

The Thai Bayh-Dole Act: Decentralizing IP Ownership in Government-Funded Research in Thailand

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Inspired by the success of the Bayh-Dole Act in other countries, such as the United States, Japan and Korea, Thailand recently enacted the Thailand Research and Innovation Utilization Promotion Act B.E. 2563 (2021) (TRIUP Act). The TRIUP Act, which came into force on May 7, 2022, is the result of extensive consideration by the Thai Government and related institutions.

Before the promulgation of the TRIUP Act, patentable inventions were owned by an employer, hirer, or commissioning party, unless a different arrangement was explicitly contracted in a written agreement. Since public research organizations and government funding agencies usually have institutional policies regulating the ownership, management and commercialization of intellectual property rights, it was common for such agencies to allow the co-ownership of IP rights with the inventor or to grant the inventor a license instead of complete ownership over their inventions. However, under the TRIUP Act, government-funded inventions can now belong to their inventors (i.e. universities and research institutions). The decentralization in the ownership of intellectual property rights in government-funded research is a commendable advancement for Thailand since the TRIUP Act facilitates the freedom for a fund recipient to own and exploit intellectual property rights resulting from their own research and innovation results.

Under the TRIUP Act, in order for inventors, researchers or fund recipients to legally retain their own research or innovation results, they must disclose such results to the funding organization within a required period of time and notify the funding party of their intent of ownership alongside a commercialization plan — otherwise, the research and innovation results will belong to the funding agency. If the fund recipient does not commercialize the results within two years or a required period of time as specified by the Science, Research, and Innovation Promotion Committee (Committee), the funding agency reserves the right to step in and commercialize such results.

Nonetheless, there are circumstances where the ownership of the research and innovation results will be as agreed in the relevant joint research funding agreement, such as when the research is jointly funded by different government agencies or private organizations, or if a public higher education institution uses their own or private funds. The provisions under the TRIUP Act are also not applicable to military technology research or innovations, or innovations that are deemed to be significantly valuable to the general public.

Furthermore, the TRIUP Act grants the Committee the discretion to determine if certain research or innovation results would be more beneficial to the general public under the ownership of a government agency. If so, the Committee can instruct the transfer of ownership of such results from a fund recipient to a government agency or organization, after paying the fund recipient fair compensation. Similarly, the TRIUP Act enables the prime minister to grant compulsory licensing orders for the exploitation of government-funded research or innovation results during national emergency situations. This is comparable to the current provisions on compulsory licensing and national emergency exceptions under the Thai Patent Act B.E. 2522 (1979), as amended.

There are many benefits that come with this new TRIUP Act, such as the ability to seek favorable licensing terms, empowering Thai universities and institutions to enhance their

position in academia and the anticipated establishment of more technology startups utilizing such research and innovation results. Consequently, in order to fully reap the benefits of their research and innovation results under the TRIUP Act in Thailand, universities, research institutions and other related stakeholders should examine and update their current intellectual property rights policies to reflect the new changes and obligations as outlined in the TRIUP Act.

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