

OFFICE OF THE SECRETARY

Memorandum Circular No. \_\_\_\_\_  
Series of 2019

Subject: **REVISED** 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

**ARTICLE I  
RATIONALE AND OBJECTIVE**

Section 1. This revised Guidelines repeals DOST Memorandum Circular No. 003, series of 2015 and DOST Memorandum Circular No. 007, series of 2016, which were formulated pursuant to Article III, Sections 7 and 8 of Republic Act No. 10055, otherwise known as the Philippine Technology Transfer Act of 2009. This Guidelines is issued to comply with Rule 11, Chapter III of the Amended Implementing Rules and Regulations of the Republic Act No. 10055 or the Joint DOST-IPOPHL Administrative Order No. \_\_\_\_\_ dated \_\_\_\_\_, and other related issuances.

Section 2. The intention of this Guidelines is to provide rules and policies on the constitution of the FOB and on the issuance of FOR in accordance with RA No. 10055 and its Amended Implementing Rules and Regulations.

**ARTICLE II  
WHEN FAIRNESS OPINION REPORT (FOR) IS MANDATORY**

Section 1. Instances when FOR is mandatory. The FOR is mandatory in any of the following instances:

- a. When the Government Funding Agency (GFA) directly negotiates agreements for commercialization of the IPs pursuant to Rule 9 (a) and (b), Chapter III of the IRR;
- b. When the public Research and Development Institute (RDI) directly negotiates agreements for the commercialization of IPs; and
- c. In the creation of spin-off firm or company.

Section 2. Activities not considered as commercialization. The following activities are not considered as commercialization where FOR is not required:

- a. government extension programs;
- b. training services;
- c. public good, which shall be defined and determined by the RDI;
- d. manufacturing for pre-commercialization activities, in which case, a limited manufacturing license is issued; and
- e. other analogous cases as may be determined by the RDI.

Section 3. Other Modes of Commercialization. In instances when the GFA or RDI resorts to other modes of commercialization, subject to the limitations as provided by law, such as public bidding, direct negotiation, build operate and transfer scheme, and such other similar and/or analogous modes, the FOR shall not be required.

### **ARTICLE III** **FAIRNESS OPINION BOARD (FOB)**

Section 1. Constitution of the FOB. The FOB shall be constituted in the following manner:

- a. Upon receipt of the written request and complete set of requirements from the Receiving Office, the DOST shall constitute the Board from the list of recommendees submitted by the requesting parties, provided, however, that other experts outside of the list may be appointed.
- b. The Board shall be composed of three (3) members with at least one (1) member coming from the private sector.
- c. In selecting the members of the Board, the persons' neutrality, impartiality and expertise shall at all times be given due regard. The experts shall execute a statement of no conflict of interest and non-disclosure agreement pertaining to the written request.

Section 2. Functions of the FOB. The FOB shall have the following functions:

- a. In coordination with the FOB Secretariat, determine the date, venue, and frequency of the meetings, and depending on its appreciation, require other administrative matters and related information from the parties concerned.
- b. The Board shall review the written request and all supporting documents, and it may obtain and consider other independent information. At its discretion, the Board may request for ocular inspection and/or presence of the representatives of the GFA and/or RDI as resource persons.
- c. Render FOR as to the fairness to the GFA or RDI concerned of the proposed transaction.
- d. In coordination with the FOB Secretariat, the Board shall complete and submit its FOR to the requesting party, copy furnished the DOST Secretary, in no more than twenty (20) working days from the issuance of the Special Order (SO) in accordance with Section 9.b.1 of the Republic Act No. 11032 also known as "An Act Promoting Ease of Doing Business and Efficient Delivery of Government Services, Amending for the Purpose Republic Act No. 9485, Otherwise Known as the Anti-Red Tape Act of 2007, and for Other Purposes".
- e. All requests for FOR, including all the documents received, information disclosed, except for information in the public domain during the proceedings to evaluate such requests, shall be kept confidential by all concerned parties to the said requests as provided by and subject to applicable laws and regulations, such as,

the Philippine Data Privacy Act, RA 6713 and the Freedom of Information E.O.

d. Perform other functions relevant to the mandate of the FOB as may be necessary.

#### **ARTICLE IV** **FAIRNESS OPINION REPORT (FOR)**

Section 1. Where to Apply. The requesting parties shall submit to the DOST Secretary a written request for FOR issuance, through the FOB Secretariat at any of the Regional Offices of the DOST where any of the following may be applicable:

- a. Where the Technology Transferee has an office or residence;
- b. Where the Technology Transferor has an office or business address;
- c. Where the Technology Transfer Agreement is signed or is to be executed;
- d. Where any of the facilities of the Technology Transferee is located; or
- e. Where the target market is located.

Section 2. Required Documents. The written request for the issuance of an FOR shall be submitted, together with two (2) sets of the following documents:

- a. Proposed Transaction;
- b. Financial Documents;
- c. Documents relating to IP protection, if any;
- d. Documents, if any, to support legal, social, environmental, or other impact of the proposed transaction;
- e. Background Documents of the parties to the transaction; and
- f. List of recommendees for possible FOB membership.

Section 3. Operating Procedures in the Issuance of the FOR.

- a. The FOB Secretariat shall receive the request and shall perform a formality evaluation within seven (7) working days to determine the completeness and authenticity of the documents. The FOB Secretariat shall forward one (1) set of the above documents to the DOST Secretary for his/her Written Recommendation.
- b. The FOB Secretariat shall prepare a list of possible FOB members and forward the same to the DOST Secretary, through the Office of Undersecretary for Regional Operations, copy furnished Office of Undersecretary for Research and Development.
- c. The DOST Secretary shall constitute the FOB through an SO within ten (10) working days upon receipt of the written request and complete set of requirements from the FOB Secretariat.
- d. The FOB Secretariat shall initially convene the constituted FOB within ten (10) working days after the issuance of SO, to determine the date, venue, and frequency of the meetings and other administrative matters, and provide the relevant documents for review of FOB.
- e. The FOB shall prepare and issue the FOR within ten (10) working days after the initial meeting. The Board may be guided, whenever applicable, by the following criteria:

- i. Financial capability of the Technology Transferee and its ability to sustain the production;
  - ii. Competitive position of the Technology Transferee;
  - iii. Marketability of the product or service that shall be produced from the subject technology; and
  - iv. Such other criteria as may be determined by the Board.
- f. The FOB Secretariat shall complete and forward the originally signed and notarized FOR to the requesting parties, copy furnished all parties to the transaction and the DOST Secretary through the DOST Undersecretary for Regional Operations.
- g. The FOB Secretariat shall forward copies of all requests and originally signed and notarized FORs to the Technology Application and Promotion Institute (TAPI), as the repository institution.
- h. All costs and expenses of the FOB and its Secretariat shall be shouldered by the GFA and/or the RDI in the proportion as determined in the RFA. In the absence of such a provision, the costs and expenses shall be shouldered by the GFA.

Section 4. Contents of the FOR. The FOR shall, at the minimum, contain the following:

- a. A discussion which shall 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;
- b. FOB opinion **as to** the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms;
- c. Recommendations on the proposed transaction;
- d. All citations, references and all supporting documents; and
- e. A certification and verification signed by all members of the FOB as to the foregoing.

## **ARTICLE V**

### **FOB SECRETARIAT**

Section 1. FOB Secretariat. The DOST Regional Office shall serve as the Secretariat to the FOB. The Secretariat shall be headed by the DOST Regional Director as its Chair.

Section 2. Functions of the FOB Secretariat. The FOB Secretariat shall have the following functions:

- a. Develop and maintain a directory of experts that will serve as guide to the requesting party in recommending experts as members of the FOB;
- b. Recommend a pool of members who will comprise and serve as FOB for selection and confirmation of the DOST Secretary on a periodic basis or as the need arises;
- c. Assist the FOB in the conduct of the business;
- d. Make arrangements for meetings and different activities sessions of the FOB including preparation of agenda papers, detailed meeting proceedings, and final FOB recommendations duly signed by the Chair;
- e. Ensure full confidentiality of all FOB meetings proceedings;
- f. Provide efficient and timely service to the FOB through practical and administrative

- processes which include the facilitation of submitted data, technical reports, library references and other bibliographic material as may be requested;
- g. Monitor the progress of the transactions issued with FOR; and
  - h. Perform other functions deemed necessary that may arise in the course of operation or as instructed by the DOST Secretary.

## **ARTICLE VI CONFIDENTIALITY AND CONFLICT OF INTEREST**

Section 1. Confidentiality of Information. The Secretariat and the members of the FOB shall ensure the confidentiality of all information that they will obtain. All requests for FOR, including all the documents received, information disclosed, except for information in the public domain during the proceedings to evaluate such requests, shall be kept confidential by all concerned parties to the said requests as provided by and subject to applicable laws and regulations, such as, the Philippine Data Privacy Act, RA 6713 and the Freedom of Information E.O.

Section 2. Conflict of Interest of Regional Office. In case the DOST Regional Office that receives a request for FOR issuance determines that there is conflict of interest with the subject proposed transaction, it shall request the DOST Secretary to appoint another DOST Regional Office as the FOB Secretariat pursuant to Article IV, Sec. 1 of this Guidelines.

Section 3. Conflict of Interest of an FOB Member. The FOB members shall ensure the absence of conflict of interest during their term. In the event that the FOB shall receive a request for FOR and a member believes that he/she has a conflict of interest from the said proposed transaction, said member shall immediately inform the DOST Secretary through the FOB Secretariat.

## **ARTICLE VII EFFECTIVITY**

Section 1. 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.

**FORTUNATO T. DE LA PEÑA**  
Secretary