



Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY

OFFICE OF THE SECRETARY

SEP 15 2015

Memorandum Circular No. 003  
Series of 2015

**Subject: GUIDELINES ON THE CONSTITUTION OF THE FAIRNESS OPINION BOARD (FOB) AND THE ISSUANCE OF FAIRNESS OPINION REPORT (FOR) UNDER REPUBLIC ACT NO. 10055 OTHERWISE KNOWN AS THE PHILIPPINE TECHNOLOGY TRANSFER ACT OF 2009**

**I. RATIONALE**

This Guidelines is formulated pursuant to Article III, Sections 7 and 8 of Republic Act No. 10055, otherwise known as the Philippine Technology Transfer Act of 2009, and Rule 11 of its Implementing Rules and Regulations or Joint DOST-IPO Administrative Order No. 02-2010 dated August 18, 2010, and other related issuances.

**II. OBJECTIVE**

To provide rules and policies on the constitution of the FOB and on the issuance of FOR.

**III. MEMBERSHIP, FUNCTIONS AND SECRETARIAT OF FOB**

1. The FOB shall be composed of three experts from the public and private sectors, as may be determined by the DOST, with at least one from the private sector. The members of FOB shall be constituted by the DOST Secretary through Special Order (SO) on a per written request basis.
2. The FOB shall have the following functions:
  - a. Review/Evaluate relevant documents submitted by requesting parties and independent information obtained related to the request for FOR.
  - b. Determine the date, venue, and frequency of the meetings and depending on its appreciation, require other administrative requirements and other related information from the parties concerned.
  - c. Render opinion as to the fairness to the Government Funding Agency (GFA) or Research and Development Institute (RDI) concerned of the proposed

transaction, issue and submit to the DOST Secretary the FOR in no more than sixty (60) calendar days after the issuance of the SO.

- d. Perform other functions relevant to the mandate of the FOB as may be necessary.
3. The Technology Application and Promotion Institute (TAPI) shall serve as the Secretariat to the FOB. The Secretariat shall be headed by the Director of TAPI. It will develop and maintain a directory of experts that will guide the requesting party in recommending experts as members of the FOB.

#### **IV. INSTANCES WHEN FOR IS MANDATORY**

The FOR is mandatory in any of the following instances:

1. When the GFA has assumed ownership over the intellectual property (IP) and decides to directly negotiate the agreement for the commercialization of the IP;
2. When the public RDI decides to directly negotiate the agreement for the commercialization of the IP;
3. When the private RDI is required to secure a FOR by the GFA which has a share in the revenue to be derived from the commercialization of the IP and/or IP rights directly negotiated by the private RDI;
4. In case of a spin-off, the RDI shall secure a FOR prior to the incorporation of the spin-off company; or
5. Other instances as may be determined by the DOST, through the Secretary.

#### **V. CONTENTS OF THE FOR**

The FOR shall, at the minimum, contain the following:

1. FOB opinion on the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms;
2. Recommendations on the proposed transaction;
3. All citations, references and all supporting documents; and
4. A certification and verification signed by all members of the FOB as to the foregoing.

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## **VI. OPERATING PROCEDURES IN THE ISSUANCE OF THE FOR**

1. The GFA/RDI shall write a request for an FOR addressed to the Secretary of DOST, through the FOB Secretariat, attaching relevant documents, such as but not limited to, the following:
  - a. proposed transaction;
  - b. valuation report;
  - c. due diligence report on the parties to the transaction;
  - d. background documents regarding the prospective transferee; and
  - e. list of potential recommendees for FOB membership.
2. The request for FOR, including the attachments, shall be received by the FOB Secretariat and shall be marked "confidential". The Secretariat shall check the completeness and authenticity of the documents submitted.
3. Within thirty (30) days after receipt of complete documents, the DOST Secretary, through the Secretariat, shall constitute the FOB through a SO.
4. The Secretariat shall initially convene the constituted FOB to determine the dates, venue, and frequency of the meetings and other administrative requirements, and provide the relevant documents for the FOB's review. The FOB may obtain independent information for evaluation.
5. The Secretariat and the FOB shall maintain the confidentiality of the information acquired and documents submitted. At all times, the members of the FOB shall disclose and avoid any conflict of interest with respect to all matters pending before them. In the initial meeting, the members of the FOB shall sign a Statement of Confidentiality and No Conflict of Interest.
6. The FOB shall review the relevant documents submitted or obtained and render its findings or opinion as to the fairness to the GFA or RDI concerned of the proposed transaction. At its discretion, the FOB may request for the presence of representatives of the GFA and/or RDI as Resource Persons.
7. The Secretariat shall prepare and consolidate the FOR for the FOB's approval. The FOR shall contain, aside from the statement expressing the FOB's opinion as to the fairness to the GFA or RDI concerned of the proposed transaction, particularly its financial terms, but also any recommendations regarding the revision of certain provisions in the proposed transaction, the citations, references and supporting documents, and a certification and verification signed by all members of the FOB. The report shall further include, but not be limited to, a review and analysis of the proposed transaction, financial statements, industry information, economic conditions and assumptions used therein and a comparison of similar transactions.

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8. The FOB shall issue and submit to the DOST Secretary, through the Secretariat, the complete/consolidated FOR within sixty (60) calendar days from the FOB's constitution.
9. All costs and expenses of the FOB shall be shouldered by the GFA and the RDI in the proportion as determined in the Research Funding Agreement (RFA). In the absence of such a provision, the costs and expenses shall be shouldered by the requesting party.

#### **VII. EFFECTIVITY**

This Guidelines shall take effect fifteen (15) calendar days after its complete publication in the Official Gazette and upon filing at the UP Law Center in accordance with law.

  
**MARIO G. MONTEJO**  
Secretary

**STATEMENT OF CONFIDENTIALITY  
AND NO CONFLICT OF INTEREST**

I, the undersigned, agree to maintain at all times the confidentiality of all information acquired and the documents submitted in relation to the Fairness Opinion Report (FOR) case indicated below, including the written request for FOR, proposed transaction, valuation report, due diligence report, background documents on the prospective transferee, financial statements, exchanges in the meetings and deliberations, and any and all other information obtained by virtue of my being a member of the Fairness Opinion Board (FOB) and I shall not disclose the same to third parties or unauthorized persons, except as may be required by legal and regulatory authorities;

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with any of the parties involved in the proposal under consideration by this FOB. I further certify that no other relationship, bias, or ethical conflict exists which will prevent me from evaluating any proposal solely on its merits and in accordance with the evaluation criteria.

Furthermore, I agree to notify the DOST Secretary if my personal or financial relationship with one of the parties is altered at any time during the evaluation process. As a member of the FOB, I agree to advise the DOST Secretary of any changes that could appear to represent a conflict of interest.

**Conforme:**

Signature: \_\_\_\_\_  
Name of Member: \_\_\_\_\_  
Special Order No.: \_\_\_\_\_ Dated: \_\_\_\_\_  
Transaction Title: \_\_\_\_\_  
FOR Case No.: \_\_\_\_\_

*Agreement*