

APR 26 2016

Memorandum Circular No. 007
Series of 2016

Subject: GUIDELINES ON THE FAST-TRACKED ISSUANCE OF FAIRNESS OPINION REPORT (FOR) UNDER REPUBLIC ACT (R.A.) NO. 10055 OTHERWISE KNOWN AS THE "PHILIPPINE TECHNOLOGY TRANSFER ACT OF 2009"

ARTICLE I RATIONALE AND OBJECTIVE

Section 1. This Guidelines is formulated in order to accelerate the issuance of Fairness Opinion Report (FOR) from the period of at most ninety (90) days from the receipt of the formal request with complete requirements, to at least ten (10) days from the receipt of the formal request with complete requirements.

Section 2. The intention of this Guidelines is to fast track the release of a fairness opinion by the DOST Secretary with regards the proposed direct licensing transaction between a Government Funding Agency (GFA) or a Research and Development Institute (RDI) as the Licensor, and an individual or entity that has an interest to commercialize a technology as the Licensee.

Section 3. This Guidelines shall also be applicable to proposed spin-off in accordance with R.A. No. 10055.

ARTICLE II CONSTITUTION OF FAIRNESS OPINION BOARD (FOB) PER INDUSTRY

Section 1. In accordance with Articles III.2d and IV.5 of the DOST Memorandum Circular No. 003 s. 2015 entitled "Guidelines on the Constitution of the Fairness Opinion Board (FOB) and the Issuance of Firmness Opinion Report (FOR) under Republic Act No. 10055 otherwise known as the Philippine Technology Transfer Act of 2009" dated September 15, 2015, a specialized FOB may be convened for every industry specifically for the purpose of the fast-tracked issuance of FOR. This specialized FOB shall be termed as "Industry-Based FOB".

Section 2. The Members of the Industry-Based 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 the Industry-Based FOB shall be constituted by the DOST Secretary through Special Order (SO) who will serve for a period depending on his discretion. The DOST Secretary may change any member or the members of the Industry-Based FOB per industry as may be necessary to maintain its independence and impartiality.

Section 3. The Industry-Based FOB shall advise the DOST Secretary on the following:

- (1) Requirements that must be satisfied before a proposed transaction may qualify for possible fast-tracked issuance of FOR;
- (2) Terms that shall be considered in the determination as to whether the proposed transaction is fair to the GFA or the RDI; and
- (3) Other requirements that may be determined by the Industry-Based FOB.

Section 4. The Industry-Based FOB may also evaluate proposed transactions that fall under its industry, as may be recommended by the Secretariat upon its evaluation in accordance with this Guidelines.

Section 5. The DOST Secretary shall change the members of the Industry-Based FOB in any industry and constitute a new FOB in accordance with DOST Memorandum Circular No. 003 s. 2015 dated September 15, 2015 in the following cases:

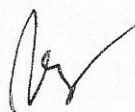
- (1) where a quorum cannot be established due to conflict of interest of any of the Members;
- (2) where a quorum cannot be ensured due to prior long-term commitment of any of the Members; or
- (3) as the DOST Secretary may deem fit in order to maintain the independence and impartiality of the Industry-Based FOB.

Section 6. The Technology Application and Promotion Institute, as the Secretariat, shall advise the DOST Secretary on which industries or kinds of technologies in an industry may be suitable for FOB constitution or for fast-tracked issuance of FOR.

ARTICLE III REQUIREMENTS TO FAST-TRACK THE ISSUANCE OF FAIRNESS OPINION REPORT (FOR)

Section 1. The following shall be required in the fast-tracked issuance of FOR:

- (1) Submission of complete documentary requirements as stated in Article VI.1 of DOST Memorandum Circular No. 003 s. 2015 dated September 15, 2015; and
- (2) Satisfaction of the requirements and terms as determined by the Industry-Based FOB to be fair to the GFA or RDI per Section 3, paragraph (2) above, wherein said terms are in the proposed transaction.



Section 2. The Industry-Based FOB may submit a provisional FOR subject to the fulfillment of the preceding section *sans* submission of complete documents under any of the following instances:

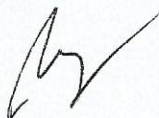
- (1) In the event that a duly-constituted Industry-Based FOB is convened for a public negotiation activity, such as Technology Transfer Fair where technologies are pitched and directly offered to investors and proposed transactions are sealed by licensing parties even without the submission of the formal documentary requirements; or
- (2) Any other urgent instances as may be determined by the DOST, through the Secretary and as recommended by the Secretariat.

Section 3. In case a provisional FOR is issued by an Industry-Based FOB, the requesting party shall submit the complete documentary requirements as stated in Article VI.1 of DOST Memorandum Circular No. 003 s. 2015 dated September 15, 2015, within thirty (30) days from the sealing of the proposed transaction, before a formal and final FOR is rendered by the Industry-Based FOB and issued by the DOST Secretary.

ARTICLE IV OPERATING PROCEDURES IN THE FAST-TRACKED ISSUANCE OF FAIRNESS OPINION REPORT (FOR)

Section 1. Upon compliance with the requirements for the fast-tracked issuance of FOR, including the terms set by the Industry-Based FOB, the following operating procedures shall be observed:

- (1) Requesting party submits to the DOST Secretary, through the FOB Secretariat, a request for the issuance of a Fairness Opinion Report, together with the necessary documents.
- (2) Secretariat receives the request and performs a formality examination to determine the completeness of the documents.
- (3) Secretariat examines the relevant terms of the proposed transactions. If the terms fit the minimum terms determined by the Industry-Based FOB to be fair to the GFA or RDI, the Secretariat convenes the Industry-Based FOB.
- (4) Industry-based FOB decides if it or any of its members has a conflict of interest with the present case. If it can proceed, the Industry-Based FOB assesses the proposed transaction and its supporting documents, as well as the Secretariat's assessment. In the event of a conflict of interest a new FOB has to be constituted.



- (5) If the proposed terms match the terms for fairness set by the Industry-Based FOB, the Industry-Based FOB renders an FOR for the DOST Secretary's consideration in issuing a formal fairness opinion.
- (6) If the Industry-Based FOB finds that the terms are outside the terms for fairness set by it, it decides if it can accept the present case or recommend a new FOB to be convened.
- (7) If the Industry-Based FOB cannot accept the present case, a new FOB specific to the proposed transaction shall be convened for a full review of the said proposed transaction.

Section 2. If, upon examination, the relevant terms of the proposed transaction do not match the terms set by the Industry-Based FOB to be fair to the GFA or RDI, FOB Secretariat shall immediately proceed pursuant to DOST Memorandum Circular No. 003 s. 2015 dated September 15, 2015.

ARTICLE V CONFIDENTIALITY AND CONFLICT OF INTEREST

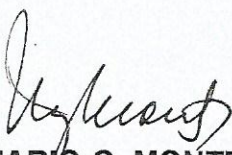
Section 1. Members of the Industry-Based FOB shall ensure the confidentiality of all information that they will obtain and the absence of conflict of interest during their term.

Section 2. In the event that the Industry-Based FOB shall receive an actual request for FOR and a Member believes that a conflict of interest may arise from the said proposed transaction, said Member shall immediately inform the DOST Secretary through the FOB Secretariat.

ARTICLE VI EFFECTIVITY

Section 1. This Guidelines does not supersede DOST Memorandum Circular No. 003 s. 2015 dated September 15, 2015:

Section 2. This Guidelines shall take effect immediately upon publication in a newspaper of general circulation. The required copies of this Guidelines shall be submitted to the UP Law Center in accordance with law.


MARIO G. MONTEJO
Secretary