, improvements to the licensed technology produced at Imperial by the founders of the company) will be licensed into the spinout either on terms to be agreed or on the same terms as the original licence. Such agreements generally have a short timeline, such as 12 months.
- Such agreements are relatively common and incoming investors are keen on them. Also referred to as IP pipelines, improvements agreements or future inventions agreements.
- Legally they consist of an option for the company to call for the technology in the future, hence the name.
Start recruiting & building your team

No matter how brilliant your mind or strategy, if you’re playing a solo game, you’ll always lose out to a team.

Reid Hoffman - Co-founder, Linkedin

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. This section looks at how you build the most important part – the team.

While everything mentioned above is important, investors focus on three things when evaluating new companies: management, management and management. You may be the world’s leading expert in your area of research, but you will still need help to develop the technology and the company. 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 technology 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.
The good news is that technology companies generally start up within a cluster (such as the Golden Triangle of London, Oxford and Cambridge), where there is a concentration of specialist investors and professional advisers as well as experienced individuals who are willing and able to join your team on a flexible part-time basis.

Research the available talent thoroughly and be prepared to take advice from a variety of sources to make sure that your business has a strong and complete management team to maximise its chances of success. Talented, entrepreneurial managers are always in demand, so seek advice to find them. Executive Recruitment Agencies are useful sources. Specialist online agencies, such as Directorbank (www.directorbank.com), which provides a matching service, may also be helpful. Organisations such as the Institute of Directors (www.iod.com), should also be able to assist. Of course, under the Jointly Driven option of Founders Choice™, Imperial Innovations will utilise its extensive networks to help you in your search.

It can often make sense to recruit people from outside who are already expert in their own area or can open doors to key contacts and markets. While building the proposition, you’ll attend numerous trade shows, 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 company will change as the business grows and it becomes necessary to have other skills at management level, so be aware from the outset that the people you hire need to be moved on from time to time as you need employees who are stage-relevant for your business.

Be sure that any research associates or post-docs intending to move to the company can 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 prompt professional appointments can help at this stage – for example, appropriate legal counsel and tax advisers to assist with incorporation issues and licensing (see our Service Provider List).

You may have people in mind for some roles within the company – but ensure that selections are made for the right reasons. Business skills differ from research skills. You will also need to consider how important being ‘in charge’ is to you.

“Back the jockey, not the racehorse.”
Complete control vs company growth

Hiring experienced management can really propel a start-up forward. Founders may have to choose whether they want to be “rich” or “king”. Being both is a rare exception.

Image adapted from Noam Wasserman’s The Founder’s Dilemma (Harvard Business Review February 2008)

https://hbr.org/2008/02/the-founders-dilemma
Top tips for building your company and team

- Create a core team with high potential.
- Carefully consider the chemistry of your team and their complementary skills. You don’t want a team of people who can’t get along, and nor do you want one in which everyone is very good at the same thing but there are skills gaps.
- Don’t 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.
- 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 company successful.
- Always be the best prepared person in the room. This applies to all aspects of the business, not just the technology. Make it your job to understand all the aspects (even if it its not your role to be CEO). The best founders have a good ‘helicopter’ view of the entire business (rather than just their specialism).
- Network sensibly. Don’t talk to everyone about everything, but identify and talk to the people you really need to talk to. Do your research first, don’t 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.
- Do not take bad professional advice just because it is cheap.
Throughout the start-up process, advice and mentorship are invaluable in building the foundation for a successful business. Imperial College London cultivates a strong entrepreneurial spirit and has access to many resources to help with networking and provide guidance for a path to commercialisation. The College’s formal programmes and entrepreneurship classes, combined with informal advice from advisers, friends, and colleagues, can help guide founding entrepreneurs through the start-up process – such as writing a business plan, building a management team, attracting board members, and meeting potential investors (see Appendix two).

Imperial is setting up a mentoring service precisely for this reason. Through this scheme you will be able to gain free of charge access to seasoned ex-industry advisers who can help provide ‘no strings attached’ advice to your venture during those vital early few years. Please contact Enterprise Lab for more information or talk to your Imperial Innovations relationship manager who can put you in touch when it goes live. [www.imperialenterpriselab.com](http://www.imperialenterpriselab.com)

**Start building an Advisory Board**

You may wish to consider building an advisory board at an early stage. Consider whether it’s 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 doesn’t actually need to be in place until the company 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.

Don’t 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.

"Get a mentor in the applicable field if you’re at all unsure of what you’re looking for."

Kyle Bragger, Forrst founder
Prepare your business plan

“Go out on a limb. That’s where the fruit is.”

Jimmy Carter

Academic entrepreneurs should develop a thoughtful business case to understand the market potential, competition, and funding needs of their business. This should include a plan for developing the technology and generating sufficient revenue to sustain and grow the company. This plan will be vital when meeting with investors and pursuing funding.

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 start-ups 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.

Remember that 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?

Key attributes of a business plan

For You

Keep it real - an academic treatise is no use in executing the plan. You are not submitting a publication in a journal. You don’t need every detail to be backed up with references. They are backing you and your proposition to solve an unmet need. Have a clear list of objectives and milestones that work towards the end game.

For Investors

Keep it simple - few investors are likely to have your specialist knowledge (and frankly they get bored easily). You should portray a solution that fills a need better, cheaper or faster than the competition - and you should demonstrate how you will make it happen. This is the message you need to communicate. Do not talk endlessly about the technology. Focus more on why people will buy your product. Also consider your ‘elevator pitch’ – how can you sell someone your concept in 60 seconds or how can you grab their attention in one page?

For Both

Keep it short - don’t write an enormous plan simply to ensure you ‘cover every base’. Investors will not
have time to read it and there is plenty of time to get into the detail once their interest is piqued. Above all, remember - it’s your plan - don’t give it to anybody else to write (though getting advice and help is advisable). You must know it, eat it, breathe it and be prepared to live it twenty-four hours a day. It is a living, real world document, not something to forget once the investors’ money is in the bank.

**Consider what type of company you are creating**

You should discuss early on with Imperial Innovations and your lawyers what the optimal legal structure for your company should look like e.g. company limited by shares, company limited by guarantee, partnership, charity or other structure. Experience has shown that the most common types of academic start up tend to be:

- Imperial College London IP-based spinouts. A high-tech company formed by staff and using College IP.
- Consultancy, services or training companies. So-called lifestyle companies - usually without IP.
- Joint-ventures (JV) with a third party - with or without IP.
- Spin-in companies. Formed substantively as a response to external stimuli established as a JV vehicle.

**What will the spinout do?**

Before you start putting pen to paper on the business plan you should consider the following:

- What will the company do? Specifically, what products or services will it sell?
- Who are your customers?
- What is your business model? How will you get products and services to your customers - directly or via ‘agents’?
- Which target markets will you aim for?
- How will the company 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 (exclusive or non-exclusive)?
- What is the likely timescale between completion of research and going to market?
- What funding will the company require and where will it come from?
- Are specialist facilities required?
- Who will be involved in the day-to-day management of the company?

"Give me six hours to chop down a tree and I will spend the first four sharpening the axe."

Abraham Lincoln
What to put in your business plan?

It will probably take you longer to research your plan than to write it. Expect that to be the case. When you begin writing it, present it in a way that works for you but which covers the main items described in this section.

Putting your ideas down on paper isn’t only essential in demonstrating the company’s viability and your commitment to potential investors; it also serves as a very valuable exercise in simply getting things straight in your own head.

Additionally, Imperial Innovations will, prior to releasing the IP to the spinout, want to see the business plan for reassurance around the likelihood of the company using the IP to good effect.

As part of the conditions of taking the Founder Driven option under Founders Choice™, Imperial Innovations will require a business plan from you so ensure that you produce one.

Appendix two contains a list of references that provide additional information about writing business plans and some template documents.

Typical 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’s succinct and lifts the key points from the rest of the plan.

- **Market Analysis**: fundamental, but often not given due consideration by technology start-ups. What need will your product address, how is it better, cheaper, faster than existing solutions and what is the competitive landscape? Is the addressable market big enough? Is it controlled by a few players? Is there a healthy growth trend?

- **Market Access**: Pricing, Product, Placement. 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?

- **Technology Plan & product/platform development strategy**: what are the technical or R&D challenges to bringing the technology to market and how will they be addressed? Does the technology lend itself to opportunities for multiple products/platforms?

If you don’t know where you are going, any road will take you there.

Lewis Carroll
- **Business Model**: how will the model be actioned in terms of building product scale, delivering services, or licensing, for example? How will you actually realise cash from the business or achieve an exit for investors? How do you plan to exit?

- **Corporate Governance Plan**: formal housekeeping, but an essential framework. What is the corporate governance & board structure? What legal advice are you getting?

- **IP Strategy**: the intellectual property is likely to be your main or only asset. How are you going to protect it? Is broad patent coverage possible? Are there background patents owned by others? Will the company have freedom-to-operate to develop the product?

- **People Plan**: what skills do you need? How will you find them; who is already on board and what is their track record? Set out the skills and experience of the key people in the business (including short CVs in the appendix).

- **Risk analysis**: explore best and worst case scenarios. Look at what the main milestones will be and how you will adjust if for any reason they are missed. Explore when you will need further funding. You investors will always ask these questions and will be pleased if you address them.

- **Financial & Operating Plan**: 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.
Checklist: step two

<table>
<thead>
<tr>
<th>12 months before formation and investment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Secure your IP</td>
<td></td>
</tr>
<tr>
<td>Register any external interests with the College and resolve any conflicts of interest</td>
<td></td>
</tr>
<tr>
<td>Select which level of support you would like under Founders Choice™</td>
<td></td>
</tr>
<tr>
<td>Select your law firm or entrepreneur to represent you in IP negotiations</td>
<td></td>
</tr>
<tr>
<td>Define your cap table</td>
<td></td>
</tr>
<tr>
<td>Agree the Heads of Terms for the IP licence with Imperial Innovations</td>
<td></td>
</tr>
<tr>
<td>Find high quality mentors and advisers to ensure you are well informed</td>
<td></td>
</tr>
<tr>
<td>Begin to prepare the business plan</td>
<td></td>
</tr>
</tbody>
</table>

"Everyone has a plan until they get punched in the face."

Mike Tyson
Discuss your business plan with others and get advice from those more experienced than you (but sign an NDA first)
Step three

Raising finance

66 Raising finance for your spinout
68 Different types of funding
70 Sources of finance for early stage companies
78 How to get equity investment
Key Information

- An introduction to raising finance for spinouts
- Sources of finance
- Imperial College London/Imperial Innovations involvement
- The process to obtain equity investment
  - Stage 1: Finding Investors
  - Stage 2: Pitching to investors
  - Stage 3: Initial due diligence (getting comfortable with each other)
  - Stage 4: Negotiate the term sheet and valuation
  - Stage 5: Detailed due diligence
  - Stage 6: Documentation & completion
Raising finance for your spinout

If you have followed the steps suggested by this guide so far then you will be developing a business plan, working out what you offer to customers, speaking to mentors and advisers and you’ll have an idea of what your spinout will do and how it will operate. But how will you fund it?

Your spinout company will not succeed without finance. You may be in a position to provide some financial backing yourself and you may also have family and friends who are willing to contribute to funding but you will almost certainly need to turn to external sources of funding eventually.

Generally external financing can take two routes - debt and equity.

- Debt means borrowing money. The principal feature of debt is that it has to be repaid from the profits of the business within a fixed timescale. A commercial lender accepts no risk that the money will not be repaid and rates of return are therefore set lower than for equity investments. As a technology start-up, you are unlikely to have sales straight away, let alone profit, so debt funding is unlikely to be an option at the very beginning of the process.

- Equity means selling a portion of your business. This involves issuing shares in your newly formed company in exchange for cash. This is a complex process for which you should seek advice from your legal adviser. Several specialist technology investors exist whom you could approach, but before doing so you should research the market to establish which are most likely to invest in your business and which will add the most value.

The third, and best, way to fund a business is to get paid by your customers for the goods/services that you deliver. This means that you have not only retained full ownership of the business but have proved that there is a demand for your offering. Do not rule out the company’s ability to bootstrap by careful cash management and maximising the use of grants and similar schemes.

The majority of IP-led spinouts from Imperial raise their money through equity finance. Raising this cash is therefore a key task for spinouts. Raising this process that can take anywhere from six months to a year and it must be managed carefully. You should make sure an experienced person in your company is responsible for this and seek expert advice from elsewhere.

Available sources of finance are covered in more detail starting on page 70.

Don’t forget that almost all sources of finance will expect a return. Even seemingly benign or not-for-profit sources such as charities may still ask for a share of future revenues or equity. Imperial Innovations can advise on the advantages and disadvantages of each source and check any ‘small print’ on translational grants and other such funding sources.
Before you approach external parties make sure you are clear on what your spinout needs. Be realistic in the business plan about exactly what you will do with the finances raised and why you need that amount; underestimating the funding required will just cause setbacks later. Equally, sandbagging the plan to allow for contingency will cause you to lose credibility with investors (if their money isn’t ‘at work’ they’d prefer it to be in their own bank account, rather than yours.)

“Think about your strategy and do not rush to pitch it to venture capitalists. There is no second chance for the first impression.”

**Founders Choice™ and finding investors**

The level of support for fund raising provided by Imperial Innovations will depend on the level of support you opted for under Founders Choice™:

- If you opted for the *Founder Driven* option, then you have signalled that you (and your advisers) are comfortable with finding, approaching and pitching to investors yourself and you will carry out this activity over the next 6-12 months to see if an investor or group of investors can be found.

- If you opted for the *Jointly Driven* option, then the Venture Support Unit (VSU) of Imperial Innovations will help you with the fund raising process. The VSU has a wide network of funders that Imperial spinouts have successfully worked with in the past. They will help you with approaches and networks, but you will still be required to work together with Imperial Innovations to make this successful. Most importantly you will still have to pitch and sell your technology – without you the company will never succeed.
Different types of funding

Not all cash is made equal. A company’s needs change throughout its growth and so does the most appropriate source of funding. Below is a rough guideline on potential sources of cash for varying levels of funding that your company might need.
Public markets like the London Stock Exchange can help you raise a lot of money for your company.
Sources of finance for early stage companies

For early stage companies there are many choices for the provision of finance, some of which are listed below:

Go direct to your potential future customers
Going direct to customers gives you the benefit of an income stream that is unaffected by the repayment or return requirements of debt & equity financing. There are a number of ways to do this.

You could sell prototypes or evaluation kits, for example. But more likely is a joint development agreement. These can be very useful in validating the technology with a potential customer or user of your technology, but it does have drawbacks in that the corporate partner will often demand exclusive rights to commercialisation. This is therefore a difficult balancing act. You need the industrial relationships to provide funds and validate the technology but you could end up giving away a large part of the value of your company, which will limit any exit value and hence the value to equity investors. A good general rule is that any external discussions are carried out under a Non-Disclosure Agreement, and this would certainly apply here.

Internal Imperial College Grants & Loans
Imperial College London and Imperial Innovations offer internal grants, competitions and convertible loans to spinouts and start-ups. These include various Proof-of-Concept (PoC) awards available from the College, see: http://inno.im/2u45Ok5.

Information on a wide range of both internal and external competitions, including venture & business plan competitions is available from: http://inno.im/2u3wYaA

Imperial Innovations also provides PoC funding which can be used pre-company formation (for example when working up a proposition, validating a patent, building a prototype etc.) or post-company formation (some initial working capital to help ‘bootstrap’ a company).

The only difference is that pre-company awards come with a revenue share obligation to repay the amount borrowed from future royalties (simply to replenish the PoC fund), whereas post-company awards are structured as small loans that ‘convert’ to equity in the future (or can be paid off). Your Imperial Innovations relationship manager can talk you through your options here and information is available from: http://inno.im/2ujcrKt

External Grants & Loans
A variety of government and charity funded translational (follow-on) awards are available in the UK. These tend to target the ‘gap’ between the end of research and the start of commercialisation (e.g. spinning-out). However, it is acknowledged that the point at which the spinout might emerge cannot be accurately predicted and many schemes have flexibility built into them so as not to artificially delay spinout formation or investment.
Equally, some types of grant funding can be deployed within a spinout to extend the period before you need to find your next round of funding, or to progress parallel development projects faster than you would otherwise be able to. You will often need to have matched funds in place. In a start-up company these are used to supplement and extend the lifetime of funds raised in other ways. Grants schemes that require a consortium to bid (e.g. EU funding) can also be an opportunity for you to approach and build relationships with possible customers and suppliers without either side having to make a commercial commitment.

As mentioned earlier there are also a series of research follow-on development grants that only academics can apply for. A list of possible grants is maintained and kept updated on the Imperial Innovations website: https://www.imperialinnovations.co.uk/staff/funding-opportunities/

**Debt Finance (Enterprise Finance Guarantee)**

The Enterprise Finance Guarantee (EFG) is a 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.

In instances such as this, EFG may be able to turn that declination into an acceptance, but that is a decision for the lender and will only be considered if the lender is satisfied that your business is viable and can afford the loan repayments. The delivery of EFG, including all lending decisions, is fully delegated to the lender. They will decide whether EFG is appropriate and confirm whether your business is eligible, but businesses unsure about whether they meet the lender’s criteria for borrowing or which have had a borrowing request declined are encouraged to ask their lender about EFG.

EFG is managed by British Business Financial Services, a wholly-owned subsidiary of British Business Bank plc, but remains on the balance sheet of the Department for Business, Innovation and Skills. 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. If EFG is not suitable then access the Finance Finder to see what other schemes might be applicable: http://inno.im/2wlee3e

**Business Angel funding**

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. They do so in the belief that the success of your business may enhance their own interests as well as help increase their personal wealth.

Business Angels sometimes wish to participate in the management activities of your spinout and help guide your progress through representation on the Board of Directors. Equally, as entrepreneurial characters and busy people, who are probably backing a number of businesses, they may not want any management role nor any Board involvement. Irrespective of their required level of involvement, they will all wish to reassure themselves about the energy and commitment of the people involved, inject ideas and operate informally by introducing contacts for further investment or business opportunities. They will also want to know that reasonable salary and option schemes are in place (by seeing copies of employment and service contracts) and to receive updates from time to time.

Angels can sometimes seem less sensitive to the price paid for their shares than VCs and can also bring useful and relevant skills to the management team.

However, beware of:

- those who are looking to immediately take back their investment as management fees; or
You should raise money when you need it or when it’s available on good terms.

Sam Altman

- those who are willing to ascribe a very high valuation for the business (perhaps because they are not ‘expert’ in the area); or

- situations where many angels all take tiny stakes in the business (this can create a complex shareholder register which future investors will not appreciate as it can impede decision making).

Valuation is a key consideration in general, not just in regard to seeking funding from Business Angels. A high valuation may seem attractive as the incoming angel buys a smaller stake in your company and leaves you with a higher percentage shareholding (less dilution of your stake).

However, this could be storing up trouble for the next round as a professional VC may value the company at a lower or similar valuation, resulting in heavy dilution for the angel investor who may then try to block the new investment – leaving you short of cash. Please ensure you take good advice when taking investment from angels, especially around the valuation issue.

There are also several angel groups in London and surrounding regions and these can be very useful for small funding requirements in the £50k-300k range. Imperial Innovations works with several of these groups and can assist in introductions. The UK Business Angel Association maintains a directory of angel groups that you can access at: www.ukbaa.org.uk/

You may also occasionally hear about ‘super angels’. These are like business angels, but with access to greater amounts of capital. They are sometimes known as ultra-high net worth individuals and have often made their money through selling a stake in a highly successful business. In the UK they are currently much less common than in the USA, but that is slowly changing especially with a number of foreign multi-millionaires choosing to domicile in the UK.

Whereas most angels don’t invest more than £250k of their own money into a single venture (and often much less), a super angel could potentially put in £1m and ‘follow-on’ later. The difficulty is that getting an introduction or ‘air time’ with these individuals can be extremely hard. Networking is therefore essential. You will almost certainly need an introduction to the super angel to get in front of them and you will likely only get one chance. The business angel networks mentioned above can help here. Make sure you research their background thoroughly beforehand. Are they prone to funding ‘moonshot’ projects? Are they likely to fund the more ‘venture philanthropy’ end of the spectrum? In any case, prepare well and give it your best shot.

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 technology 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.

Your Imperial Innovations relationship manager can advise you on some of the options available under equity crowd funding along with the pros and cons of taking such money. An extensive list of UK-based crowdfunding organisations is provided here: www.ukcfa.org.uk/about-us/members/

**Venture Capital funding**
Venture capitalists specialise in providing ‘risk’ finance. It’s all that they do, so they generally have a pretty clear idea of the kind of set-up they might invest in and those they won’t. Compared to angels, VCs can invest larger amounts of money (usually millions of pounds) in a company. In exchange they tend to receive more equity. VCs also exercise control and bring in experienced management talent to help guide and grow the company. Sometimes they invest in several rounds of funding and are part of a larger consortium of investors in the company (known as ‘syndicates’).

They are professional investors and the terms they will impose under the investment agreement are likely to be more onerous than those imposed by private individuals. They are also often more able to take a strategic view of the company’s business and provide further funding in follow-on rounds.

Specialist healthcare or technology funds invest at all stages of the fundraising cycle as do general funds, which may have specific amounts of their funds earmarked for investment in technology. These funds invest at all stages of the funding cycle and lead fundraisings or funding rounds.

VCs are primarily interested in achieving very good returns on their investment, and often have specific criteria regarding an investment. For example, they could require that the company has already achieved certain milestones, the management must have a track-record of success and the company has minimum potential scale of returns and operates in specific market sectors or technology areas.

Scale is important to VCs. For example, if an investor put in £1m and got back £10m, or an investor put in £10m and got back £100m, both would represent a tenfold return on their investment (a so called ‘10x’). However, many VCs are only interested in businesses that can scale to provide the £100m+ type of return and may therefore decline perfectly good businesses because they consider them ‘subscale’.

With VCs, it is often the case that finance to be invested will be provided on the achievement of agreed goals, called ‘milestones’. So, if certain goals are not reached or tasks not completed satisfactorily, then the next investment is withheld. This serves as a useful way for the venture capitalist to guard against complacency and protect against throwing good

There are several ways to raise funds. The key is to conduct thorough research and find the best option for your business
money after bad. Such ‘tranchéd payments’ are often referred to as ‘drip-feed’ investment.

Venture Capitalists will also require stringent examination of the status of IP rights and of existing or pre-existing situations regarding the work and the people involved (the due diligence process). They will usually expect the existing shareholders to provide warranties as to the accuracy of information and the IP position of the company.

Venture Capitalists (and Business Angels) in the UK generally don’t expect academic founders to be putting in hard cash alongside them (known as ‘skin in the game’). They will instead expect to see your reward coming from your shares (plus a share of any royalties accruing to the College under the licence agreement). For this reason, they may not support you trying to receive significant (or even any) consulting fees from the spinout. They will see this as you taking out money ahead of everyone else (especially them). Their rewards come from an increase in share value, and they want everyone to be in the venture together, pulling in the same direction.

You should research the market thoroughly before approaching any potential investor to make sure that they are interested in your field and they can bring something more than just cash to the table; for example, contacts or industry expertise. One way to contact them is through the British Venture Capital Association’s website (www.bvca.co.uk), which has a keyword matching facility for identifying relevant Venture Capital firms against your funding level requirement and field of business activity. Imperial Innovations has built up a network of contacts of such VCs who are familiar with Imperial-based high-tech start-ups and we can supply you with a list.

It should be said that if you can find a reputable VC to fund your business it can be hugely advantageous. These investors have large, established networks and can share contacts or other resources that will benefit your company. And once one big name has invested in the company, it will be much easier to attract further interest.

**Working with Touchstone Innovations**

Imperial Innovations is a subsidiary of a larger venture financing and technology commercialisation company called Touchstone Innovations. Touchstone Innovations is not a traditional venture capital fund, as it invests directly off its balance sheet rather than being bound by fixed investment timelines. Sometimes this type of funding is known as ‘patient capital’. Touchstone has invested hundreds of millions of pounds into high-technology UK start-ups since 2006 and has seen some significant & successful exits. It has syndicated with many prominent UK venture capital firms and corporate VCs, and its portfolio companies have collectively raised investment of over £1.5 billion.
Imperial Innovations works closely with the Ventures team within Touchstone Innovations, which is a major advantage for Imperial College London as it ensures that its company founders and Imperial Innovations can get high quality feedback on Imperial spinout ideas at an earlier stage than would otherwise be the case.

Whatever level of support you have opted for under Founders Choice™, all new spinout propositions will be shared with Touchstone Innovations during the work-up phase. If Touchstone sees potential and alignment with their areas of interest, Imperial Innovations will arrange for an opportunity to formally pitch to them at the appropriate time. Touchstone Innovations is subject to a blanket confidentiality agreement with Imperial College London.

You are under no obligation to pitch to or take funding from Touchstone Innovations. If you have (or believe) that you can get a better offer elsewhere then you are free to do so. However, our experience has shown that, when the opportunity presents itself, most founders elect to work with Touchstone Innovations because of the company’s extensive networks, ability to help find quality co-investors and management, and ‘deep pockets’ which has allowed it to become a pioneer of patient capital with a consistent approach to follow-on investing.

If you are comfortable to pitch your spinout concept to Touchstone Innovations then your Imperial Innovations relationship manager will work with you to develop your proposition and ensure that both your view and the Imperial Innovations view on the business are aligned. Imperial Innovations will then be your champion in the process and, after the pitch, will prepare (with you) a separate brief on your proposition for the Touchstone Innovations Investment Committee (TIC). The investment process

Crowd-funding your business can work if you’re developing a customer product. Make sure you set achievable milestones so you can keep your future customers happy.
is rigorous and will require significant preparation. This is a good opportunity to hone your proposition in front of a friendly audience before you approach external investors and to get experienced feedback on your plan and presentation. The total process takes several weeks and will include a rehearsal presentation and a final formal presentation from the spinout company to the TIC. Touchstone Innovations will develop a view on the proposition and identify final areas of due diligence that will be required. If the TIC approves the investment a timetable will be set on providing the remaining due diligence and bringing on board other investors over the next few months.

If Touchstone Innovations declines to receive a pitch from you, or declines to invest post-pitch, then what happens next depends on the level of support you elected for under Founders Choice™. For Jointly Driven spinouts, Imperial Innovations will work with you to identify other potential investors, arrange meetings, practice your pitch, negotiate documents and so on. For Founder Driven spinouts, you will be confident that you can find investors yourself and you will need to agree how long you will seek financing for, how you will do it, and how the IP will be handled in the meantime. More detailed information on this process can be found in the Founders Choice™ Mini-guide.

**R&D Tax Credits**

While inappropriate for a first round of financing, established spinout companies engaged in research and development can “sell” part of their tax losses to the government in exchange for cash. This can provide a useful injection but it is a complex area and specialist advice should be sought. More information on R&D tax credits can be found here: [http://inno.im/2vhKJSJ](http://inno.im/2vhKJSJ)

**Corporate Venture Capital (CVC)**

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 company.

However, mostly they will still act just like VCs, syndicating alongside other VCs and expecting a return on their investment.

You should take care to determine the type of CVC you are working with. Are they a ‘strategic investor’ who is investing with a view to potentially buying the company in the future? If so, you should be careful with any attempts to provide a ‘first right’ to the CVC as this may put off other investors who would prefer a free market bidding process. Generally speaking, most CVCs are independent entities from their parent company and are investing to make a positive return on capital deployed. As such, they will tend to act just like other VCs.
Imperial Innovations can help you access a network of potential investors.

Imperial College London/Imperial Innovations involvement in the spinout

As stated earlier in this guide, the University takes a shareholding in exchange for IP rights, facilities and other support and association with Imperial’s name.

Imperial College London (through Imperial Innovations) will expect regular access to good information about its associated spinout company activities and this is achieved either by including certain obligations for this provision in the Shareholders’ Agreement (see later) and/or having a representative on the spinout board – quite often this will be someone from Imperial Innovations in the initial stages.

While Imperial College London & Imperial Innovations are ultimately interested in realising a capital gain by selling their shares in the spinout, it is unlikely that they will be active in managing the spinout or being a board member beyond about two years from the creation of the spinout, as by then they are likely to have been replaced by experienced directors and professional managers (but they will still retain their shareholding).
How to get equity investment

5 things start-ups should consider when choosing a venture firm
Technology Transfer Tactics: February 15th, 2017

According to Andrew Dudum, co-founder and partner at San Francisco-based venture firm Atomic “Your VC firm will be your critical adviser moving forward and can provide guidance and company-altering insight”. Given this, here are his five tips for choosing a venture firm:

■ Set a timeline and stick to it. “Raising capital is incredibly distracting to your core business,” Dudum says. “You are out of the office, away from the team and removed from your customers and product.” For this reason, it is crucial that you set a target timeline and do your best to hit it. “The sooner you close the round, the better,” he says.

■ Know what you’re bad at. If you need help reaching distribution partners, for example, hook up with a venture firm that has those kinds of connections. If you need to fill out an executive team, seek out firms with that kind of expertise.

■ Do your diligence and only target firms that are the right fit. “Raising venture funding is incredibly hard, but raising it from a VC firm that, at its core, does not invest in companies like yours is nearly impossible,” says Dudum. This is why start-ups should do research on the firms they’re interested in before even seeking a first meeting.

■ Partner matters more than firm. The person who is the venture partner you are dealing with will be your primary contact at the firm, and they will be with you through the hardest times. “It’s fundamental that you not only really enjoy spending time with that person, but that you trust, respect and have a great rapport,” Dudum says. In the end, your impression of the partner is much more important than your impression of the firm itself.

■ Optimise for the size of the total pie, not for the size of the slice. As a start-up, the funding round you’re preparing for probably won’t be your last, so don’t focus on short-term benefits alone. Ask yourself how a particular VC firm and partner could help your company in the long run, whether it’s raising more money later on or hitting some other milestone. As Dudum puts it, “Find the team and partner that you believe will help you build the best, tastiest and biggest pie in the years to come.”
Following these steps is not a guarantee that you will receive equity investment, but these are the typical steps of the fundraising process and you should be aware of them before you set out to speak to investors.

**Step one: finding investors to pitch to**

- Introduction to potential investors - 'warm' introductions are vital to gain the attention of VCs and Imperial Innovations can leverage its extensive experience and relationships to provide these introductions.

- Circulate a brief description of your technology and how you will make money from it for your investors – usually a one- or two-page summary of the business plan (often known as the executive summary).

- You may find you have an opportunity for an initial ‘sounding’ meeting with some VCs which will be brief and you will need to prepare a short ‘elevator pitch’ to engage their interest.

_These early stages can occupy some months before you manage to gain any real interest and move to the next steps._

**Step two: pitching**

- If you are successful in engaging investor interest they will ask to see a copy of your full business plan and/or pitch pack (around a 15 slide investment presentation).

- This may lead to the opportunity to give a 30 to 60 minute presentation where you can expect to be questioned in detail about your business proposition - the founder(s) and the whole management team should be present at this meeting, as the investment proposition is as much about the team as the technology.

**How to pitch to investors**

- Before writing your business pitch, consider the specific investor you have in mind and what are 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 company is going to take to market and the qualities the product has that will inspire people to buy it – not just once but repeatedly, and in ever greater volumes.

- The pitch should be accompanied by a formal slide presentation using clear schematics to explain business models, product lines, routes to market, and development and purchasing cycles.

_The presentation should cover:_

- Key details about the company team and their roles

- The products and/or services

- Target market, including data on growth and trends

- The company’s competitive advantages

- The business model – how the company will reach and sell to the end user

- Scalability of the company and revenues

- Investment required and use of funds

- Timescales and milestones along the way

- Any key issues to address before spinning out the company
Diligence is the mother of good luck.

Benjamin Franklin

Step three: initial due diligence

- Should this meeting go well, the investor will start to carry out some preliminary research into you and the technology. This initial due diligence process (not to be confused with Imperial’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 the VCs. VCs are likely to canvas key opinion leaders and industry specialists at this point to gather intelligence on your idea.

- At times some investors like to co-invest with a number of similarly structured funds as a syndicate and one will be chosen to handle most of the negotiations (known as the Lead Investor). If the co-investors are not already known, the lead investor may help to find them and line them up during this period.

Understanding that investors need an exit strategy

Somewhere down the line, investors will wish to recoup their investments. The company must be sufficiently stable to allow this. When pitching to and accepting cash from investors, the company should take account of any time sensitivities they have. Try to ensure that the investor’s timeline aligns with the company’s ability to increase in value and its potential to be in a good position for the shareholders to benefit from an exit.

Investors plan to recoup their investments via exit strategies. Typically, a VC hopes to sell its equity in a portfolio company within 3-10 years, most likely through an initial public offering (IPO) or a trade sale.

Put yourself in their shoes - How Investors evaluate a company

- Investors listen to pitches constantly and only a small portion of start-ups get funding.

- The investors will determine if the start-up meets their strategic and financial goals and if the company fits into their current portfolio of investments.

- Due to the higher risks involved in venture capital investing, VCs will target higher returns than those associated with other investment vehicles such as stocks and bonds.
Step four: Term sheet negotiation and valuation

- If you successfully navigate the previous hurdles, the investor will send you a term sheet describing their conditions for investment.

What details does a typical term-sheet contain?

- **Exclusivity.** At this stage the investors will expect to know about any other competing offers you may have received.

- **Number of board seats.** You will need to pay attention to this, to see how voting will work. Experience suggests that in well balanced and well run companies, voting hardly ever happens in practice. However, it might and you need to understand who has the majority and consider matters such as whether the chairman’s vote counts and how to resolve any deadlocks.

- **Investment sums.** This details the total amount that will be invested, how much each party will provide and the stages of investment if it is to be tranched (paid out in stages).

- **Conditions of the investment.** Is further due diligence is required and various board approvals still to be obtained (if any).

- **Terms of the investment.** This will set out the agreed company development milestones, the basic corporate governance rules the company is expected to follow, and expectations of communications to shareholders.

- **Good Leaver/Bad Leaver provisions.** Laying out how much of their shares Founders/Employees will have to ‘give’ back if they leave the company in certain conditions and timescales.

- **Valuation.** This is the price at which the investor values your firm at (see pages 82-83).

- **Size of Share Option pool.** These can be large in the early days (e.g. 10-25%) but tend to be smaller later (e.g. 1-5% at series B funding). As a founder, you should pay attention not only to how many shares you may earn, but also how they are given out (vest) – i.e. over what period and under what pre-conditions.

- **Veto rights.** These set out what the incoming investor can say yes or no to. For example, investors will want to be able to consent to the sale of the company or the raising of new capital. Make sure minority investors with tiny stakes can’t block or derail progress for your whole company.

- **Types of share.** Investors may want ‘special’ classes of share that confer additional rights or pay out earlier than others. These may take the form of preferred shares. In addition, they may ask for participation rights. Make sure your lawyers properly advise you on what these terms mean and what is ‘normal’ in an investment round of this nature.

- **Liquidation preferences.** The order in which the assets get paid out in the event of a ‘liquidity event’ (e.g. a trade sale). Investors want to ensure they at least get their money back, so they may introduce these to be senior to other shareholders when shares are paid out (often known as a ‘waterfall’ hierarchy). These are explained more in Appendix one.

> Always look for the fool in the deal. If you don’t find one, it’s you.

*Mark Cuban, AXS TV chairman and entrepreneur*
How to get equity investment (continued)

- **Confidentiality & Governing law.** Standard boilerplate language in any terms sheet.

- **Exclusions & warranties (guarantees from founders).** Investors will want to know the content is correct to the best of your knowledge.

- **Expiry date of the offer.** This is usually 1-2 months from the date on the term sheet. Ideally you want a competitive process, so try to get several investors bidding for the prize (although this is easier said than done).

**Valuation**

- At this point you will be discussing the valuation of your company - how much does the investor consider it to be worth before their money comes in and buys shares. The ‘pre-money’ valuation (what it’s worth before they invest) plus the money going in, when added together, gives you the post money valuation.

- Settling on a valuation is essential. The company will seek to extract as much money from the investor in return for as small a percentage of equity as possible. The investor, on the other hand, will be arguing for as large a percentage shareholding as possible. There will be many complex factors involved in fixing on an actual valuation (not least the question of what the Investor is prepared to pay for the shares) and the company will need to seek appropriate advice at such time.

- When you begin to negotiate term sheets with your investors, you should seek to establish comparables - valuations of other businesses similar to your own. Find companies like yours that have taken money from investors and then look at Companies House records and any press releases to see how their funding rounds and cap tables developed.

- Ultimately it is more worthwhile for you to have a smaller piece of a large pie than to have a large piece of a smaller, worthless pie, which could be the outcome if you resist further investment because of concerns over dilution. **Appendix five** provides some examples of the effect of dilution.

To help with this discussion Imperial Innovations will provide you with an equity modelling tool so you can see the effect of different pre-money amounts, investment amounts and any special instruments (such as non-dilution provisions) and you have access to the same tools as Innovations has (so you are at no disadvantage in negotiations at any stage). You can then try out some different scenarios and see what the net effect on your shareholding will be.

**Negotiating the pre-money valuation of the business with investors**

Your driving passion may be to see the technology at the heart of your business have an impact in society, but investors will only put money into it because of the prospect of making a return. Your investors need to be confident that the valuation at which they invest will enable them to make their target return, which could be as much as 35-40% compounded on an annual
basis (or 5-10 times the money they put in within 5-10 years).

The higher the valuation placed on your company, the lower your “dilution” from the investment (i.e. you will sell less percentage ownership for the same cash invested). Remember, there are likely to be several rounds of investment as the business grows with further potential for dilution at each round.

The pre-money valuation (i.e. the value of the company at which the new investment is introduced) is therefore critically important. The valuation of early stage technology companies is notoriously difficult to calculate and there is no definitive or universally accepted methodology. However, the questions that any investors will ask are:

- What is the academic pedigree of the founders? Have they done a spinout before, successfully?
- What is the quality of the management team? Have they managed a similar business, division or unit before, successfully?
- What is the quality of the existing investors? (Are any previous early stage investors following on?)
- Are there any contracts/deals with quality companies already in place or lined up: what are they like?
- What is the quality of intellectual property and are there barriers to entry for the competition?
- Is there any revenue and what is its quality?
- What’s hot and what’s not? (VCs often follow ‘fads’ – what may have been hot 5 years ago e.g. nanotechnology, may no longer be the ‘next big thing’).

If you are prepared to address these with a well-considered plan, then you have more chance of improving the valuation of the investment and minimising your dilution. Against this, remember that there are other factors at work in the market outside your control. It is important to be realistic and informed when negotiating value and not to lose sight of what the investor brings in added value.

You will probably never be satisfied with the valuation you achieve in a funding round. You will feel like the investors have undervalued your business. You should expect this.

In many respects this is a positive - you are the one who believes in its potential and are most focused on delivering it. You are therefore not as distracted by the other factors that incoming investors must take into account, or are more confident in overcoming the risks that they perceive as serious barriers. As a general rule, if you are seeking equity investment and there is money on offer, take it. It is always better to have a small percentage of something valuable than 100% of nothing.

Always choose your investors based on who you want to work with and be friends with, and get advice from. Never, ever choose your investors based on valuation.

Jason Goldberg
Step five: detailed due diligence

Detailed due diligence is a thorough assessment of your company. While negotiating the term sheet (and after it has been signed) the investor will often carry out a ‘deeper dive’ of due diligence into your company, checking out IP, contracts and people involved in exquisite detail. They will be intensely demanding and expect quick turnarounds and responses. It can be exhausting and relentless, but you will not get funded unless they are very sure of what they are investing in (no-one wants to be embarrassed by a ‘skeleton in the cupboard’ that only comes to light post-investment.

The end result will be a Due Diligence Pack. There may be some specific items required by certain investors in it, but the core documentation required will be:

- Business plan;
- Patents, status and warranties on their viability, including information on any licences to this IP that have been granted or are in negotiation;
- Board minutes, any special resolutions passed;
- Financial accounts;
- Details of current shareholdings;
- Existing contracts/relationships with external parties (if any).

Note that VC funds are not cheap. On top of the equity you will have to give up to the VCs, investors usually charge a variety of fees:

- Arrangement fees to the lead investor of anywhere up to 5% of the amount raised
- Usually legal and due diligence costs of the investors will be deducted from the amount invested
- On-going monitoring fees which can be a few per cent per annum

The lead investor will usually appoint a non-exec director and their fees and costs are expected to be borne by the company.

Set investor expectations correctly from the start

It is important to set investor expectations correctly - and early - to avoid future disappointment.

Experience has shown that the following issues are extremely important to convey to your potential investors during term sheet negotiations:

- Imperial Innovations will only license IP into a spinout. They will not assign IP (transfer complete ownership) to the spinout. Imperial Innovations will generally grant a fully exclusive
Finding investors is about more than just “giving a slice of the pie”—you are also picking a collaborator

Licence and (in nearly all cases) provide the spinout with control/decision making over the prosecution of the IP. It does this:

- To ensure that the royalties cannot be subsequently de-coupled from the IP (which has unfortunately happened in the past and cannot be prevented by any form of legal drafting).

- To ensure that the College can recover the IP in the event of insolvency or failure to progress the technology, and evaluate other ways to progress the technology (if at all possible).

IP Licences generally include milestone payments and are royalty bearing. To avoid charging small companies large cash sums for technology upfront, it has become generally accepted that it is better to stage payments that gradually scale with success (milestones) and to share the risk and upside together i.e. benefit when a product is finally sold (via a royalty). That way if the company is successful, then the College benefits (and if not, then neither benefit). In a few exceptional cases where royalties are not possible (e.g. it is not possible to quantify the sales of each unit), then another form of recurring shared risk can normally be found (such as escalating annual payments).

- IP Licences include the right for the College to carry on teaching, research and attracting funding for such activities from any source (including industry) with regards to the IP being licensed. Imperial College London is an academic institute and it must ensure it has the freedom to conduct research, teaching and fundraising activities freely.

- The University equity stake may include non-dilution protection. This only applies if you have elected for the Founder Driven/basic support option under Founders Choice™. In such a scenario, the initial University equity position is much smaller on the express understanding that such stake is subject to a non-dilution protection provision. Without such provision, the University equity stake would need to be significantly larger and renegotiated. Keeping the equity level fixed at the negotiated percentage but removing the non-dilution provision at the request of an investor is not acceptable. For more information see Appendix five on non-dilution.

These provisions are commonplace in the United States of America, a country known to have one of the most dynamic ecosystems for venture financing and exiting of university based start-ups. These provisions have also been used in UK spinouts that have gone on to raise many millions of pounds and exit for very
How to get equity investment (continued)

large sums to industry. There is no reason to believe that such provisions should inhibit the creation and financing of new spinouts and Imperial Innovations will be happy to discuss this with any prospective investors. The key (as stated above) is to have these conversations early in the negotiations so that common ground can be established (and not late in the day, where it can be painful for all parties).

Step six: Documentation and Completion Phases

Once due diligence has been completed and the term sheet is in place your investors will instruct lawyers to work with you and Imperial Innovations to finalise the required documentation for investment. If you have never gone through this process before, the documentation can be daunting, so this section outlines the paperwork that you may expect.

Whichever level of support you elected for under Founders Choice™, Imperial Innovations will work to negotiate these documents with the investor’s lawyers alongside your company's lawyers. Remember: Imperial Innovations will be representing the position of itself and Imperial College London. The company’s lawyers are representing that of the company.

Investors will subscribe cash for new shares which will usually be a different class of shares to those held by founders, management or other (earlier) investors. In return they will be looking to make a substantial capital gain on an eventual exit.

The main body of documentation will set out the rights and obligations of the investors, the company and management and will comprise:

- **The Due Diligence pack**: Finalised and approved just before investment.
- **IP Licence Agreement**: Signed after incorporation but before investment (Imperial receives its founding shares at this stage).
- **Share subscription**: when a shell company is formed with the academic founders as shareholders.
- **Articles of Association**: Adopted on completion of this process.
- **Subscription and Shareholders Agreement**: Signed on completion of this process.
- **IP Option (pipeline) agreement (if applicable)**: can be created at any time.
- **Investment Agreement**: Signed when investors come in and replaces the original Shareholders Agreement.
In addition, there will be a host of ancillary documents such as board minutes, resolutions, director contracts etc. The company lawyer and Imperial Innovations will guide you through these.

**Investors will also likely require:**

- The right to appoint a director to the board
- Regular board meetings
- The right to veto various company actions
- The right to receive financial and other management information on a monthly basis

Please note that the information listed here is advisory and is not a substitute for professional advice.

As the new investor will become a shareholder in the company, the existing Shareholders’ Agreement will need to be amended or a new one put in place. Imperial Innovations will have already provided a template agreement for this at the point of incorporation. However, as mentioned earlier, the Investor is likely to also have its own standard template subscription and investment documents that it will expect to form the basis of the new shareholder agreement. This will replace the agreement entered into when the company was first incorporated.

This is likely to contain provisions which are more onerous than those expected at the spinout stage. This is particularly so in relation to the following areas:

**Warranties:** having committed funds to the project, the Investor will want comfort that the founders and management team are prepared to stand behind the key information documents on which they relied when deciding to invest (for example the business plan) and to give the Investor comfort that the Company has access to the assets it needs to execute the business plan (in particular regarding the IP) and does not have any unnecessary liabilities. Academic Founders may be asked to give some or all of the warranties alongside the management team. Try to negotiate limitations to your liability in such circumstances – for example a maximum financial cap. Be wary also as to the nature of any warranties which you will be giving and whether you are being asked to warrant the future performance of the company. You should also disclose upfront any matters which could make the warranties untrue by preparing a “Disclosure Letter” for submission to the Investor. If, for instance, there is a warranty that the company is not involved in any litigation but you are aware that the company is being sued by a creditor, you should inform the lead investor of this through the Disclosure Letter.

**Consent Matters:** the list of consent matters is likely to be far more extensive than those expected at the spinout stage. While there is still a balance to be struck between operational flexibility for the management team to run the business effectively and the controls required on them by the investor, the investor will potentially be committing a sizeable amount of funds to the company. The investor will be keen to know, therefore, that the scope for the management team to fritter the money away on matters that take value out of the company is limited (e.g. the management team awarding themselves large bonuses or expensive new company cars without the consent of the investor).

**Information:** the investor is likely to require more detailed information than that required at the spinout stage. For example, as well as the monthly management accounts, reports may also be required as to current trading, revised forecasts and the performance of the company against financial covenants contained in any banking documents. Consider the practicalities of being able to produce the required level of information within the timescales expected by the investor.
Restrictive Covenants: the investor will expect the key members of the management team to give their full time and commitment to the company to deliver the growth forecast in the business plan. It will also expect that any employees who leave the company will not set up in competition against it for a defined period of time after the end of their employment. Where things can be difficult is where the investor attempts to restrict academic activity around a certain area (i.e. a ‘non-compete’). Imperial College London is an academic institute set up to do research & teaching and will not accept such wide ranging non-competes; you should make sure that any investor realises this. The period of restriction under an Investment Agreement is likely to be between one and three years. A period in excess of 12 months under a service agreement is not likely to be enforceable.

Good and Bad Leaver: If you cease to be an employee or director of the company (e.g. if you leave the company), you may well be required to serve a transfer notice in respect of the shares held by you (i.e. offer them for sale). The price at which you may sell those shares may be governed by the circumstances in which you leave the company. The negotiations with the investor as to what constitutes a good leaver can therefore be protracted.
Many think that once a startup is able to raise funds, it’s considered successful. It’s definitely not true. Raising money is just a means to an end. It simply gives the startup a shot at building a company.

Aihui Ong. Founder & CEO, Love with Food

Checklist: step three

<table>
<thead>
<tr>
<th>Raising finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Select which type of finance you are looking for</td>
</tr>
<tr>
<td>Find your investors (try to build a portfolio of interested parties for competitive tension)</td>
</tr>
<tr>
<td>Pitch your proposition to the receptive investors</td>
</tr>
<tr>
<td>Prepare a due diligence pack or data room for the investors to review</td>
</tr>
<tr>
<td>Negotiate the term sheet and valuation</td>
</tr>
<tr>
<td>Finalise the terms and ensure investors are happy with the due diligence</td>
</tr>
<tr>
<td>Finalise the investment documentation to secure the money transfer</td>
</tr>
</tbody>
</table>
Step four

Three months before company formation
Key points

- Sign the Founders MoU to show that you are all agreed on forming a spinout and everyone is satisfied with their equity stake

- Check that all founding IP has been through the full due diligence process undertaken by the College and is listed and ready to go

- Appoint and brief your company lawyers (if you have not already) as they will be required to complete the formation documents on behalf of the spinout

- Register your web domain name and set up a basic front page ready to go live upon formation

- Finalise the details of your company formation documents

- Begin making arrangements with your bank to open a bank account (which cannot be completed until the company is incorporated)

- Finalise the details of your investment documents if you have already identified the investors for the company
Essential procedures
pre-company formation

In the short months leading up to the formation of your spinout, there are a number of key steps you must undertake.

Some of these are relatively minor, and some might seem burdensome; however carrying out these steps in good time and good order will contribute to the successful launch of your company.

If you are concerned or unsure about any of these suggested steps then please contact your Imperial Innovations relationship manager to discuss.

Make sure the Founders MoU is fully signed
At this stage the division of equity stakes between founders should be agreed. Sign the Founders’ MoU to say that you all agree to form a spinout on the basis set out in that document. This document is not legally binding and doesn’t commit you to anything. Its purpose is to make sure the equity stakes have been agreed well in advance of formation, and that everyone understands and agrees to the journey you are about to embark on. Experience has shown that the Founders’ MoU is a helpful document that can prevent misunderstandings later.

Check that all founding IP has undergone due diligence and is ready to be licensed into the company
All intellectual property should have been identified and put through the formal due diligence process by Imperial College Research Office to ensure that the College owns it. A full list of the IP, including patents, design rights, copyright and know-how (which should be unpublished and written down or stored on readable electronic media) should be made available. This will form the IP appendix of the founding IP licence agreement. If there are still outstanding issues with the IP, and encumbrances (issues with third party ownership) still need to be resolved, you will need to closely track progress as these may delay formation. The Research Office is skilled in working with Imperial Innovations to resolve these matters, but please be aware that they can take time to sort out and this should be factored into your expectations, especially if you have investors lined up.
Formally engage lawyers
If you have not already, now is the time to formally engage and sign up your lawyers. They may have been working with you on an informal basis until now, but as things are beginning to get serious, you need to ensure you have signed a proper letter of engagement with your chosen law firm and checked that you understand their fees structure. You are strongly advised to cap your exposure and ensure you get regular cost updates from them to avoid nasty surprises. The lawyers are appointed by the company and hence Imperial Innovations and Imperial College London are not liable for any bills they may run up acting on your instructions. The Venture Support Unit of Imperial Innovations has experience of working with spinout lawyers and can help advise here.

Register a web domain name and prepare a hidden site ready for launch
You should now ensure that your company web page domain name is registered. Ideally you should take up several variations on your company name to allow for flexibility in your branding in the future. There are a variety of domain and search agencies to allow you to search for your company’s name and the possible domains you may want to register, usually .com and .co.uk. Registration is simple and is done online. You will pay a registration fee, which will vary depending on the domain you are trying to buy, though usually it would be no more than £20-£40 a year. Certain registrars will allow you to register a domain name for years at a time, but some will require that you renew your registration more regularly. In any case, it’s important to your business that you keep track of when renewals are due – you don’t want someone to register ‘your’ domain name if you allow its registration to lapse.

You may well find your desired domain name is unavailable. In these cases it’s worth checking what is being done with it; many domains are owned by domain trading businesses and you may be able to acquire it in any case following a negotiation on price. However, you should be prepared to pay a great deal more for these domains so take into consideration whether it is an essential expense.

You should at least ensure that a front page with contact details is set up as potential funders and investors will generally web search the company’s name as soon as they become aware of it. You can select your own web designer or Imperial Innovations can recommend a list of firms and they will also help you find a server to host it on. Recommended providers are included in our service provider list. The cost of this can vary but you would expect to pay hundreds to thousands of pounds for a basic set-up with monthly hosting fees in addition (likely to be no more than £10-20/month). There are a number of services which will allow you to build and manage your own website based on template designs in exchange for a monthly fee. Options such as www.squarespace.com and www.wix.com can be useful for new companies looking to keep costs small.

It is usual practice to develop a website on a private or hidden server and implement public access at launch. Early PR and marketing efforts should point people to your website. It can be a very powerful promotional tool and can add credibility to your operation. If nothing else, it will be a useful place to host news articles and information about your value proposition and team - the things that investors and early customers want to see. Note that potential funders and investors are highly likely to visit your website as basic background due diligence, so make sure it’s not something you would be embarrassed by. This generally means: ensure some thought has gone into the design and more importantly, make sure it covers key information about your business, it’s goals and operations, in a clear and concise way.
Don’t let the fear of risk overwhelm you. It may seem like a lot when starting a company, but the only truly non-renewable resource is your own time.

Evan Doll - Flipboard founder

Finalise and line up the details of your company formation documents
The full list of documents required for company incorporation and formation is covered in the next section. Begin discussing these documents now with your lawyers to begin the preparation process. Identify gaps and missing pieces of information that you will need as early on as you can (to avoid them becoming bottlenecks later when you ‘press the button’ on incorporation and formation).

Select a bank account provider and start getting everything in place
You may be surprised at how long it takes to set up a business bank account in the UK. Indeed, it can sometimes become a bottleneck in company formations unless planned in advance. Make sure that you have selected your favoured corporate bank account provider and sat down with them and discussed exactly what forms & documents they will need to see and how long the process will take. Opening a company bank account requires extensive proof of identity, address, status among other things from all parties. If you have all the required documentation ready, it can be done in a couple of weeks. However, there are usually some hold-ups and it may take up to six weeks, so it is important you start this as soon as possible. The company needs this account to receive any seed funding, loans, investments or revenue from customers.

When you select a bank you should also consider the availability of a small business adviser and their success in helping SMEs gain access to the Small Firm Loans Guarantee scheme (SFLG) if you believe your business could make sales in relatively short order. Imperial Innovations can provide you on request with a list of appropriate banks used to dealing with high technology start-up businesses.

Finalise details of your investment documents (if you already have the investors lined up)
If you are ahead of the game you may be looking at incorporating and taking investment very shortly thereafter. As investment requires a different set of documents to the incorporation and formation documents, you should also begin discussing these with your lawyers and find out whether you are presenting the first template (or your investor is insisting you start with theirs). Where possible, we suggest you try to use the standard documents provided by Imperial Innovations or your lawyers as the first draft. It can get very expensive if your lawyers have to go through a ‘one sided’ investment document from investors and reinsert all the missing provisions we would normally request as standard.
Checklist: step four

<table>
<thead>
<tr>
<th>Three months before company formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign the Founders MoU (if not already signed)</td>
</tr>
<tr>
<td>Check IP due diligence is complete</td>
</tr>
<tr>
<td>Finalise the appointment of your company lawyers (if not already done)</td>
</tr>
<tr>
<td>Register your web domain name</td>
</tr>
<tr>
<td>Start preparing your formation documents with your lawyers</td>
</tr>
<tr>
<td>Select and choose your banking provider and work out what they need</td>
</tr>
<tr>
<td>Begin thinking about your investment documents (if investors are already lined up)</td>
</tr>
</tbody>
</table>
Step five

Company formation
Key points

■ What is involved and how long does it take?
■ Company formation and investment stages
  □ Stage 1: Incorporate the company so that it exists as a legal shell vehicle
  □ Stage 2: Issue founding equity to all individual founders in accordance with the Founders MoU
  □ Stage 3: IP licence into the Company; University shares issued at this stage
  □ Stage 4: Finalise the corporate governance documents and if relevant take investment into the company
■ Other matters
  □ Sign Service Agreements
  □ Register changes to the company documents with Companies House
■ Schedule and hold first board meetings
  □ Set up the basic financial arrangements
  □ Register for various tax obligations with HMRC
The Company formation process

What is involved and how long does it take?

Setting up a company involves a number of actions, the most immediate of which are listed on the left, and detailed in this section. Company formation requires many advisers, including legal advisers and tax specialists. Each has an important role to play in covering all of the bases. It is impossible to set a hard-and-fast timeline for spinning out a company from the College. That said, around six to nine months, from the first thorough draft of the business plan to agreeing a licence, is fairly standard.

Delays most commonly result from difficulties in securing finance. There is precious little point in signing a licence before funding is in place or initial launch customers are buying goods. Without money the company can’t do anything with the IP because it can’t pay for premises, staff, patent costs or consumables.

Company formation process

The full company formation process (from incorporation to investment) generally takes place in four discrete stages at Imperial:

- **Stage 1:** Incorporate the company (a simple single-share incorporated vehicle)
- **Stage 2:** Issue shares to the founders in accordance with the founders’ MoU
- **Stage 3:** Licence the founding IP into the company – University shares issued as part of this process
- **Stage 4:** Take investment into the company (a stage that may be repeated many times subsequently)
Stage 1: Incorporating a shell company
Your relationship manager in the Venture Support Unit (VSU) team at Imperial Innovations can help advise on the process of incorporation and this advice is available under both levels of support under Founders Choice™. Note that normally the Founders’ MoU is fully agreed before the shell company is formed which allows the full shareholding to be issued to all Founders at one time. However, if there is a need to form a single share company (e.g. to apply for grant funding) then that can also be accommodated in discussion with Imperial Innovations.

The required incorporation documents are briefly described below. Companies House has a series of guide booklets covering these items at:
http://inno.im/2tZrhqd

Incorporation of a shell vehicle may be carried out in three ways:

■ The academic founders can do it directly;

■ Lawyers appointed to act for the spinout can do so; or

■ Imperial Innovations can set up the shell company.

These different routes may have significant tax implications for the academic founders personally. Academic founders should seek independent legal advice to assist them in making this decision. Imperial Innovations should be informed in advance if you plan to incorporate a company into which you intend Imperial College London IP to flow.

Setting up a Shell Company
Setting up a shell company is very simple. Online it takes no more than 30 minutes and costs only a few pounds. http://inno.im/2uVPSPK

The key is to have the details of the initial shareholding and directors ready and the personal details of those parties gathered. These include full name, address, date of birth, nationality and personal identification details listed online:
http://inno.im/2vsK81e

Companies House will check your details and if they are all acceptable will issue the Company Certificate of Incorporation within 48 hours. As part of the formation pack they will also send you the Memorandum of Association (a one-page document listing the shareholders).

The company governance documents for this shell company will be Standard Articles of Association (Model Articles). These are the minimum legal requirement and as such are fine for a shell company. As part of the next steps all parties will agree revised corporate documents based on the details agreed in the Founders’ MoU. Imperial Innovations will provide template documents as a starting point and these are described in more detail overleaf.

Stage 2: Issue shares to founders
If a shell company has been set up before the Founders’ MoU has been finalised, then once this has been agreed the additional shares will need to be issued to all the Founders as the next step. At this stage the company’s lawyers will prepare the relevant documentation and this will be done in advance of the next steps. Whatever tier of support you have chosen under Founders Choice™, Imperial Innovations will help with this stage to ensure all academic founders receive their shares directly and in accordance with the approved Imperial College HMRC protocol.
A ‘startup’ is a company that is confused about what its product is, who its customers are and how to make money.

Dave McClure, 500Startups co-founder

Stage 3: IP licence agreement
The IP licence agreement will authorise the company to use 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 the technology was created at a University in receipt of public or charitable funding, there is an obligation to act in an arm’s-length way that encourages exploitation of the technology for the public good. 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, part of the licence consideration will be satisfied by issuing shares to Imperial Innovations (which acts as the IP trading partner of the College).

It is important for tax reasons that the IP licence has been signed before you accept any investment into the company. Please consult with Imperial Innovations if you plan to take any investment (however small) into the company before the founding IP licence has been completed.

Stage 4: Subscription & Investment Agreement
The purpose of the founding shareholders agreement is to regulate the operation and management of the Company and the relationship between the Company’s shareholders. This will be expressed as a series of undertakings by all parties that protects the shareholders’ positions and generally imposes a discipline of good communication and corporate governance. It should therefore not be too contentious.

This is a private contract between the shareholders and does not need to be filed with Companies House. It details how the company will be run, specifically:

- The responsibilities of the founders and what they will bring to the company;
- How the board members can be appointed;
- How the shares are apportioned;
- Details of any options schemes;
- Rights of shareholders based on their shareholding;
- Detailed responsibility of the management team;
- Measures that require special approval and how this approval must be obtained;
- Detailed responsibilities of the company in providing information to the shareholders;
- Confidentiality obligations around the Company’s assets and business activities;
- How the IP will be treated in the event of the company being wound up;
- Any other restrictions on shareholders and members of the company;
- Any initial shareholder resolutions.
The initial business plan will also be appended to this agreement.

When new investors come into a company, the original shareholders’ agreement is often revised to take into account the wishes of the new investors and to allow for the change in shareholding and ‘voting blocks’. The investment agreement will set out the principal commercial terms for the investment agreed between the parties and how the company is to be managed and will contain all of the terms set out above in the original shareholders agreement, plus some additional ones.

Again your legal advisers will guide you through the documents above and advise on their adoption.

**Articles of Association**

This is a public document filed at Companies House that sets out the rules for the company’s operation, specifically its internal regulations and by-laws covering:

- Further detail on how shares can be transferred or sold, including:
  - types of and number of each type in issue;
  - the rights attached to them;
  - how they can be transferred or sold;
  - the rights of other shareholders if a shareholder wants to transfer or sell their share holding (Tag Along & Drag Along);
- Rules covering meetings and annual meetings;
- Expectations of the directors and their powers;
- Other administrative issues.

The articles of association of a company is a public document which must be filed at Companies House after which it is freely available for anyone to view. For this reason, any sensitive or confidential matters are typically included in the Shareholders Agreement where possible.

Imperial Innovations will provide a template Articles of Association that has been tried and tested and we know to be generally acceptable to incoming investors

**Your legal advisers will guide you through the above documents and advise on their adoption. You should also take tax advice at this point to ensure the company is structured in a tax efficient manner going forward.**

Please note: It does not matter whether you elect (under Founders Choice™) to incorporate the shell vehicle yourself and then take 6-12 months to find investors, or whether Imperial Innovations incorporates the vehicle and investors are ready to go straight away post-incorporation. Either way, all of the above documents still need to be put in place. If an investor is lined up early on at the company formation stage the shareholders’ agreement and investment agreement may be combined into a single document.
Sign service agreements
These agreements need to be set up between the company and each of the academic founders who will work with the company. These may take the form of directors’ service contracts, or consultancy contracts or similar. Your Imperial Innovations relationship manager can assist based on their previous experience. However, the actual agreement will be signed between the spinout company and the academic founder. This will cover:

- Details of the appointed position e.g. technical or scientific officer, and duration of the appointment
- The hours of work committed to
- Duties and responsibilities
- Remuneration - if the spinout has sufficient funds available
- Details of expenses and holiday entitlements
- Confidentiality agreement
- How any new IP arising from the work done solely for the company will be treated – see the common points section for further details on how the college will treat future IP
- Restrictions on other activities during the time the agreement is in force and following the termination of the agreement
- Other termination/notice provisions
- Disciplinary and grievance procedures
- Data protection regarding personal information

Registering new resolutions and share issues with Companies House
After signing these agreements, any changes to the directors of the company or the secretary will need to be filed with Companies House. Note that it is a legal requirement that a company’s register accurately records its directors & company officers, including directors’ interests in other companies (shareholdings & directorships). There are financial penalties if this is not done. You can do this online at http://inno.im/2f7repF or engage an appropriately experienced accountant or company secretary. Your lawyers can usually act for you in this regard in at least the early stages.

Companies Registers (formerly known as the Company’s Books)
The Company needs to keep a physical register of its particulars at its registered address:

- Members (shareholders)
  - People with Significant control
- Details of directors and their residential address
- Company secretary (if appointed)

You can now elect to have these held at Companies House only, which can simplify paperwork but the downside is that all the details (including personal details) will be available to the public online. We recommend that you maintain a physical register at your registered address.
Schedule your first real board meetings

There may be one or two ‘formulaic’ board meetings required to get the company properly incorporated, but these are often formal affairs arranged by the company’s lawyers involving reading out prepared text to ensure the company is formed properly. The real work begins after that. You will need to schedule your first board meeting when the directors assemble and really start to talk about company business. You are also strongly advised to schedule board meetings for the coming year (which can be a real challenge).

The roles and responsibilities of the board need to be clearly defined and agreed between the team, especially which board member will oversee company finances. A brief summary of the legal responsibilities of company directors is included in Appendix eight but an effective board needs to go beyond these basic duties.

The board needs to consider its own composition and ensure it has the right skills sets for this stage of the company’s development. Another key consideration is the effective use of the board’s time, which will be spent on a mix of detailed oversight of the CEO and accounts and a strategic review of the direction of the company. A careful balance is needed of both components. An experienced board chair is often needed to navigate this path.

The first board meeting will have two essential elements: (1) formal approval of the legal agreements and (2) detailed discussion on how the board will function.

- The formal approval of the legal documents will be handled by your company lawyers. The actual minutes of this board meeting that will need to be signed off will vary between companies but will usually include:
  - Resignation of the director of the shell company if appropriate
  - Adoption of the shareholders’ agreement and Articles of Association
  - Issue of the shares required
  - Approval of any loan terms if needed
  - Approval of the consultancy agreements with your academic founders
  - Disclosure of conflicts of interest by the board
  - Formal instruction to the secretary to file all the required Companies House forms

- The board will need to discuss and agree the strategy on fund raising and the next development stage of the company, including filling any gaps on the board as finding the right person can take up a significant amount of time. For spinouts that have elected for the enhanced support package under Founders Choice™, Imperial Innovations will utilise its internal network of potential candidates as well as introduce the company to specialist executive search agencies that have worked with Imperial spinouts.

The process of forming your company is when all the work you put in so far comes together so you can drive your idea further.
The agenda for this part of the first board meeting will obviously vary between companies depending on what discussion has gone on beforehand, but the things that you should aim to cover in the first/second board meetings are:

<table>
<thead>
<tr>
<th>Initial Board Meetings Checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal adoption of the business plan if it is not included in the shareholders’ agreement</td>
</tr>
<tr>
<td>Roles &amp; Responsibilities – assigning who will implement the components of this plan</td>
</tr>
<tr>
<td>One board member needs to be assigned responsibility for the finances, to oversee the bookkeeper/accountant and report the monthly management accounts to the board</td>
</tr>
<tr>
<td>Who will report on the commercial activities?</td>
</tr>
<tr>
<td>What is the sales plan?</td>
</tr>
<tr>
<td>Who will report on the technical development projects?</td>
</tr>
<tr>
<td>Status of the IP protection</td>
</tr>
<tr>
<td>Key hires – timetable and who will be responsible for them</td>
</tr>
<tr>
<td>Cash flow position and Funding timetable</td>
</tr>
<tr>
<td>Who will have signing authority on behalf of the company to authorise invoices and sign cheques/initiate and approve online payments (usually two different people)?</td>
</tr>
<tr>
<td>What level of approval authority for expenditure each board member will have</td>
</tr>
<tr>
<td>Dates of all of the next year’s meetings to be booked in advance</td>
</tr>
</tbody>
</table>

This sets the expectation for future board meetings which can then have some standard agenda items to review these points, together with discussions on the company strategy and the plan for the next period.
**Set up the basic financial arrangements**

**Appoint the accountant/bookkeeper**

If you choose the right bookkeeper they should be able to handle most of the basic financial setup requirements described below, as well as managing your payroll and preparing your monthly management accounts and forecasts. Bear in mind however that a specialist will only be able to supply forecasts based on the information you give them. Make sure it is accurate and complete. Imperial Innovations maintains a list of accountants and financial advisers on its service provider list.

You may consider yourself financially literate, but note that the simple bookkeeping which is your legal responsibility, is unlikely to be sufficient if you want to make your spinout’s cash go as far as possible. The legal and regulatory issues described in implementing your plan are important, but simply complying with the statutory minimum will not provide you with adequate market information to execute a complex business plan with limited resources.

Be clear what you want from your accountant. You may generate or receive a set of perfectly constructed historic financial information. However, this may be absolutely useless from the perspective of running your business.

If you want to keep on track you need to:

- Make sure that the actual business data - the raw transactions - are being captured in the same format that you anticipated in the business plan;

- Make sure that the output for this is being presented clearly and consistently in a format you can understand and which is useful to you;

- Make sure that it shows where you are - and how you got there - against where you thought you would be - and how you thought you would get there;

- Have the information analysed and summarised so it can be quickly assimilated by investors and other key users;

**Things not to do if there is a big delay between shell formation and taking investment**

If under Founders Choice™ you elected to receive the basic support package and incorporate a shell vehicle yourself and IP is to be licensed in from the University, it is strongly advised that you do not carry out the activities below in the period between incorporation and the transfer of IP into the company & investment:

- Do not take money from anyone and put it into the company

- Do not alter the capital structure or founding documents in any way

- Do not sell or trade in any way

If you do any of these things it could inhibit the ability of the University to follow the HMRC process that ensures academic founders stay within the Schedule 22 ‘income tax safe harbour’ to avoid an immediate income tax liability for the founders.

If you find that you are under pressure from an external adviser or investor to carry out any of the above, please discuss it with Imperial Innovations first so that you can fully understand any tax consequences before doing so.
Update your model with actual data and compare against the projected position to take account of current intelligence.

In this way you can stay on course and take appropriate corrective action at an early stage.

Remember that the profit and loss forecast is not the same as your cash forecast; cash flow needs to be understood and planned separately. Complications such as delays between selling something and getting paid; the need to build up a stock of parts or the operation of the VAT regime all have an impact on cash and, particularly as you are unlikely to have much of it, it is essential that you understand this and plan accordingly. This is not easy and can take a lot of your time unnecessarily. There is an old truth in accounting which says “cash is fact - everything else is opinion”. The key milestone you need to work out is the ‘cash out’ date: when will your company run out of money?

Use this as the basis for your timetable for raising further finance. You will need to develop possible scenarios on how to save cash and extend your ‘cash out’ date if required. This will help to ensure that you are not in a weak negotiating position with future investors.

Imperial Innovations runs regular courses on finance for start-up companies which are available to all Imperial spinouts, details can be found here: www.imperialinnovations.co.uk/innovation-academy/

Tax: structure for tax efficiency and register to pay taxes

Dull though tax may seem, do not make the mistake of only considering tax issues as an afterthought. It is not just about the company’s tax affairs - setting up a spinout company can affect your personal tax liability in several ways.

Although UK legislation requires you to keep proper accounting records and file accounts, you must also comply with taxation legislation that is extensive and can be confusing. The penalties for non-compliance can be severe. You should discuss with your advisers each of the following topics and ensure you have adequately addressed them and registered your tax affairs appropriately. You do not want an embarrassing company tax bill that you need to explain to your shareholders and investors.

In addition, some tax relief schemes such as EIS investments and EMI tax options (described on pages 108-109) need some thought at the very earliest stages of company formation so that they are set up properly and achieve maximum tax efficiency.

Keep thorough records to stay on course and be able to react quickly when needed.
Company tax matters
- VAT registration
- PAYE and NIC
- Corporation tax
- R&D Tax Credits
- SEIS and/or EIS registration (if appropriate)
- Tax efficient options scheme and management rewards (EMI etc.)

Personal tax matters
- Income tax
- Entrepreneurs’ Relief

Register for VAT
A company that makes taxable supplies becomes liable for VAT registration should the level of turnover exceed pre-set amounts over a given period. In certain circumstances, it may be possible to register on a voluntary basis so that input tax may be recovered prior to the registration limit being reached. This is often the case with technology start up companies.

Once you have a bank account you can register for VAT. This is a long process that can take up to three months so you should do it straight away. Your bookkeeper/accountant will be able to do this for you.

Registering for VAT exemption will allow you to save the prevailing rate of VAT on your company spending which will build into a significant amount. There are several VAT schemes that you can register for but your adviser will be able to select the best scheme for you. The latest guidance and application form can be downloaded from: [http://inno.im/2vobowY](http://inno.im/2vobowY)

Set up your Payroll (PAYE) and National insurance Contributions (NIC) system
If you have an employee you must ensure that an employee payroll system is set up. This will handle deduction of employees’ Income Tax and National Insurance contributions and organise matters such as Sick Pay. Your accountant will set up and administer a computerised system for you.

You must notify HMRC of the existence of your company (as an employer). The form notifies HMRC of your accounting date, your accountant, and also enables a PAYE (Pay As You Earn) scheme to be set up, which is a requirement if you are to be an employer.

Corporation tax
The company itself is a separate legal entity and taxed separately. It pays corporation tax on any profits. These are calculated by reference to the company’s accounting period, which is established when the company is formed. It is calculated on the basis of a self-assessment tax return, which must be submitted within 12 months of the end of the company’s accounting period. In the early days (possibly for several years) the allowable expenses of the company will be more than its total turnover and so it will have tax losses rather than profits. So no corporation tax will be payable (as losses are not taxable).

Companies are charged corporation tax at the rate applicable during the financial year. Where a company’s accounts period spans two financial years the profits for the period are apportioned between the years. The company is required to send its completed tax return accounts and tax computation to the HMRC Inspector by the filing date, which is 12 months after the end of its accounting period. Penalties will be charged if it is late.

R&D tax credits
The UK R&D tax credit scheme allows you to reclaim your R&D expenses up to certain limits, making it a valuable source of early cash flow. Your bookkeeper/accountant will be able to apply for this as part of your annual tax filing process. You will need to keep
detailed records of the costs incurred and staff time spent on the research. Time sheets do not need to be sent in with the application but you will need to be able to back up any claim if the tax office request further information. Hence from the start of the project you should set up clear time sheets showing the amount of ‘hands-on’ time a researcher has spent on each specific project.

To be eligible you need to spend more than a set amount annually on eligible R&D (not grant funded). Note that you cannot claim for an individual consultant’s time. However, you can contract out the actual research and claim on a portion of that cost.

Full information can be found on the HM Revenue & Customs website at: [http://inno.im/2viF4Mi](http://inno.im/2viF4Mi)

(Seed) Enterprise Investment Scheme (SEIS & EIS)
SEIS and EIS represent tax breaks that are offered to higher risk, small companies that may help to attract investors, particularly from business angels. EIS can allow them to benefit from a range of tax relief including income tax relief, Capital Gains relief, loss relief and inheritance tax exemption.

The private investor should get their own professional advice on how to set this up for themselves. On the company’s side you need to register your spinout for EIS and gain clearance before the private investor can claim their tax relief. The process can take a few months. You should start as soon as possible to ensure it is in place in time for future private investors. Up to date details on these are listed on the HM Revenue and Customs website at: [http://inno.im/2uVY3LP](http://inno.im/2uVY3LP)

First, check with your advisers that the business fulfils the criteria to be eligible for EIS. Take care that the ‘tail does not wag the dog’ - in your efforts to appease angel investors you have lined up ensure you don’t end up with a structure that is unsuitable for significant investment from venture investors in the future.

Initially you apply to the HMRC for provisional clearance, providing basic information about your company and its activities

- Once your company has traded for a period of 4 months (or longer if involved in certain activities such as R&D), you submit form EIS 1 (available from their website).

- If there are no issues the HMRC will issue you an EIS 2 form confirming that the company may issue the tax certificates to investors.

- You then can issue EIS 3 forms to each of your individual investors to claim their own tax relief

Investors should seek specialist tax advice to be certain of their position – and also that of the company. These should be paid for separately – the company is not the same as the investors.

SEIS and EIS schemes have been set up by the government to help small businesses attract investment and grow

---

© Imperial Innovations 2017 All Rights Reserved
Management reward schemes: Options and Enterprise Management Incentives (EMI)

This is a very complex area of the law and taxation code. If you wish to set up a management reward scheme you are strongly advised to get advice from your lawyers or accountants who will also set up your chosen suitable scheme for you.

The key point is that you will need to carefully consider the tax implications for the individuals involved to ensure that they do in fact gain value after eligible taxes have been paid. Note that you will need to agree the price of your options/shares with the Inland Revenue before they are granted to avoid issues in the future. This is a lengthy process taking up to six weeks. In early stage businesses you can argue that the market price is very low / close to the nominal price.

Schemes can be set up in any way you want but normally you will make the granting and exercising of options dependent on reaching sales targets or commercial milestone. But note that each will have different tax implications. The most flexible for start-up companies is the government approved Enterprise Management Incentives (EMI) Scheme. Under this scheme you can grant options worth up to £250,000 at the date of grant for each selected employee and up to £3 million for all employees. Eligible employees must work a minimum 25 hours a week or 75 per cent of their working time. You don’t need prior approval from the HMRC but you must notify them within 92 days of granting the options. Only independent companies with more than £30 million in gross assets can grant EMI options and trading activities must be carried out mainly in the UK.

Please note that the information provided here on EMI is not exhaustive and company founders should conduct their own research and consider engaging professional advice on the subject.

A more basic alternative is to simply grant options and/or shares to employees. There would then be no limit on the quantity of options or shares granted, but the downside is that tax and national insurance contributions would be required at different stages. Basic information on the tax implications of different management reward schemes are summarised in a table overleaf.
Income tax

There are at least three areas where you should consider income tax implications (note that this list is not exhaustive and you should seek professional personal tax advice at all times):

- **Income tax & NIC on revenue from the spinout back to the College:** If you are due to receive a proportion of the College’s revenue from the spinout in the future (e.g. milestone payments and royalties) under the College’s Rewards to Inventors Scheme, these payments will be subject to income tax and National Insurance Contribution (NIC) deductions if the payment is made via payroll through your salary at Imperial College London. Details on this can be found here: [http://inno.im/2voh6Pl](http://inno.im/2voh6Pl)

- **Income tax & NIC on payments direct to you from the company:** If the spinout pays you for work (and this is approved by Imperial – see earlier in this guide) such as consultancy advice, then these payments are part of your own personal tax affairs and you should ensure you seek appropriate personal tax advice and consider whether they should be declared on your annual self-assessment form to HMRC.

- **Income tax payable upon the acquisition of shares in the spinout:** As a founder, you are likely to acquire shares in the spinout company at formation. It is possible that the HMRC will consider such shares to have been acquired by reason of your employment with the College. As a result, you will be considered to have received a benefit from your employment, which will be subject to income tax if the market value of the shares you acquire exceeds the amount you paid for them. The risk of an income tax liability will be increased where IP assets are subsequently licensed into the company by the University (which generally happens). The IP assets may cause the shares to have a value in excess of their nominal value. The same could apply to any increase in value due to an investor investing at a premium to the price you paid. A charge to income tax will only arise if the amount you pay for the shares is deemed by HMRC to be less than their market value.

An incoming investor may receive shares with enhanced class rights, in which case it may be possible to argue that the value of the shares you received is lower. If you paid nothing or only a nominal amount for your shareholding, you would ordinarily need to check if you need to pay income tax immediately upon acquiring the shares.
Because of the above complexity and uncertainty, Imperial College London and Imperial Innovations have agreed with HMRC an approved process (SOPA) which, if followed, means that academic founders who are employees of the College and acquire shares in Imperial spinout companies at formation, should not incur an income tax charge on their shares as a benefit of their employment. Note you will be expected to account for them under capital gains tax legislation at the time of realisation (i.e. sale) under your self-assessment submission to HMRC.

For this reason, whichever tier of support you may have elected for under Founders Choice™, we strongly suggest that academic founders work closely with Imperial Innovations to incorporate, form and transfer the founding IP into the new spinouts.

You are under no obligation to do so, but if you choose not to, and, for example begin to trade or take investment from third parties before the IP has been licensed into the new company, then we cannot guarantee that the HMRC approved process can be followed and you may be exposed to a potential income tax liability with the HMRC (this will be for you to determine using personal tax advice).

Entrepreneurs’ Relief (ER)
Entrepreneurs’ Relief may enable you and other shareholders to claim some relief from capital gains tax upon disposal of shares. However you may be required to hold a certain percentage of the ordinary shares of the company for a set period of time and take certain roles within the company to be eligible. This is a personal rather than company tax matter and you should take personal advice at the set up stage. Do not wait until later. The Government’s guidance on ER can be found here: www.gov.uk/entrepreneurs-relief

Stay up-to-date with the latest regulation to make sure you have the best arrangement for your company.
Make sure everything is lined up and ready to go.
## Checklist: step five

### Company formation

<table>
<thead>
<tr>
<th>Task</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporate company shell</td>
<td></td>
</tr>
<tr>
<td>Finalise the Articles of Association &amp; Shareholders agreement</td>
<td>if they are different from the standard versions filed when the shell company was formed</td>
</tr>
<tr>
<td>Finalise the service agreements with your academic founders</td>
<td>if they are going to act as consultants to the company</td>
</tr>
<tr>
<td>Finalise your contract with the company itself</td>
<td></td>
</tr>
<tr>
<td>Issue founding shares</td>
<td></td>
</tr>
<tr>
<td>Hold first board meeting</td>
<td>to formally adopt the legal agreements and plan the future running of the company</td>
</tr>
<tr>
<td>Licence the founding IP into the company</td>
<td></td>
</tr>
<tr>
<td>Take investment from your investors</td>
<td>(with associated documentation) if your investors are ready to go (otherwise this stage comes later)</td>
</tr>
<tr>
<td>Appoint a bookkeeper or accountant</td>
<td></td>
</tr>
<tr>
<td>Ensure a PAYE system set up</td>
<td>and all current employees have employment contracts</td>
</tr>
<tr>
<td>Open a company bank account</td>
<td>(current and deposit) and overdraft facility</td>
</tr>
<tr>
<td>Register for VAT</td>
<td></td>
</tr>
<tr>
<td>Register for the EIS scheme (if required)</td>
<td></td>
</tr>
<tr>
<td>Register new Articles of Association with Companies House</td>
<td></td>
</tr>
<tr>
<td>Register changes in directors/secretary if any with Companies House</td>
<td></td>
</tr>
<tr>
<td>Ensure the company secretary is tasked with filing all legal</td>
<td>requirements with Companies House</td>
</tr>
<tr>
<td>Check the current year end date for the company is OK</td>
<td>it may need to be changed to fit in with VAT payments or grant applications where you need to provide accounts</td>
</tr>
<tr>
<td>Put in place timesheets to enable you to claim for R&amp;D tax credits</td>
<td></td>
</tr>
<tr>
<td>Understand the payment schedule for any development contracts with</td>
<td>the College</td>
</tr>
<tr>
<td>If you are paying fees to advisers and directors, ensure you have</td>
<td>agreed the payment schedule</td>
</tr>
</tbody>
</table>
Step six

The first few months of operation
Key points

- Set up the company’s
  - Basic facilities and office
  - IT systems
  - Insurances
    - Employer’s liability insurance
    - Keyperson (Keyman) insurance
    - Directors & Officers (D&O) insurance
    - Future insurance requirements
  - Health & Safety
  - Employee contracts of employment & consultancies
The first few months

Now that your spinout has been formed and is up and running, you will want (and need) to focus on the development of products, customer interaction and research, managing investors and other important activities. However, there remains a list of operational requirements that must be fulfilled. You should take care to ensure that you have considered and addressed the activities outlined in this section of the guide.

Set up the company facilities
When looking for space you should consider speaking to the team at the Imperial Incubator, based in the I-HUB at White City. This facility can provide medium-term lab and office space for start-up companies. They can also provide hot desk facilities and/or act as a mail drop address if needed. If they are not able to offer space in your time scale they will be able to help and advise on other options. You can contact the incubator team at:
info@imperialincubator.com

Accessing the facilities and equipment of Imperial College London
It is very important that you do not conduct company business using Imperial College London property or equipment. The College is a charity and its premises are not registered to conduct commercial activities. In addition, many items of Imperial College London equipment were purchased using government or charitable money on the express understanding that their use be limited to academic research purposes. However, it is possible for you to access Imperial research facilities through the proper channels:

- To sponsor research at Imperial, you should contact Research Services: http://inno.im/2viuHs4
- To access facilities, equipment or conduct contract (non-published) research then please contact Imperial Consultants (ICON) www.imperial-consultants.co.uk
- To access the College library databases you must make a separate agreement with the Library Service: http://inno.im/2f8AsSv (the British Library runs a separate service for spinouts. Academics are covered for use by their University employee status. HEFCE databases are excluded.)

Set up your IT facilities
Software licences
Software installed on Imperial computers has been purchased under educational licences by the College. The vendors give the College significant discounts but, in turn, specifically require the College to restrict use of the software to educational purposes only. The College is liable for any infringement and vendors routinely carry out audits at UK universities. The College policy is very clear: the academic founders of a spinout cannot carry out any commercial work using College funded software, including Windows, MS Office/MacOS and MatLab, even if the founders are only working for the spinout company part-time or as consultants (note this also applies to any specialist software used by your research group.) Therefore, on formation of your spinout company you
will need to budget for commercial software licenses. These costs need to be included in the business plan. The initial costs are not large for the basic software, and almost any application you need to run a small company is now available through a subscription model allowing you to spread the costs.

**Network Access**

UK university academics have access to Janet, a UK-wide academic high-speed network. This is only authorised for educational & research use and it should not be used for activities related to a start-up company. Should your start-up need high-speed network access then you will need to make special arrangements via the College IT department. If you are moving to the Imperial Incubator you can access a high-speed network through the Incubator team who will also be able to introduce you to external IT providers.

As your company grows you may need to consider having your own server space; there are cloud solutions for this which are most likely preferable to buying hardware outright in the early stages. Above all you must ensure that your critical data is routinely backed up.

**Company insurance**

A spinout company should consider taking out insurance to protect itself against the financial consequences of loss of or damage to assets employed or liabilities incurred in the course of business. The insurance arrangements of a new spinout company will frequently be driven by Investors, who may insist that appropriate insurance arrangements are put in place as a precondition of their investment.

Take time to pinpoint exposure to liability and other risks, and seek appropriate professional advice. As with all aspects of establishing a spinout company, you can’t know exactly what’s around the corner. But you can make some educated guesses and protect yourself against the worst negative outcomes. Some types of insurance, such as employers’ liability insurance are compulsory. Other types, such as public liability insurance or building contents insurance are not compulsory but may also be required. Any company should, at an early stage, compile an inventory of its assets and potential areas of exposure to liability and obtain professional advice as to the appropriate level of insurance protection required.

**Employers’ liability insurance**

All business with employees must have employers’ liability insurance. This protects your business against claims from your employees for accidents or sickness they may suffer as a result of working for you on or off company sites. You must be insured for at least £5 million. In practice, most insurers offer cover of at least £10 million. You must display a copy of the Certificate of Insurance where your employees can easily read it and retain copies of all expired policies for at least 40 years as claims can be made retrospectively. A basic guide can be found at the Health & Safety Executive (HSE) website: [http://inno.im/2u4zxcp](http://inno.im/2u4zxcp)

**Keyperson (Keyman) insurance**

It is likely that the company will rely on a number of key people across the company (female or male). Taking out ‘Keyperson’ (sometimes known as ‘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. Keyperson insurance will cover the costs of incapacity, illness or death of prime movers in the spinout, such as the chief executive or a key researcher, as these individuals are very important to the company, especially when it is young.

Your Imperial Innovations relationship manager can direct you towards insurers who can provide this sort of cover, or you may choose to source your own.
Directors & Officers (D&O) liability 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, and your personal wealth, it’s worth sourcing a quality directors & officers (D&O) liability insurance policy to protect yourself in respect of claims from which the company does not indemnify you. A standard policy usually provides cover for companies for amounts which the company pays in indemnifying its directors and officers in such situations. It also provides cover directly to individual directors and officers for losses that they incur as a result of claims made against them and in respect of which the company does not indemnify them. 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 or negligence; you and your fellow board members must ensure that conduct within the company always remains above reproach.

For founders that have elected to take the Jointly Driven/enhanced support option under Founders Choice™, you will most likely only need to arrange Directors and Officers (D&O) insurance to start after your later funding rounds. This is because Imperial Innovations has arranged a policy for D&O liability insurance in order to cover the directors, shadow directors and officers of spinout companies during the very early growth stages of the spinout. As in any insurance policy there are series of exclusions; for details please contact either Imperial Innovations or the insurance company directly. This service is only intended as an interim arrangement until full D&O cover is taken on and the company must have a forward plan to arrange their own cover.

Note that obtaining D&O insurance is not a trivial matter. Insurers will typically want to see the company’s business plan and review its financial position, including prospects for raising further funds, before agreeing to insure the company. This process can take up to three months. Consequently, spinouts need to start arranging their own D&O cover well before they raise external funds so as to avoid potential exposure.

Future insurance requirements

If you will provide any sort of professional consultancy then you will also need professional indemnity insurance.
In addition, as your company grows you will also need to consider other types of insurance such as: equipment insurance; buildings and contents insurance; product liability insurance; goods in transit insurance; public liability insurance and so on. You can find further information and lists of providers on the Association of British Insurers website: www.abi.org.uk/

Health and Safety policy and monitoring
An extremely important area for all businesses. You must ensure that an appropriate Health and Safety (H&S) policy is in place and properly policed. Health and safety law places duties on organisations and employers, and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety. More information on this very important subject is available here: http://inno.im/2vtj1mC

Put a Human Resources Policy in place and recruit & sign up your staff
At this early stage it is unlikely that you will have a dedicated HR manager, but you should make yourself aware of government regulations on employment.

For example, a letter offering a position to a prospective employee needs to include: start date, salary & notification that approval is subject to employment and medical references.

You should also ensure that you compile a company handbook setting out policies and procedures, including grievance and disciplinary procedures. There are many examples of these that you can find online but you should take care to tailor it to your business and not just use a generic one.

All companies in the UK need to have a workplace pension scheme in place by 2018: http://inno.im/2u0qu8p

There are many advisers who will help you set one up and you will need to decide on the benefits you will offer under the scheme. As a minimum, the company must initially pay at least 1% of the employee’s qualifying earnings into the scheme. This will increase to 3% by 2019 (if approved by parliament).

You also need to consider your plans for on-going people recruitment. Finding the right people can be time consuming hence you need to forecast at what stage you will require what skill set. Your first inclination will be to use your own networks, but you need to bear in mind that this can be a time consuming process and there are professional recruitment agencies that have much wider networks and can help you shorten this process. Imperial Innovations has an internal network of contacts and can introduce you to recruitment agencies that understand start-up needs and are willing to work with them on favourable basis. Note that you need to be in the habit of carrying out your own background checks on candidates as you cannot afford a misstep at this stage.
“Success is the sum of small efforts, repeated day-in and day-out.”

Robert Collier

### Checklist: step six

<table>
<thead>
<tr>
<th>The first few months of operation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set up office &amp; lab space – ensure that you have a company phone number and mailing address</td>
</tr>
<tr>
<td>Print business cards</td>
</tr>
<tr>
<td>Set up IT facilities – including company email addresses and build your web site</td>
</tr>
<tr>
<td>Buy software licenses &amp; packages</td>
</tr>
<tr>
<td>Set your liability insurance</td>
</tr>
<tr>
<td>Set up keyperson &amp; D&amp;O insurance if you need it</td>
</tr>
<tr>
<td>Plan your yearly budget and obtain shareholder approval</td>
</tr>
<tr>
<td>Plan your fund raising timetable</td>
</tr>
<tr>
<td>Plan on-going recruitment requirements</td>
</tr>
<tr>
<td>Set up contracts for new employees</td>
</tr>
<tr>
<td>Set up contracts for Non-Exec directors</td>
</tr>
<tr>
<td>Appoint a long term company secretary</td>
</tr>
</tbody>
</table>
A business is an intricate mechanism with a lot of components. Having these in place will help your spinout run smoothly.
Step seven

The first year and beyond
Key points

- Roles and responsibilities of directors
- Set up your corporate governance procedures
  - Follow the rules for board meetings
  - Ensure that you have procedures in place to fulfil your annual legal reporting/filing requirements
- Manage on-going IP arrangements
  - Appoint your IP attorneys
  - Budget properly for your on-going IP costs
  - Think about how you create and access future, arising IP
- Branding and public relations (PR)
- Managing potential Conflicts of Interest that arise later
- Learn to manage your investors
- Training
The first year and beyond

Roles and responsibilities of directors
As an academic founder it is possible that you will become a company director, possibly for the first time. While this may sound glamorous, being a director attracts a range of statutory responsibilities in addition to the demands placed on you by the shareholders’ agreement. It is important to fully understand your obligations as a director and to ensure key matters are addressed as neglecting these could land you with a criminal record and substantial fines.

In law, a company is a separate legal entity, able to raise money, employ staff and enter contracts in its own right. The company is owned by the shareholders. The shareholders delegate to the directors (these may be the same people) the day-to-day responsibility for running the business. A critical feature of the company is that the liability of its members (shareholders) is limited to the amount of share capital they have invested - so in the event of the company failing then other creditors of the company cannot pursue the shareholders personally for the company’s debts (see appendix seven).

The price of this protection is that the company must make public certain information about itself, its trading, members and officers. It does this by filing certain documents at Companies House in the UK, where they are freely available for inspection. These documents must be filed according to strict deadlines which, if missed, will cause the company to incur penalties and can lead to criminal actions being taken against directors.

Even if you’ve done the most meticulous research, bolted down your IP, targeted your customers and generated piles of investor cash, there may still be trouble ahead. US statistics suggest that more than half of all spinouts fail in their first year so it’s crucial you’re equipped to get through this early period.

By this point you will quite naturally be preoccupied with making the technology work.

However, there are a host of issues as a new company that you may be unfamiliar with. If properly managed they are little more than good housekeeping; but if ignored they can land you and the company in serious legal and commercial difficulties.

Even if you’ve done the most meticulous research, bolted down your IP, targeted your customers and generated piles of investor cash, there may still be trouble ahead. US statistics suggest that more than half of all spinouts fail in their first year so it’s crucial you’re equipped to get through this early period.

By this point you will quite naturally be preoccupied with making the technology work.

However, there are a host of issues as a new company that you may be unfamiliar with. If properly managed they are little more than good housekeeping; but if ignored they can land you and the company in serious legal and commercial difficulties.
The directors have other legal responsibilities too, notably the duty to keep proper accounting records that enable them to establish the company’s financial position on an ongoing basis. They also have duties to employees, members, creditors and others so that when acting on behalf of the company they must be careful to consider the rights and responsibilities of others and document their decisions accordingly.

This guide is not intended to provide a comprehensive list of all the roles and responsibilities of directors required under UK company law. Surround yourself with good advisers and consider attending a course. Imperial Innovations occasionally provide ‘roles and responsibilities of directors’ courses under our Innovation Academy programme: www.imperialinnovations.co.uk/innovation-academy. Alternatively you may be able to find other similar courses online or locally.

In summary, being a director brings many duties that you may not have considered and legal requirements that must be adhered to. If properly managed they should not distract you from delivering the business plan. It does mean that you need the right skills in your team, either in-house or brought-in, to ensure your obligations are met (see appendix eight).

**Board & Corporate governance procedures**

As a small spinout, you should ensure that you have access to a good company secretary or someone willing and qualified to provide those services such as an accountancy or law firm. They will help to ensure your legal responsibilities as a company are discharged. This will also lay the foundations for a corporate governance environment which will make your eventual exit from the business far smoother and could even increase the company valuation.

In addition, all spinout companies need to ensure that all necessary documentation is kept up-to-date and, where appropriate, filed at Companies House on time. Appropriate corporate governance will ensure that there are proper procedures to: control the finances of the company; guard against insolvency; keep to plan; and make sure that any deviation from the plan is carried out correctly with prior board approval. The board acts as the check-point for all of these fundamental decisions.

Note that the board documentation and Companies House filing records will need to be disclosed in the due diligence process when you raise finance. Up-to-date documentation that has not been filed on time or was filed at the last minute will call into question the management’s control over the company operations.

**Rules for board meetings**

Basic rules for board meetings are:

- You must arrange a board meeting if any director asks for one;
- You must give reasonable notice to the other directors.

**General meetings**

- The company must hold at least one general meeting of the shareholders each year (AGM);
- Written notice with copies of annual accounts must be circulated to the directors and shareholders, generally at least 21 days in advance;
- The board needs to approve the accounts and reappoint the auditors;
- You must file at Companies House (within 15 days) any extraordinary or special resolutions passed at a general meeting.

Special resolutions are required for matters such as modifying classes of shareholders and winding up the company. Special resolutions require 14 days’ notice, but can be held more quickly if 90% of the shareholders agree to a short notice meeting. The Companies House website has further guidance on running a board meeting and resolutions at: http://inno.im/2w6CNRZ
There are two types of people who will tell you that you cannot make a difference in this world: those who are afraid to try and those who are afraid you will succeed.

Ray Goforth

Annual legal filing requirements
There are three basic annual filing requirements in the UK:

■ Confirmation statement (previously called the annual return). You need to maintain an accurate record at Companies House of the following:
  □ the details of your registered office, directors, secretary and the address where you keep your records;
  □ your statement of capital and shareholder information (if your company has shares);
  □ your SIC code (the number that identifies what your company does);
  □ your register of 'people with significant control' (PSC) - you’ll need to include this the first time you file a confirmation statement.

■ Annual Accounts (your bookkeeper/accountant should do this for you). The company’s first accounts must start on the day of incorporation. You may change the reference date by sending Form AA01 to the Registrar. The accounts will usually include at least:
  □ a directors’ report signed by a director or the company secretary;
  □ a balance sheet signed by a director;
  □ a profit and loss account (or income and expenditure account if the company is not trading for profit);
  □ notes to the accounts;
  □ auditor’s report – note that small companies can qualify for audit exemption if they have turnover and a balance sheet below certain thresholds. The majority of start-ups apply for this exemption and save the expense of auditors. Information on this is provided here: http://inno.im/2viD0Eg;

■ Corporate tax return.

The above are legal requirements and every member of the board and officer of the company is held accountable. There are financial penalties for failing to comply that may stretch to several thousand pounds for each offence.
Manage on-going IP arrangements

Appoint your own IP attorneys
Following initial filings of the patent(s) by Imperial Innovations, your spinout company will need to consider future maintenance of the patents and how it will deal with on-going and future IP protection issues. The company should therefore appoint its own patent agents. To simplify the process it would make sense for you to appoint the same patent agents that Imperial Innovations used to originally draft and register your patent. This has the advantage that you already know the patent attorney and the attorneys will be aware of any issues/concerns raised by the patent office during prosecution. The list of agents recommended by Imperial Innovations is on its service providers list. You are under no obligation to continue with the same attorney and may switch to another if you so wish.

Budget appropriately for your on-going IP costs
As soon as the IP has been licensed into your company, it is responsible for all IP costs going forward including those paid temporarily on your behalf by Imperial Innovations (e.g. at the ‘hand-over point), annual payments on your original patent and applying for new IP rights or patents for inventions by company employees.

For some forms of IP such as copyright the protection is automatic and incurs no costs. Other forms of IP such as design rights require filing but are relatively inexpensive. However, for patents the process is long and can be very expensive if you go for worldwide protection. Imperial Innovations can advise, but you will need to budget for this cost (it can cost tens of thousands of pounds) and remember that patents become very expensive around 30 months from the date of filing (and it just gets more expensive from there).

The first filing is usually made in the UK. This reserves your IP rights for up to one year, within which time you need to decide if you want to file internationally. International filing is done under the International Patent Co-operation Treaty (PCT). This is one filing point that again reserves your IP rights worldwide for a further 18 months. Then you need to decide which individual countries you want to file in. At this stage, major expense may be incurred, as you will need to pay for translation and filing costs in each country you select.

During the PCT stage, the patent is subject to a preliminary examination that provides an indication of the likelihood of it being granted. The determining examination of the patent occurs in each national jurisdiction and can take several years to complete. Consequently, the process from initial filing to final grant can take between 3 and 5 years. The costs outlined below are guides only, as they can vary greatly depending on the complexity and extent of the patent application. A high-tech patent that is granted and maintained in all key countries of the world could cost well over £100,000 over the lifetime of the patent.

A table presenting a summary of the typical costs you might expect to incur is provided overleaf.
## Typical IP Costs

<table>
<thead>
<tr>
<th>Status</th>
<th>Who</th>
<th>Time</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Write the patent</td>
<td>Inventor, and a patent agent</td>
<td>Start point</td>
<td></td>
</tr>
<tr>
<td>Carry out a UK search</td>
<td>Innovations and inventor</td>
<td>Within 12 months</td>
<td>£2,000 to £10,000</td>
</tr>
<tr>
<td>UK patent office carries out an examination and decides to grant (or not)</td>
<td>Patent office, issues dealt with through the patent agent</td>
<td>Within 12 months, but after the search</td>
<td></td>
</tr>
<tr>
<td>PCT application and search</td>
<td>Imperial Innovations (or the spinout if formed by this stage), issues dealt with through the patent agent</td>
<td>Within 12 months</td>
<td>-£6,000 one off fee</td>
</tr>
<tr>
<td>“National” phase - separate filings in chosen countries. Patent needs to be translated into each national language.</td>
<td>Imperial Innovations (or the spinout if formed by this stage), issues dealt with through the patent agent</td>
<td>Within 30 months</td>
<td>Variable per country, and there will be added translation costs, £2,000 to £35,000 one off fee if lots of countries covered</td>
</tr>
<tr>
<td>International renewal fees</td>
<td>Spinout company</td>
<td>After grant then annually</td>
<td>Variable per country, from £5,000 to £50,000 over lifetime of the patent (paid in smaller amounts annually over several years)</td>
</tr>
<tr>
<td>UK annual renewal fees</td>
<td>Spinout company</td>
<td>After grant then annually</td>
<td>Total -£4,000 over period</td>
</tr>
</tbody>
</table>
Licensing out your IP to third parties

During the initial 30-month process described above you may well have opportunities to license out your technology in non-core jurisdictions or market sectors. Note that ideally the licence should be registered on at least pending national patents and the licence registered separately in each country - your IP agent should do this for you. In the UK, the licence needs to be registered within six months of grant of the patent. It is possible to grant a licence based on an International patent application before it is split into national applications. In this case, it will not be possible to register the licence straight away, but you will need to remember to register the licence when the application is split up into national applications. If this is outside the normal six-month period, the licence should be registered after entry into the UK national or EP regional phase. You need to make sure that you have instructed your IP agent to do this.

Guidance notes to Imperial Spinouts with regards to ‘new’ IP arising

A spinout company is not automatically entitled to any further intellectual property which is generated by its founders in the future unless a specific arrangement has been agreed between Imperial Innovations and the spinout. Imperial College London owns all IP generated by its staff or by anyone using its facilities. Each new piece of IP is subject to the standard rules and processes and the first port of call is the relevant technology transfer team at Imperial Innovations.

Branding and Public Relations

Unless your company is operating in ‘stealth mode’, you will want the world to know about you and your web and social media presence will need to project the right image for your company (investors may be looking). In the initial years, we generally find that companies can manage by using a collection of different providers to manage their web presence, marketing materials and press releases. However, as the company grows you may wish to sign up with a PR agency capable of handling these tasks for you and ensure a co-ordinated, professional image is projected that reflects your brand values.

Imperial Innovations can provide a list of PR agencies used to working with start-ups when you get to this stage.

Website and social media presence

An earlier section in this guide talked about setting up your website and domain name. At this point you should check that you have also covered the other bases such as your LinkedIn profile, Twitter and Facebook page. Even if you are not particularly active in the early stages it is useful to have these accounts registered as you may wish to engage more with social media as your company grows and develops.

Letterhead & logo design

Company law requires that all companies have their company registration number and the jurisdiction where it is registered on their letterhead. As your spinout company will be a limited liability private company the name will end with “Limited” or “Ltd”. In addition, you should consider designing a logo for use on your letterhead, business cards & website.

Imperial College London has a close relationship with the Royal College of Art (RCA) and may be able to support you by helping you engage with design students through InnovationRCA. You can contact the RCA via email innovation@rca.ac.uk or phone 020 7590 4508 or by visiting their website: http://inno.im/2hoes72. Further providers are in the Imperial Innovations service providers list.

Trademark

A trade mark can be a right which you gain through simple use as a matter of common law without the need for registration. Hence this is not usually an early cost for a spinout company. However, if you start associating a key aspect of your technology or product with a form of words or specific design then there may be some specific value attached to that trademark. In these situations you may want to consider actually registering it with the UK IP Office. The process can take several months and can be costly depending on the extent of coverage and extent of protection. However, if granted, the protection will date back to...
The first year and beyond (continued)

the date when your application was received and you can use the ® symbol for the registered trademark. The relevant forms and detailed guidelines are on this web site: http://inno.im/2hnQwR7

Changing a Company name
Experience has shown that many spinouts change their name during the first 24 months, sometimes more than once!

To change your company name you must pass a special resolution in a general meeting, or 75% of the members must sign a written resolution that the name of the company be changed to the new name. A signed copy of the resolution containing the new name should then be sent to the Registrar, together with the relevant form and fee (currently £10). A copy of the amended memorandum and articles must also be sent in at the same time as the change of name resolution. If all is in order, Companies House will then process the resolution and issue a Certificate of Incorporation on Change of Name. The name of the company is not changed until the new certificate is issued.

Note: this is only one way of changing your company name and alternatives exist. You may wish to seek professional advice on this matter.

Use of or association with the “Imperial College London” brand
The College has strict guidelines on the use of its name, addresses and letterheads and trademarks. Straightforward guidance can be found here: http://inno.im/2vtxIGu

In summary, the Imperial College London name, brand and trademark etc. cannot be used for commercial or private work without express permission. However, it is acceptable to say that you are an ‘Imperial College London spinout’ provided that you worked with Imperial and Imperial Innovations to form the company in accordance with the processes set out in this guide.

Handle potential conflicts of interest that arise after formation
Situations may arise in which the academic founders, other directors and managers of spinout companies find themselves faced with a conflict of interest that arises after formation. It is not enough to clear conflicts only before formation - you must review the situation constantly. This should be declared to the company board as soon as that person is aware of the potential conflict.

With regards to the academic founders, the College has a strict policy that covers any decision that they might be able to influence in their capacity as a member of staff at the College. Situations in which this occurs must be handled very carefully so as to ensure that the reputations of the academic staff, the spinout company and the College are not compromised in any way. In any situation where an Imperial employee is in a position to negotiate or approve something that concerns both the College and the spinout company they are advised to inform both the College and the spinout company immediately.
Learn to manage your investors (or they will manage you)

Managing your investors is a skill and something that must be taken very seriously. Regular and effective communication is essential. Your investors will want regular updates on the company’s progress. Remember, your investors are investing in a wide basket of companies to spread risk because they understand that technology development is hard and not everything goes to plan.

Don’t just rely on formal board meetings to meet with the investors. Arrange for regular informal meetings with them to give them updates. Face time is key - don’t just rely on email.

Ask their advice, too. They have probably ‘seen it before’ and may have some useful contacts to help you resolve things. They also like to be asked!

Above all do not bury or delay the release of bad news. Investors hate this more than anything and you will rapidly lose credibility. It can be tempting to delay disclosure slightly (as you are still working on it) because your next milestone payment may be contingent on achieving a certain goal. Do not struggle along, hoping you’ll solve the issue at the 11th hour the day before the board meeting. Rather, you should be transparent and share with them the issues as they arise and how you plan to solve them.

Poor communication with your investors can kill a spinout just as easily as technical failure. Commit the time to try to do it well, or hire someone who can do it for you.

Training

Imperial Innovations and other parts of the College (such as Enterprise Lab: www.imperialenterpriselab.com/ and the Business School www.imperial.ac.uk/business-school/) offer a series of information events/course to help you and other members of your team.

The Innovation Academy

Imperial Innovations provides a suite of formal learning and development opportunities for Imperial students, staff and companies from the Imperial Incubator.

Modules offered cover seven core areas:

- Finance & Funding
- Intellectual Property
- Business Fundamentals
- Growth & Exit
- Sales, Marketing & Communications
- Legal & Contracts
- Building a high performance team

Attendees can join the whole Innovation Academy or select specific modules according to their needs. In future, selected modules will be available online.

You can find out more at: www.imperialinnovations.co.uk/innovation-academy/

Evening and lunchtime seminars and events - Engaging with Innovators

A key aspect of company and personal development is engaging with change-makers and innovators. The Imperial White City Incubator hosts a programme of inspiring and educational events designed to allow Imperial students and staff to engage with the external ecosystem. Events are a mix of seminars, networking, panel discussions, offline and online content delivered in partnership with multiple sector-specific external organisations.

External courses

There are a variety of external courses you could consider, for example via the Institute of Directors, www.iod.com

There are also a variety of initiatives designed to help entrepreneurs in a variety of ways, from basic general advice to specific help in tuning investment pitches. Please talk to your Imperial Innovations relationship manager for advice on possible courses or contact the Venture Support Unit at Imperial Innovations. www.imperialinnovations.co.uk/vsu
Training is an important way to ensure your knowledge (and your employees’ knowledge) is up to date - as well as helping you to upskill where necessary.
# Checklist: step seven

## The first year and beyond

<table>
<thead>
<tr>
<th>Activity</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set up your corporate governance procedures</td>
<td></td>
</tr>
<tr>
<td>Ensure that board meetings are held regularly and are effective</td>
<td></td>
</tr>
<tr>
<td>Make sure you are complying with the law and reporting to Companies House and HMRC as required</td>
<td></td>
</tr>
<tr>
<td>Make sure you understand your responsibilities as a director</td>
<td></td>
</tr>
<tr>
<td>Ensure that you have undertaken a Health &amp; Safety risk assessment and have the procedures in place to deal with any issues raised</td>
<td></td>
</tr>
<tr>
<td>Set up a management &amp; employee reward scheme</td>
<td></td>
</tr>
<tr>
<td>Appoint your own IP agents – and plan ongoing IP development/protection</td>
<td></td>
</tr>
<tr>
<td>Investigate designing a logo for the spinout and other PR arrangements</td>
<td></td>
</tr>
<tr>
<td>Build out your website</td>
<td></td>
</tr>
<tr>
<td>Set up training programmes for your staff</td>
<td></td>
</tr>
</tbody>
</table>
Exiting the business

Step eight

136 Exiting the business
140 Why do you need an exit strategy?
142 Dos and Don’ts of running a spinout
Key points

- What is exiting?
- Why do you need to have an exit plan?
- Ways to exit a business
- Dos and Don’ts of running a spinout - useful tips to keep in mind through the whole process
Exiting the business

Exiting is hard

“I’m amazed anyone ever gets acquired. It’s the hardest thing. The process is so weird, and everything can go wrong at any moment. And it usually does. Selling a company is very different from selling a product. The perception of risk on the part of the buyer is different, and there are often far more people involved than at any other significant event in the life of your company. An acquisition is a very, very fragile thing. And it often takes much longer than you planned. You need to go about it with scientific precision, and complete dedication.”

Erik Bovee, Partner, Speedinvest

Source: https://venturebeat.com/2014/09/16/the-exit-things-every-startup-founder-should-know/

Though it may seem early to be thinking already about the ‘end game’, it is vital that you do so and build it into your planning from the very start. An exit is how an investor gets a return on their investment in a venture-backed start-up. It is the reason that investors put their money in so you need to start thinking like an investor to appreciate their mind set. Even though some founders might want to keep their company small and private for as long as possible, for investors, this is an unattractive scenario.

You can understand how investors feel about exit strategy if you consider what happens to investors who don’t get exits. They don’t have a return. They put money into a company, but they get nothing back. Having a minority share in a healthy, growing company, without any prospect of an exit offers no return for investors.

About 90% of all companies investors put money into will go bankrupt. This means that investing money in your start-up carries a pretty substantial risk. The odds are always against them. The only way investing is worth it to the investors, then, is if the remaining 10% of companies that survive give them a return of ten, twenty, even fifty times their investments.

From the perspective of an investor, a spinout worth £10m may not actually be worth that much, so that leaves spinouts with a profound need to grow—and then exit.
Why do I need to exit? Lifestyle and Bootstrap companies?

Some Imperial spinouts find that they do not need to raise money from angels and VCs. Instead, they can take ‘bootstrap finance’ (just enough money for initial working capital and to get themselves going) and then build the business organically through sales or services to customers. Provided such companies establish a secure and stable stream of revenue they may elect to reinvest profits back into the business and remain as an independent entity. These profits can be used to ‘pay back’ the providers of the original bootstrap loan or to return a share of profits to shareholders via a dividend. This route means that the business comes under less pressure to sell itself to a larger company and it can also avoid the public markets and accompanying obligations.

The reality is that many Imperial College spinouts are ultra-high technology, deep science led businesses that require substantial investment in product development over significant periods. As such, equity based finance from investors is required and therefore exits must be planned in from the start.

Key issues to remember for bootstrap/lifestyle businesses are:

- Be frugal with your cash spent on product development. It can take a long time for a capital-intensive business to become profitable and you should constantly look for areas where you can bring in some revenue at the same time as minimising your overheads.

- Have a rapier-like focus on a particular market segment or niche. Pursue highly profitable niches rather than just ‘acquiring as many customers as possible’. Volume plays can be hard to manage well at the spinout stage and you can scale later. (Note that some internet companies are exceptions to this).

- Be realistic if your eventual exit is either unclear or likely to be modest (in VC terms). You may well be better off avoiding institutional VC investors (or at least until you need to scale-up rapidly later). Instead look at loans, crowd-funding, government grants etc.

“Timing, perseverance, and ten years of trying will eventually make you look like an overnight success.

Biz Stone - Twitter Co-founder
The exit strategy isn’t about you as a founder, it’s about your investors.

David Ehrenberg founder, Early Growth Financial Services

Spinout acquisition as an exit route

A larger company, usually one that is well established and which has an interest in the product or service your spinout has created, may offer a substantial amount of money to purchase the spinout. In this case, investors receive cash in exchange for their equity holding. The spinout might then be combined into the larger company, or it might run as a subsidiary of the original.

Things you need to consider:

Maybe you have your eye on being a large company’s next acquisition at a high valuation. If so, you need to:

- Make sure you aren’t a “me too” player. It can be hard to overcome first mover advantage (e.g. ‘me too’ therapeutic drugs aren’t generally attractive to VCs and ‘displacing GSK’ may be a tough sell). Focus on filling an unaddressed market need and owning your product niche.

- Invest in your team. Many acquisitions are driven as much by the desire to lock up scarce talent as they are by acquirers wanting to get their hands on a killer product. Make sure you recruit A-players who produce tangible value as a team.

- Be careful when entering into business partnerships and/or significant contracts. Make sure any partnership or contractual agreements you enter into include options for early termination and/or the ability to assign them to a successor entity.

- Keep your capital structure simple. While most exits are through acquisition and not IPO, make sure any investors you take on understand and buy into your strategy and that there are no minority investors in a position to throw a wrench into a deal. Also, avoid including lots of small investors in your capital structure.
Listing on a stock exchange (an IPO)

Alternatively the spinout could list its shares on a public stock exchange. IPO stands for Initial Public Offering. This refers to the spinout turning from a privately owned company into a publicly traded one. In this case, the investors won’t necessarily get out immediately, but they gain the option to sell and trade their stocks on the open market.

As a founder, technically you will have the same ability to sell some (or all) of your equity holding. However, many shareholders do not regard IPOs as ‘true exits’ and often founders may be ‘locked-in’ for a substantial post-IPO period (unable to sell their shares) or the stock may be relatively illiquid and finding buyers may not be that easy. For this reason, some see IPOs as ‘just another funding round’ in the spinout’s journey.

An IPO is a lengthy and complex process that cannot be fully summarised in this document. If you reach the stage of considering an exit via IPO it is essential that you seek out good, professional advice.

Exit via IPO – things you need to consider:

If your ideal exit is through an IPO, start with the end in mind. First, keep in mind that only a tiny minority of spinouts will exit that way. Then structure your business so that you avoid obvious obstacles to your goal of an IPO. That means:

- Choose an IPO-friendly business structure. Make sure your chosen corporate structure does require an expensive restructuring to make an IPO feasible.

- Lock down your IP. Document your access to College IP and ownership of Company generated IP, get acknowledgements and signed agreements from employees and contractors as to ownership, and make sure what you own is protected by copyright, trademarks and/or patents as necessary.

- Then, as they say, ‘go big or go home’. Concentrate your energies on a product/service and customer segment that will generate large numbers of customers/patients/users and rapid growth. Investors at IPO will regard you as a growth stock (not a dividend paying ‘yield’ stock) - hence they will need to be convinced you are addressing a large and rapidly growing market segment to get excited about you.

Finally, if you are lucky enough to reach the IPO stage - get good advice. IPOs are complex, and you will need an army of lawyers and finance firms to underwrite and ‘build a book’ of willing buyers in advance of the IPO. Be prepared that a substantial part of the proceeds will go towards paying these advisers. Your investors will be experienced in these matters and can generally guide you through the process.
Why do you need an exit strategy?

Your end goal affects everything from how you run your business, to the partnerships you pursue, to how you choose to fund your company.

By thinking and planning ahead, you’re much more likely to be prepared when you do exit, whether that’s in 18 months or 10 years down the road. In addition, if you plan to take on outside investors, they will expect you to be able to clearly spell out your path to an eventual exit, the milestones you need to hit, over what timeframe, and your anticipated valuation at exit. They’ll also expect you to produce data points to back these up.

Success does not consist of never making mistakes but in never making the same one a second time.

George Bernard Shaw

Having a vision for the future of your company will be compelling to investors
Scott Munro of VC firm iNovia Capital discusses in his blog “exit preparedness for start-ups, and why it matters”

“When some companies are aimed at an ultimate IPO, the fact remains that less than 1% of start-ups grow into becoming public companies,” Munro writes. “The other 99% need to consider other ways to return value to the people and organizations who invested money into the company.”

The key here is developing strategic business partnerships. “Over the years, I received numerous calls from CEOs or investors who told me that Google should buy their company. When I asked them who they were working with at Google a blank stare came across their face – they had never had contact with Google, nor with any other potential acquirer,” he notes.

For most large companies who represent potential acquirers, “they will not engage in an acquisition discussion without having an internal business leader sponsor,” he adds.

Making these kinds of connections takes effort and time — often more than six months, according to Munro — so do it well in advance of seeking a buyer. Partnerships aren’t only good for exits; they also can help your company move into growth fundraising and provide start-ups with more negotiating leverage by having more than one acquisition possibility.

“Bear in mind that in the case of almost all large exits, the company being acquired was not for sale. The transaction was initiated by a preliminary relationship that developed over time in which ultimately the buyer determined that the target was strategic enough that it shifted from a partnership relationship to an interest in acquisition. When this trigger event occurs, it is optimal that other partnerships exist that can be leveraged to create a competitive M&A environment,” Munro points out.

Developing relationships with potential acquirers should be a goal of every start-up. “This way,” Munro says, “the chance of the very desirable situation of a competitive bidding war for the target company is made more likely, leading to greatly increased exit valuation.”
Dos and Don’ts of running a spinout

A common feature of early stage technology companies from a university such as Imperial College London is that they are inherently high-risk business propositions. They also have limited resources and are generally seeking to raise substantial further investment from a limited pool of capital - itself a difficult and time consuming process. In consequence, they sometimes fail - the company is wound up and the investors are not repaid. Other creditors such as suppliers, the employees and tax authorities may also be unpaid. Below are some suggested ‘dos and don’ts’ to try to maximise your chances of success.

Don’t do these things

While many Imperial spinouts are successful, others are not. Some common problems that can cause academic start-ups to fail are:

- **Hire inexperienced management.** A strong, experienced, cohesive team is required for a successful start-up company. Problems can arise if founders or other members of the team do not have enough start-up and business experience, or if the founders, new management, and investors do not have the same strategic vision.

- **Raise insufficient funding.** A start-up needs sufficient capital to overcome technical challenges, reach critical business milestones, and progress to the next phase of development. To attract investors the company must have a solid business plan and a strong management team. As someone once said “there is no point in being able to swim only half way across the channel”.

- **Fail to ensure your technology addresses a clear commercial need.** Sometimes the science is innovative and exciting but does not meet a critical commercial need, or current solutions are still better than the new technology.

- **Get the timing wrong.** Even when a commercial need exists, the company may miss the market. Sometimes this is because the market is not ready for a product: it could be too early, too expensive or be targeting an unrecognised need. Sometimes it is because the product is too late to the market and the need has already been filled by a different technology or competitors have leapfrogged over the company with an even better product.

- **Address a marginal niche.** If the target market is smaller than expected the company may not meet its financial targets.

- **Suffer Bad luck.** Ok, you can’t really control this one! You may just have to accept that sometimes events outside of your control can negatively impact a company.
Do these things
Many successful Imperial spinouts turned out to have got the basic fundamentals right. You should:

- **Be passionate** Do it for the passion not the money! At the same time stay reflective and flexible. Be prepared to pivot or adapt if the market tells you it wants something else.

- **Know and like your co-founders.** Can you survive something like the equivalent of a ‘marriage’ over several years with them?

- **Talk to customers and potential acquirers before launching (and continually afterwards).** Understand the value proposition of your idea. Who is really going to buy it?

- **Network furiously, take good advice and listen – you do not know everything.** Equally, network sensibly. Don’t talk to everyone about everything, but identify and talk to the people you really need to talk to. Do your research first, don’t just turn up, ‘work the room’ and hope for the best.

- **Hire the right team.** Create a core team that can develop. Carefully consider the chemistry of your team (complementary skills). The best people cost money. Spend it. 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 company successful.

- **Collaborate widely and look for help.** Don’t do everything on your own. Look for partners, coaches and mentors who will help you sell and market your product and engage with them early. Do not take bad professional advice just because it is cheap. 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.

- **Never stop selling your business.** Prepare a one-minute ‘elevator pitch’ and practice it until you know it in your sleep – sell the benefits not the technology.

- **Remember the best money comes from customers.** If you have a minimum viable product start selling it and listen to the feedback.

- **Choose your investors carefully.** If you need money from investors, choose wisely and constantly communicate with them.

- **Be efficient.** Spinouts will sap all of your time if you let them. Prioritise and be ruthless with your time. Consider how many competitions, pitches and conferences can you realistically attend without taking your eye off the core business.

- **Keep an eye the big picture.** Don’t focus too much on micro-tasks and distractions. Make what you do scalable. You won’t have time to change things easily later when your business is ramping up.

- **Stay grounded and realistic.** Not everyone company is a unicorn (a potential billion-pound company).

- **Always be the best prepared person in the room.** This applies to all aspects of the business, not just the technology. Make it your job to understand all the aspects (even if it’s not your role to be CEO). The best founders have a good ‘helicopter’ view of the entire business (rather than just their particular specialism).
We sincerely hope that you will make Imperial Innovations your partner in pursuing your entrepreneurial vision: we are eager to be your sounding board, to address your questions, and to guide you through the process of launching a new company. Please take the next step and contact us at any time to discuss your spinout idea.

We encourage you to explore the potential of entrepreneurship and become part of Imperial College London’s expanding spinout ecosystem.

Whichever path you decide to take, above all, we wish you fun and good luck!

### Checklist: step eight

<table>
<thead>
<tr>
<th>Exiting the business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan for your exit from the start</td>
</tr>
<tr>
<td>Work out which is your most likely exit route (but accept things may change)</td>
</tr>
<tr>
<td>Follow the list of dos and don’ts where appropriate, but you have to find your own path</td>
</tr>
<tr>
<td>Have fun!</td>
</tr>
</tbody>
</table>
Being an entrepreneur is a challenge that will help you gain and develop new skills.
Appendix one

Jargon buster and glossary of key terms
Articles of Association
These form the constitution of the company. The Articles essentially govern the internal workings of the company and set out the rights that attach to shares in the capital of the company.

Anti-dilution
Protection for existing investors against future financing at a lower price per share than that which they paid (also referred to as a down-round).

Assignment (IP)
The transfer of ownership of intellectual property from one party to another. Imperial Innovations does not assign IP into spinouts. Instead it licenses the IP into the spinout on a worldwide, fully exclusive basis, giving the spinout complete control over prosecuting such IP.

Bible of documents
A set of copies of all the signed documents for a transaction bound together by the lawyers or in a loose-leaf folder or on a memory stick, usually with an index.

Board meetings
Meetings of the Directors of the company. The board meets regularly to review the company’s finances, ability to meet its obligations, objectives and responsibilities. Crucial decisions about how the company is managed are generally made by a vote.

Business Angels
High Net-Worth (HNW) individuals, who are seeking early stage companies in which to invest with a view to making a large capital return.

Business Model
The road map which gives an overview of the business proposition and how it will be achieved and sustained.

Business Plan
A Business Plan typically includes financial projections and market information relating to a company and will be one of the principal documents that an investor will rely on in deciding whether to invest in a company.

Capitalisation table (cap table)
A record of who owns what in a start-up company, usually presented in the form of a spreadsheet. The table shows the ownership stakes of all parties (founders, management, investors) on a fully diluted basis which allows the capital structure of the company to be ascertained quickly.

Chairman or Chair
The director appointed by the board of directors to act as its chair(man). In practice it is a position of great influence. He/she will be involved in determining the agenda for each board meeting and must ensure that the board operates in an efficient manner. In public companies the chair(man) is expected to be someone different from the Chief Executive/Managing Director and this is widely mirrored in spinout companies.

Chief Executive Officer or CEO
The director of the company who has overall day-to-day responsibility for the management of the company. Another term for the role would be Managing Director (MD).
Chief Financial Officer or CFO
The director who has responsibility for the financial management and reporting of the company, including the production of financial information such as management accounts and cash flow forecasts, which are required by investors. Another term for the role would be Finance Director.

Class Rights
Specific rights attaching to a class of share providing specific contractual rights with regard to the ongoing management of the business.

Company Secretary
The individual who has various obligations relating to the duties of the company to file documents at Companies House. While a sole director can also act as the company secretary, they won’t be able to execute certain documents that require authorisation from both a director and a company secretary. In spinouts often a representative of the company law firm may initially take this role, although private limited companies are not obliged to appoint and maintain a company secretary.

Convertible debt and Convertible loans
Funding that can be converted into shares at a later funding round or event. Sometimes convertible debt is a good funding alternative to venture finance, especially at the very earliest stages where it is hard to establish a realistic valuation on the prospective spinout. Note that as a result of taking a convertible loan the spinout immediately has debt on the balance sheet which must be declared to incoming investors or acquirers.

Conditions Precedent to Financing
In financing transactions, conditions precedent (known as CPs) are the specific conditions that need to be fulfilled for funding to occur.

Copyright
An IP right which arises automatically without requiring registration. It does not protect ideas, but the way ideas are expressed. Copyright may arise in and protect works including publication papers, reports, notebooks, tables, databases, websites, lecture notes, computer programs, source code, operating manuals, charts, diagrams and plans (among others).

Designs
IP rights that protect 3D objects or designs applied to them. Design rights arise automatically if the design is not commonplace in the design field in question. Designs can also be registered, if the design is new and has individual character.

Development or Growth Capital
Finance typically provided to growing companies who already have a track record, either to expand or to make an acquisition.

Dilution
The decrease in existing shareholder’s ownership when new shares are issued and current shareholders do not purchase or receive any of these new shares. A simple example: four founders each have 25 shares in a company (25% equity). In order to raise finance, the company issues 100 more shares which are purchased by other investors. Now each founder owns 25 shares out of 200, or 12.5% equity. Dilution can occur through raising finance or when options are exercised (as
both will increase the total number of shares in the company).

**Dividends**
A payment made to shareholders in a company as a means to distribute a portion of the company's earnings (usually of its net profits). Usually, spinouts reinvest profits (if any) in the growth of the company but if it has pivoted to a consultancy and/or a service type of model then dividends may be paid to shareholders.

**Drag-along Rights**
Rights available to shareholders holding a specified majority of the equity share capital to require other shareholders to sell their shares at the same time as the majority sell their shares provided the same terms are made available.

**Due Diligence**
Detailed analysis and appraisal of the background of the company, its IP and technology, its finance and accounting, its management and the Business Plan.

**Entrepreneurs' Relief**
A UK Government scheme that entitles entrepreneurs to a reduction in capital gains tax upon the sale of their business as long as certain conditions are met. Detailed information on the scheme and qualification terms are here: [http://inno.im/2veL5sE](http://inno.im/2veL5sE)

**Enterprise Management Incentives (EMI)**
A UK Government scheme that enables companies with assets of £30m or less to offer shares to its employees. Employees may be able to acquire up to £250,000 of shares without paying income tax or national insurance on the difference between the shares' value and what is paid for them. More details here: [http://inno.im/2wDuWuE](http://inno.im/2wDuWuE)

**Enterprise Investment Scheme (EIS)**
A UK Government scheme for smaller, higher-risk companies to raise finance by offering tax relief to investors who purchase new shares in those companies. There are rules and requirements on both sides (company and investor) that must be followed. The UK Government offers a guide, here, but also suggest you take professional advice. [http://inno.im/2wpabDR](http://inno.im/2wpabDR)

**Equity**
The ownership interest of a company that is held by various parties in the form of shares.

**Exit**
The realisation of value for shareholders of a company by disposal of their shares— usually a primary target for university spinouts. Outside investors seek exits as a means of realising a return on investment and founders may also benefit. Exits may also be a means of cutting losses – investors may prefer to sell the company even if they receive less than they paid for their investment in order to generate a definite return. Means of exit include a merger/acquisition, in which a company that needs the technology or skills your company has buys it or merges with it to consolidate; IPO, in which the company lists shares on a stock exchange enabling shareholders to sell their shares to the public, sometimes after adhering to an agreed period of share sale restriction or “lock-up”; or a simple direct sale of assets by the company which transfers the value up to shareholders (often followed by a liquidation if the company retains no other valuable assets or purpose).
**General Meetings**
Meetings of the members (shareholders) of the company.

**Incubation Stage**
Generally the early stages of a start-up’s life, when it will benefit from a supportive environment such as a business incubator. For university spinouts it can mean the stage when laboratory facilities are required but are not available at the research institution. Therefore the company must have access to dedicated start-up supporting facilities (such as the Imperial White City Incubator).

**Indemnification**
The agreement of one party to assume financial responsibility for the liability of another party. In a financing context, a bank commitment letter and loan agreement often provide that the borrower will indemnify the agent banks and lenders for losses, liabilities and related expenses they incur from litigation or other claims related to the loan or the borrower.

**Information Rights**
Investors will typically demand to periodically receive certain agreed reports on a company’s progress. They may also be granted rights to request information on an ad hoc basis.

**Initial Public Offering (IPO)**
The listing of company shares on a stock exchange. This is the first time a company’s private shares are offered to the public – hence Initial Public Offering.

**IP Stand-Still letter**
Imperial Innovations uses this term to refer to an agreement not to market to any party the IP that is the subject of a company formation under the basic support option of Founders Choice™ scheme. It provides a commitment from Imperial Innovations to maintain the patents during a fixed period of exclusivity in order to give Founders time to find investors and work up the business before signing the IP licence.

**Letter of Understanding (LoU)**
An agreement between the founders and Imperial Innovations that sets out the preferred support option chosen by the founders under Founder’s Choice™.

**Licence Agreement (IP)**
An agreement through which the owner of some Intellectual Property grants the right to use it to another person or organisation under terms defined within the agreement. Such agreements may be exclusive or non-exclusive, world-wide or territory-limited, for general use or for restricted use. The parties will agree to terms during negotiation.

**Liquidation Preference**
Investors holding preferred shares may require a liquidation preference on their shares. This provides them with the right to get a multiple of their investments back before anyone else. This is often one times the amount of their investment (a 1x) but it can sometimes be more. After payment of this preference, the preferred shares may not have any right to further payment (a “non-participating preference”) or may thereafter share in any further proceeds one for one with the other shares (a “participating preference”).
Non-participating preference shares typically carry the right to be converted one for one into ordinary shares to enable investor to benefit from a high value exit, while protecting their original investment sum if there is a low value exit. A participating preference can be illustrated with a simple example in which the preferred shareholders (investors) invested £5m for which they hold 50% of the company and have a 1x participating liquidation preference. If the spinout is then sold for £25m, then the investors will get £5m, and then the remaining £20m is split according to the equity percentage of the shareholders i.e. £10m to the investors and £10m to the ordinary shareholders (the Founders and Imperial Innovations).

Memorandum of Understanding (Founders MoU)
A non-binding document that sets out the intention of each of the inventors to form an Imperial spinout and to receive equity in it. It also determines the relative split of equity between inventors, identifies any contributors who will also receive equity and sets some ‘ground rules’ to build common understanding before the spinout is formed.

Mentor
A guide and adviser, who can assist you in achieving your objectives with the spinout, either through their own knowledge and experience and/or through their network of contacts in the business community.

Nominee Director
Also known as an ‘appointee director’, this is a director appointed by someone to the board of the company, essentially to be their eyes and ears within the company and (as far as they can) to represent their interests (directors have a fiduciary duty to first represent the best interests of the company). Imperial Innovations or one (or more) of the Investors may wish to appoint a nominee director. Whoever appoints them, though, they still always have to act in the best interests of the spinout.

Non-Executive Director
A director who has no role in the day-to-day operation of the company but usually attends board meetings and other meetings and becomes involved in the strategy for the business. An Investor will normally appoint at least one non-executive to the board for which they usually receive a fee. In larger companies it is generally recommended that at least one non-exec director is completely independent (not an appointee or nominee of anyone).

Non-dilution provision
Protects the shareholder that holds that provision against shareholding dilution. This involves an adjustment to the number of shares in issue to maintain a fixed percentage of shares. This provision falls away once a defined cumulative funding threshold has been achieved by the spinout.

Observer
Someone appointed by a third party, such as Imperial Innovations or one of the Investors, to observe on their behalf. Depending upon the Articles of Association of the company, they may or may not have the right to speak at board meetings. However, as they are not a director, they will not have the right to vote at board meetings. If they have the right to speak, then they should be careful not be become a shadow director.
Ownership compared to control
Equity investors are generally in control of the company. Provisions in the investment documents usually give the investors authority over certain decisions, such as whether to accept an acquisition offer, even if they have less than 50% of the outstanding shares. After the first round of financing, the founder’s total equity percentage is often ‘diluted’ to less than 50%. In short, do not think that owning more than 50% gives you control — it depends what is written in the documents.

Option pool
Shares authorised for future issue in order to satisfy options granted to buy shares in the future at a pre-agreed price. Sometimes investors require that an option pool representing a significant percentage of the company be set aside to attract key employees.

Option Agreement (also called Pipeline Agreement) (IP)
An agreement with a spinout company in relation to rights over any new, arising IP from research by the founder which is relevant to the company’s business. These are necessary because should the founder generate further IP at Imperial, it will belong to the College and not to the new company. A pipeline agreement helps to smooth the way for the new company to acquire valuable unencumbered future IP.

Pay to play
A punitive measure which punishes investors who do not participate in future funding rounds.

Patents
Registered rights that protect inventions for either products or processes. Details of all UK patents or applications for patents are held with the UK Intellectual Property Office. It is also possible to register patents in Europe and other countries around the world.

Pre- and post-money valuation
The company’s pre-money valuation is its value before an investment is made. The pre-money valuation must be reasonable. Post-money valuation is that pre-money valuation plus the amount invested. For example, if investors provide £3m and the pre-money valuation is £2m the post-money valuation is £5m. In this example the investors would end up with 60% of the equity.

Preference Shares (also called Preferred Shares)
A class of share that has a preferential right to a payment of capital and/or a dividend before other shareholders receive a payment.

Proof of Concept (PoC)
This is the activity which takes an idea (frequently expressed in a development proposal format) to a state whereby the idea can be demonstrated in some way such as by a rudimentary prototype, phantom images or sample study, and can generate sufficient data such as statistical evidence, images, or computer models, under certain types of conditions, to show that the idea has merit, such that further funding to develop proper working proposals is justified. This will likely occur after invention disclosure but before any seed funding is put together. This is regularly called Proof of Principle also (PoP), and you may see PoC and PoP used interchangeably. Where PoC funding is supplied with the intention of forming a spinout it may take the form of convertible debt.
**Ratchet or Growth shares**
A mechanism whereby management’s share of the equity is either increased or decreased as a result of performance of the spinout vehicle. Typically, an upwards ratchet will be applicable where management believe they should have a greater share of the equity on day one and the Investor remains to be convinced but wishes to incentivise the management.

**Redemption rights**
A redemption right enables investors to require the company to repurchase their shares after a specified period of time.

**Right of first refusal**
The right to purchase shares (either newly issued or already in issue) before any third parties.

**Seed Funding**
Money required to carry out and complete the seed stage activities. The amount can range from modest sums up to approximately £250,000, depending upon the nature of the business idea and its underlying IP.

**Seed Stage**
The stage at which a business idea is being translated into working proposals. In practice this means the production of a business model and supporting plan, the development of a prototype, the initiation of relevant IP searches and registrations and the initial market research activities to validate the business proposition.

**Shadow Director**
A shadow director is someone who is not a formal company director and although they do not openly participate in the firm’s governance, his/her directions or instructions tend to be followed by the appointed directors of the company. If you attend the spinout board meetings regularly and/or instruct the directors, it is possible that you may be considered to be a “shadow director”. This means that, in law, you will have all the responsibilities and liabilities of an appointed director. Therefore be clear about your position.

**Shareholders’ Agreement**
An agreement entered into by the shareholders of the company to govern their relationship (i.e. the rights and obligations of each party) and the operation of the company. It may also set out the terms on which each member may be applying (or subscribing) for shares in the company in which case the agreement may also be referred to as an “Investment Agreement” or “Subscription Agreement” or any combination thereof e.g. “Subscription and Shareholders agreement”.

**Share class**
Different share classes within a company confer different rights to the stock holder.

**Small Enterprise Investment Scheme (SEIS)**
A UK Government scheme for smaller, higher-risk companies to raise finance by offering tax relief to investors who purchase new shares in those companies. There are rules and requirements on both sides (company and investor) that must be followed. The UK Government offers a guide, here, but also suggest you take professional advice.

http://inno.im/2wDHvGr
**Stakeholders**
Those individuals or organisations who are not shareholders but who are likely to be affected by the company’s activities e.g. Imperial College London, bankers, loan providers, customers, creditors, debtors, industry and/or social groups.

**Statutory or Company Books**
A record of the shareholders and directors of the company, directors’ interests in the company’s shares, charges over the company’s assets and minutes of meetings. It may be a book or a loose-leaf folder and may comprise one or more of them. Some of these documents must be electronically filed at Companies House in the UK, while others can be optionally filed to avoid the need to maintain a paper record.

**Tag-along Rights**
Rights attaching to a minority shareholder requiring the majority to ensure that any offer for the majority shareholding is extended on the same terms to the minority. This prevents a small minority from being left out of an arrangement or deal.

**Trade marks**
Any sign capable of being represented graphically. It may consist of words, designs, letters, numerals, colours or even smells or shapes. Trade marks exist in the UK as both a registered and unregistered IP. Registration offers a cost effective and easier way to protect brand image.

**Tranche**
In investing, a tranche refers to parts of an investment that are delivered to a company based on hitting pre-defined milestones.

**University Equity**
The equity stake acquired by a university in return for licensing its IP to a spinout at company foundation. For Imperial College London spinouts, the university equity is held by Imperial Innovations which shares any proceeds with the College on equity realisation.

**Vesting**
The process by which an individual (typically an employee of a company) becomes entitled to tranches of shares or options by virtue of the passage of time or achievement of agreed milestones. These options or shares may still be subject to additional claw-back provisions.

**Venture Capitalist or VC**
An institution which provides equity- or risk-capital to businesses with a view to making a large capital return.

**Warranties**
Contractual statements contained in the investment agreement, that take the form of assurances from the company and the managers as to the condition of the company and its business.

**Waterfall**
A distribution waterfall describes the order of priority by which capital is distributed to shareholders or creditors following the dissolution or the exit of a company.
Appendix two:

Useful Links and Resources

Imperial College London Register of External Interests & Annual Declaration
http://inno.im/2wleBum

IP management
European Patent Office Espacenet
http://inno.im/2hF7871

Funding
UK Business Angels Association
www.ukbaa.org.uk

British Venture Capital Association
www.bvca.co.uk

Directors
Director Bank
www.directorbank.com

Institute of Directors
www.iod.com

Incubation Centre
Imperial White City Incubator
www.imperialincubator.com

Tax matters
Enterprise Investment Scheme (EIS)
www.hmrc.gov.uk/eis/

Small Enterprise Investment Scheme (SEIS)
http://inno.im/2hF7871

Research and development tax credits
http://inno.im/2vis07k

Companies House
www.companies-house.gov.uk
Useful Links and Resources

HM Revenue & Customs
www.hmrc.gov.uk

Patent Searching
http://gb.espacenet.com

Resources: funding

List of grants on gov.uk
http://inno.im/2vfMy24

Small Business Research Initiative
The recently revitalised SBRI programme, based on a successful American model should provide an additional route to government contracts for early stage companies and reduce the amount of “hard” equity that they need to raise (see www.innovateuk.org for more details)

Grantfinder
www.idoxgrantfinder.co.uk/

Research Council
Run annually and an invaluable training vehicle - www.rcuk.ac.uk/funding/

Translational awards
Wellcome Trust University Translation Awards (UTA)
Grants for the commercialization of new technologies in the biomedical area www.wellcome.ac.uk

Horizon 2020
Horizon 2020 is the biggest EU Research and Innovation programme ever with nearly €80 billion of funding available over 7 years (2014 to 2020) - in addition to the private investment that this money will attract. It promises more breakthroughs, discoveries and world-firsts by taking great ideas from the lab to the market.

Horizon 2020 is the financial instrument implementing the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe’s global competitiveness.

Horizon 2020 is open to everyone, with a simple structure that reduces red tape and time so participants can focus on what is really important. This approach makes sure new projects get off the ground quickly - and achieve results faster.
The result of the UK referendum on EU membership and the invoking of article 50 has no immediate effect on UK applications H2020 or on UK participation in current H2020 projects. This right will continue until the UK leaves the EU on 29th March 2019. Further updates and information are published regularly on Imperial College London’s website.

**INNOVATE UK**
Innovate UK is the UK’s innovation agency.
http://inno.im/2hFMeVe

**NIHR I4i**
http://inno.im/2vAuwID

**PNO**
PNO is Europe’s largest independent public funding advisory, annually raising over €250 million on behalf of its clients. www.pno.grants.co.uk/
Appendix three:

Templates and forms

**Template Founders MoU**
This sets out the key provisions of all aspects of the spinout company and provides a summary upon which lawyers can build full documentation.
http://inno.im/2uBUl6s

**Template Letter of Understanding**
An agreement between the founders and Imperial Innovations that sets out the preferred support option chosen by the founders under Founder’s Choice™.
http://inno.im/2fpGoqx

**IP Standstill Letter**
Imperial Innovations uses this term to refer to an agreement not to market to any party the IP that is the subject of a company formation under the basic level of support option of Founders Choice™ scheme. It provides a commitment from Imperial Innovations to maintain the patents during a fixed period of exclusivity in order to give Founders time to find investors and work up the business before signing the IP licence.
http://inno.im/2wpSLaa

**Template Shareholders/Investment Agreement**
This addresses the relative shareholdings between the founding researchers, the University, management, and investors, and the protections which each shareholder seeks. Imperial Innovations has a standard shareholders agreement which is a useful starting point in discussions.

**Template IP Licence Agreement**
This will authorise the company to use any specified intellectual property owned by the University which the company wishes to use and which the University is able to make available to the company.

**Template Articles of Association**
These documents are standard company documents which set out the nature of the company’s business and its operations. These will be supplied by the company’s lawyers.
Appendix four:

Understanding shares

Understanding Shares
Ordinary shares

The spinout vehicle will almost certainly be 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 is in the hands of its shareholders. They may also be called its members. These are the individuals who either subscribe for (i.e. acquire) newly-issued shares in the company, or purchase already-issued shares from existing shareholders.

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.

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. It is wise to seek professional advice prior to the grant of any class of shares to a new shareholder in order to ensure that such an action is in the wider interests of the company and its members.

The shares represent units of ownership in the company. For example, if the share capital of a company is £10 divided into 1000 ordinary shares of £0.01 each and 300 shares are issued to the research institution, 350 shares are issued to Dr Red and 350 shares are issued to Professor Green, the ownership of the company will be as follows:

In other words, the researchers, as the holders of 700 of the 1000 issued shares in the capital of the company, will own more than half of the company or 70% of the equity. While day-to-day operational control and
management of the company will rest in the hands of a board of directors, ultimate control is with the shareholders. The differences between shareholders and directors is covered in more detail in Appendix eight.

Other types & classes of shares
While the most basic type of share is the ordinary share, a company may issue different classes of shares to which different rights may attach. Investors may insist on subscribing for some form of Preferred Share which carries a preferential right to receive the value of their investment on an exit before any payment is made to other shareholders. This may be combined with a right to a preferential dividend and/or to enhanced voting rights. The differing rights attaching to shares can dramatically affect the value each shareholder receives on an exit, particularly at different exit values, and will be a central focus of negotiations when a company considers taking investment.

A description of the different sorts of rights which can attach to shares is, however, outside the scope of this Guide. It tends not to be too much of an issue at the spinout formation stage where the key is to keep the structure straightforward. Be aware, however, that as the company looks to external investors for investment, such investors are likely to demand various preferential rights for the shares that they will be acquiring.
Appendix five:

Understanding dilution

Understanding Dilution

Reduction in Original Shareholding (Dilution)

The main effect of new investors becoming shareholders is that new shares will be issued to them which will dilute the shareholding of the original shareholders, including yourself. For example, if 1000 shares are in issue of which you hold 350, you will own 35% of the company. If a further 1000 shares are issued to new investors, you will hold 350 shares out of 2000 shares in issue, so you will own 17.5% of the company. Taking the example in Appendix four, the original position was as follows:

Figure 1

If a new investor, Investor Limited, wishes to acquire 1000 new shares in Newco, the new shareholdings will be as follows:

Figure 2
Appendix five:

Understanding dilution

In other words, the percentage shareholdings of the original shareholders will also have gone down. They will have each experienced dilution. The question for the original shareholders, however, is what benefits the new investment will bring in return for the dilution of their shareholdings. Will the investment, for example, provide the injection of funds which the company needs to take the next step in its development?

You must also remember that the company may require a number of rounds of further financing in order for it to develop and grow until it reaches the stage where an exit can be contemplated. These rounds are classed by letter: ‘Seed’ round, ‘A’ round, ‘B’ round, etc. This simply means the various stages reached, i.e. first round, second round, third round etc. as the spinout progresses and achieves its predetermined targets. Typically the size of funding is larger at each subsequent round and the shares issued for these rounds may carry different rights. Such further rounds of financing will inevitably lead to further dilution.

It is good practice to reserve a certain number or percentage of shares for key people who are yet to join the spinout, who will help drive the spinout towards success. An equivalent to about 15% of the issued shares of the company is commonplace. This is called an option pool and when the shares which have nominally been allocated to such a pool are allotted it too will lead to dilution.

If Newco wishes to allocate 350 new shares to an option pool (to create the equivalent of 15%), then the new shareholdings, once those shares have been issued, will be as follows:

![Figure 3](image_url)

<table>
<thead>
<tr>
<th>Shareholder</th>
<th>Shares Allocated</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor Limited</td>
<td>1000</td>
<td>42.6%</td>
</tr>
<tr>
<td>University (300 shares)</td>
<td></td>
<td>12.7%</td>
</tr>
<tr>
<td>Dr Red (350 shares)</td>
<td></td>
<td>14.9%</td>
</tr>
<tr>
<td>Professor Green (350 shares)</td>
<td></td>
<td>14.9%</td>
</tr>
<tr>
<td>Option Pool (350 shares)</td>
<td></td>
<td>14.9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1000</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Ultimately it is more worthwhile for you to have a small piece of a large pie than having a large piece of a small pie which has no value at all, which could be the outcome if you resist further investment because of the dilution effect. A clear way to understand this is to consider that a 5% stake in a company that exits for £100m is worth considerably more than a 40% stake in a company that exits for £10 million; dilution is often a risk worth taking if it means the ultimate exit value will increase a great deal.
Appendix six:

Understanding non-dilution

Non-dilution provisions protect the shares from dilution effects until certain conditions are reached. If you choose the basic support option under Founders Choice™, the non-dilution clause will be removed once a certain level of cumulative investment is received by the company.

In the following example, we assume a 10% non-dilutable equity stake is taken by the University and the cumulative investment threshold is set at £10,000. If the founding share capital of the company is divided into 1000 ordinary shares and 100 non-dilutable shares are issued to the University, 450 ordinary shares are issued to Dr Red and 450 ordinary shares are issued to Professor Green, the ownership of the company will be as follows:

If a new investor, Investor Limited, wishes to acquire 1000 new shares at £10 a share (for a total investment of £10,000) then Newco Limited will issue 1000 new shares to the investor. It will also issue 111 new shares to the University in order to keep its stake at 10%. The total number of shares in issue for NewCo Limited will therefore be 2,111.

As the cumulative funding threshold has been reached, the non-dilution provision falls away and University shares will be diluted the same way as others at the following investment rounds.
Appendix six:

Understanding anti-dilution

Understanding anti-dilution
Non-dilution provisions are distinct from anti-dilution provisions, which you may also be familiar with. Unlike non-dilution provisions, anti-dilution provisions protect against future financing when the value of the company decreases (also referred to as a down-round). Anti-dilution ensures that equity stakes do not drop below a certain fixed percentage by adjusting the share price agreed at previous financing rounds.

The anti-dilution ratchet provides the original investors with protection against dilution by issuing bonus shares to them (anti-dilution shares). The number of shares that the original investors will receive depends on whether they have full ratchet, narrow based weighted average ratchet or broad based weighted average ratchet protection:

- **Full Ratchet.** This effectively rebases the original investor’s starting price per share to that of the new down round price; in simple terms what number of shares would the original investor have received had it bought shares at the down round price?

- **Narrow-Based Weighted Average Ratchet.** This reduces the price per share by averaging the price across the rounds and taking into account how many shares are actually sold at the down round price compared against the number of shares outstanding.

- **Broad-Based Weighted Average.** This type of ratchet reduces the price per share by averaging the price across the rounds and taking into account how many shares are actually sold at the down round price compared with the share capital of the company on a fully diluted basis, that is the share capital of the company supporting all options, warrants and securities convertible into shares as if such options, warrants and securities had been converted) together with all issued shares.
Understanding Liability

As the company will likely 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 his or her shares – in other words, the capital they hold in the company.

In other words, if the company incurs a large liability or is sued by a creditor because it cannot pay a debt, the shareholders should, if they have fully paid for their shares, be immune from any such action unless, for example, they have agreed personally to guarantee any such liability of 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 won’t 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.

To protect yourself, and your personal wealth, it’s worth sourcing a quality directors & officers (D&O) liability insurance policy to protect yourself in respect of claims from which the company does not indemnify you.

Don’t forget that the directors manage the company and may be different people to the shareholders.
Appendix eight:

Shareholders & Directors

This is only a brief of overview of shareholders’ and directors’ responsibilities and should be read with the relevant legislation (as of May 2017, relevant legislation refers to Companies Act 2006).

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. 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 control is exercised primarily by the passing of shareholder resolutions.

There are two main types, ordinary resolutions and special resolutions.

- Ordinary resolutions - passed by shareholders who hold more than 50% of the voting shares.
- Special resolutions - passed by the holders of usually at least 75% of the voting shares and required for certain key matters. A number of transactions or decisions require a special resolution, such as the amendment of company’s articles of associations or the change of the company name.

These requirements are defined in the Companies Act.

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.

The general duties of a director under the Companies Act include:

- Promote the success of the company
- Operate with reasonable care, skill and diligence
- Comply with the company’s constitution
- Declare any interest in proposed transactions or arrangements
- Avoid conflicts of interest
- Refuse benefits from third parties
- Exercise independent judgement
In addition to the general duties above, the directors have an overarching duty to promote the success of the company for the benefit of its members as a whole and are subject to other fiduciary duties such as acting with reasonable care, skill and diligence and for a proper purpose. Every company director also has a personal responsibility to ensure compliance with certain provisions of the Companies Act, including those requiring statutory documents to be delivered to Companies House. (see http://inno.im/2hFWkWv)

A director can be liable to the company as a result of his/her wrongdoing. These acts may be punishable by financial penalties payable to either the company or third parties and, in some cases, criminal penalties. In addition, where the company is insolvent, a director can be disqualified from acting as a director for a period of time.

The duties, expertise and responsibilities of a director are therefore clearly very serious (as compared e.g. to a shareholder) and should not be treated lightly. It is more than a title.

We advise that you consider getting more advice on this topic and attend a specific ‘roles and responsibilities of directors’ course if possible. Please consult Imperial Innovations if you would like to know about when and where these courses run.
Health and Safety

Health & Safety is a key responsibility of a company director for which you can be held personally accountable. All companies, irrespective of size must carry out a series of actions and assessments.

For small companies even minor health & safety incidents can have a disproportionate effect on the business and hence risk management strategies need to be developed to reduce this possible impact.

Health and safety law states that organisations must:

- Carry out a risk assessment related to employees, customers, partners and any other people who could be affected by their activities; Relevant forms can be found here: www.imperial.ac.uk/safety/find-forms/
- arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
- have a written health and safety policy if they employ five or more people;
- ensure they have access to competent health and safety advice;
- consult employees about their risks at work and current preventive and protective measures.

For any practical queries relating to your specific business or industry you can contact your local Health and Safety Executive (HSE) office or local authority to register your business. Information and guidance for company directors and boards on how to comply, is available here: http://inno.im/2wpF8aY and http://inno.im/2ukFRZH

Key contacts

- Imperial Incubator
  - Graham Hewson – Incubator Manager, Graham.hewson@imperialinnovations.co.uk

- Imperial College London
  - Dr Anton De Paiva – Deputy Director of Safety, a.de-paiva@imperial.ac.uk

- For any work using radiation:
  - Jon Fear – Imperial College London Radiation Protection Officer, J.fear@imperial.ac.uk
Key H&S Considerations for Laboratory Based Start-ups

- Use and storage of flammable liquids
- Use and storage of reactive substances
- Use and storage of compressed gases and cryogenics
- Use of pressure vessels and systems
- Production of hazardous waste
- Need for local exhaust ventilation
- Use of radioactive materials
- Use of biological materials
- Any other substances subject to legislation
- Safety equipment required
- Environmental control required
Authors’ note

A Founder’s Guide to Spinouts was written by Tony Hickson, Govind Pindoria and Gavin Reed.

It was edited by Gavin Reed, David Barreto Ian and Jon Davies and typeset by Gavin Reed and David Barreto Ian.

Special thanks is due to all those authors and technology transfer organisations acknowledged in the front of the guide.

We are also grateful to all the members of the team at Imperial Innovations who provided feedback during the development of this guide. Members of staff within the Imperial College Research Office, especially Emma Toumi and Jo Sutcliffe, provided invaluable advice and insight, too.

As the prevailing wisdom (and legislation) around forming and building spinout companies remains subject to change, we regard this guide as a living document. As such, we are keen to hear feedback from readers and will incorporate this as much as possible into further editions. If you would like to comment on the guide, then please contact us at: info@imperialinnovations.co.uk
“You’re all smart and working on promising ideas. Whether you end up among the living or the dead comes down to the third ingredient, not giving up.

So I’ll tell you now: the odds of getting from launch to liquidity without some kind of disaster happening are one in a thousand. So don’t get demoralized. When the disaster strikes, just say to yourself, ok, this was what Paul was talking about. What did he say to do? Oh, yeah. Don’t give up.

Paul Graham, founder, YCombinator
Nothing worth having comes easy

Starting a spinout company based on your research is difficult. It takes time. The journey may seem confusing, and the necessary steps opaque. But the outcome can be transformative and sustaining. Your company could change the world.

This guide sets out in simple terms what you need to do to start a spinout company at Imperial College London. Following this guide won’t guarantee you success but it will help you on your way.

Imperial Innovations is dedicated to helping Imperial science get out into the world. We want to help you achieve your goals. If you need advice, or you want to take advantage of the support we offer, do get in touch.

www.imperialinnovations.co.uk