



Republic of the Philippines  
DEPARTMENT OF SCIENCE AND TECHNOLOGY

OFFICE OF THE SECRETARY

AUG 12 2016

Memorandum Circular No. 009

**SUBJECT: Direct Licensing and Spin-off Terms under the Information Technology 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 Information Technology Industry pursuant to DOST Special Order No. 170 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. SCOPE:**

Software or a combination of Software and Hardware including networking.

**B. 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):**

- If software – Not exceeding P2,000,000.00
- If combination of software and hardware including networking – Not exceeding P10,000,000.00

**Types of IP:** Patents, UMs and Copyright

**Eligibility of Licensee:**

- a. If Sole Proprietor:
  - Registered at the DTI
  - Filipino citizen
  - Equity at least equivalent to the cost of developing the technology (R&D cost) but not below P500,000.00. Submission of the latest Audited Financial Statements or Income Tax Return is required.
  - With established facilities
  - At least three (3) years of existence
- b. If a corporation or cooperative:
  - Registered at the SEC/CDA
  - Domestic with at least 60% Filipino ownership.

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**MR. JHOVEN G. LITANA**  
RECORDS OFFICER  
DEPARTMENT OF SCIENCE AND TECHNOLOGY

Postal Address: P.O. Box 3596 Manila  
Cable Address: Science Manila  
Telex No. (75) 66819

Head Office: Bicutan, Taguig, Metro Manila  
Tel. Nos. 837-2939 (DL) 837-20-71 to 82 (TL)  
Fax. no. 837-29-37

- Paid-up capital twice the cost of developing the technology (R&D cost) but not below P1,000,000.00.
- With established facilities
- At least three (3) years of existence

**(2) Terms in the proposed transaction**

The following terms shall be the basis in the determination whether the proposed transaction is fair or not fair to the GFA or to the RDI:

**Financial terms:**

- a. Licensing fee (Upfront): At least 3% of the cost of technology.
- b. Royalty rates: At least 3% from the gross sales.

**Exclusivity:**

- a. Field of use: Non-exclusive
- b. Geographic territory: Limited to Philippine territory

**Sub-licensing:** With written consent of the Licensor

**Effectivity/ Term:**

- a. For patents: Five (5) years renewable
- b. For UMs: Life of the UM
- c. For copyright: Five (5) years renewable

**(3) Others**

Subject to submission of all required documents.

**C. FOR SPIN-OFFS**

**(1) Basic Requirements**

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

**Cost of technology:** Not exceeding P2,000,000.00

**Types of IP:** Patents, UMs and Copyrights

- a. **Eligibility of Licensee:** Who can spin-off
  - Researcher or any member of the research team
  - Employee / still in the service with the consent of the employer
- b. **Type of spin-off:** Partnership, Corporation or Cooperative 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. **Paid-up capital:** At least equivalent to the cost of the technology but not below P500,000.00.

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**(2) Terms in the proposed transaction**

The following terms shall be the basis in the determination whether the proposed transaction is fair or not fair to the GFA or to the RDI:

**Financial terms:**

- a. Licensing fee (Upfront): At least 3% from the cost of the technology.
- b. Royalty rates: At least 3% from the gross sales.

**Exclusivity:**

- a. Field of use: Non-exclusive
- b. Geographic territory: Limited to Philippine territory

**Effectivity / Term:**

- a. For patents: Five (5) years renewable
- b. For UMs: Life of the UM
- c. C. For copyright: Five (5) years renewable

**(3) Others**

Subject to submission of all required documents.

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.

  
**FORTUNATO T. DELA PEÑA**  
Secretary

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**MR. JHOVEN G. LITANA**  
RECORDS OFFICER

DEPARTMENT OF SCIENCE AND TECHNOLOGY

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