

Fairness Opinion Board

Guidelines and Status of Implementation

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Outline

- Rationale
- Membership of the FOB
- Functions of the FOB
- Instances When FOR is Mandatory
- Contents of the FOR
- Operating Procedures
- Actual cases
- Fast-tracked FOR Issuance



[REPUBLIC ACT No. 10055]



Basis

AN ACT PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY GENERATED FROM RESEARCH AND DEVELOPMENT FUNDED BY GOVERNMENT AND FOR OTHER PURPOSES



**DEPARTMENT OF SCIENCE
AND TECHNOLOGY**



**INTELLECTUAL PROPERTY
PHILIPPINES**

JOINT DOST-IPO ADMINISTRATIVE ORDER NO. 02-2010

THE IMPLEMENTING RULES AND REGULATIONS
OF
REPUBLIC ACT NO. 10055



Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY

OFFICE OF THE SECRETARY

TAPI RECORD

SEP 15 2015

Memorandum Circular No. 003
Series of 2015

Subject: 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



DEPARTMENT OF SCIENCE
AND TECHNOLOGY



INTELLECTUAL PROPERTY
PHILIPPINES

Basis

JOINT DOST-IPO ADMINISTRATIVE ORDER NO. 02-2010

THE IMPLEMENTING RULES AND REGULATIONS
OF
REPUBLIC ACT NO. 10055

RULE 11. *Fairness Opinion Report*

Section 1. *Commercialization by the GFA.* When the GFA assumes commercialization of the IPs, it shall, subject to existing laws requiring transparency and accountability, the Commission on Audit (COA) Rules and Regulations and as required under Article IX, Section 20 of the Act, be allowed to directly negotiate agreements for the commercialization of IPs: *Provided, further,* That it shall obtain a written recommendation from the Secretary of the Department of Science and Technology (DOST) and secure a fairness opinion report from an independent third party body composed of experts from the public and private sectors as may be determined by the DOST.

The fairness opinion report shall contain a statement expressing the opinion of the body as to the fairness to the GFA of the proposed transaction, particularly its financial terms. The report 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; *Provided, however,* That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.



Membership of the FOB

Three experts:

- From public and private sectors
- At least one from the private sector
- Constituted by the DOST Secretary through Special Order on a per written request basis



Functions of the FOB

- Review/Evaluate relevant documents submitted by requesting parties and independent information obtained related to the request for FOR.
- Determine the date, venue, and frequency of the meetings, and to require other requirements.
- Render opinion as to the fairness of the proposed transaction to the GFA or RDI.
- Perform other functions relevant to the mandate of the FOB as may be necessary.



Membership of the FOB Secretariat

Engr. Edgar I. Garcia, TAPI Director

Atty. Marion Ivy D. Decena, Chief, IDD

Mr. Caezar Angelito E. Arceo, Supv. SRS, IDD

Engr. Richelle D. Cahanap, SRSII, IDD

Support Staff:

Ms. Rose Marthy Bongon



Instances When FOR is Mandatory

- When the GFA has assumed ownership over IP and decides to directly negotiate the agreement for the commercialization of the IP.
- When the public RDI decides to directly negotiate the agreement for the IP commercialization.
- When the private RDI is required to secure a FOR by the GFA which has a share in the revenue.
- In case of spin-off, prior to the incorporation of the spin-off company.
- Other instances as may be determined by the DOST.



Contents of the FOR

- FOB opinion on the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms.
- Recommendations on the proposed transaction.
- All citations, references and all supporting documents.
- A certification and verification signed by all members of the FOB as to the foregoing.



Operating Procedures: Usual route

Request for FOR



Constitution of FOB



Submission of FOR



**Issuance of
Fairness Opinion**

Involved: FOB Secretariat

Duration: Day 0 to 10

Required documents:

- Proposed transaction
- Valuation report
- Due diligence report on the parties to the transaction
- Background documents re: prospective transferee
- List of potential recommendees for FOB membership



Operating Procedures: Usual route

Request for FOR



Constitution of FOB



Submission of FOR



**Issuance of
Fairness Opinion**

**Involved: FOB Secretariat;
DOST Secretary**

**Duration: Within 30 days from
receipt of complete documents**

**Secretariat shall initially
convene the FOB to determine
the dates, venue, and frequency
of the meetings and other
administrative requirements.**

**FOB may obtain independent
information for evaluation.**

**Signing of Statement of
Confidentiality and No Conflict
of Interest**



Operating Procedures: Usual route

Request for FOR



Constitution of FOB



Submission of FOR



**Issuance of
Fairness Opinion**

Involved: FOB Secretariat; FOB

**Duration: Within 60 days from
the signing of Special Order**

**Secretariat shall prepare and
consolidate the FOR for FOB's
approval.**

FOR's contents:

- **Statement expressing the
FOB's opinion as to the
fairness to the GFA or RDI of
the proposed transaction**
- **Recommendations re:
revision of certain provisions**
- **Others as already mentioned.**



Operating Procedures: Usual route

Request for FOR



Constitution of FOB



Submission of FOR



**Issuance of
Fairness Opinion**

Involved: DOST Secretary

**Duration: Within 60 days from
the signing of Special Order**

**Secretary to issue the fairness
opinion.**



Actual Cases

1. arQ technology of ASTI

TAPI's code: FOB-2015-001

Licensors: DOST-ASTI

Licensee: ACE

Request received: 01 Oct 2015

FOB convened: 16 Nov 2015

FOR submitted to SMGM: 11 Jan 2016

FOB members:

- Atty. Bayani F. Loste, Fortun Narvasa Salazar
- Mr. Noel A. Catibog, PCAARRD
- Mr. Jerry C. Serapion, PhilRice

Note: All are registered Philippine patent agents and directors of the Association of PAQE Professionals, the sole association of patent agents in the Philippines.





Actual Cases

1. arQ technology of ASTI



Interview with the Licensor



Interview with the Licensee



Actual Cases

2. Biotek-M

TAPI's code: FOB-2015-002

Licensors: UP

Licensee: Manila Tek, Inc.

Request received: 11 Dec 2015

FOB convened: 12 Jan 2016

FOR: 12 Feb 2016



FOB members:

- **Atty. Editha R. Hechanova, Hechanova Bugay Vilchez Arcadio-Recadio; registered Phil. patent agent and Director, APP**
- **Dr. Lawrence L. Ilag, USAID-STRIDE, US patent attorney**
- **Mr. Ronilo Violanta, UPLB-BIOTECH, Technology Valuator**



Actual Cases

2. Biotek-M



Interview with the Licensee



Actual Cases

3. Emergency Food Reserve

TAPI's code: FOB-2016-003

Licensors: ITDI

Licensee: CHEERS

Request received: 22 February 2016

FOB convened: 05 April 2016

FOR: 18 May 2016

FOB members:

- **Atty. Anne Mariae Celeste V. Jumadla, RevolPMente**
- **Ms. Maria Divina D. Alcasabas, Technology Plus**
- **Dr. Marissa V. Romero, Philippine Rice Research Institute**



Actual Cases

3. CHEERS



Interview with the Licensee



Actual Cases

4. Polyvinyl Pyrrolidone Carrageenan Hydrogel

TAPI's code: FOB-2016-004

Licensors: PTRI

Licensee: Threetwoone Ventures Inc.

Request received: 27 April 2016

FOB convened: 27 April 2016

FOR: 27 June 2016

FOB members:

- Atty. Leonides M. Madrilejo, Sapalo Velez Bundang & Bulilan
- Dr. Lawrence L. Ilag, USAID-STRIDE, US Patent Attorney
- Dr. Judilynn N. Solidum, UP Manila





Fast-Tracked FOR Issuance

Convened seven FOBs for the following industries:

1. Agriculture
2. Electronics
3. Electrical and Energy
4. Pharmaceuticals
5. Food and Beverages
6. Information Technology
7. Chemical Industries



Fast-Track FOR Issuance

Agriculture





Fast-Track FOR Issuance

Electronics





Fast-Track FOR Issuance

Pharmaceutical and Electrical/Energy





Fast-Tracked FOR Issuance



Food and Beverage



Fast-Tracked FOR Issuance



Chemical



Fast-Tracked FOR Issuance



Information Technology

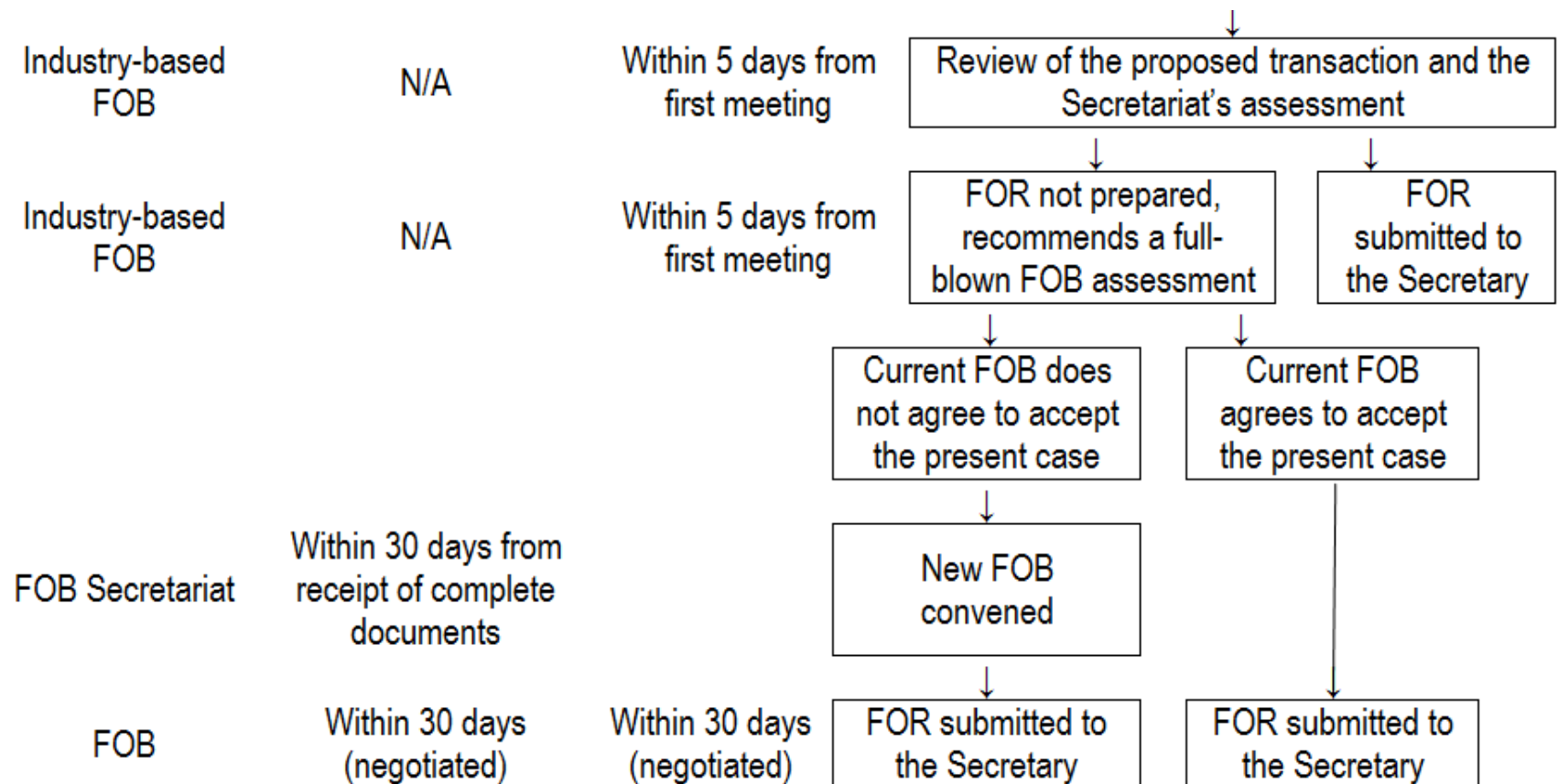


Fast-Track FOR Issuance

<u>INVOLVED</u>	<u>USUAL PERIOD</u>	<u>ACCELERATED</u>	<u>PROCESS</u>
Requesting Party	--	--	Request received
FOB Secretariat	1 day	Within 1 day	↓ Formality examination
FOB Secretariat	N/A	1-3 days from receipt of complete requirements	↓ Assessment if the proposed terms match the ideal terms set by the FOB in the industry
FOB Secretariat/ Industry-based FOB	N/A	Within 5 days from receipt of request, depending on experts' availability	↓ Industry-based FOB is convened to decide if the proposed terms matched the ideal terms and if there are other issues to consider, such as other aspects of the proposed transaction and conflict of interest.
Industry-based FOB	N/A	Within 5 days from first meeting	↓ Review of the proposed transaction and the Secretariat's assessment
Industry-based FOB	N/A	Within 5 days from first meeting	↓ FOR not prepared, recommends a full-blown FOB assessment
			↓ FOR submitted to the Secretary



Fast-Tracked FOR Issuance





Actual Cases

Fast-tracked FOR Issuance: First DOST Technology Transfer Day

Industry	Agreements	Fast-tracked FOR Issued
Agriculture	1	1
Food and Beverage	12	4
Pharmaceuticals	1	-



Technology Transfer Day

27 April 2016, Sofitel Hotel, Pasay City





Thank You!
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