

Content

Title :	Government Scientific and Technological Research and Development Results Ownership and Utilization Regulation <a href="#">Ch</a>
Date :	2018.01.05
Legislative :	<ol style="list-style-type: none"><li>1. Promulgated in Executive Yuan Order Tai 89 Ko-Tzu No. 05913 of Feb. 25, 2000</li><li>2. Revision promulgated in Executive Yuan Order Ko-Tzu No. 0920000403 of Mar. 12, 2003</li><li>3. Revision promulgated in Executive Yuan Order Ko-Tzu No. 0950080312 of Jan. 12, 2006</li><li>4. Revision promulgated in Executive Yuan Order Ko-Tzu No. 1010131156 of Jun. 11, 2012</li><li>5. Revision promulgated in Executive Yuan Order Ko-Tzu No. 1060040507 of Jan. 5, 2018</li></ol>
Content :	<p><b>Article 1</b></p> <p>These regulations have been drafted in accordance with Article 6, Paragraph 3 of the Fundamental Science and Technology Act (henceforth "this Act").</p> <p><b>Article 2</b></p> <p>Definitions of terms used in these regulations:</p> <ol style="list-style-type: none"><li>1. Scientific and technological research and development results (henceforth "R&amp;D results"): Intellectual property rights and results derived from scientific and technological research and development projects funded, commissioned, or invested from the scientific and technological project budget of a government agency (organization).</li><li>2. Funding agency: Any government agency (organization) that enters into scientific and technological research and development project contracts with R&amp;D implementing units via a funding, commissioning, or investing approach.</li><li>3. R&amp;D implementing unit: Any public school, public research agency (organization), government-operated enterprise, juristic person or organization that implements scientific and technological R&amp;D projects.</li><li>4. Income derived from R&amp;D results: All licensing fees, royalties, purchase fees, equity, or other rights and interests derived from management and utilization of R&amp;D results by the funding agency or R&amp;D implementing unit.</li><li>5. Proprietary interests:<ol style="list-style-type: none"><li>(1) Personal property and real property.</li><li>(2) Cash, deposits, foreign currencies, and marketable securities.</li><li>(3) Creditor's rights or other proprietary interests.</li><li>(4) Any other interest that has economic values or is acquirable through monetary transactions.</li></ol></li></ol> <p><b>Article 3</b></p>

Where the funding agency funds, commissions, invests fund or a public research agency (organization) duly provides R&D budgets for science and technology R&D, the results so yielded through such R&D efforts belong to the R&D implementing unit unless the funding agency officially recognizes that the results should belong to the nation. Income derived from R&D results shall be handled as specified in Article 17 through Article 19.

Regarding the ownership, management and utilization of the relevant R&D results mentioned in the preceding paragraph, the funding agency and the R&D implementing unit should expressly specify in writing upon execution of the contract.

#### Article 4

The funding agency shall enjoy non-exclusive right of implementation without compensation of the R&D implementing unit's R&D results within and outside the territory of the ROC. If, however, the funding agency's amount of funding, payment, or investment is less than 50% of the total project funding, the two parties shall negotiate implementation.

The funding agency shall not transfer the right mentioned in the preceding paragraph to a third party.

#### Article 5

Where the R&D results are obtained by the funding agency or the R&D implementing unit in accordance with Article 3, Paragraph 1, such the funding agency or R&D implementing unit shall assume the responsibility for management & utilization and shall duly set up sound managerial mechanism for the R&D results to manage and utilize the R&D results owned by them.

The term "management & utilization of the R&D results" as set forth in the preceding paragraph includes all such acts to apply for and assure all rights at home and abroad, licensing, transfer, gaining the benefits, avoidance from presence (recusal) and divulgence of the relevant information and data, mandate, trust, litigation or all other acts which might be linked up with management or utilization of the R&D results.

The managerial mechanism mentioned in Paragraph 1 includes the followings:

- (1) Designated management unit: a unit run by dedicated personnel, legal counsel and/or R&D personnel holding a concurrent post in other units, missionary taskforce or commissioned personnel.
- (2) Maintenance management: including maintenance, termination of maintenance, documentation, and periodic review of R&D results.
- (3) Management on utilization: process regarding the licensing, assignment or any other utilization of R&D results.
- (4) Avoidance of conflict of interest and information disclosure management: procedure for acceptance of information declaration form, review of conflict of interest, and pronouncement of disclosed information.

- (5) Documents depository: implementation of confidentiality measures for personnel, documents, and information.
- (6) Accounting: separate accounts for management of income and expenditure of R&D results.
- (7) Equity disposition management: establishment of the evaluation procedure for the pricing and timing of equity disposition.

#### Article 6

The mechanism for the avoidance of conflict of interest and information disclosure management, established by R&D implementing units, shall include the followings:

- (1) An acceptance office for applications for the avoidance of conflict of interest and information disclosure.
- (2) Circumstances and requirements of voluntary disclosure to the acceptance office or self-recusal required as a result of R&D results licensing or assignment.
- (3) The composition, review standards, and operating procedure of the review committee.
- (4) Measures in responding to non-compliance.
- (5) The method and scope of the pronouncement of relevant information, and the internal and external notification procedure.
- (6) Educational training regarding avoidance of conflict of interest and information disclosure.
- (7) Other management measures regarding avoidance of conflict of interest and information disclosure.

#### Article 7

The inventor may participate in the negotiation and promotion of R&D results. However, the inventor shall recuse himself/herself from participating in the review or decision process of R&D result management or utilization.

#### Article 8

The inventor shall, according to the rules of the R&D implementing unit, voluntarily disclose whether any of the following interests exists between himself/herself and the profit-seeking enterprise which R&D results being licensed or assigned; the same requirement applies to any of the following interests acquired after the licensing or assignment:

- (1) Proprietary interests acquired by the inventor, his/her spouse, and dependent children from the said profit-seeking enterprise during the previous year period in the aggregate exceed NT\$150,000 in value or represent more than 5% ownership in the said profit-seeking enterprise.
- (2) The inventor or his/her spouse, children, parent, grandparent, grandchildren or sibling holds a position of representative, director, supervisor or managerial officer in the said profit-seeking enterprise.

#### Article 9

Personnel in charge of submitting, reviewing, or deciding R&D results management and utilization shall recuse himself/herself therefrom when any of the following interests exists between the personnel and the profit-seeking enterprise which R&D results being licensed or assigned:

- (1) Proprietary interests acquired by the personnel, his/her spouse, and dependent children from the said profit-seeking enterprise during the previous year period in the aggregate exceed NT\$150,000 in value or represent more than 5% ownership in the said profit-seeking enterprise.
- (2) The personnel or his/her spouse, children, parent, grandparent, grandchildren or sibling holds a position of representative, director, supervisor or managerial officer in the said profit-seeking enterprise.

#### Article 10

When the R&D implementing unit has become aware of that the inventor or the personnel in charge of submitting, reviewing, or deciding R&D results management and utilization fails to recuse himself/herself from a conflict of interests circumstance set forth in Article 7 or the preceding Article, the R&D implementing unit shall order the said inventor or personnel to recuse himself/herself.

When one is obligated to recuse but fails to do so, any interested person may apply to the R&D implementing unit for recusal.

#### Article 11

When there is a dispute or concern regarding whether a party shall disclose information or recuse himself/herself, the R&D implementing units shall hold a review meeting to review the case and provide the party with an opportunity to express his/her statements.

When a party intentionally or gross negligently fails to disclose information or recuse himself/herself in accordance with these Regulations, the funding agency shall not grant or sponsor such party in full or in part for a specific period of time. Public servants, who shall declare their properties in accordance with Article 2, Paragraph 1 of the Act on Property-Declaration by Public Servants, shall comply with rules of the Act on Recusal of Public Servants Due to Conflict of Interest.

#### Article 12

The management and utilization of R&D results shall be periodically reported by the R&D implementing unit and also be assessed by the funding agency. The funding agency may consider the assessment outcome as criteria for the award of grants and sponsorship.

In the event where the funding agency finds the R&D implementing unit's non-compliance of rules and regulations, the funding agency may, in addition to notifying the R&D implementing unit to timely correct its non-compliance, decline to award grants or sponsorship in full or in part for a specific period, if necessary.

#### Article 13

When transferring R&D results owned by a R&D implementing unit to a third party, the transfer shall, unless otherwise provided by law or contract, be approved by the funding agency.

R&D results owned by a funding agency may be transferred to a third party.

#### Article 14

If the intellectual property rights owned by a funding agency or R&D implementing unit do not possess utilizable value, and have not been transferred to any other party, the payment of annual fees and other maintenance expenses may be stopped.

#### Article 15

With regard to the management and utilization responsibilities specified in Article 5, Paragraph 1, the transfer or licensing of R&D results must comply with the following requirements. Likewise in the case of re-transferal or sub-licensing. If R&D results are managed or utilized in some other manner that conforms to the goals and intents of this Act, the below requirements do not apply.

1. It must be done in a fair, open, and compensated manner.
2. It must target public schools, public research agencies (organizations), government-operated enterprises, and juristic persons or organizations.

#### Article 16

In the case of R&D results owned by a R&D implementing unit, and upon one of the conditions described below, the funding agency may ask the R&D implementing unit or R&D results transferee to license a third party to implement the R&D results, or may declare the R&D results national property when necessary:

1. The R&D implementing unit, R&D results transferee, or exclusive licensee has not effectively utilized the R&D result within a reasonable time period and does not have appropriate reasons.
2. The R&D implementing unit, R&D results transferee, or exclusive licensee has implemented the R&D results in a manner that hinders environmental protection, public safety, or public health.
3. To advance significant interests of the nation.

The third party that is licensed as specified above must pay reasonable compensation to the licensing party.

In the event the funding agency licenses a third party for implementation or declares national property in accordance with this Article, the procedures and key points connected with the exercise of these rights must be specified in written contractual form when establishing a contract.

#### Article 17

Income obtained by a R&D implementing unit through the management or utilization of R&D results must be handled in the following manner. If, however, the funding agency has reached a contractual agreement with the R&D implementing unit specifying different percentages or exemption from payment, and

the agreement conforms to the goals and intents of this Act, the below requirements shall not apply.

1. If the R&D implementing unit is a public school, private school, or public research agency (organization), it must pay 20% of income derived from R&D results to the funding agency.

2. In the case of other R&D implementing units, 40% of income derived from R&D results must be paid to the funding agency.

If, however, the funding agency's funding, payment, or investment is less than 50% of total project funding, the percentages of income must paid to the funding agency in the preceding paragraph, the funding agency and R&D implementing unit may negotiate a different contractual agreement or exemption from payment.

Income paid to the funding agency as specified in the above two items may take the form of licensing fees, royalties, purchase fees, equity, or other rights and interests.

#### Article 18

If the R&D implementing unit bears responsibility for management and utilization of R&D results, a certain percentage of income derived from management and utilization must be allotted to the inventor. If the funding agency bears responsibility for management and utilization, a certain percentage must be allotted to the inventor and to the R&D implementing unit.

#### Article 19

The R&D implementing unit may keep and use any income derived from R&D results after the amount due to the funding agency and inventor has been subtracted. This requirement does not apply, however, when otherwise stipulated in law.

#### Article 20

The stipulations of Article 5 and Article 15 are applicable to the management, utilization, transferal, or licensing of R&D results derived from scientific and technological R&D projects conducted independently by public schools and public research agencies (organizations).

#### Article 21

These regulations are applicable to the ownership, management, and utilization of R&D results derived from scientific and technological R&D projects funded, commissioned, or invested by government agencies (organizations) from their non-scientific and technological budgets.

#### Article 22

These regulations came into force when promulgated.