

GUIDELINES ON THE CONSTITUTION OF FOB AND ISSUANCE OF FOR

JOINT DOST-IPOPHL ADMINISTRATIVE ORDER NO. 001

Amending the Implementing Rules and Regulations of RA 10055

Rule 3 (t)

“ “ **Receiving Office** shall refer to the **regional office of the DOST** which received the request for a Fairness Opinion Report.

Rule 11, Section 5 (d)

“ “ **The Receiving Office** shall act as the **Secretariat to the Board**.

**Amended IRR was signed by DOST and IPOPHL last March 7, 2019, and took effect last April 19, 2019.
Amended FOB guidelines and other DOST IP related policies was signed last September 9, 2019.*

DOST MEMORANDUM CIRCULAR 002 SERIES OF 2019

(Guidelines on the Issuance of Fairness Opinion Report (FOR)
by the Fairness Opinion Board (FOB)
and Written Recommendation by the DOST Secretary)

INSTANCES WHEN FOR IS MANDATORY

- a. When the Government Funding Agency (GFA) directly negotiates agreements for commercialization of the intellectual properties (IPs)**
- b. When the public Research and Development Institutions (RDI) directly negotiates agreements for the commercialization of IPs**
- c. In the creation of spin-off firm or company.**

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INSTANCES WHEN FOR IS NOT MANDATORY

- a. government extension programs as defined and determined by the RDI;**
- b. training services as defined and determined by the RDI;**
- 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.**

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INSTANCES WHEN FOR IS NOT MANDATORY

Other Modes of Commercialization

- a. Public Bidding**
- b. Direct Negotiation**
- c. Build-operate-transfer scheme**
- d. Other similar and/or analogous modes**

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WHERE TO APPLY FOR?

Any of the following conditions:

- 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**

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FAIRNESS OPINION REPORT – REQUIRED DOCUMENTS

- a. Proposed Transaction**
- b. Financial Documents to prove financial capability of the Transferee**
- c. Documents relating to IP protection**
- d. Documents to support legal, social, environmental, or other impact of the proposed transaction**
- e. Background Documents of the parties to the transaction**

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MEMBERSHIP OF THE FOB

- a. DOST Secretary shall constitute the Board thru a Special Order**
- 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, which shall be notarized**

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FUNCTIONS OF THE FOB

- a. Determine the date, venue, and frequency of the meetings**
- b. Review the written request and all supporting documents**
- c. Render opinion as to the fairness to the GFA or RDI concerned of the proposed transaction**
- d. Shall complete and submit FOR to the requesting party in no more than 15 working days**
- e. All requests for FOR, including all documents received shall be kept confidential**
- f. Perform other functions relevant to the mandate of the FOB as may be necessary**

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FAIRNESS OPINION REPORT - CRITERIA

- a. Financial capability of the Technology Transferee and its ability to sustain the production of products, adoption of process and rendering of services;**
- b. Competitive position of the Technology Transferee; and**
- c. Marketability of the product or service that shall be produced from the subject technology**

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FAIRNESS OPINION REPORT - CONTENT

- 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**

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CONFLICT OF INTEREST

a. Conflict of Interest of Regional Office

- When RO is the GFA and/or RDI of the technology
- DOST Secretary to appoint another RO as the FOB Secretariat

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CONFLICT OF INTEREST

b. Conflict of Interest of FOB Member

- The member is a shareholder, director, officer, consultant, or employee of the funding agency, the technology generator/researchers, or the technology adoptor;**
- The member is a relative within 4th degree of consanguinity or affinity of the funding agency, the technology generator/researchers, or the technology adoptor;**
- Has financing, pecuniary or adverse interest or personal gain in the proposed transaction;**

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CONFLICT OF INTEREST

b. Conflict of Interest of FOB Member

- **Member is involved in the development of competing technology or is a shareholder, director, officer, consultant or employee of a competing company;**
- **Member is involved in pre-commercialization activities of the technology such as generation of IP valuation, Freedom to Operate report, IP searching, drafting and application, and other consultancy services.**

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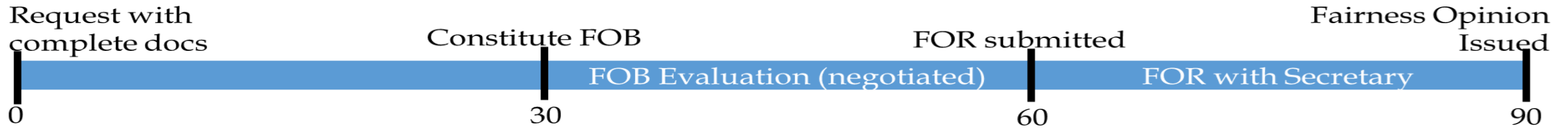
Article 4, Section 5

“ “ Nothing in this Guidelines shall be interpreted to mean that the FOR as a clearance for the proposed transaction.

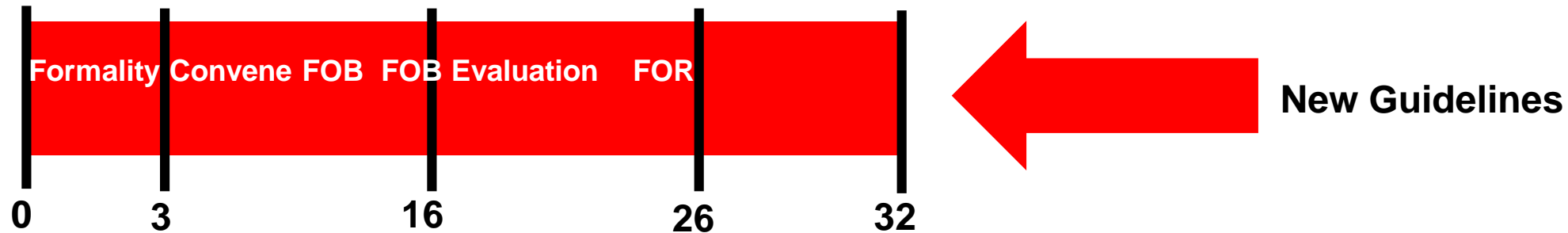
The FOR only serves as the opinion of the FOB on the terms and conditions of the proposed transaction.

ROUTES TO ISSUANCE OF FAIRNESS OPINION REPORT

Prior to Implementation of Amended IRR of RA 10055 TAPI as FOB Secretariat (90 calendar days)



Implementation of Amended IRR of RA 10055 DOST Regional Offices as FOB Secretariat (32 working days)



Direct Licensing

Licensing through Spin-off Firm

**Spin-off firm refers to a juridical entity that is an independent business technology taker with a separate legal personality form the GFA, RDI and researcher created through the initiative of the researcher-employee who generated the technology.*

The researcher-employee involved is a decision maker in the spin-off firm.