

Guidelines on Investment by R&D agencies

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Director General for Science Technology and Innovation

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With regard to the R&D agencies (which refer to agencies prescribed in Article 2, paragraph (9) of the Act on Activation of the Creation of Science and Technology Innovation (Act No. 63 of 2008, hereinafter referred to as the “Act”); the same shall apply hereinafter), the function of investment and other relevant businesses (investment and personnel and technical supports prescribed in Article 34-6 of the Act; the same shall apply hereinafter) has been expanded by amending the law, in view of the creation of innovation, etc.

Subsequently, from the perspective of appropriately implementing operations such as investment in accordance with the purpose of the recently amended Act while maintaining the soundness of operations and finances as R&D agencies, the guidelines shall be set out to indicate the basic idea concerning investment as follows:

We urge the ministry that holds jurisdiction over the R&D agency (hereinafter referred to as “competent ministry”) to make every effort for proper implementation of investment and other relevant businesses by the R&D agency under its jurisdiction in accordance with these guidelines. (Note)

(Note) These guidelines show basic ideas and notes on investment, etc. Therefore, the competent ministry is required to respond depending on the business contents of the research and development agency under its jurisdiction.

I . Concept regarding investment business

To further develop the economic society of Japan, it is important to activate venture creation, collaborative research with private companies and licensing of intellectual property and, through these activities, to promote social implementation of research achievements of the R&D agencies more than ever. And important is to build a virtuous circle by doing so, where private investment is expanded and the research

and development capabilities of the agency are strengthened by effectively utilizing it, thereby advancing social implementation of research and development achievements.

Until now, only a part of the R &D agencies have been permitted for business such as investment in agency-originated ventures. However, taking into consideration that agency-led efforts through industry-government-academia collaboration have been active in recent years and that, in particular, the achievement of patent acquisition and licensing have increased and some of the agency-originated ventures are making use of the research achievements of agencies to grow greatly, the 2018 amendment of the Act has made it possible for the agencies to expand their investment and other functions.

Specifically, not only a part of the R&D agencies, but also other agencies, have been permitted to carry out investment business so far. The targets of the concerned investment have been expanded as well. Namely, it has been possible to provide investment not only to achievement utilization operator (those which intend to utilize such achievements of R &D agencies in their business activities) but also to business operator which provide advice and funds necessary for business activities, and to achievement utilization supporting corporation (those which promote the utilization of such achievements of the agencies by transferring to private business operators or planning and cooperating on joint research and development, etc.).

On the other hand, in order for a R&D agency to implement operations such as investment in accordance with the purpose of legal revision regarding businesses such as investment, while maintaining the soundness of operations and finance as an incorporated administrative agency, it is necessary to decide matters to keep in mind in implementing such business and matters to address such as organizational structure, we decided to define these guidelines.

In line with these guidelines, we expect to return the research and development achievements of R&D agencies to society and economy and to dramatically improve the introduction of private funds, while maintaining the appropriateness of the investment and other operations, thereby realizing a virtuous circle of knowledge and funds with the agencies as a core.

II. Basic matters concerning business such as investment

1. About target of investment

In order to realize practical use of research and development achievements and creation of innovation that follows after it in accordance with Article 34-6 of the Act, the R&D agency can invest in the following business operators. In which the

agency can invest among business operators is a matter that should be individually prescribed according to each agency's characteristics and structure of business and its holding situation of self-derived funds, requiring flexible review according to changes in social conditions, so it is a matter to be prescribed for each agency under a cabinet order. For the same reasons, restrictions on property that can be invested (availability of investment in money and in kind, etc.) are also prescribed for each agency under a cabinet order.

- (1) Venture that utilizes the research and development achievements of R&D agencies that make investment, etc. (so-called agency-originated venture) [achievement utilization operators prescribed in Article 34-6, paragraph (1), item (i) of the Act]
- (2) Venture capital or fund (venture capital, etc.) that provides necessary advice and funds to agency-originated venture that makes investment, etc. [business operators which conduct businesses such as giving necessary advice and funds for business activities to the achievement utilization operators prescribed in Article 34-6, paragraph (1), item (ii) of the Act]

* Investment from the R&D agency to venture capital or fund needs to be used only for support to agency-originated venture by the concerned agency (including expenses related to the establishment and operation of venture capital)

- (3) Achievement utilization supporting corporations [those which encourage private business operators to utilize research and development achievements of the agencies which are prescribed in Article 34-6, paragraph (1), item (iii) of the Act, by transferring such achievements to private business operators or planning and coordination of joint research and development, etc.]

* Corporations that conduct activities to promote the utilization of the achievements of the R&D agencies are as follows:

- ① Transfer of research and development achievements of R&D agencies to private business operators
- ② Planning and coordination of joint research and development with R&D agencies

- ③ Other activities that promote the utilization of the achievements arising from R&D agencies (such as building platforms with companies that can utilize such achievements of R&D agencies, as well as providing information to companies and promoting collaboration through the platform)

2. About investment property

(1) Investment in money

Business such as investment was prescribed by the recent legal amendment as contributing to the building of a virtuous circle of knowledge/funds at industry, academia and government. For this reason, when the agency conducts investment in money, it constitutes a basic rule for each agency to use self-income* as the source of fund.

* Revenues not attributed to cause burden to the people (revenues other than grants for operating expenses and subsidies from national or local public entities). Specifically, they are donations, patent fee income, income from contracted business, financial income (excluding those derived from national expenses such as subsidies for operating expenses) and miscellaneous income (excluding income derived from national expenses such as earnings on sales of goods purchased with grants for operating expenses). Needless to say, borrowing for the purpose of investment is not allowed.

(2) Investment in kind

For investment in kind, it is generally assumed that the assets to be used for the investment are intellectual property and equipment owned by R&D agencies. The amount of their evaluation needs to be within a reasonable range in terms of the transaction price in the market.

And if they are the assets purchased according to the Act on Regulation of Execution of Budget Pertaining to Subsidies, etc., it is desirable to contribute those for which the procedure prescribed in Article 22 of the said law has been finished or the depreciation has been completed.

Furthermore, it is desirable to make it possible to ask for the return of intellectual property by contract or other means so that the intellectual property invested in kind may not be dissipated or deceased even if the invested company in the event of entering bankruptcy or dormancy.

3. Concept about personnel and technical supports

In order to effectively and efficiently return the achievements arising from the R&D agencies to society, it is necessary to provide not only the above-mentioned investment but also personnel and technical supports to companies targeted for investment as needed. For example, the expected support is as follows:

- Direct support, technical guidance, provision of advice and information for examination of practical use by the researchers of R&D agencies
- Provision of know-how on practical application of research and development achievements, matching of such achievements with market needs and management/strengthening of intellectual property, and introduction of specialized human resources familiar with the know-how
- Introduction of management personnel necessary for the growth of agency-originated venture utilizing a network with the private venture capital and private financial institutions, and so on

4. About implementation of business such as investment

(1) Measures necessary to advance business such as investment

R&D agencies need to take the following measures to properly implement their business such as investment. Since it is necessary to secure a system for ensuring expertise and objectivity concerning investment, R&D agencies are required to prepare necessary regulations for items of ① ~ ⑤ in particular. (Reference examples of the regulations concerning investment in agency-originated ventures are shown in the Attachment.)

① Deliberation, etc. by the Committee of external experts

To effectively implement the investment operation while maintaining the fairness and objectivity, a R&D agency shall establish a deliberation system by a committee of external experts in selecting investees and transferring the shares it holds. The number of members and their attributes and other requirements of the committee as well as its authority and functions shall be determined for each R&D agency, but external experts are required to have neutrality to the subject of deliberation in addition to sufficient experience in investment in venture and expertise in the targeted field. (However, from the viewpoint of promoting the deliberation based on the policy of the agency, it is possible to include one executive or employee of the agency in the external members of the committee.). On top of that, the president of the agency takes

responsibility for final decision of investment based on the deliberation achievements of the committee of external experts.

② Establishment of administrator, etc.

The R&D agency shall set up a department in charge of investment business to efficiently carry out surveys for selecting investee companies and matters to be deliberated at the committee of external experts, as well as to acquire a general idea of the situation after investment and provide personnel and technical supports. The administrator shall be appointed from those having expertise about the investment business. The authority and functions of the administrator and department in charge shall be determined for each R&D agency.

③ Selection of investee companies

The R&D agency needs to prepare specific subjects of discussion in advance in deliberating on the selection of investees.

The expected items to discuss for each investee are as follows:

(Agency-originated venture)

- Contents and business plan of research and development achievements to be commercialized
- Financial contents (*)
- Management system, technical capability
- Management strategies including financial plans and exit strategy
- Growth potential for business, social demands (including ESG

(Environment, Social, Governance), SDGs (Sustainable Development Goals)), etc.

(Venture capital and fund)

- Contents of support for business plan and agency-originated venture
- Management system, technical capability
- System and framework for investment review/management
- Financial contents (*), etc.

(Achievement utilization supporting corporation)

- Contents of business plan and support for achievement utilization
- Management system, technical capability

· Financial contents (*)

(*) Attention should be paid not to make up for the deficit of the investee. In the case of a deficit, it is appropriate to restrict investment to only the cases where the project is promising and there is a specific business/revenue plan that is expected to achievement in a considerable improvement in the degree of profit and loss within a reasonable period.

④ Grasp of situation and responses after investment

The R&D agency regularly collects information on the situation of progress and management of the investee's business plan even after investment and, when there are circumstances allowing the investee to expand business, the agency can provide additional investment and personnel and technical supports as needed. It is also appropriate to regularly verify financial information and report to the committee in ①. Furthermore, based on the progress of the business plan and the management situation, a timely judgment is made on whether or not it is possible to continue the investment, and if it is judged that a serious failure has occurred in the management or business plan implementation, the owned shares shall be transferred after investigating by utilizing the committee in ①. Beyond that, procedures such as exercise of voting rights and transfer of owned shares to appropriate counterparties shall be established.

⑤ Conflicts of interest management

The R&D agency, in addition to selecting external experts, shall develop regulations on conflicts of interest that may arise in relation to investment and build a conflict management system within the agency.

⑥ Collaboration with private venture capital, etc.

Investment by the R&D agency serves to complement the private business, basically a venture in the early stages of founding where private venture capital is difficult to bear responsibility. In addition, the investment from the agency is expected to be based on mutual relationship with private businesses, thereby facilitating private sector investment.

- (2) Regarding approval concerning investment in venture capital and the achievement utilization supporting corporations

Given that investment from the R&D agency to venture capital and the achievement utilization supporting corporation is to transfer the function of the agency to an external institution continuously, it requires the approval of the competent minister and consultation with the Minister of Finance. The competent ministry therefore needs to properly establish the approval criteria and the application form so that measures based on these guidelines may be implemented steadily.

5. Reflecting on the mid to (long-term) objectives and evaluation of investment business

It is necessary to decide the policy and system of investment and the outcome to be achieved in the Medium-term (Medium to Long-term) Objective/Plan and the Statement of Operational Procedures.

6. Compliance with related regulations

Given that the Act on General Rules for Incorporated Administrative Agencies as well as “Incorporated Administrative Agency Accounting Standards” and “Commentary on Incorporated Administrative Agency Accounting Standards” shall be applied to the relationship of the R&D agency with the investee company and the venture in which the said investee company invests, each agency is required to respond appropriately not in contrary to these regulations.

- (1) Act on General Rules for Incorporated Administrative Agencies

In accordance with the provisions of Article 50-4 of the Act on General Rules for Incorporated Administrative Agencies, regulations for reemployment of executives or employees to “closely-related corporations” are established. “Closely-related corporations” cited in the cabinet order and ministerial ordinance of the Act on General Rules for Incorporated Administrative Agencies include not only the companies in which the incorporated administrative agency directly invests but also the companies on which a subsidiary owned by the incorporated administrative agency could make a significant impact through investment. Thus, it is necessary to pay attention that if a venture capital or achievement utilization supporting corporation falls under a subsidiary of the

R&D agency, the provisions of Article 50-4 of the Act on General Rules for Incorporated Administrative Agencies will be applied to those companies.

(2) “Incorporated Administrative Agency Accounting Standards” and “Commentary on Incorporated Administrative Agency Accounting Standards”

It is required in the “Incorporated Administrative Agency Accounting Standards” and “Commentary on Incorporated Administrative Agency Accounting Standards” (revised on September 3, 2018) that the status of contracts/transactions with “special affiliated companies” should be made public. The “special affiliated companies” include not only the companies in which the incorporated administrative agency directly invests but also the companies in which the special affiliated company owned by an incorporated administrative agency invests. Thus, it is necessary to keep it in mind that if the venture capital or achievement utilization supporting corporation falls under the special affiliated company of the R&D agency, it is required that the status of transactions should be made open to the public even if the agency invests in a venture via those relevant affiliates.

(3) Other relevant regulations, etc.

In addition to (1) and (2), the research and development agency needs to take all possible measures to comply with the regulations for investment, such as regulations for the rights and responsibilities of equity underwriters under the Companies Act and regulations for insider trading of corporate stakeholders under the Financial Instruments and Exchange Act.

In addition, the research and development agency is asked to confirm that there is no relationship with antisocial forces in the management system and shareholder composition of the investee.

7. Report to the competent ministry and disclosure of information

With regard to the appropriateness of business and financial soundness, not only the R&D agency concerned but also the competent ministry should take responsibility and fulfill accountability.

Therefore, the R&D agency needs to properly report to the competent ministry on the contents of investment and the situation after investment as below, and to establish a system that cooperates with the ministries and agencies.

- Contents of investment (name and business contents of investee company,

amount of investment), process and background of investment decision

- Financial information on each investee company based on appropriate evaluation after investment, expected amount of collection, EXIT policy on investment
- Discrepancy between initial and current future prospects, responsive policy/concrete measures

Also, the agency is asked to disclose timely and appropriate information through financial statements, business reports, website and so on.

(Attachment)

Examples of internal rules specified by the Research and Development Agency regarding capital investment (investment to agency-originated ventures) in the achievement utilization operator specified in Article 34-6, paragraph (1), item (i) of the Act on Vitalization of the Creation of Science and Technology Innovation (Act No. 63 of 2008)

1. Concerning deliberation, etc. by the Committee of external experts

[Example of internal rules]

- Article xx The National Research and Development Agency (hereinafter referred to as “yy Agency”) shall establish the zz Committee to deliberate necessary matters concerning the implementation of business.
2. The zz Committee shall deliberate the matters listed in the following items:
 - (i) matters concerning the selection of investee companies and conditions for investment;
 - (ii) matters concerning the transfer of owned shares;
 - (iii) matters recognized as important from among those pertaining to the exercise of voting rights.
 3. The zz Committee shall consist of a Chairperson and (number) Committee Members.
 4. The Chairperson and the Committee Members shall be appointed or nominated by the Chief Director from among the external experts or executives and employees.
 5. The term of office of the Chairperson and Committee Members shall be (number) years. However, it does not prevent re-appointment/re-commission.
 6. When it is recognized that the continuation of its duties is not appropriate, the Chief Director may dismiss the Chairperson or Committee Members regardless of the term of office prescribed in the preceding paragraph.
 7. The Chairperson shall preside over the Committee as well as convene the meetings.
 8. The Chairperson, other than the Committee Members, can also ask the external experts as necessary and listen to their opinions.
 9. The Chairperson shall report the results of the deliberation to the Chief Director.
 10. When the Chairperson has an accident, the Committee Member appointed by the Chairperson in advance shall substitute for his/her duties.
 11. In addition to the matters stipulated in these rules, necessary matters concerning the operation of the Committee shall be determined by the Chairperson.

2. Matters concerning establishment of administrator, etc.

[Example of internal rules]

- Article xx The yy Agency shall place investment managers to contribute to the smooth and efficient promotion of surveys, and personnel and technical supports for the candidate investee companies and other businesses.
2. The appointed investment manager shall be an appropriate one from among those having professional

knowledge about investment business, and shall perform the operations listed in the following items:

- (i) responding to outside consultation on investment businesses;
- (ii) research on management strategy and situation of investee companies (including candidate investee companies, the same applies hereinafter in this paragraph);
- (iii) personnel and technical supports to investee companies;
- (iv) advice on the operation of investment business;
- (v) selection of projects to be discussed in the zz Committee.

* Besides the above, it is necessary to clarify the department in charge of investment business on the organization rules, etc. of the Agency.

3-1. Matters concerning selection of investee companies

[Example of internal rules]

Article xx The yy Agency shall select appropriate investee companies from among several candidate investee companies established to utilize its research and development achievements in business activities after having an external specialized organization conduct survey, and shall adjust the investment conditions with the stakeholders.

2. In selecting the investee company in the preceding paragraph, the zz Committee prescribed in Article xx shall deliberate on it

3. In conducting the deliberation in the preceding paragraph, the zz Committee shall examine the matters set forth in the following items, respectively:

- (i) contents and development plan of technology to be commercialized by the candidate investee companies;
- (ii) financial contents of candidate investee companies;
- (iii) management system in candidate investee companies;
- (iv) management strategy including financial plan and exit strategy of the candidate investee companies;
- (v) prospects of businesses and marketability of projects proposed by the investee companies.

3-2. Matters concerning the execution procedure of investment

[Example of internal rules]

Article xx In executing investment, the yy Agency shall conclude a contract on investment with the investee company (hereinafter referred to as “investment contract”).

2. The following matters shall be specified in the investment contract:

- (i) types and number of shares to be acquired by the yy Agency;
- (ii) the amount and contents of investment to be executed by the yy Agency;
- (iii) in the case of intellectual property investment in kind, matters concerning its handling;
- (iv) matters concerning elimination of antisocial forces;
- (v) matters concerning the responsibilities of management and equivalent persons;
- (vi) matters concerning cooperation for searching for the transfer destination of the shares owned by the yy

Agency, in cases where the yy Agency has difficulty in continuing the investment;
(vii) other matters the yy Agency deems as necessary.

4. Matters concerning grasp of situation and responses after investment

[Example of internal rules]

(Supports and investigation of investee company)

Article xx The yy Agency shall continuously and properly grasp the after-investment progress, business situation and the issues of the investee company's business plan, and implement the personnel and technical supports as necessary.

2. When the investee company falls under any of the following items, the yy Agency shall investigate the target investee company, and take measures such as transfer of owned shares, support of business transfer and merger, support for liquidation of the said company and other measures that the yy Agency deems as necessary:

- (i) when it is judged that a serious obstacle has occurred in execution of management or business plan;
- (ii) when the executives' and employees' behavior is recognized as a likely breach of disloyalty;
- (iii) when an offer to transfer the shares owned by the yy Organization is made from a third party;
- (iv) other cases the yy Agency deems as necessary.

(Exercise of voting rights, transfer of owned shares, etc.)

Article xx The yy Agency shall exercise the voting rights for investee companies in an appropriate manner according to individual cases.

- 2. The yy Agency may transfer the shares it owns to an appropriate counterparty.
- 3. Regarding the transfer of its owned shares prescribed in the preceding paragraph, the yy Agency shall decide the conditions for transfer such as validity and value, based on the deliberation by the zz Committee.

5. Matters concerning conflict-of-interest management

[Example of internal rule]

Article xx The yy Agency shall establish regulations concerning the execution of conflict-of-interest management for such possible conflicts arising from the investment.