

Guidelines on acquisition and possession of shares or share options relating to achievement utilization operators by R&D agencies and national university corporations, etc.

January 17, 2019

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From the viewpoint of creation of innovation and the like, it is prescribed in Article 34-4 and Article 34-5 of the Act on Activation of the Creation of Science and Technology Innovation (Act No. 63 of 2008, hereinafter referred to as the “Act”) by its recent amendment that R&D agencies (which refer to agencies prescribed in Article 2, paragraph (9) of the Act, the same shall apply hereinafter), national university corporations, inter-university research institute corporations and public university corporations (hereinafter referred to as “R&D agencies and national university corporations, etc.”) prescribed in Article 68, paragraph (1) of the Act on Local Incorporated Administrative Agency (Act No. 118 of 2003) can acquire and possess (hereinafter referred to as “acquisition of shares, etc.”) shares or share options (hereinafter referred to as “shares, etc.”) under certain conditions while striving to provide support¹ to agency-originated ventures (which refers to achievement utilization operator prescribed in Article 34-4, paragraph (1) of the Act, the same shall apply hereinafter).

This is why we set forth the guidelines that indicate the basic idea as shown below, from the viewpoint of enabling R&D agencies and national university corporations, etc. to appropriately conduct the acquisition of shares, etc. while maintaining the soundness of business and financial affairs, in accordance with the purpose of the recent amendment of the Act.

The competent ministries that hold jurisdiction over the R&D agencies and national university corporations, etc. are asked to take all possible measures to properly implement the acquisition of shares, etc. by corporations under the jurisdiction accorded

¹ It refers to support (Article 34-4, paragraph (2) of the Act), which is necessary to promote the dissemination and utilization of transfer, set-up or permission and technical guidance or advice concerning intellectual property rights possessed by the R&D agencies and national university corporations, etc., as well as to facilitate the leasing of the facilities or equipment they possess and other research and development results.

by these guidelines (Note).

(Note) These guidelines show the basic ideas about acquisition of shares, etc. Therefore, the competent ministries are required to respond depending on the business contents of the R&D agencies and national university corporations, etc. under jurisdiction.

I . Policy on acquisition of shares, etc. relating to support of agency-originated ventures

With technology progress accelerating and the role sharing of industry, universities, research institutes fundamentally changing, it is becoming difficult for a single company to carry out the social implementation of business and technology as in the past. Under such circumstances, the collaboration of R&D agencies and national university corporations, etc. with the R&D-oriented ventures, which have excellent technologies and ideas and aim to create new value with speed, can be presumably an effective means for social implementation. Therefore, it is extremely important to promote innovation by developing an environment that makes the creation of R&D themed ventures even easier, and by facilitating the collaboration as mentioned above.

Against this backdrop, due to the recent amendment of the Act, it was prescribed in its Article 34-4, paragraph (2) that the R&D agencies and national university corporations, etc. should strive to support for agency-originated ventures. Furthermore, paragraph (3) of the same Article allowed such support to be made free of charge if deemed necessary, and Article 34-5 made possible the possession and acquisition of shares, etc. in that case.

Although the R&D agencies and national university corporations, etc. make it a basic rule to receive cash payment when supporting agency-originated ventures, the above measures are prepared to support and foster the financially weak but promising agency-originated ventures. Namely, this is devised to provide necessary support such as licenses for intellectual property, facilities, equipment and technical guidance to such agency-originated ventures in response to their request, taking into consideration their financial resources and other circumstances and by receiving shares, etc. in the cases where it is deemed particularly necessary.

Subsequently, the agency-originated ventures will be more likely to tackle the development of business by receiving necessary services from the universities and R&D agencies while securing enough cash for business activities for the time being,

leading to increased expectations for progress of social implementation of the research results. In case the business of an agency-originated venture makes progress, the revenue of R&D agencies and national university corporations, etc. is also expected to increase, attributed to gains from the sale of shares, etc.

On the other hand, in order for R&D agencies and national university corporations, etc. to properly manage the acquisition of shares, etc. in accordance with the purpose of the revised Act, while maintaining the soundness of operations and finance, it is necessary to determine the matters that they should address. That is why we decided to establish these guidelines.

In accordance with these guidelines while maintaining the appropriateness of acquisition of shares, etc., it is expected that the R&D agencies and national university corporations, etc. will return more of their research and development results to the society and economy, whereby the input of private funds will increase dramatically and a virtuous cycle of knowledge and funds centered on such agencies and corporations will be realized.

II. Basic matters concerning the acquisition of shares, etc. relating to support of agency-originated ventures

1. Targeted agency-originated ventures

Article 34-4 and Article 34-5 of the Act refer to cases in which it is particularly necessary for the R&D agencies and national university corporations, etc. to acquire shares, etc. to support the agency-originated ventures, taking into account their financial resources and other circumstances. That is to say, eligible for such cases is that of an agency-originated venture with highly promising business that utilizes the research results of the concerned agencies and corporations who provide support, where exemption or mitigation of cash payment for the support is considered to be particularly necessary to accelerate the management of the venture.

2. Points to be noted when acquiring shares, etc.

R&D agencies and national university corporations, etc. must take the following measures to properly acquire the shares, etc. It is important to ensure the expertise, objectivity and fairness of the support for agency-originated ventures. It is important to ensure that the system is in place so that the contents of the support (transfer, setting or licensing of intellectual property, provision of facilities and equipment, technical guidance and so on) should be clarified and publicized as

necessary. It is also desirable to improve the necessary organizational structures and regulations.

① Procedures for acquiring shares, etc.

With regard to support programs, it is important for the R&D agencies and national university corporations, etc. to properly publicize that they can provide support to the agency-originated ventures in accordance with their financial resources and other circumstances and to inform the basic matters (target assets, requirements for support targets, policies for acquisition of shares/exercise of voting rights, etc.). Furthermore, in the event that the intention to offer shares, etc. is indicated from an agency-originated venture, they need to decide the number of shares to be acquired on agreement with the concerned venture by utilizing the opinions of external experts with experience in the handling of shares if necessary, thereby enabling fair and objective assessment of the shares, etc.

② Proper management

Pursuant to Article 34-5, paragraph (2) of the Act, the R&D agencies and national university corporations, etc. may hold the shares, etc. acquired from the agency-originated ventures, but the period of holding has not been specified in the related acts and regulations. Under these circumstances, the concerned agencies and corporations are requested to respond appropriately in accordance with the purpose of the revised Act. So, it is desirable for them to establish organizational structure and regulations.

Acquisition of shares, etc. from agency-originated ventures is a measure to support the ventures with a view to disseminating the research results of R&D agencies and national university corporations, etc. While it is not their main objective to obtain profits from the sales, they are required to secure financial soundness. For this reason, they shall designate or set up an administrator and a department in charge so that the shares, etc. can be effectively utilized and the management including evaluations can be periodically carried out. In selling the shares, it is important to utilize the opinions of external experts with experience in handling of the shares if necessary, thereby enabling effective and fair decisions.

③ Compliance with related regulations

The Act on General Rules for Incorporated Administrative Agencies (for national university corporations, National University Corporation Act) as well as “Incorporated Administrative Agency Accounting Standards” and “Commentary on Incorporated Administrative Agency Accounting Standards” (for national university corporations, the reports entitled “National University Corporation Accounting Standards” and “Commentary on National University Corporation Accounting Standards;” for public university corporations, “Local Incorporated Administrative Agency Accounting Standards” and “Commentary on Local Incorporated Administrative Agency Accounting Standards”) shall be applied to the relationship between R&D agencies and national university corporations, etc. with the agency-originated ventures the shares of which are owned by the concerned agencies and corporations and, therefore, they are required to respond appropriately not to be in contrary to these regulations.

For example, pursuant to the provisions of Article 50-4 of the Act on General Rules for Incorporated Administrative Agencies (for national university corporations, Article 35 of the National University Corporation Act), regulations for reemployment of executives or employees of the “closely-related corporations” have been established. The “Incorporated Administrative Agency Accounting Standards” and “Commentary on Incorporated Administrative Agency Accounting Standards” require the R&D agencies and national university corporations, etc. to disclose the status of contracts/transactions with the “closely-related corporations, etc.” Aside from these, they need to ensure thorough compliance with the provisions on the rights and responsibilities of shareowners under the Companies Act, and on insider trading by the stakeholders of the concerned companies under the Financial Instruments and Exchange Act.

In addition, R&D agencies and national university corporations, etc. need to confirm that the agency-originated ventures, the shares of which are owned by them, have no relationship with the antisocial forces in their management structure and shareholder composition.

④ Management and disclosure of information

The R&D agencies and national university corporations, etc. need to keep the records of how and why they reached the decision on acquisition of shares, etc. and their number for each case to enable to perform social accountability when necessary.

While properly reporting to the competent ministries in a timely manner, they

are also required to disclose such information in a timely and appropriate manner through the financial statements, business reports and websites, etc. while taking trade secrets into consideration.

3. Points to be noted when handling share options

① Exercise of share options

The R&D agencies and national university corporations, etc. may acquire shares by exercising the share options obtained from the agency-originated ventures pursuant to the provisions of Article 34-5, paragraph (2) of the Act. They also need to appropriately position the expenditure incurred by the exercise of the rights in their Medium-term Plan or Medium to Long-term Plan. Specifically, they need to properly reflect the concerned expenditure and related financial resources in the budget, revenue and expenditure plan and funding plan of the mid-term plan or mid to long-term plan. Furthermore, if the concerned financial resources are objective reserve funds or the carry forward reserve funds in the previous targeted Medium- (Medium to Long-) term period, they need to clearly and properly indicate it as the use of surplus or use of reserve funds of the mid-term plan or mid to long-term plan, respectively.

② Accounting process for acquisition of shares by the exercise of share options

With regard to the accounting processing for acquisition of shares by the exercise of share options, since there are no special provisions in the “Incorporated Administrative Agency Accounting Standards”/“Commentary on Incorporated Administrative Agency Accounting Standards,” the reports entitled “National University Corporation Accounting Standards”/“Commentary on National University Corporation Accounting Standards” and “Local Incorporated Administrative Agency Accounting Standards”/“Commentary on Local Incorporated Administrative Agency Accounting Standards,” they need to go through the appropriate accounting process in accordance with the fair and reasonable corporate accounting standards after consulting with the accounting auditor in advance.

③ Handling of shares acquired through the exercise of share options

It is the same procedure as that of the handling of shares in “2. Points to be noted when acquiring shares, etc.” that is applied to the handling of shares acquired through the exercise of share options.