

[REPUBLIC ACT NO. 10055, March 23, 2010]

**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**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

ARTICLE I

**TITLE, DECLARATION OF POLICY AND OBJECTIVE, SCOPE AND OTHER
GENERAL PROVISIONS**

SECTION 1. *Short Title.* — This Act shall be known as the "Philippine Technology Transfer Act of 2009".

SEC. 2. *Declaration of Policies and Principles.* — The State fully recognizes that science, technology and innovation are essential for national development and progress. It shall, therefore, give priority to research and development, invention, innovation and their utilization. It shall also encourage the widest and most systematic participation of all stakeholders in policy-making related to science and technology, and in the generation, transfer and utilization of intellectual property, especially for the benefit of the general public.

The State shall facilitate the transfer and promote the utilization of intellectual property for the national benefit and shall call upon all research and development institutes and/or institutions (RDIs) that perform government-funded research and development (R&D) to take on technology transfer as their strategic mission and to effectively translate results of government-funded R&D into useful products and services that will redound to the benefit of Filipinos, notwithstanding the income generated from intellectual property rights (IPRs) and technology transfer activities.

The State acknowledges that the successful transfer of government-funded R&D results depend on the proper management of intellectual property, development of capacity by RDIs to become self-sustaining and competitive, and on enhancing interaction and cooperation with the private sector, particularly small and medium enterprises through collaborative and contract research based on equitable, fair access, and mutual benefit for all involved partners.

The State shall establish the means to ensure greater public access to technologies

and knowledge generated from government-funded R&D while enabling, where appropriate, the management and protection of related intellectual property-

SEC. 3. *Objective.* — This Act aims to promote and facilitate the transfer, dissemination, and effective use, management, and commercialization of intellectual property, technology and knowledge resulting from R&D funded by the government for the benefit of national economy and taxpayers.

SEC. 4. *Definition of Terms.* — For purposes of this Act:

- a. "Intellectual Property (IP)" is the term used to describe intangible assets resulting from the creative work of an individual or organization. IP also refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images and designs used in commerce.
- b. "Intellectual Property Rights (IPRs)" refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines".
- c. "Potential IPRs" refer to intellectual property, or the products of creation and research that form the subject matter of IPRs, but which are not yet protected by the statutory grant of IP rights.
- d. "Protection of IPs" refers to the statutory grant of rights upon which the basis of enforcing the right rests, such as issuance of patents; registration of utility models, industrial designs, and trademarks or availment of protection of undisclosed information and other rights as may be provided by law. "Protected IPs", therefore may refer to issued or pending patents; registered utility models, industrial designs and trademarks.
- e. "IP Code" refers to Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines".
- f. "Intellectual Property Rights Management" refers to the principles, mechanisms and processes involved in the identification, assessment, protection, utilization and enjoyment of intellectual property rights.
- g. "Government Funding Agency (GFA)" refers to any government agency or instrumentality, or government-owned and/or -controlled corporation that provides research grants and other technical and material support, from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds.
- h. "Parent Agency" refers to the Department or agency, which exercises the power of control or supervision over the GFAs, RDIs or RDI acting as the GFA itself. In general, where multiple GFAs are involved, the department or agency, which has the largest financial contribution, shall be deemed as the parent agency, except as may otherwise be specifically provided by this Act.
- i. "Research and Development Institute or Institution (RDI)" refers to a public or private organization, association, partnership, joint venture, higher education institution or corporation that performs R&D activities and is duly registered and/or licensed to do business in the Philippines, or otherwise with legal personality in the Philippines. In the case of private RDIs, they shall be owned solely by the citizens of the Philippines or corporations or associations at least sixty *per centum* (60%) of the capital of which is owned by such citizens. This does not include RDIs covered by international bilateral or multilateral agreements.

- j. "Research Funding Agreement" refers to a contract entered into by and among the GFA and other funding agencies and the RDI. It governs ownership of IP, duties and responsibilities of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization, establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization.
- k. "Research Agreement" refers to a contract entered into by RDIs and researchers, including the agreements between the RDI and collaborating RDIs.
- l. "Researcher" refers to a natural person who is engaged by the RDI by employment or other contract, to conduct research with or for the RDI.
- m. "Spin-off firm or company" refers to a juridical entity that is an independent business technology taker with a separate legal personality from the GFA, RDI and researcher created through the initiative of the researcher-employee who generated the technology.
- n. "Technology" refers to knowledge and know-how, skills, products, processes, and/or practices.
- o. "Technology transfer" refers to the process by which one party systematically transfers to another party the knowledge for the manufacture of a product, the application of a process, or rendering of a service, which may involve the transfer, assignment or licensing of IPRs.
- p. "Commercialization" refers to the process of deriving income or profit from a technology, such as the creation of a spin-off company, or through licensing, or the sale of the technology and/or IPRs.
- q. "Revenue" refers to all monetary and non-monetary benefits derived as a result of the development, production, transfer, use and/or commercialization of IPRs, including income from assignments and royalties from licenses.
- r. "Research and Development (R&U)" refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications.

SEC. 5. *Coverage.* —

- a. All R&D activities carried out on behalf and for the interest of the Philippine government by RDIs receiving grants directly from the GFAs;
- b. All intellectual property rights derived from R&D activities funded by government;
- c. All government agencies that fund R&D activities as well as provide financial, technical or material support to such R&D activities; and
- d. All institutions that implement government funded R&D.

ARTICLE II

INTELLECTUAL PROPERTY OWNERSHIP

SEC. 6. *Ownership of Intellectual Property and Intellectual Property Rights.* — The

ownership of IPs and IPRs shall be governed by the following:

- a. In recognition of the fact that RDIs are in a better position to identify the potential for economic utilization of IPs and IPRs subject to their possession of the right skills and management capability, the ownership of IPs and IPRs derived and generated from research funded by the GFA, whether such funding is in whole or in part, shall, in general, be vested in the RDI that actually performed the research, except in any of the following circumstances:
 1. When the RDI has entered into a public, written agreement sharing, limiting, waiving or assigning its ownership of the IPs or IPRs generated from its research in favor of the GFA: *Provided*, That the same may only be voluntarily executed by the RDI to protect public interest, and in particular involves national security, nutrition, health, or the development of other vital sectors;
 2. In case of failure of the RDI to disclose potential IPRs to the GFA, whereupon the GFA shall assume the rights to the potential IPR;
 3. In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the GFA, which shall in no case exceed three (3) months from public disclosure, whereupon the GFA shall assume the rights to the potential IPR; and
 4. In case the RDI ceases to become a Filipino corporation as defined in Article I, Section 4(i) of this Act.
- b. In case of collaborative research where two (2) or more RDIs conducted the research funded by the GFA, the RDIs shall own the IPRs jointly or as otherwise stipulated in the research agreement between them: *Provided*, That any research agreement between RDIs and other funding entities shall be made with the full knowledge of the GFA: *Provided, further*, That the agreement shall strictly be in accordance with the provisions of this Act.
- c. Nothing in this Article shall modify, amend, derogate or prejudice IPs that will be owned by employees of the RDIs under the IP Code and other existing laws.

ARTICLE III

RIGHTS AND RESPONSIBILITIES OF THE GOVERNMENT FUNDING AGENCIES AND RESEARCH AND DEVELOPMENT INSTITUTES OR INSTITUTIONS

SEC. 7. Rights and Responsibilities of a Government Funding Agency. — Under this Act, the GFA shall:

- a. Protect government interest in the IPs and IPRs generated from the R&D that it funded through suitable provisions in the research funding agreement. The GFA is authorized to withhold from public disclosure, for a reasonable time, any information relating to potential IPR of the RDI, to allow the RDI to pursue full protection of such IPR;

- b. Monitor efforts and effectiveness of the RDI in securing IP protection and pursuing IP commercialization, as well as provide alternative solutions and assistance in case of shortfall in the RDI's performance in protecting, utilizing and commercializing the IP;
- c. Ensure adequate freedom to use the IP for further research to expand the knowledge frontier and requirements for publication of information as appropriate in accordance with government policy or academic policy, or institutional mandate of the RDI; and
- d. Allow sharing of revenues from IP commercialization in a way that is not onerous to commercialization: *Provided*, That 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 this 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.

SEC. 8. *Rights and Responsibilities of the RDIs.* — The following are the rights and responsibilities of the RDIs that availed of research funds from GFAs:

- a. Identify, protect, and manage the IPs generated from R&D funded by the GFA and pursue commercial exploitation diligently as a required performance stipulated in the research funding agreement and as allowed by this Act and other applicable laws.

In case of commercialization by public RDIs, it shall, subject to existing laws requiring transparency and accountability, the COA Rules and Regulations and as required under Article IX, Section 20 of this Act, be allowed to directly negotiate agreements for the commercialization of IPs: *Provided*, That it shall obtain a written recommendation from the Secretary of the 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 RDI of the proposed transaction, particularly its financial terms. The report shall include, but must not be limited to, the provisions in Section 7(d), Paragraph 2: *Provided, however*, That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.