December 2005/**48**

Related companies: guidance for higher education institutions

Appendices

Produced for the UK funding bodies by RSM Robson Rhodes

HIGHER EDUCATION FUNDING COUNCIL FOR ENGLAND

Contents

Appendix I: Duties of the Nominated Officer

The duties of the Nominated Officer may include the following:

- On behalf of the institution, to set up the company and ensure the matters contained in the Recommended Practice Guidelines on preliminary considerations and company formation (Checklists A and B) are satisfactorily addressed.
- To ensure that the constitution of the company is properly drafted and implemented and that the memorandum of understanding (and shareholders' agreement where applicable) are agreed between the directors of the company and the institution (and the joint venture partner(s) where the company is a joint venture company).
- To ensure that the memorandum of understanding is applied and any relevant matters satisfactorily addressed.
- To attend company board meetings on behalf of the institution, or to receive board papers.
- To review, and discuss with the directors when appropriate, the monthly management information on the company's performance.
- To report to the governors, or to their delegated authority, on the performance of the company.
- To carry out regular reviews of the following :
  - relevant formation issues (Checklist B)
  - management of the company (Checklist C)
  - review procedures (Checklist D).
- To prepare a report to the institution (see Appendix II) together with appropriate commentary and conclusions.
- While getting close to the activities of the company, the Nominated Officer must remain aware of the difficulties which may arise in respect of fulfilling the primary duty to the institution and not becoming over committed to the activities of the subsidiary.

Appendix II: Nominated Officer’s report

We set out in the following pages a suggested framework for the Nominated Officer's report. This comprises a summary sheet, together with a ‘’certificate of completion’’ for each of the checklists set out in Section 5 of the main guidelines.

Although not intended to be prescriptive, such a framework highlights the key issues and should facilitate clear reporting to the institution.

The structure is as follows:

Summary

Certificates of completion for checklists:

A - Preliminary considerations

B - Company formation

C - Management

D - Review

E - Exit/realisation of investment

Nominated Officer's report - Summary

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Position of Nominated Officer: ....

Date of report: ....

Checklists completed:		**Yes/No**	**Certificate attached**
A	Preliminary considerations		
B	Formation		
C	Management		
D	Review		
E	Exit/realisation of investment		

I confirm that there are no matters, other than as disclosed in this report, which have come to my attention during the course of my review and which in my opinion should be brought to the attention of the governors.

Signature ....

Date ....

Date of issue: ....

Nominated Officer’s report - Preliminary considerations

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Certificate of completion	
Have all matters contained in the attached Checklist A been satisfactorily addressed?	**Yes/No**
Are there any matters which in the opinion of the Nominated Officer should be brought to the attention of the governors or delegated authority?	**Yes/No**
If yes, give details and the suggested course of action below:	
Conclusion: As outlined in my attached report dated ...., I recommend that we consider setting up a company.	
Signed by: .... Position (Nominated Officer): .... Date:	

Date of issue: ....

Nominated Officer's report - Company formation

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Certificate of completion	
Have all matters contained in the attached Checklist B been satisfactorily addressed?	**Yes/No**
Are there any matters which in the opinion of the Nominated Officer should be brought to the attention of the governors or delegated authority?	**Yes/No**
If yes, give details and the suggested course of action below:	
Conclusion: As set down in my report dated ...., I confirm that appropriate expert advice has been taken to ensure the company is constituted properly and in accordance with the institution's instructions.	
Signed by: .... Position (Nominated Officer): .... Date:	

Date of issue: ....

Nominated Officer's report - Management

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Certificate of completion	
Have all matters contained in the attached Checklist C been satisfactorily addressed?	**Yes/No**
Are there any matters which in the opinion of the Nominated Officer should be brought to the attention of the governors or delegated authority?	**Yes/No**
If yes, give details and the suggested course of action below:	
Conclusion: As set down in my report dated .... I confirm that the company's management arrangements have been established in accordance with agreed procedures.	
Signed by:	....
Position (Nominated Officer):	....
Date:	....

Date of issue: ....

Nominated Officer's report - Review

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Certificate of completion	
Have all matters contained in the attached Checklist D been satisfactorily addressed?	**Yes/No**
Are there any matters which in the opinion of the Nominated Officer should be brought to the attention of the governors or delegated authority?	**Yes/No**
If yes, give details and the suggested course of action below:	
Conclusion: As set down in my report dated.................., I am not aware of any circumstances which should be drawn to the governors' attention and which could cast doubt on the continuation of the arrangements with the company.	
Signed by:	....
Position (Nominated Officer):	....
Date:	....

Date of issue: ....

Nominated Officer's report - Exit / realisation of investment

Name of institution: ....

Name of company: ....

Name of Nominated Officer: ....

Certificate of completion	
Have all matters contained in the attached Checklist E been satisfactorily addressed?	**Yes/No**
Are there any matters which in the opinion of the Nominated Officer should be brought to the attention of the governors or delegated authority?	**Yes/No**
If yes, give details and the suggested course of action below	
Conclusion: As set down in my report dated .... I confirm that all material matters associated with the company closure/disposal have been addressed.	
Signed by:	....
Position (Nominated Officer):	....
Date:	....

Date of issue: ....

Appendix III: Duties of company officers

DIRECTORS

What is a director?

These rules apply only to companies limited by shares or by guarantee.

As a matter of law, the term ‘director’ includes any person acting in the capacity of a director, by whatever name he/she may be called. The essence of directorship is exercising substantial control over the business or an aspect of it, and being accountable only to fellow directors for that role.

In addition to formally appointed directors and ‘de facto’ directors, it is also possible for certain people to be construed as ‘shadow directors’. A shadow director is not a director of the company but someone in accordance with whose directions or instructions the directors of that company are accustomed to act. Depending on circumstances, either the institution as a separate body or specific governors can be shadow directors.

Nominated Officers must be alert to the risk (in many cases unavoidable) that they or their institution could be directors, or shadow directors, of the related company. They should be aware of their duties as such and if there is a potential conflict of interest they should inform the company and the institution and seek appropriate advice.

Duties and responsibilities of directors

Directors have duties laid upon them by statute law and common law. Under common law, duties can be split into two main categories: fiduciary duties and duties of skill and care.

Fiduciary duties

Fiduciary duties are designed to prevent abuse of a director's position. Directors must act in good faith in the best interests of the company (and not in their own interest or the interest of a third party - including the institution), and they must act for a proper purpose. Directors may breach fiduciary duties if they participate in wrong doing by another, or if they ought to have supervised an activity of the company but failed to do so, or ought to have known what was happening even if they did not.

Conflicts of interest may occur particularly in relation to contracts and loans.

(i) Contracts. Directors are obliged to put the company's best interests before any other consideration. In particular they are obliged to disclose interests of their own or those of any party connected to them in contracts in which the company is involved (and they may in some cases have to obtain the approval of the shareholders to such interests), and to disclose such interests in shares or other securities of the company. Directors must make full and honest disclosure before voting on a resolution in which they have an interest.

(ii) Loans and transactions equivalent to loans. Transactions between the company and a director, or a party connected with him or her may be open to challenge under the principles of breach of fiduciary duty. This is an obvious area for a possible conflict of interest between the director and the company. Company law also imposes specific restrictions on loans and similar transactions. The rules are complex and advice should be sought in any particular case.

Duties of skill and care

Directors must show such skill in the performance of their duties as may reasonably be expected from a person holding office as a director, and exercise such care in the conduct of the company's affairs as an ordinary person might be expected to take on his/her own behalf. Broadly, breach of these duties means that the director has done his/her legitimate duties badly.

Statutory duties

Statutory provisions relate specifically to matters such as service contracts, loans, interests in contracts and property transactions with the company, health and safety at work and environmental legislation.

Breach of duty

If a director has breached his/her duties, the outcome will depend upon the breach. A transaction entered into in breach of duty will often be void or voidable and capable of being set aside. In certain circumstances it could lead to personal liability for the acts of the company. However under new legislation, although companies continue to be prohibited from exempting directors from liability, they are permitted to take advantage of a specific exemption to indemnify directors against liability to third parties. In other cases, and specifically in relation to breach of statutory duties, the relevant legislation lays down criminal penalties of fines, imprisonment or disqualification.

Corporate governance

The management of the company's affairs is usually entrusted to the directors by the articles of association. The manner in which such powers are exercised is paramount in determining whether the company is well run.

A number of codes of practice have been written, the most prominent of which is the Combined Code of Practice (which only applies in theory to UK publicly quoted companies), but whose principles have been adopted more widely in the private and public sectors.

Good governance practice is to follow codes of practice (suitably adapted) even if not specifically targeted at that type of related company. This includes the following canons of good practice:

- Boards should meet regularly, exercise effective control over the company and monitor management's activities. Effective control may depend upon how the Board operates as a team, and its collective ability to provide necessary checks and balances in the company's management.
- To avoid one individual having unfettered control there should be a clearly defined and accepted division of responsibility at the head of the company. It is not generally advisable to have the chairman also acting as chief executive.
- The board should have a formal schedule of matters reserved to it to ensure control remains at board level. Procedures to be followed where - exceptionally - decisions are required between board meetings should be clearly laid down.
- All directors should be entitled to seek legal or financial advice at the expense of the company in furtherance of their duties.
- All directors should have access to the company secretary (who is responsible for ensuring board procedures are followed and applicable regulations adhered to).

Matters of corporate governance must be clearly determined and agreed from the outset, with the help (where appropriate) of independent advisers.

COMPANY SECRETARY

What is a company secretary?

These rules apply only to companies limited by shares or by guarantee.

The role of company secretary is different from that of a director, although a director may in certain circumstances take on the additional role of company secretary (as long as there is at least one other director). The company secretary is an officer of the company generally appointed to ensure compliance with certain statutory and other legal requirements. Companies limited by shares or guarantee must appoint a company secretary.

Duties and responsibilities of a company secretary

A company secretary is, like a director, in a fiduciary relationship with the company, although in most cases the required standard of responsibility will be lower than that for directors. The company secretary must therefore act in the best interests of the company and must put the interests of the company before his or her own interests. There are a number of specific areas where the company secretary is under a duty to ensure compliance by the company with the company's constitution and with general law. These are broadly as follows:

(i) Convening meetings (both of directors and of shareholders); preparing and sending out notices; filing resolutions with the Registrar of Companies as required; ensuring that procedure at meetings is adhered to, in line with the company's constitution; keeping books for the purposes of entering minutes of all shareholders' and directors' meetings and, where appropriate, meetings of the company's managers.

(ii) Ensuring that the company's statutory registers are accurate, up to date and in compliance with the terms of the Companies Act 1985, in particular:

- register of directors and secretaries
- register of members
- register of interest in shares
- register of directors' interests
- register of mortgages, charges and debenture holders
- register of share applications and allotments
- register of share transfers.

The company secretary, together with the directors, should ensure the following:

- accounts, directors' reports and an annual return are properly prepared and filed for the company;
- an annual return is properly made for the company;
- compliance with the publicity requirements of general law in relation to companies;
- conspicuous display of the company's name at places of business;
- compliance with requirements to publish the company's name and other details on notepaper.

Breach of duty

The company secretary, although having ostensible authority to act without any necessary reference to the board in administrative matters, is generally responsible to the board for his/her actions. In a number of areas, however, fines are statutorily imposed for failure to maintain necessary registers and make necessary returns. Proper advice on this should be sought at the time of setting up the related company and subsequently if necessary.

Appendix IV: Contents of key documents

MEMORANDUM AND ARTICLES OF ASSOCIATION

Memorandum of Association

A company limited by shares or guarantee is formed by the requisite number of people subscribing their names to a Memorandum of Association which governs the relationship between the company and the outside world, and will broadly set out the powers of the company. The Memorandum of Association must (inter alia) state the following:

(i) The name of the company.

(ii) Whether the registered office of the company is to be in England and Wales, or in Scotland.

(iii) The objects of the company.

(iv) If liability is limited (in which case there are additional requirements for public companies).

(v) For a limited company with a share capital or limited by guarantee the memorandum must also state the amount of the share capital or amount of the guarantee with which the company proposes to be registered.

The memorandum must be signed by each subscriber in the presence of at least one witness, who must attest the signature. The memorandum cannot be altered except in the mode and to the extent permitted by the Companies Acts.

Articles of association

The articles of association prescribe the internal regulations of the company. They must be printed, be divided into consecutively numbered paragraphs and be signed by each subscriber of the memorandum in the presence of at least one witness, who must attest the signature.

There are a number of statutory 'tables' setting out articles of association for limited companies which can be adopted in whole or part, or modified or replaced altogether. It is unusual to have a bespoke form of articles. Articles for a company limited by shares should set out procedures for internal governance in relation to the following:

- share capital and variations of rights
- lien
- calls on shares
- transfer of shares
- transmission of shares
- forfeiture of shares
- conversion of shares into stock
- alteration of capital
- general meetings
- notice of general meetings
- proceedings of general meetings

- votes of members
- directors
- borrowing powers
- powers and duties of directors
- disqualification of directors
- rotation of directors
- proceedings of directors
- managing director
- secretary
- the seal
- dividends and reserves
- accounts
- capitalisation of profits
- audit
- notices
- winding up
- indemnity.

The articles of a company limited by guarantee will be in a different form as they will set out the rights attaching to membership of the company. It may be appropriate to include provisions for the expulsion of a member or members of the company if they are in breach of any agreed rules applicable to membership of the company.

In each case the articles should be carefully drafted with the aim of the project in mind. It may be possible to alter articles (and to amend the memorandum) at a later date, to take account of changing circumstances, but appropriate advice should be sought on the text of such change and on the procedure for implementing it.

Effect of the memorandum and articles

The memorandum and articles, when registered, bind the company and its members to the same extent as if they had been respectively signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and articles.

MEMORANDUM OF UNDERSTANDING

The memorandum of understanding will be different for each project.

The following are examples of matters which it may be appropriate to include in a memorandum of understanding:

- obligations of the company to the institution
- scope of activities to be undertaken
- management structure of the company
- dividend/covenant policy of the company
- overhead contribution (company to institution and vice versa)
- apportionment of costs for shared use of staff and premises
- authorisation limits for the company (this could also be put into the articles of association)
- borrowing/lending/banking arrangements (restrictions in the articles should also be considered)
- financial and other reporting and transfer of information
- responsibility of key officials, in particular where they are common to both organisations
- remuneration of company officials and employers
- title to intellectual property rights/royalties
- share ownership
- formation of subsidiary companies
- insurance/indemnity for officials common to the company and the institution
- auditing arrangements
- health and safety issues
- quality control.

A decision should be taken in each project as to whether some or all of the memorandum of understanding should be binding. If it is not, then consideration needs to be given as to which obligations should be enforceable and separate agreement(s) may need to be put into place.

Recommended good practice is for the memorandum to be binding.

SHAREHOLDERS' AGREEMENT

A shareholders' agreement will normally be required in any situation where the company is not a wholly owned subsidiary of the institution, but represents a joint venture between the institution and one or more other joint venture parties. The exact terms of a shareholders' agreement will depend upon the circumstances of each case and will be the subject of specific negotiation between the relevant parties . The following are examples of matters which should be considered for inclusion within a shareholders' agreement (or the articles of association of a joint venture company).

- In what proportions are the shares in the company to be held between the different joint venture parties? Under company law, the percentages giving different degrees of control of a company are more than 75% or more than 50%. Similarly, under company law for minority shareholdings an interest of 25% or 10% or 5% or more, or less than 25% or 10% or 5%, have material implications.
- Are all shareholders in the joint venture company to hold equal ranking ordinary shares, or should there be any special or restrictive rights attaching to a particular party's shares? Is there a requirement for shares of a different class such as preference shares?
- How are individual joint venture parties to be treated in the event of the joint venture company needing to raise additional share capital, and how will they be protected against their shareholding in the company being unfairly diluted?
- Is there a requirement for loan finance, and if so, where is it to come from? If it comes from a third party that requires shareholder guarantees, which shareholders are to provide such guarantees?
- How is the board of the joint venture company to be constituted? Commonly, each joint venture party will have the right to appoint and remove a certain number of directors to the board. How frequently are board meetings to be held and do they require the attendance of each shareholder's appointee(s) in order to be quorate?
- How is the chairman of the board to be appointed and is he/she to have a casting vote?
- It would be normal to include provisions governing the rights of the individual joint venture parties to have information relating to the joint venture company and monthly management accounts and annual accounts.
- Although day-to-day management control is delegated to the board, is it appropriate for decisions on certain key matters relating to the joint venture company to require the unanimous consent of all the joint venture parties?
- Minority shareholders will normally wish to build in certain protections of their position which go beyond those provided by the general law.
- Are restrictive covenants required that prohibit the individual joint venture parties from competing with the joint venture company?
- What is the policy of the joint venture company on the distribution of its profits to its shareholders?
- Is a mechanism required to bring the joint venture to an end in the event of irreconcilable differences developing between the shareholders in the future, or if one or more parties simply wish to withdraw and/or sell shares?
- It would be normal to include pre-emption rights in the share transfer provisions of the joint venture company's articles of association, requiring any shareholders wishing to dispose of their shares to offer them to other shareholders first before being entitled to transfer them to a third party.
- Is there an exit strategy for the shareholders to realise their shareholding in the joint venture company? A majority shareholder will sometimes wish to have the right to require a minority shareholder to sell his shares if the majority shareholder wishes to <u>sell</u> his shareholding. Equally, a minority shareholder will wish to prevent a majority shareholder from selling unless the majority shareholder procures that any purchaser also offers to buy out the minority shareholder at the same price per share.

- Are there any specific arrangements between the shareholders and the joint venture company for the provision of services, the transfer of assets or the licensing or assignment of intellectual property rights to the joint venture company that need to be provided for?

Even if a company limited by shares or guarantee is not being used as the entity, an equivalent agreement will be required covering whichever of the above matters are relevant.

Appropriate professional advice should always be sought on the establishment of a joint venture company and the drafting of a shareholders' agreement.

Appendix V: Specimen memorandum of understanding

The following is applicable only to a wholly owned subsidiary and should not be used as a draft for any other purpose. The contents of a memorandum of understanding with a company limited by shares or by guarantee will form a binding contract between the institution and the company (otherwise the institution will not be able to enforce the terms of the memorandum).

Appropriate advice should be sought in drafting any such document.

MEMORANDUM OF UNDERSTANDING

Purpose of the Memorandum

The purpose of this memorandum is to define the relationship between ABC institution (ABC) and XYZ Limited (XYZ).

Obligations of XYZ to ABC

1. To help faculties/departments within ABC generate external income to meet their funding requirements.

2. To assist academics to secure research grants and contracts and to develop opportunities for these with outside bodies and industry in the UK, EU and overseas.

3. To carry out on behalf of ABC, and in collaboration with the appropriate parts of ABC administration, the administration of all research grants and contracts and institutional consultancies.

4. To provide the relevant management information to ABC administration and departments on research grants and contracts and institutional consultancies.

5. To help ABC academics protect and exploit their intellectual property rights.

6. To promote the transfer of technology from ABC to industry, through licensing and the formation of campus companies, thereby ensuring an income stream back to ABC.

7. Through the Nominated Officer to be accountable to the governors of the institution.

Scope of activity - research contracts

1. XYZ will endeavour to broaden the opportunities for academics to secure research grants and contracts, by setting up specialist offices and other mechanisms to develop expertise and establish relationships with outside bodies and industry in the UK, EU and overseas.

2. XYZ will help academics prepare applications for research grants and contracts and will provide financial administration for those received.

3. XYZ will be compensated for its work by receiving payments, which are currently set by agreement with ABC, at the following levels:

- x% of the overheads obtained on non-Research Council grants and contracts
- x% of the overheads [indirect costs] on payroll costs of Research Council grants
- a minimum of x% of overheads on institutional consultancies and equipment hire charges.

Additionally, XYZ may seek to negotiate on the larger contracts, and where a contract management service is provided by XYZ and by agreement with the academic concerned, an appropriate management fee, which will be retained entirely by XYZ.

Scope of activities - intellectual property rights (IPR)

1. XYZ will advise ABC academics on an individual basis of the best way to protect and exploit their IPR.

2. XYZ will seek to obtain patent protection at its own expense for any IPR assigned to it.

3. XYZ will seek to exploit any assigned IPR through sale or by licensing and/or the formation of a campus company.

Scope of activities - licensing

The annual net income derived from each licensing agreement will be allocated in accordance with present ABC policy i.e.

Up to £5,000	Academic x%	ABC x%
£5,000 - £20,000	Academic x%	ABC x%
Above £20,000	Academic x%	ABC x%

Scope of activities - campus companies

1. Where appropriate, XYZ will exploit ABC technology through the formation of a campus company.

   [state intention of investment/future realisations]

2. XYZ will own the ABC interest in the shares in any new campus company; shares held by ABC in current campus companies will be transferred to XYZ. Thereby, XYZ will be responsible for managing the investment in all campus companies including those which are subsequently floated.

3. XYZ will nominate a director in all campus companies who will be responsible for reporting to the managing director of XYZ who, in turn, will report to the XYZ board.

4. The policy of XYZ is not to hold majority equity positions in campus companies. Thus, apart from the formation period when XYZ will own 100% of the equity, shareholding in any future campus company will be reduced to a minority position in a planned manner, with means put in place for eventual realisation of the equity. On formation, XYZ will be responsible for ensuring through the Nominated Officer, assisted by the finance director of XYZ, that appropriate financial controls and administration are put in place.

5. Decisions regarding the acquisition and disposal of equity, receipt of dividends, royalties etc, will be made by the board of XYZ against a background of prior consultation with the institution (Nominated Officer).

Financial arrangements

1. XYZ is expected to return all profits to ABC by means of the deed of covenant. Any amendment to the policy will require the prior approval of ABC's governing body.

2. In operating as an autonomous company, XYZ will establish its own bank account and borrowing facilities without requiring ABC to act as a guarantor. All borrowings will require approval of the board against a background of prior consultation with the institution (Nominated Officer).

3. XYZ will hold in its balance sheet investments in both campus companies and publicly quoted companies.

4. XYZ will operate within the framework provided by the ABC financial regulations, including the internal audit arrangements on research grants and contracts.

Employees

A personnel policy for staff working in XYZ is being prepared in collaboration with the registrar and the bursar, and will be issued by [date].

Management structure

1. An academic advisory board will be formed with a representative from each academic department to provide the main communication link between academics and XYZ. The chairman of this board will be the director of XYZ, ex-officio, thereby ensuring that issues important to academics are raised at XYZ board meetings.

The chairman and deputy chairman of the academic advisory board will be appointed by ABC's governing body with the agreement of the academic advisory board.

It is recommended that the academic advisory board should meet quarterly.

2. The XYZ Board will consist of 10 directors, meeting monthly, as follows:

From XYZ:	Chairman Managing director Finance director (not the bursar)
From ABC:	Deputy chairman Chairman of the academic advisory board - ex-officio Vice-principal (finance) - ex-officio An honorary officer of the governing body Bursar - ex-officio as representing ABC Administration with the registrar nominated as alternate director
External:	Two members.

Note that it is the intention that a representative from the academic advisory board and from ABC administration should attend all board meetings. The appointment of alternate directors should facilitate this and copies of all board papers will be circulated to them whether attending or not.

3. A remuneration committee consisting of the chairman, deputy chairman and the bursar will determine the compensation of XYZ directors, including external non-executive directors should this prove necessary, but excluding the chairman, and noting that ABC nominees are ineligible for payment.

4. An audit committee will be formed consisting of the bursar and two non-executive directors (one from ABC and one external). One of the internal directors will serve as chairman.

Actions of XYZ requiring the approval of the governing body of ABC

1. Appointment of directors.

2. The acquisition or disposal of assets, including investments in campus companies and publicly quoted companies of more than £[ ] in a single transaction.

3. The annual budget for the following year and any modification to the strategic plan, which will be presented in June each year.

4. The directors' annual report and accounts at the AGM.

Review clause

This memorandum, which constitutes the current state of intent of ABC and XYZ, will be reviewed in June of each year prior to the submission to ABC's governing body of the XYZ budget for the following year.

Signatures

....	....
On behalf of the institution	On behalf of the company
Date	Date ....

Appendix VI: Outline business plan

This guidance is based on a publication by RSM Robson Rhodes intended for companies seeking to raise external finance from venture capitalists. The institution is effectively in the role of a venture capitalist when considering an investment in a new venture. We recommend that it should prepare a comprehensive business plan and the following guidance may be useful.

Contents

EXECUTIVE SUMMARY

1.1 Investors see hundreds of business plans each year and they are unlikely to find time to read them all from cover to cover. Instead, they prefer to read a short summary of a business plan which highlights the important aspects and investment opportunities and which contains only enough information to enable them to determine quickly whether the proposal is of interest.

1.2 The summary is therefore of critical importance. It must sell the proposal in a few succinctly written pages setting out a convincing case. It should be written after the rest of the business plan.

1.3 The summary should cover the following:

- **Purpose of the plan:** outline the reason for presenting the plan (eg to attract investment), the goals sought and the distinguishing features which will allow them to be realised.
- **The company and its founders:** say who formed the company and when, what it does or will do, what is special or unique about it and, in particular, the opportunities available to it. A brief résumé of the backgrounds of the entrepreneurs may be relevant, highlighting their particular experience or qualifications and their suitability to pursue the business opportunities available.
- **Market opportunity:** outline the opportunities, indicating the size and growth prospects for the product or services offered and the way in which projected market share is to be achieved.
- **Products/services/technology:** describe briefly the products or services sold and any unique features or advantages they have. Indicate any proprietary technology, trademarks, intellectual property rights or skills which give the company an edge in the market place. Outline future product development and plans for extending the product range.
- **Past trading record:** if the business has an established track record (be it several years or months), provide a brief summary of sales, gross profits and pre-tax results explaining significant trends. Highlight the achievements to date and milestones reached.
- **Summary of the financial projections:** provide information on sales, gross profit and pre-tax profit for at least three years, briefly explaining trends and any divergence from historic performance.
- **Funding requirement:** state the size of the investment needed and how the finance will be used.

CORPORATE OBJECTIVES

2.1 It is important to state the aims and objectives of the entrepreneurs, both personally and for the company. These goals must be appropriate to the company's industry sector and compatible with the objectives of potential investors. Since venture capital investment is a form of partnership it is vital that each party has the same broad objectives.

2.2 This section will aid the investor in the appraisal process and avoids entrepreneurs wasting time and energy trying to sell a sound business opportunity to investors whose objectives are ill-matched with their own.

2.3 Entrepreneurs should address four basic issues:

- What do the founders want for themselves: money, power, success, excitement, status?
- What do the founders want for their company: to go public, to sell out, to build an empire?
- How do the founders' and corporate objectives fit with the experience of other companies in the industry sector? Investors will question business plans which deviate significantly from industry norms.
- What are the investors' objectives and how do these compare with the above?

If these objectives are not coherent, investors will resist.

HISTORY

3.1 A common way of evaluating future potential is to look at past performance. It is important, therefore, to give the potential investor background information on the company and its performance and development to date. Where there is little or no trading record, the original rationale behind the company's formation should be stated.

3.2 Give the date of formation or incorporation and provide a brief summary of developments since. Point out past successes (or otherwise) in terms of products or services developed and marketed and explain how these will enhance the company's future.

3.3 Discuss any setbacks or losses, emphasising corrective action taken both to prevent recurrence and to improve profitability. If there are good reasons why the past is not a reliable indicator of projected performance, briefly explain why. This can be developed further in the rest of the plan.

3.4 The following should be included in this section:

- date of incorporation and commencement of trading
- details of the group structure if relevant
- explanation of financing to date, including the previous and current involvement of outside shareholders, if any. A list of shareholders should be included as an appendix
- progress to date:
  - successful development of products/services
  - expansion of the management team and evolution of balanced management structure
  - description of past financial performance, together with an indication of the current position
  - the influence of any industrial, economic, political, social or technological trends on the company
  - milestones reached

- major agreements which bind the company, whether to investors, major credit sources, customers or suppliers.

PRODUCTS OR SERVICES

4.1 A potential investor will want to know what you are going to sell, what kind of product protection you have and the opportunities for and possible weaknesses in your products or services.

4.2 Describe the products or services fully, but bear in mind that investors may not have much technical or industrial knowledge. A more detailed assessment will be made later, but is not required in the business plan.

4.3 Emphasise any unique feature of your product or service and highlight any advantages over what is currently available in the market. If products are under development, indicate the stage of that development, how long it will take to reach the market place and the cost of doing so.

4.4 Product literature, photographs or other supporting information may help to explain what the products or services are and who is likely to buy them. These should be appendices to the plan.

4.5 Discuss any product disadvantages or the possibility of rapid obsolescence owing to technological or styling changes or market fads. Do not try to cover up any shortcomings: they are sure to come out in a more detailed product evaluation and acknowledging them will make the plan more credible.

4.6 To summarise, this section should cover:

- a description of current products or services
- the application of your product or service, both primary and secondary
- the unique features of each product or service
- product advantages over competitors and how these will benefit the customer
- patents, trade secrets or other proprietary features
- any barriers to competition which may give a favoured or entrenched position in the market (exclusive distribution, legislation, development lead)
- opportunities for the expansion of the product line or the development of related products or services, including the extent and direction of any research and development.

MARKET AND MARKETING STRATEGY

5.1 This is another important section as it sets the scene for the rest of the plan by estimating total available market size and the share the venture can realistically achieve. Its purpose is to convince the potential investor that the product or service has a substantial market in, preferably, a growing industry and can achieve sales despite existing or likely future competition. It provides the basis of projected turnover, which will determine the size of the venture and the amount of finance sought.

5.2 This section should be prepared first, with time and care spent collecting market data on overall size and growth rates, and presenting facts, figures and their source wherever possible. Concentrate on the market segments which specifically relate to the products or services offered rather than more general analysis, as prospects and trends directly applicable to your business may not be representative of the market as a whole. Extracts from relevant surveys or statistics should be appended to the report as supporting information. In situations where either a market is being entered for the first time or a new market is being created, actual experience cannot be used for comparison. Here it is even more critical to undertake research to reassure the investor as to the reasonableness of sales projections.

5.3 This section should address the following:

Customers

- Who are the existing or anticipated customers for the product or service?
- What is the basis of their purchase decision: price, quality, service, personal contacts or some combination of factors?
- Indicate potential customers who have expressed an interest in purchasing the product or service and explain why.
- Similarly, indicate potential customers who have shown little or no interest in purchasing and explain why.
- Explain how negative customer response will be overcome.
- Consider what customers expect in the way of price, quality and service.

Market size and trends

- What is the total size of the current market for the product or service offered? Indicate the source of the estimates.
- Is the market expanding, contracting or static? (Discussions with customers, distributors, dealers, agents and sales representatives may prove useful in determining both market size and trends).
- If the intention is to sell regionally, a regional breakdown should be given.
- Indicate the major factors affecting market growth (economic, industrial, political, climatic, population shifts).
- Indicate how the effects of seasonality on the business can be minimised.

Competition

- Make a realistic assessment of the strengths and weaknesses of competitive products or services and name the companies which supply them.
- Compare competing products or services on the basis of price, quality, performance, service, warranties and other relevant features.
- Indicate the advantages and disadvantages of competing products or services and explain why customer needs are not fully met.
- Highlight your three or four principal competitors and explain why customers buy from them. Indicate why the venture will be able to compete favourably.

Estimated market share

- Summarise the features of the product or service which will enable it to take market share from competitors.
- Highlight customers who have made or are prepared to make purchase commitments, and give an assessment of future major markets.
- Based on the customer, market and competition assessments made above, estimate what share of the market the company is aiming to achieve in the next three years. The anticipated growth of the company's sales and its estimated market share should be related to the growth of the industry, customers, and strengths and weaknesses of competition.

Marketing strategy

Explain how you intend to achieve sales targets. This should cover overall marketing strategy, pricing, sales strategy, after-sales service and advertising and promotion, detailing what is to be done, how and by whom.

- <u>Overall marketing strategy</u>. This should be developed from market research and analysis. The general marketing philosophy and strategy should be outlined:
  - which customers will be targeted for sales efforts, initially and thereafter
  - how customers will be identified and contacted
  - where the company intends to be positioned in relation to the competition (i.e. by way of price, quality, response, etc)
  - whether sales will be generated regionally, nationally or internationally, and the timetable involved in graduating from one to another.
- <u>Pricing</u>. This is a critical factor as the 'price must be right' to allow market penetration, sustain market position and generate profits. If products or services are superior to those of competitors, investors will be surprised if the price is lower. Two things should be remembered:
  - costs always tend to exceed expectations (Murphy's Law)
  - price cuts are more acceptable than price hikes.

  Since both imply pressure on gross margin it is important to demonstrate that the pricing policy adopted will generate net profits after all direct and indirect costs, allowing for possible future price competition.
- <u>Sales strategy.</u> How will sales be achieved and by whom?
  - will the company use its own sales force, sales agents, distributors?
  - what incentives will be given to stimulate maximum sales efforts by internal sales people and by third parties?
  - what is the longer term intention with regard to your own sales force?
  - how are distributors/dealers attracted and chosen and what are the terms of trade?
- <u>After-sales service.</u> Indicate the importance of any servicing agreements and warranties in the customer's purchasing decision and how the commitments will be met. Detail any service charges and compare your service with that provided by competitors.

- Advertising and promotion. Describe the approach that will be adopted to generate sales leads by creating customer awareness, e.g. exhibitions, trade magazine advertising, direct mail, promotional literature, advertising agencies, etc. A schedule of the costs should be presented in an appendix.

RESEARCH AND DEVELOPMENT

6.1 If the product or service requires any design or development before it is marketable, the extent of this work should be disclosed. Similarly, if future prospects depend on the successful development of new products it is important to state the nature and extent of such work and the timescales involved. As well as being interested in existing products, investors will be perhaps even more concerned with product succession, given the likely length of their involvement with the company. They will therefore expect to have the R&D strategy outlined in the plan.

6.2 Points for consideration include:

- current status of the development programme
- the in-house expertise and whether any development work is to be sub-contracted
- the experience and expertise of the person responsible for overseeing development
- any major anticipated problem areas and the approaches to their solution. State what effects these may have on the development timetable
- future development work on new products
- a design and development budget showing both cost and time. Allow some contingency as costs are often underestimated
- the accounting policy with respect to R&D. If costs are capitalised, present the case for this.

BASIS OF OPERATION

7.1 This section describes the facilities, location, space requirements, equipment and labour necessary to produce the product or service. When writing it, bear in mind that the reader may not be an expert in your field of activity. Highlight features of the operation which yield an advantage over competitors.

7.2 As operational requirements vary from business to business, not all of the following points may be relevant to your venture but they provide a general guide:

Location

7.3 Describe the present or planned location of the business, explaining the rationale for choosing the site and outlining both positive and negative features relating to:

- labour availability
- level of wage rates
- proximity of customers and suppliers
- ease of distribution
- availability of grants – (should be of secondary importance and viewed as a bonus).

Facilities

7.4 Give details of current facilities and future requirements, e.g. plant and office space, machinery, specialist tooling and other equipment. An assessment of future needs should be based on the expansion of capacities necessary to meet the projected sales growth. Lease/buy options should be considered for both equipment and space, and details of future capital expenditure should be given.

Manufacturing plans

7.5 Explain the manufacturing process involved in producing the company's products, together with the policy with regard to sub-contracting (i.e. make or buy decisions). It may be useful to present a production plan showing cost-volume details at various turnover levels, breaking down costs between raw materials, direct labour, factory overheads and purchased components. Stockholding at various turnover levels should be outlined, together with stock control, production control and quality control. Quality control is particularly important to minimise service problems and customer dissatisfaction. Purchasing should be explained, indicating purchase control procedures to ensure efficient buying. In all cases detailed analyses should be set out in an appendix.

Labour force

7.6 Discuss whether the local labour force has the necessary skills in sufficient quantity and quality (high productivity, low absenteeism) to manufacture the product or supply the service. If skills are inadequate, outline training plans and cost.

MANAGEMENT

8.1 Venture capitalists recognise that, however good a product or service, it is people who make a business successful. They back committed and experienced management teams, rather than individuals, and they shy away from 'one-man bands' because there is a limit to the amount one person can accomplish.

8.2 A well-balanced management team is favoured for two reasons:

- the business will probably survive the loss of a key person
- a full range of skills ensures that the important managerial functions (e.g. production, sales, finance) will be attended to.

8.3 Accordingly, this section will figure largely in the potential investor's decision.

8.4 From the investor's perspective, management teams can be categorised from the most to least preferable as follows.

- Most favourable: all members of the team are identified, working together and fully committed to the venture. This is the ideal situation, especially when team members have experience and a successful track record, and explains why investors are keen to back management buy-outs from parent groups.
- All the team members are identified but not everyone is on board. This is a typical situation where the existing management cannot bring in the necessary complementary

management skills until funding is in place. The possibility that the people identified may not join is a source of concern for investors.

- One or more members of the team have yet to be identified. In these circumstances it is important to indicate how the gaps in the management team will be plugged. Part-time staff or outside advisers may be recruited until a suitable full-time person is found. The recruitment aspect makes the team less attractive and the investment more risky.
- Least favourable: the 'one-man band'. The limitations of this situation are usually unacceptable to investors unless the person has an outstanding track record in developing successful businesses and it is possible to build a team around him/her.

8.5 Therefore, assembling your team, or at least identifying its members, before seeking venture capital, will significantly reduce the perceived risks and increase the likelihood of success. Also of paramount importance to investors is the financial commitment of management to the venture. Investors will expect management to invest personally in the opportunity as an explicit show of faith and commitment. If there is no such financial commitment, investors who are usually asked to put up most of the cash, may be reluctant to back the venture. The amount of management's personal investment differs from case to case, but the sum should be significant in terms of personal wealth if it is to show real commitment.

8.6 Points for inclusion in this section are:

- provide a brief synopsis for each key manager, reviewing career highlights, duties and responsibilities and past accomplishments which demonstrate their ability to carry out the role required
- explain how the management team is to be organised and describe each member's primary role. If the company is established and has an effective management structure, an organisation chart should be included as an appendix
- describe the board of directors, including any non-executive members and their function
- provide details of salary packages and any personal investment in the company. Include a list of shareholders as an appendix
- identify any weaknesses in the team and explain how they will be overcome, e.g. training, recruitment, outside advisers
- explain the strategy to retain and motivate staff, such as key executive share options, bonuses, profit sharing, etc
- describe support provided by professional advisers both current and ongoing.

PRINCIPAL RISKS AND PROBLEMS

9.1 Inevitably, there will be risks attached to the development of a business; and the business plan invariably contains some implicit assumptions about them. It is important to give thought to these risks, as the identification of any significant negative factor by potential investors can seriously undermine the venture's credibility and hence jeopardise its financing.

9.2 Furthermore, by identifying and discussing the potential risks, entrepreneurs demonstrate not only the thoroughness of their approach but also their ability to deal positively with risks. Their credibility is thus enhanced in the eyes of investors.

9.3 This section should therefore identify and discuss any major risks and problems which may occur. Risks relating to the company and personnel, product development, market, and the timing and financing of the venture need to be considered. The following list is not exhaustive but highlights issues which may be relevant:

- delayed product development
- price cutting by competitors
- overspending on design, development or maintenance
- sales projections not achieved or overachieved
- difficulties in procuring raw materials
- problems in collecting from debtors
- the need for more R&D expenditure in order to remain competitive
- underestimated costs and time delays in moving premises
- inability to recruit staff
- inability to retain key staff.

9.4 Risks and problems should be discussed in order of importance, and management's actions to minimise their impact should be outlined.

FINANCIAL INFORMATION

10.1 This section represents the 'gelling together' of the plan in the form of financial projections. It should include:

- details of any previous financial record, briefly explaining historic trends and hiccups, if any. If available, the past 5 years' results should be summarised, and the audited accounts together with latest management figures included in the appendices
- a summary of projected results for the next 3 to 5 years, concentrating on the principal features of the projections, trends, rising or falling margins, fluctuations, commitment to R&D, major capital expenditure and key assumptions. Detailed projections, together with the assumptions on which they are based, should be provided in the appendices and should include:
  - profit and loss accounts monthly for at least 12 months, and preferably for 3 years, and annually thereafter. The break-even point should be clearly identified
  - cash flow projections, monthly and yearly as above
  - balance sheets, monthly and yearly as above

- a commentary on the forecasts, considering the overall shape of the company as projected rather than a detailed review of specific points
- the nature of existing or planned financial reporting and control systems
- sensitivity analysis covering key risk areas and a summary of their effects on the projections, in particular their impact on the funding requirement.

10.2 Investors routinely expect business plans to project sales, profits and other financial information for 3 to 5 years into the future. These projections are basic to the evaluation of the investment opportunity, and to a large extent will determine how much of the company's equity investors will expect in return for their investment.

10.3 Projections must represent the entrepreneur's best estimate of future operations and should be supported by the strategies described in the previous sections of the plan. They should also provide the operating plan for the financial management of the venture.

10.4 When compiling projections, always work from the top downwards, i.e. start with the sales projections determined by the market and market strategy sections. It is a common mistake to project from the manufacturing cost level on the assumption that everything that can be made will be sold.

10.5 Although profit and loss statements are important from the point of view of probable returns (forecasts must be realistic if they are to be of value as aids to decision making or policy formulation), the cash flow forecast can be more critical as it details the amount and timing of expected cash inflows and outflows. Generally the level of profits, particularly during the early years of a venture, will be insufficient to meet the working capital needs and, as inflows do not match outflows on a short-term basis, the cash flow forecast allows management to identify and plan cash needs. It also helps the investor to ascertain the finance required.

10.6 Balance sheet information details the assets required to support projected levels of operation and shows how these assets are to be financed (liabilities). These are important tools for both investors and banks, who will analyse balance sheet ratios to determine whether they are within acceptable limits to justify investment. The opening balance sheet will form the base for the financial projections. It is important to state when it was compiled and from what source (year-end audited position, monthly management figures or blank piece of paper).

10.7 Once the company's projections have been prepared it is necessary to draw upon section 9 of the business plan to highlight any major risks that could prevent the achievement of the forecasts and the sensitivity of the figures to those risks. Although investors will form their own view about risk factors, they will take note of the company's own assessment. Using the original projections as the ‘base’ case, both positive and negative sensitivities should be considered to give a best, worst and median set of projections. As a result, the total finance required, plus contingency to take account of principal risk areas, will be determined.

10.8 The ability to meet income and cash flow projections will depend upon the company's ability to monitor and control costs. Investors will want to know what accounting and cost control systems are or will be employed by the business, so brief details should be given.

FINANCE REQUIRED AND ITS APPLICATION

11.1 The preparation of detailed financial projections and sensitivity analysis of them should enable the amount of investment required to be determined. This section should include:

- how much money is required now
- whether additional finance will be needed in the future if plans are achieved and when this will be required. In some cases where all the finance is not required immediately investments can be made in stages against the achievement of pre-defined targets
- what the finance will be used for
- what proportion of the funds are expected to be raised from debt sources rather than through equity investment
- details of current investment in the company, both equity and loan (including bank facilities)
- the percentage of the company that investors are being offered in return for investment
- an indication of how the investor will realise his investment.

LONGER TERM OBJECTIVES

12.1 It is useful to state the aims and aspirations of the company and its management beyond the period covered in the plan. This section gives an insight into the type of business that is anticipated and is important for attracting compatible investors who have similar return criteria.

ANNEXES TO THE BUSINESS PLAN

These have two roles:

- they help keep the main body of the business plan to a manageable length; and
- they provide supporting information to help sell the opportunity to the interested investor.

Annexes should be listed and clearly marked so the reader can find them easily. Their contents may include:

- detailed financial projections together with assumptions
- summaries of the training and experience of key managers
- organisation charts – current and projected
- market information – studies, editorial from trade journals, etc
- product literature, particularly promotional literature with pictures of the product
- customer lists or details of prospective customer interest
- audited accounts and monthly management figures
- patents/trademarks
- suitable references for key personnel, products or services.

ANNEX A - SAMPLE DETAILED ASSUMPTIONS

The main assumptions upon which the financial projections are based should be clearly stated. Failure to provide this information renders the figures meaningless, and the investor will have little or no insight into how the projections have been compiled. Not every assumption need be stated, only the ones which will have a significant effect on the projected results.

Typically, these will include:

- sales increase by unit volume or value and product mix
- gross margin analysis by product line
- debtor collection period
- creditor payment cycle
- stock turn by product line
- a schedule of company assets and related depreciation rates
- inflation (in times of low inflation this can be ignored)
- exchange rates
- capital expenditure schedule outlining the levels and timing
- manpower schedule detailing the numbers of people involved in the project and the build-up of employees over time. Include a breakdown of wages and salaries
- research and development schedule indicating the level, timing and nature
- loan repayments due
- bank interest rates
- capital introduced.

Capital introduced is a complex issue with the following extremes:

- projections assume no additional funding, so that the finance required is demonstrated by the level of bank borrowings in the cash flow. However in most cases the figures will be distorted by the unrealistically high gearing and bank interest costs which result from this treatment
- projections assume capital introduced at a given point in time. But preconceived ideas as regards amount, timing and structure of finance are inappropriate.

In view of the above, the following approach is generally recommended:

- initial projections are prepared on the basis of no additional finance
- an assumption is made as regards equity finance raised, and projections amended accordingly. This will ensure that any gross distortion of the figures is avoided
- the report makes clear that the assumption made is for illustrative purposes only and that the financial package is open to discussion.

ANNEX B - SAMPLE STRUCTURE FOR FINANCIAL PROJECTIONS

Pro forma profit and loss account

	Month 1	2	3
Sales	*	*	*
Cost of sales			
Materials used	*	*	*
Production wages	*	*	*
	*	*	*
Gross profit	*	*	*
Overheads			
Directors' remuneration	*	*	*
Wages and salaries	*	*	*
Printing and stationery	*	*	*
Telephone	*	*	*
Vehicle expenses	*	*	*
Leasing	*	*	*

Pro forma profit and loss account (continued)

	Month 1	**2**	**3**
Repairs	*	*	*
Advertising	*	*	*
Exhibitions	*	*	*
Rent and rates	*	*	*
Light and heat	*	*	*
Insurance	*	*	*
Professional fees	*	*	*
Legal and audit	*	*	*
Travel and subsistence	*	*	*
Sundries	*	*	*
Interest	*	*	*
Recruitment	*	*	*
Bad debts	*	*	*
Depreciation	*	*	*
	*	*	*
Net profit before tax	*	*	*

Pro forma cash flow

	Month 1	2	3
Operating cash flow			
Receipts			
Trade debtors	*	*	*
Other income	*	*	*
	*	*	*
Payments			
Trade creditors	*	*	*
Accruals	*	*	*
Prepayments	*	*	*
Wages and salaries	*	*	*
PAYE/NI	*	*	*
VAT	*	*	*
	*	*	*
Net inflow/(outflow)	*	*	*
Interest payable	*	*	*
Capital flows			
Receipts			
Investment proceeds	*	*	*
Bank term loan	*	*	*
Sale of fixed assets	*	*	*
	*	*	*

Pro forma cash flow (continued)

	Month 1	2	3
Payments			
Loan repayments	*	*	*
Fixed asset purchases	*	*	*
	*	*	*
Total cash inflow/(outflow)	*	*	*
Opening cash balance	*	*	*
Closing cash balance	*	*	*

Pro forma balance sheet

	Month 1	2	3
Fixed assets			
Cost	*	*	*
Depreciation	*	*	*
Book value	*	*	*
Current assets			
Stock	*	*	*
Debtors	*	*	*
Prepayments	*	*	*
Cash	*	*	*
	*	*	*

Pro forma balance sheet (continued)

	Month 1	2	3
Current liabilities			
Trade creditors	*	*	*
Accruals	*	*	*
Bank overdraft	*	*	*
Bank loan	*	*	*
	*	*	*
Net current assets	*	*	*
Net assets	*	*	*
Shareholders' funds			
Share capital	*	*	*
Reserves	*	*	*
	*	*	*

Appendix VII: Protection and exploitation of technology and intellectual property rights

Where a company is being set up to exploit the commercial potential of an institution's technology and intellectual property rights, several issues may arise. This is a complex area and specific advice may be needed. Among other matters, the following issues should be considered.

- Check that the technology and rights belong to the institution or that it has the right to exploit them. This will require consideration of the institution's arrangements with its own academics and arrangements with other third parties who may have been involved in the development of the technology and rights.
- Ensure that appropriate patent protection has been applied for before any publication of the results of research, and that any publication does not prejudice the patentability of a relevant invention. Prior publication can be fatal to a patent application.
- In discussions with third parties, ensure that they have signed an appropriately worded confidentiality agreement prior to disclosing information to them. Technology disclosed without such an agreement in place can be rendered worthless.
- Where a particular development, for example software, attracts copyright protection, ensure that it is marked with an appropriate copyright notice. This will ensure it attracts copyright protection in certain overseas jurisdictions and put third parties on notice that the copyright owner regards it as valuable and claims copyright protection to it.
- As between the institution and the company, on what basis is the company to acquire its rights to the technology and rights as they then exist? This will normally be pursuant to a licence rather than by outright assignment, so that if for any reason the company fails or the licence otherwise comes to an end, the rights revert to the institution. Is the licence to be exclusive or non-exclusive? Are any 'field of use' restrictions appropriate?
- As between the institution and the company, what obligations will there be on either party to further develop the technology and rights, and who will own improvements that may subsequently be made by each party to the technology and rights? Consider what cross-licensing arrangements may be required to allow both parties to use such improvements.
- What financial return will the institution receive from the company for the licensing to it of the technology and rights, in terms of an up-front payment, running royalties, guaranteed minimum royalties or any combination thereof, in addition to any return it derives from its shareholding in the company?
- The arrangements for the licensing of the technology and rights will normally necessitate entering into a formal licence agreement between the institution and the company. This will set out the extent of the rights granted to the company by way of licence, the financial return to the institution, and other matters such as the future protection and enhancement of the value of the technology and rights (including responsibility for applying, and paying, for patent protection, and responsibility for taking any necessary infringement action against third parties).

- Careful consideration should be given to the terms of any warranties and indemnities that may be contained in a licence agreement.

Appropriate professional advice should in all cases be sought in relation to the protection and exploitation of technology and intellectual property rights and the terms of any licence agreement. This advice should be considered at an early stage to avoid unnecessary complications and potentially substantial costs later being incurred by the institution.