

This publication is copyright. Apart from any fair dealing for the purpose of private study or research permitted under applicable copyright legislation, no part may be reproduced or transmitted by any process or means without prior written permission of Baker McKenzie.

IMPORTANT DISCLAIMER. The material in this publication is of the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The firms involved and the contributing authors expressly disclaim all liability to any person in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this publication. No reader should act or refrain from acting on the basis of any matter contained in this publication without taking specific professional advice on the particular facts and circumstances in issue.

Philippines

Christina Macasaet-Acaban | Lara Camille Lee

Introduction

Clinical trials in the Philippines are regulated by the Department of Health (DOH) and the Food and Drug Administration (FDA).

The FDA is an agency under the DOH and is responsible for ensuring the safety, efficacy and quality of food, drugs, cosmetics and medical devices. Republic Act No. 9711, or the Food and Drug Administration Act of 2009 ("RA 9711"), provides for the establishment of centers within the FDA for each major category of health products, which are drugs, food, cosmetics and medical devices. The same law empowers and mandates the FDA to supervise, monitor and conduct research studies on the health and safety standards for health products. Pursuant to this mandate, the DOH and the FDA have issued regulations and guidelines for the conduct of clinical trials in the Philippines, as well as for the entities that engage in such clinical trials.

Regulatory framework

Licensing of entities that engage in clinical trials

DOH Administrative Order No. 2014-0034 ("AO-34") requires sponsors and contract research organizations (CROs) that engage in clinical trials to obtain from the FDA a License to Operate (LTO) for such purpose. Prior to AO-34, sponsors of clinical trials and CROs were not required to obtain an LTO.

An LTO is an authorization or permission, embodied in a document granted by the FDA to any natural or juridical person, to engage in the activity covered by the LTO.

A sponsor refers to an individual, company, institution, organization or entity that takes responsibility for the initiation, management and/or financing of a clinical trial. A CRO refers to a person or an organization (commercial, academic or others) contracted by a sponsor to perform one or more of the sponsor's trial-related duties and functions.

Pursuant to AO-34, the FDA issued FDA Circular No. 003-15 entitled, "Guidelines on the Implementation of New Rules and Regulations on the Licensing of Sponsors and CROs following AO-34" ("CRO Guidelines").

Under the CRO Guidelines, entities engaged in the following trial-related duties and functions delegated by a sponsor are required to secure an LTO as CRO: (i) oversight (e.g., ensuring quality assurance and/or quality control systems are in place to ensure clinical trials are conducted, data is gathered and subsequently reported); and (ii) management (e.g., development of protocols and/or trial design, selection of investigator and/or sites, screening and/or recruitment of subjects, data handling).

Entities involved in the procurement/importation, storage, and/or distribution of investigational product(s) are not required to secure an LTO as CRO, unless they are involved in other activities as mentioned above. These entities must follow other existing LTO requirements for such specific activities.

Accredited bioequivalence testing centers need not apply for LTO as sponsor or CRO.

Clinical trial protocols

Under FDA Circular No. 2012-007 ("**Circular 07**"), all clinical trials must be approved by the FDA. Such approval shall be based on the approval/recommendation of accredited ethics review boards and committees (**ERC**). Such ERCs are established in institutions that engage in biomedical and behavioral research charged with safeguarding the dignity, safety and well-being of all actual or potential human participants. The FDA will accredit the ERCs based on the recommendation of the Philippine National Health Research System (**PNHRS**).

The ERC shall review the clinical trial protocols submitted to the FDA for approval and provide its recommendation to the FDA. The FDA shall have the final decision regarding the approval of the clinical trial. The clinical trial may proceed after the FDA's approval.

The sponsor or CRO must notify the ERC and the FDA of any serious and/or adverse events, major changes or deviations from the approved protocol, revisions in the informed consent form, or termination of the trial before the anticipated completion date. The sponsor or CRO is also responsible for submitting progress reports to the ERC and for securing the participants' informed consent.

Import permits

As a general rule, only drugs that are covered by a Certificate of Product Registration (**CPR**) from the FDA can be imported into and distributed in the Philippines. By way of exception, for purposes of clinical trial use, medicines not yet registered with the FDA can be imported by obtaining an import permit for investigational drug products ("**Import Permit**") with the FDA. In addition to unregistered drug products for clinical trials, the Import Permit allows the inclusion of ancillary supplies, such as laboratory kits, reagents and other materials to be used for the clinical trial concerned to be imported.

Under Circular 07, the following may apply for the Import Permit:

- Principal investigator
- Authorized representative of the study sponsor (registered pharmaceutical company with permanent address in the Philippines)
- CRO, with permanent Philippine address, representing the sponsor through a letter of authorization

To obtain the Import Permit, the application must be supported by the FDA document attesting to the approval of the clinical trials to proceed based on compliance to ethical and technical requirements ascertained by the ERC.

ERC requirements for clinical trial applications

The PNHRS and the Philippine Health Research Ethics Board (**PHREB**) have issued the National Ethical Guidelines for Health and Health-Related Research in 2006, which was updated in August 2017 ("**National Ethical Guidelines**"). Aside from providing for the establishment of ERCs, the National Ethical Guidelines provides for the following requirements for the approval of ethical and technical review of clinical trial protocols from the ERCs:

- Application for review, which may be a formal letter or part of an application form as described in the committee's standard operating procedure, addressed to the research ethics committee
- Clearance from technical/ethical reviews from other committees (if applicable)

- Research protocol that includes the title of the proposal, significance of the study, literature review, objectives of the study, methodology and procedure, inclusion and exclusion criteria, ethical considerations, and data analysis

The section on ethical consideration shall state what relevant international and national guidelines will be used as reference in the study, and include ethical issues, such as anticipated risks (how these will be minimized) and potential benefits, protection of confidentiality of data and privacy of research participants, vulnerability of research participants, management of adverse events, and how informed consent will be obtained.

- Informed consent and assent documents as provided in the National Ethical Guidelines

The informed consent and assent documents must be both in English and in a language appropriate to the level of understanding of the research participant as provided for in the National Ethical Guidelines. A sample template of statements to be written in an informed consent form (**ICF**) is also found in the same guidelines.

- Study tools (questionnaires, case report form, posters, advertisements for recruitment)
- Study drug / medical device information, such as investigator brochures, published literature, and medical device manufacturer's design, if relevant
- Curriculum vitae of the researcher and co-researchers, which shall also include the relevant training and proof of their GCP training (in the case of a clinical drug trial)
- Statement on presence or absence of conflict of interest of the researcher
- Information on funding, sponsors, institutional affiliations, potential conflicts of interest
- Contracts and approval of relevant offices: Memorandum of Agreement (**MOA**) if study is collaborative in nature; Materials Transfer Agreement (**MTA**); Intellectual Property Approval; and Investigational Device Exemption (**IDE**), when relevant
- Study/protocol budget
- The number of copies of the protocol package that is required by the committee for its review

The protocol must contain at least the following:

- Administrative information about the study, such as about the researcher or investigator(s), sponsor(s), monitor(s), other qualified medical expert(s), diagnostic laboratories, and research institutions involved
- Background information regarding the study, relevant past and current research findings and references to such information and data, and potential risks and benefits
- Background information regarding the drug under investigation, reason for the indicated route of administration, dosage, periods of treatment, population to be studied, a declaration regarding compliance with good clinical practice, and regulatory requirements
- Objectives and purpose
- Study design, which substantially determines the scientific integrity of the trial and the reliability of the data and includes the matters specifically provided for in the National Ethical Guidelines
- Selection and withdrawal of research participants, which include inclusion, exclusion and withdrawal criteria

- Informed consent of adult study participants or their minor children, and assent of adolescent participants with informed consent of their parents or legally authorized representative (LAR)
- Research participants' therapy or treatment and monitoring procedures
- Efficacy parameters, methods and timing
- Safety parameters, methods, timing and procedures for recording and reporting, as well as monitoring adverse reactions
- Safety measures for research participants when they withdraw/or are withdrawn from the study
- Plan for data and statistical analysis
- Information regarding direct access to study data and documents for monitoring, audits, institutional ethics committee reviews and regulatory inspections
- Ethical considerations
- Data management and record keeping
- Financing and insurance
- Dissemination and publication plans and procedures
- Clinical trial participants' information sheet/brochure, if applicable

The National Ethical Guidelines provide that a clinical trial protocol must, among others, discuss financing and insurance. As there are no specific guidelines, the sponsor and CRO are free to stipulate on this matter, subject to the approval of the ERCs.

On the publication of clinical trial results, the National Ethical Guidelines provide for the following:

- Results of clinical studies shall be published regardless of whether they are positive, negative or inconclusive. Findings shall be released in the public domain, and generally made known through scientific and other publications. Special effort must be exerted to share the results with the participants.
- Preliminary reports that raise false hopes and expectations of product safety, efficacy and immediate use shall not be made public.
- The plan for publication and the actual publication of trial results shall not expose the identity of the research participants or their family and community, or imperil their privacy or confidentiality as individuals, family or community, or breach the confidentiality of their personal and health information.

FDA approval for registration, including approval and conduct of clinical trials of vaccines and biologic products

Under DOH Administrative Order No. 47-a, series of 2001 entitled "Rules and regulations on the registration, including approval and conduct of clinical trials, and lot or batch release certification of vaccines and biologic products" ("AO 47-a"), all sponsors of clinical trials of developmental or investigational biologic products shall apply for a Permit for Clinical Investigational Use (PCIU) before undertaking clinical trials.

Under AO 47-a, "Biologic" or "Biologic Product" means any attenuated or inactivated virus or bacteria, or sub-components attached to adjuvants, toxoids, hyperimmune serum, and analogous products applicable to diagnosis,

prevention, treatment or cure of disease or injuries to man, obtained or derived from living matter — animals, plants or microorganisms, or parts thereof. It includes preparations primarily designed to develop a type of immunity or preparations that are concerned with immunity.

All clinical trials of investigational, new or established “biologic products” shall require clinical trial protocol approval by the FDA. Application for protocol approval shall be on a per phase of the clinical trial per product basis. The applicants are required to fully disclose all pertinent documentation and information regarding the product, the subjects and disease process to be evaluated, the study endpoints, the clinical trial sites, existing resources and infrastructure at the proposed trial sites, and other field site information such as location, personnel, resources, equipment and facilities. The applicants shall ensure strict adherence to the codes of Good Clinical Practice, Good Laboratory Practice and Good Manufacturing Practice.

Data retention

All clinical trials are required to be uploaded by the sponsor or the CRO (on behalf of the sponsor) in the [Philippine Health Research Registry \(“Registry”\)](#), administered by the Philippine Department of Science and Technology. The Registry is a publicly available database of newly approved health researches, which includes clinical trials and non-clinical studies conducted in the Philippines.

Furthermore, all original and latest approved versions of clinical trial protocols, investigator’s brochures, informed consent forms, ERC proof of approval, summary of amendments and final clinical trial report, including summary of safety reports, shall be recorded, filed and archived by the clinical unit of the FDA. Stored files shall be accessed only by duly authorized persons and shall be stored and disposed thereafter in a manner as may be provided by existing laws, rules and regulations. Disposal of files shall be in coordination with the Records Section of the Administrative Division, which shall seek approval from the National Archives of the Philippines.

Data stored with the clinical unit of the FDA is not generally accessible to the public.

Intellectual Property (IP) and data

Under Philippine law, the person who commissioned the work shall have ownership over the work. However, IP rights, such as copyright, shall belong to the author, unless there is a stipulation to the contrary.

On 9 September 2016, the Implementing Rules and Regulations (**DPA-IRR**) of the Data Privacy Act of 2012 (**DPA**) came into effect. The DPA and DPA-IRR were enacted to protect the right to privacy of communication while ensuring free flow of information to promote innovation and growth.

Generally, the DPA and the DPA-IRR applies to individuals and entities that process personal information and sensitive personal information. Personal information is any information from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual. Sensitive personal information refers to personal information about a person’s race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations; health, education, genetic or sexual life; criminal history; government-issued identifiers such as social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns, which have been established by an executive order or law as classified information.

The DPA and the DPA-IRR could ostensibly apply to the conduct of clinical trials and to institutions that process and handle the clinical data and that eventually use the clinical data results, since these activities may involve the personal information or sensitive personal information of participants. Also, the DPA and the DPA-IRR may apply to

individual health practitioners who collect, process, handle and maintain clinical data of their patients as part of their clinical research and clinical trial data collection. This may occur preparatory to the individual health practitioner entering into a research grant with a larger research-engaged entity.

However, the DPA-IRR identifies that the DPA and the DPA-IRR do not apply to personal information that will be processed for research purposes; intended for a public benefit; and subject to the requirements of applicable laws, regulations or ethical standards. They only apply to the minimum extent of collection, access, use, disclosure or other processing necessary to the purpose, function or activity concerned.

The National Privacy Commission (**NPC**), which is the regulatory body in charge of data privacy, has issued NPC Circular 17-01 and its Appendix 1, which states that the following health- and research-related sectors that are processing personal data and operating in the country are subject to mandatory registration of its data processing systems on the ground that their processing of personal data that is likely to pose a risk to the rights and freedoms of data subjects and/or where the processing is not occasional:

1. Universities, colleges and other institutions of higher learning, all other schools and training institutions
2. Hospitals, including primary care facilities, multi-specialty clinics, custodial care facilities, diagnostic or therapeutic facilities, specialized outpatient facilities, and other organizations processing genetic data
3. Pharmaceutical companies engaged in research

In other words, the processing of personal information and sensitive personal information, in so far as it relates to clinical trials and the individuals or institutions that process such information, is exempt from the application of the DPA and the DPA-IRR, provided that the personal information and sensitive personal information are processed for research purposes and are intended for a public benefit, and provided further that the processing of the information complies with the applicable laws, regulations or ethical standards relating to clinical trials, as enumerated above. However, the sponsor or contract research organization itself is still covered by the DPA and the DPA-IRR. Particularly, those that fall under the enumerated entities in NPC Circular 17-01 Appendix 1 must register their data processing systems with the NPC.

In addition, the National Ethical Guidelines contain a set of guidelines on authorship and publication of research results to avoid ethical problems and controversies when there are ambiguities regarding responsibility for various aspects of the research and the resulting publication.