

INNOVATION AND TECHNOLOGY FUND

Interim Guidelines on Commercialization of ITF Projects

PROBLEM

We need a set of simple and consistent principles to govern the arrangements for the commercialization of projects conducted or completed under the Innovation and Technology Support Programme (ITSP) and General Support Programme (GSP) of the Innovation and Technology Fund (ITF).

BACKGROUND

2. The ITF has been designed carefully to distinguish two kinds of government support for innovation and technology and related support activities. The University – Industry Collaboration Programme (UICP) and Small Entrepreneur Research Assistance Programme (SERAP) are, for policy reasons, designed to provide direct financial assistance to individual companies.

3. On the other hand the ITSP and GSP are intended to benefit industry or the relevant industry sector(s) as a whole. The relevant submissions to the Executive Council and the Finance Committee have made this intention clear. The guidelines to the administration of these programmes have also clearly set out their public mission. Thus we encourage wider industrial sponsorship of projects. We emphasize the importance of non-exclusivity in the application of intellectual property¹ and the licensing arrangement for transfer of technology.

4. One well established way of technology diffusion is for the university or industrial support organization (referred to hereinafter as “institution”) concerned to provide, on a non-discriminatory and non-exclusive basis, direct consultancy services or to license technologies to industry based on the work, results and deliverables of the relevant ITF project. But this situation is changing rapidly as the institutions concerned are increasingly seeking to commercialize more and more ITF projects. We need to set out simple and consistent principles to deal with this development and to enable the stakeholders, namely the Government, the institutions and potential investors/partners, to understand the underlying philosophy and value of the

¹ As defined in para. 8.2, Chapter VIII, Guide to the ITF, Vol. I and II

ITF, as well as their rights, privileges and obligations in any commercialization arrangement.

FORMS OF COMMERCIALIZATION

5. There are three main categories of ITF projects which are capable of commercialization:

- (a) Technologies and products (in the form of intellectual property). Examples of these include the “Centre for Information Security and Cryptography” (HKU, AF/276/98), “Multimedia server for video distribution on LAN” (CUHK, AF/328/94) and “Development of Novel Diagnostic Kits” (CUHK, AF/034/97);
- (b) Services. These are normally ITF projects granted on the basis of an existing gap in our technology infrastructure and services, where the government will have a role in filling the gap. Examples are the “Centre for Electronic Packaging and Assemblies, Failure Analysis and Reliability Engineering” (City University, AF/255/97) and the project for “Development of Advanced Surface Analysis and Engineering Technologies for the Metal Finishing and Related Industry” (CUHK, AF/32/98); and
- (c) Tangible deliverables derived from an ITF project. A case in point is the databases which the ITF funded as part of the efforts to support the relevant industry. Examples are “Developing a Technology Partner Database at Hong Kong Plastic Technology Centre for use by Interested Plastic Technology Buyers in Hong Kong” (HKPTC, AF/07/95) and “HK-PRC Plastics Linkage Database” (HKPTC, AF/336/97).

6. There are basically three broad types of commercialization arrangement known to us:

- (a) Formation of a subsidiary of the institution concerned to take on the management, marketing and further development of the ITF projects;
- (b) Formation of a company to be spun off from the institution concerned as a joint venture with external partners/investors. In this connection anyone other than the institution itself will be deemed as an external partner or investor. This includes the

project coordinator or anyone in the research team who intends to set up a company to commercialize the project; and

- (c) Direct acquisition by an external party.

GOVERNMENT POSITION

7. In principle we support and welcome initiatives to commercialize ITF projects:

- (a) First, we need more avenues to pass ITF project results on to industry than just the more conventional way set out in paragraph 4 above. Commercialization is an additional and arguably more direct and effective channel for the transfer of ITF project results to benefit industry;
- (b) Second, institutions may not be the most efficient and effective organizations to pass the ITF project results to industry. Institutional constraints are known to exist in universities, given their main mission in education and research, their organizational and management structure, and their other focuses and priorities. The institutions themselves see their limitations, hence more and more projects are being spun off from universities;
- (c) Third, a more liberal environment with regard to commercialization of ITF projects will provide added incentives for universities and industry support organizations to conduct commercially relevant R&D activities and seek actively for their commercialization; and
- (d) A fortiori, this could promote a stronger sense of entrepreneurship, particularly on the campuses, hopefully with more spin-off and start-up activities. This would reinforce our efforts to promote innovation and technology and contribute to Hong Kong's development by offering a new kind of economic activities and enterprises which are technology based.

8. Thus our concern is not so much commercialization per se. Rather it is a question of whether a commercialization proposal is consistent with the public mission of the ITSP and GSP (namely derivation of benefits for general applicability to industry as a whole) and public accountability concerns (notably visibility, transparency, equity and financial discipline).

PRINCIPLES

Non-exclusive Arrangement

9. Inherent in the design of the ITSP and GSP, ITF projects are intended for the public good and therefore they should be open for the benefit of industry. In this spirit of openness we do not intend to regulate any commercialization activities set out in paragraph 6 above if they are conducted in an open, transparent and non-exclusive basis. In this connection, one major test for non-exclusivity is the point of control of dissemination of project results. Thus, for the scenarios described in paragraph 6(a) and (b) above, if the institution owns or maintains a controlling interest² (hence the control is still in the public domain) and the intention is to use the subsidiary or spun-off company to make widely available the project results (say, by the provision of services or solutions to industry), the arrangement is deemed non-exclusive.

Exclusive Arrangement

10. The main issue thus lies with exclusive arrangements. Our view is that the lack of exclusivity may not provide the incentive for firms to acquire technologies and other deliverables generated by ITF funding. This could impede the process of technology transfer to benefit industry. Also, circumstances and the nature of the ITF project results may dictate exclusive arrangements. An example is the disposal of genomic information on an exclusive basis to a pharmaceutical company. In this particular case, the commercial attraction of the information may be greatly diminished if non-exclusivity is the way to allow commercial application of the information.

11. Given the sensitivity of any exclusive arrangement, the institutions concerned should first seek approval from the Innovation and Technology Commission (ITC) for pursuing an exclusive arrangement and the conditions under which such an exclusive arrangement are to proceed. The ITC's main consideration will be whether an exclusive arrangement would represent a better option or a more effective way for technology transfer to industry having regard to such factors as the nature of the technologies in question, the need for further development by industry, the relevant industrial profile, etc.

12. In permitting exclusive arrangements, the ITC would normally require a competitive process in the offer of the ITF project results to a third

² "Controlling interest" here refers to a simple majority of shareholding. Shares option exercisable in the future is not counted.

party on an exclusive basis for the sake of removing barrier to information, transparency and public accountability. The competitive process may not necessarily be in the form of a full tender exercise. We leave the details of the competitive, selection and final award processes to the institutions concerned, provided that the exclusive licensee should have a significant presence of industry activities in Hong Kong. In case the selected licensee is a foreign company with little or even no industry activities in Hong Kong, the institutions concerned should consult CIT before awarding the license. The institutions are also required to submit a report to the ITC after the completion of an exclusive commercialization arrangement.

PAYMENT TO GOVERNMENT

13. To give incentive to institutions, the Government does not seek royalty or payment in the commercialization of ITF project results. The only exception is the disposal of physical assets acquired by institutions from ITF funding. In these circumstances, the Government would reserve the right not to allow the acquisition if it is a straight forward transaction for the disposal of the assets or if the disposal is not strictly related to the commercialization exercise. In any event if the disposal of physical assets is approved, the Government would normally seek to recover no less than 50% of the depreciated value of the assets where the original cost of each of which is over \$500,000³.

PRICING

14. We do not seek to control the pricing of transfer of technology and services as it is in any event impractical for the ITC to do it. In the final analysis we can leave this to the market.

APPLICATION

15. These guidelines were first published in January 2001 and last revised in January 2007. They would be in force until the publication of a set of new guidelines for the purpose. The ITC however reserves the right to make further amendments and revisions to these guidelines at any time within the period of their validity.

³ For equipment partly funded by ITF, the Government will only seek to recover the depreciated value on a pro rata basis. To calculate the Government's share of the equipment cost, we will take into account the sponsorship for the procurement of the equipment, whether in kind or in cash, but not the discounts generally available to institutions when procuring equipment.

16. These guidelines do not apply to:
- (a) ITF projects which are more than three years after their completion. We leave it unconditionally to the institutions to dispose of such projects; and
 - (b) ITF projects which are terminated for lack of satisfactory progress, for reasons that the original objectives and relevance have been overtaken by events and other circumstances that the Commissioner for Innovation and Technology sees fit to terminate in the public interest.

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