HEECA The Higher Education Export Control Association

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A: Establishment of spin outs by universities or their tech transfer companies [1]

NOTE: Trigger events turn on ***acquisition*** *of an entity –* ***creation*** *of an entity is* ***not*** *a trigger event*

	Event	Comment	Mandatory Notification Required when there is acquisition of control[2] of a qualifying entity[3] if its activities are covered by the 17 sector definitions in the Notifiable Acquisition Regulations	Voluntary Notification Considered when there is acquisition of control[4] of a qualifying asset[5] where it falls within *or close to*[6] one of the 17 sector definitions. Consider also whether less than 25% shareholding or material influence has been acquired[7].
1	Conversion of an off the shelf 'shell' company and repurposing for a spin out	Shell companies are sold with e.g. 2 shares, and e.g. 2 directors who are employees of the	Does not appear to fall within the mandatory notification requirements.	There is no trigger event (acquisition of a right to use or control a qualifying asset).

[1] Discussion with BEIS/ISU in respect of this table does not constitute official endorsement nor does it fetter the Secretary of State's powers under the Act.

[2] Sections 8(2) and (5) define control of an entity as the acquisition of a right or interest that allows the acquirer to increase its shares or voting rights in the entity:
- (a) from 25% or less to more than 25%;
- (b) from 50% or less to more than 50%; or
- (c) from less than 75% to 75% or more.

Sections 8(6) also defines control of an entity as the ability to secure/prevent the passage of any class of resolution.

[3] A qualifying entity is defined in sections 7(2) and (3) as any entity, whether or not a legal person, that is not an individual, and includes a company, a limited liability partnership, any other body corporate, a partnership, an unincorporated association and a trust that carries on activities or supplies goods or services in the UK.

[4] Control is defined in section 9(1)(a) and (b) – namely the occurrence of trigger events in relation to rights to use or control

[5] A qualifying asset is defined in sections 7(4) and (6) as:
- (a) land;
- (b) tangible (or, in Scotland, corporeal) moveable property;
- (c) ideas, information or techniques which have industrial, commercial or other economic value;

that is situated in the U.K or used in connection with activities or the supply of goods or services in the UK.

[6] Example: acquiring full control of a company which is not within one of the 17 areas, but 'close to' one of the sectors, means there is a voluntary rather than a mandatory notification trigger

[7] A trigger event that involves acquiring the ability to exercise material influence over the qualifying entity's policy (section 8(8)) is not within the scope of the mandatory notification regime.

		seller of the shell companies. The shell has no relevant technology		
2	The university/tech transfer company work with the founders to convert the shell company, and the shares are issued to the university/its company in consideration of a licence	Prior to the issue of shares to the university/its company, the shell company has no relevant technology. The shell company only gains relevant technology once the transaction is completed (the licence is granted)	This is the *creation* of a qualifying entity. At the point when the shares are issued the company, does not carry on activities specified in the 17 areas of the economy. The granting of the licence simply creates the opportunity to begin such activity. The issue of shares to the university/its company is not an acquisition of control of a qualifying entity which has relevant technology, even though the university might hold >26% of the equity following this transaction	The grant of a licence is a trigger event
3	Assignment or exclusive licence rather than non-exclusive licence	A non-exclusive licence is the grant of a right to use. An assignment or exclusive licence is the grant of the right to control.	N/A	The grant of a licence is a trigger event, whether non-exclusive or exclusive because even a non-exclusive licence provides a right to use an asset. The subsequent grant of an assignment (or conversion of a non-exclusive to an exclusive licence) is a further trigger.

4	Grants or loans (unsecured by shares) or funding without any investor controls or licences to investors		There is no acquisition of control of a qualifying entity - even if it is has relevant technology	There is no acquisition of control or right to use of qualifying asset – even if the company has relevant technology
5	Loans (unsecured by shares) or funding but with investor rights of control e.g. restricting sale (standard investor consents)	See also row 9	This is a mandatory notification trigger event if lender gets voting rights above the specified thresholds OR any right which allows them to pass/block resolutions. Section 6(2) of the Act and section 8(5)	Voluntary notification if the rights only amount to material influence[8]
6	Acquisition of shares in a company (i.e. subsequent to initial creation and licensing of technology in one of the 17 areas) which exceed 25% by the university/tech transfer company or investors	If the company carries on activities in one of the 17 specified areas of the economy, it is a notifiable acquisition. See Example 2.	Mandatory notification required	N/A
7	Acquisition of shares in a company by investors at the same time as the university/tech transfer company grants a licence of relevant technology (that is before it has any	The investment makes a significant change to relevant technology; raw academic technology is normally a process patent which needs considerable investment to bring to market.	Mandatory notification not required unless when the shares are issued the company is already carrying on activities specified in the 17 areas of the economy. Significant investors should check the position	The granting of a licence is a trigger event

[8]See footnote 8.

	technology in one of the 17 areas)		with their legal team.	
8	Increase of shareholding from: 25% or less to above 25%; 50% or less to above 50%; or below 75% to 75% or above	Each is a trigger event acquisition of control over a qualifying entity - see section 8(2)	Mandatory notification required	N/A
9	Shareholder rights: An investor who invests when the technology has been proved/improved by earlier investment will pay a higher share price for the shares and in return may secure shareholder rights in the Articles to protect their investment	Such an investor may have certain rights such as a veto on sale, so that the exit is at a price which will pay a reasonable return on their larger investment for the same or smaller equity shareholding as earlier investors who paid a lower price for their shares. *Paragraph 5 of Schedule 1 is a necessary caveat to make clear that contractual rights which allow a person to control the voting rights held by others would continue to constitute a trigger event where the relevant thresholds in 8(5) – e.g. over 25% of voting rights – are met.*	If the right is in the Articles this is a mandatory notification trigger event if the investor gets voting rights above the specified thresholds OR any right which allows them to pass/block a class of resolutions (ordinary, special or extraordinary resolutions). Contractual rights relating to individual matters (rather than a whole class of resolution) would not constitute a trigger event. Section 6(2) of the Act and section 8(5). And paragraph 5 of Schedule 1 If the rights are contained only in the shareholders agreement, that is not a trigger event.	

10	Shareholder rights in the Articles: 3 investors together secure shareholder rights to protect their investment through having "an investor majority"	It is only a trigger event when a single individual has the control vested in them to control the voting rights held by others. (Investor majorities don't normally fall into this category because a single individual does not have control vested in them of all the voting rights – the shareholders have to act together to exercise the control.)	No, unless the contractual rights give one person the right to control the voting rights held by others. paragraph 5 of Schedule 1	N/A unless the individual's rights amount to material influence
11	A company with relevant technology is set up outside the UK	The setup is a creation of an entity, so out of scope. If a potential qualifying entity is formed or recognised outside UK, and shares are acquired once it has technology in one of 17 areas, it is only a qualifying entity if it carries on activities in the UK or supplies goods or services to persons in the UK. Section 7(3)	Mandatory notification only relevant for entities which carry on (specified) activities in the UK – Section 6(4)	Voluntary notification of the initial licence either to the founders or the company is required.

12	University/its company help founders to begin the steps towards getting investment, providing advice and mentoring	The decisions at all times will rest with the Directors / controlling shareholders - rather than the university tech transfer company.	Material influence is not a trigger event for mandatory notification.	Section 8(8) refers to material influence as a trigger for voluntary notification[9]. For any trigger event there needs to be the "acquisition of a right or interest" in the entity or asset. Advice and mentoring do not amount to the acquisition of a right or interest.
13	University assigns IP to its tech transfer company	This is within the scope of voluntary notification but it might be considered this is unlikely to raise a national security risk so institutions may decide not to notify.	No	Is a trigger event for voluntary notification

[9] Material influence only applies in respect of entities. There is information on the concept from page 22 onwards of the CMA's guidance. The Government has stated that it intends to apply the CMA's guidance so far as is appropriate in the context of national security.

14	Where a university tech transfer company is a wholly owned subsidiary of the University, and both receive shares, these have to be aggregated when calculating trigger event %	In addition to its direct shareholding, the University is treated as indirectly holding the shares, which the university tech transfer company has, because it has a majority stake in the university tech transfer company (by virtue of paragraph 3 of Schedule 1 to the Act). There are anti-avoidance provisions to ensure that transactions are not split up to get around the regime.	N/A	N/A
15	The University or university tech transfer company only has 50% or less stake in a separate company acquiring shares	These shares do not have to be aggregated	N/A	N/A

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