

Technology Transfer

Legislation

The Civil Code of which the former was passed by the NA on 14 June 2005 and replaced by the new one dated 24 November 2015 is now the principal legal basis for technology transfer activities in Vietnam. Guiding the Civil Code, on the technology transfer, are now Law on Transfer of Technology No. 07/2017/QH14 passed by the NA on 19 June 2017 (“Technology Transfer Law”), and its implementing Decree No. 76/2018/ND-CP issued by the GoV, on 15 May 2018 (“Decree 76/2018”).

Scope of Technology Transfer

The scope of technology transfer is quite broad. Technology to be transferred must not fall within the list of technologies of which transfer is prohibited as stipulated in Articles 10 and 11 of the Technology Transfer Law and specified in Article 3 of Decree 76/2018. Transfer of technology falling within the list of technologies of which transfer is restricted as specified in the same Articles of the Technology Transfer Law and Decree 76/2018 shall be subject to a technology transfer permit.

One or more of the following technology objects are eligible for transfer:

- (i) Technical know-how and technological know-how;
- (ii) Technological plans, technological processes, technical solutions, parameters, drawings and diagrams; formulae, computer software, and data information;
- (iii) Solutions for rationalizing manufacture and for renewing technology; and
- (iv) Machinery and equipment to which any one of the objects specified in (i), (ii) or (iii) above is attached.

Technology objects shall be permitted to be transferred

whether attached or unattached to industrial property objects.

Forms of technology transfer include:

- (i) An independent technology transfer.
- (ii) A portion of technology transfer in the following cases:
 - (a) Investment project;
 - (b) Capital contribution in the form of technology;
 - (c) Commercial franchise;
 - (d) Transfer of intellectual property rights;
 - (e) Purchase and sale of the machinery and equipment.
- (iii) Other forms of technology transfer as stipulated by law.

Technology may be transferred by the following method(s):

- (i) Transfer of data about the technology.
- (ii) Training the technology transferee to properly understand and master the technology within an agreed period.
- (iii) Sending a technical consultancy expert to the technology transferee to apply the technology and put it into operation in order to achieve the product quality standards and schedule agreed by the parties.
- (iv) Transferring the machinery or equipment to which technology is attached by the prescribed methods.
- (v) Other forms of transfer as agreed by the parties.

Technology Transfer Contract (TTC)

Parties entering into a TTC may reach agreement on inclusion of the following particulars:

- (i) Name of the transferred technology;
- (ii) The technology object which is being transferred, the products created by the technology, and product standards and quality;
- (iii) Transfer of the ownership of [and/or] right to use the technology;

- (iv) Method of transfer of the technology;
- (v) Rights and obligations of the parties;
- (vi) Price and mode of payment;
- (vii) Term and date of effectiveness of the contract;
- (viii) Concepts and terms (if any) used in the contract;
- (ix) Plan and schedule for transfer of the technology, and location for implementing the transfer of the technology;
- (x) Liability to provide a warranty for the transferred technology;
- (xi) Penalties for breach of contract;
- (xii) Liability for breach of contract;
- (xiii) Dispute resolution tribunal; and
- (xiv) Other contents as agreed by the parties.

It is required that a TTC must be in writing or some other written form with equivalent validity such as a telegram, telex, facsimile or data message or other form as stipulated by law. The written contract must be signed and sealed by the parties (if they have a seal); and each page of the contract and any appendix must be signed and sealed with an overlapping seal (if they have a seal). The contract language shall be as agreed by the parties, but in the case of a transaction in Vietnam contract must be in Vietnamese. The Vietnamese and the foreign language versions of a contract shall be of equal validity.

Compared with the old regulations, the new regulations on technology transfer are more open and respect the business intention of the parties, by removing a number of contractual restrictions and prohibitions in a technology transfer contract, relating the price, the supplies, term of validity, applicable law for dispute resolution, etc.

The term of performance and the date of effectiveness of a TTC shall be as agreed by the parties; if the parties are unable to agree thereon, then the date of effectiveness shall be the date on which the contract was entered into, except:

(i) A contract for the transfer of a technology the transfer of which is restricted shall be effective as from the issuance date of the technology transfer permit.

(ii) A TTC required to be registered shall be effective as from the time of issuance of the certificate of registration of the technology transfer; any extended, amended or supplemented contract shall be effective as from the date on which the competent State agency issues a certificate of registration of such extended, amended or supplemented TTC.

Registration and Timing

Compared to the old regulations, the existing regulations permit the parties to a TTC to register at their own discretion only for obtaining incentives under applicable laws instead of required registration as in the past; unless TTCs for and technology transfer part of:

- (i) Technology transfers from other countries into Vietnam;
- (ii) Technology transfers from Vietnam to other countries; and
- (iii) Technology transfers within Vietnam domestically using the State capital or the State budget, except where a certificate of registration of the results of performing scientific and technological tasks has been issued.

According to Decree 76/2018, the competent levels of certifying the registration of technology transfer contracts, are:

(i) As for the technology transfer through carrying out an investment project:

(a) At the central level, the MOST shall issue a technology transfer contract registration certificate to an investment project in Vietnam which is under the decision on policy of investment of the NA, PM, ministries and central government authorities as prescribed in the regulations of the law on investment, of the law on public investment and the law on outward investment projects; and

(b) At the local level, the DOST shall issue a technology transfer contract registration certificate to an investment project in the areas managed in accordance with the decision on policy of investment of the People's Councils, People's Committees, Manage Boards of industrial parks, of export processing zones, of hi-tech parks and of economics zones as prescribed in the law on investment and the law on public investment; to the project required to register for Technology Transfer Registration Certificate but is not required to obtain a decision on policy of investment from the regulatory agency; to the cases where the applicants choose to register.

(ii) As for the independent technology transfer and other forms as prescribed by laws:

(a) The MOST shall issue a Technology Transfer Registration Certificate to the applicant who transfers technology from a foreign country to Vietnam or from Vietnam to a foreign country.

(b) The DOST shall issue a Technology Transfer Registration Certificate to the applicant who transfers technology within Vietnam by using the State fund or the State budget, and to the applicant who is not required, but selects to register the TTC.

(iii) The Ministry of National Defense ("MOND") shall issue the Technology Transfer Registration Certificate to the cases where the technology transfer is on the list of national defense secrets or on the list of properties procured by using the national defense's special budget.

It is required that the TTCs must be registered within 90 days from the signing date. And as a routine, and subject to the satisfaction of the registration application, the contract registration certificate shall be issued within 5 days from the receipt of the satisfactory application.

An application for registration of technology transfer must

include the following:

(i) Application in writing;

(ii) The original or a certified copy of the transaction documents on technology transfer. If there is no such document in Vietnamese, then there must be a notarized or certified Vietnamese translation.

Taxation

Taxes applicable to transferors are further described in Taxation hereunder.