

June 30, 2020

Committee on the "Study of Sector-by-Sector Contract
Guidelines for Promoting Open Innovation"

1. Background to the study

Emphasis in business competition is shifting fast from "market adaptation" to "value creation" due to the recent rapid development of technology. For companies to maintain and strengthen their competitiveness, it is essential to make combined use of various resources, including those outside their own business domains, to speedily provide products and services. However, it is difficult for companies, however large they may be, to possess all such resources on their own. We are entering an era in which **the success or failure of partnership and open innovation is the key factor for enterprise value.**

In particular, in the event of an emergency like the ongoing novel coronavirus pandemic, there are limits to what can be done by any single entity. Therefore, there is a particularly strong need for many entities to cooperate and create shared value in order to promote open innovation.

What is important in open innovation is **how to develop relationships that make the partners feel willing to collaborate again.** Usually, open innovation is realized through a continuous collaborative relationship, rather than ending after a one-off deal. Companies that make their partners feel reluctant to collaborate again after just one collaborative activity will lose opportunities for open innovation due to a negative reputation, a situation that could cause them to lose competitiveness.

2. Purpose of the model contracts

Based on recognition of the abovementioned background, the model contracts uphold the following basic value about which both sides of a partnership should always have consciousness (core value): **"Maximize the sum of business values by making full use of intellectual properties created through collaboration between startups and business entities."**

With this core value as the prerequisite, companies should opt for approaches and actions as outlined below when they engage in specific partnerships.

- ✓ Both sides of the partnership should consciously sort out the possession of the intellectual properties created through the collaboration and the way of using the intellectual properties so that maximum cash flow can be generated (it is wrong to opt for shared ownership as a provisional arrangement).
- ✓ Regarding the utilization of intellectual properties, prohibition of utilization in competing business domains should be limited to domains over which conflicts of interest cannot be resolved because of both sides' respective business models (it is wrong to prohibit utilization in a broader range of domains than necessary).

Startups and business entities are complementary partners possessing different strengths. While startups may focus on undeveloped markets and technologies, they typically lack extensive business resources. Business entities owe responsibility to a broad range of stakeholders, including customers, whereas they have plenty of business resources, including funds, mass production capacity, and sales channels. Naturally, business models, management approaches and growth models for startups and business entities are entirely different. It is necessary for both sides to actively explore what kind of rules (contract conditions) should be followed in order to develop a "win-win" relationship from the medium to long term perspective while respecting each other's models and approaches. This effort corresponds to negotiation in the contracting process, the results of which are embodied by a written contract. The model contracts have been formulated as a tool to facilitate this process.

3. Target readers

The model contracts contain information useful for parties as listed below for the purpose of promoting open innovation between business entities and startups.

- Business entities (e.g., personnel responsible for business operations and intellectual property and legal affairs at large and middle-ranking companies)
- R&D-based startups (startups aiming to expand into multiple business sectors with innovative technology)
- Startup supporters (e.g., venture capital and CVC)

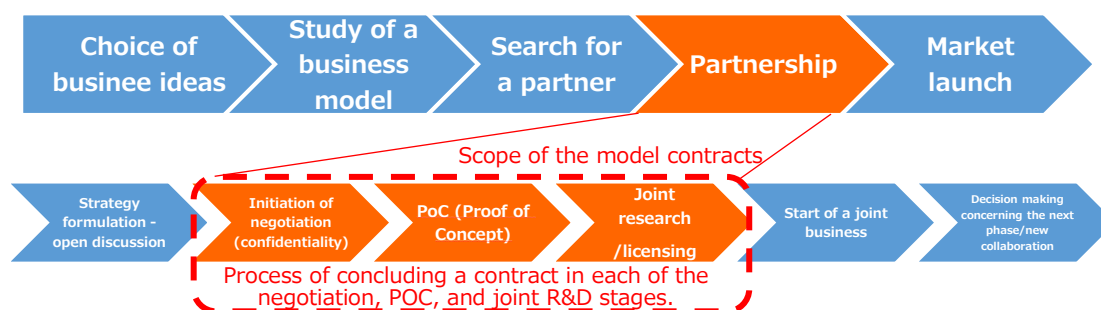
In particular, startups, unlike business entities, do not in many cases have personnel dedicated to legal affairs. Therefore, they are said to be lacking in knowledge and knowhow concerning legal affairs and intellectual property, and in the experience of negotiating with business entities. The model contracts have been formulated so as to

facilitate basic understanding on those matters on the assumption that there is a **resource gap between companies with respect to legal affairs and intellectual property**. This is intended to help realize partnerships through smooth negotiation by filling that gap as much as possible.

4. Scope of the model contracts

The scope of activities in the open innovation process covered by the model contracts includes initiation of negotiation (confidentiality), PoC (Proof of Concept), and joint R&D/licensing, as shown in the figure below.

Scope of the model contracts in the open innovation process



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