



Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY

OFFICE OF THE SECRETARY

APR 22 2016

Memorandum Circular No. 003
Series of 2016

SUBJECT: Direct Licensing and Spin-off Terms under the Electronics Industry that would be Considered as "Fair" to the Government Funding Agency (GFA) and/or Research and Development Institute (RDI) for Fast Tracked Issuance of Fairness Opinion Report (FOR) under Republic Act No. 10055, otherwise known as the "Philippine Technology Transfer Act of 2009"

Per the recommendation of the Industry-based FOB duly constituted for the Electronics Industry pursuant to DOST Special Order No. 172 s. 2016 dated 21 March 2016, the following requirements and terms shall be considered "**FAIR**" to the GFA and/or RDI for fast tracked issuance of FOR:

A. FOR DIRECT LICENSING

(1) Basic Requirements

The following requirements must be satisfied before the proposed transaction shall be assessed:

Cost of developing the technology (R&D Cost) OR Value of the technology:

- Not exceeding P2,000,000

Types of IP:

- Patents, UMs, Industrial Designs (IDs) and Trade Secrets

Eligibility of Licensee:

- a. If Sole Proprietor:
 - Registered at the Department of Trade and Industry (DTI)
 - Filipino citizen
 - Equity at least equivalent to the cost of developing the technology (R&D Cost) or Value of the technology but not below P 500,000.00
 - With existing facilities
 - At least three (3) years of existence

- b. If a corporation, partnership or cooperative:
 - Registered with the SEC
 - Domestic
 - Equity at least equivalent to the cost of developing the technology (R&D Cost) OR Value of the technology but not below P 1,000,000.00
 - With existing facilities
 - At least three (3) years of existence

(2) Terms of the proposed transaction

The following terms shall be the basis in the determination if the proposed transaction can be declared as "Fair" to the GFA or to the RDI, on the condition that the licensing agreement contains performance milestones:

Financial terms:

- a. Royalty rates: At least 2% from the gross sales.
- b. Licensing fee: At least 2% of the cost of developing the technology (R&D Cost).

Exclusivity:

- Non-Exclusive (with or without field of use or geographic limitation)

Sub-licensing: With written consent/upon the discretion of the Licensor

Effectivity / Term:

- a. For Patents and Trade Secrets: At least five (5) years, renewable
- b. For UMs and IDs: At least three (3) years or the Life of the UM/ID

B. FOR SPIN-OFFS

(1) Basic Requirements

The following requirements must be satisfied before the proposed transaction shall be assessed:

Cost of developing the technology (R&D Cost) OR Value of the technology:

- Not exceeding P2,000,000

Types of IP:

- Patents, UMs, Industrial Design and Trade Secrets

Eligibility of Licensee:

- a. Who can spin-off
 - Researcher or any member of the research team
 - Employee / still in the service with the RDI during the license period
- b. Type of spin-off: Corporation or partnership, without government funding support; government support may come in the form of Technology Business Incubator (TBI) space/facility. Draft articles of incorporation or partnership should be attached together with the proposed business plan
- c. Capitalization equity: At least equivalent to the cost of the technology (R&D cost), or value of the technology, or value of the transaction; but not below P500,000.00.
- d. FOR request should also contain secondment/leave form, and an indication from RDI that researcher will be allowed. Researcher/member of research team to present leave of absence¹ and waiver by RDI of conflict of interest.²

Start up companies are subject to full blown FOB evaluation.

¹ See RA 10055 IRR, Chap. VI, Rule 16

² See RA 10055 IRR, Chap. VI, Rule 18



(2) Terms in the proposed transaction

The following terms shall be the basis in the determination if the proposed transaction can be declared as "Fair" to the GFA or to the RDI:

Financial terms:

- a. Royalty rates: At least minimum of industry rate.
- b. Upfront fee: not required

Exclusivity:

- Non-Exclusive (with or without field of use or geographic limitation). If exclusive without field of use or geographic limitations – Full scale FOB evaluation.

Effectivity / Term:

- a. For Patents and Trade Secrets: At least five years , renewable
- b. For UMs and IDs: At least three years or the lifetime of the UM/ID

This Circular shall take effect immediately after its complete publication in the Official Gazette or newspaper of general circulation and upon filing at the UP Law Center in accordance with law.


MARIO G. MONTEJO
Secretary