

TECHNOLOGY TRANSFER REGULATIONS, 1992 (L.I 1547)

In exercise of the powers conferred on the Board of the Ghana Investment Centre by section 30 of the Investment Code, 1985 (P.N.D.C.L. 116) these Regulations are made this 9th day of September, 1992.

Regulation 1—Registration of all Technology Transfer Agreements.

- (1) All Technology transfer agreements entered into under the code or regulations made under the code shall be registered with the Ghana Investments Centre (hereinafter referred to as the “Centre”).
- (2) Any existing technology transfer agreement not registered with the Ghana Investments Centre shall be registered with the Centre within six months of the coming into effect of these Regulations.
- (3) Any enterprise which wishes to register its technology transfer agreement shall apply to the Ghana Investments Centre on the application form provided for that purpose by the Centre and copies of the agreement to be registered shall be attached to the form.
- (4) There shall be paid for the application form such fee as the Centre shall determine.

Regulation 2—Application of Regulations.

- (1) The provisions of these Regulations shall apply to all technology transfer agreements entered into under the code or regulations under the code.
- (2) Where there is a breach of any of the provisions of these Regulations, the Centre may not register the agreement, and the agreement shall be unenforceable.

Regulation 3—No Restriction on Registration.

Subject to the other provisions of these Regulations, no restrictions shall be imposed on the registration of a technology transfer agreement.

Regulation 4—Unenforceable Clauses in Technology Transfer Agreements.

Where a technology transfer agreement contains any of the clauses specified in this paragraph or contains a clause the effect of which is the same as or similar to any of the said clauses, that clause shall be inapplicable and unenforceable—

- (a) clauses transferring technology which is freely and easily available in Ghana; or
- (b) clauses which restrict the volume of production or the sale of the transferee’s products in the transferee’s country; or
- (c) clauses which completely prohibit the exportation of the transferee’s products or the right to export to specific geographical areas other than to areas where the transferor has previously granted exclusive rights to third parties; or

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(d) clauses which require—

- (i) the transferee to export exclusively through the transferor or on unfavorable terms; or
- (ii) the transferor's prior permission before any export transaction is made; or
- (iii) the transferee to pay additional royalty on export sales; or

(e) clauses which impose an obligation on the transferee to acquire or procure its inputs including equipment, tools, parts, raw materials or intermediate products exclusively from the transferor or any other person or a specific source; except where such inputs are not commercially available elsewhere or such inputs are special to the technology supplied or are required to meet the specifications of products to be produced either under license or trademark; or

(f) clauses which impose on the transferee an obligation to employ personnel to be appointed by the transferor whose remunerations shall be provided by the transferee, unless in the opinion of the Centre the obligation is considered indispensable, taking into account the work to be performed by the personnel in respect of the transferred technology; the remuneration for it compares favorably with what prevails in the international market for similar services to be performed by the personnel and in any such case the provision of the services is supported by a properly drawn-up Management or Technical Services Agreement; or

(g) clauses which provide for the obligatory transfer by the transferee of improvements or innovations introduced or developed, or patents acquired by the transferee in respect of the licensed technology to the transferor, except that such a clause, excluding patents acquired by transferee, may be permissible where they are mutual or reciprocal; or

(h) clauses which require payment for patent and other industrial property rights after their expiration, termination or invalidation; or

(i) clauses which prohibit the manufacture or sale or both of products based on the technology transferred on the expiration of the agreement, or prohibit the use of licensed technical know-how acquired from the use of the licensed technology after the expiry of the agreement; or

(j) clauses which are designed to prevent the transferee from contesting or assisting in determining, either administratively or by means of judicial proceedings, the validity of industrial property rights claimed or secured in Ghana by the transferor; or

(k) clauses which restrict R & D (research and development) activities of the transferee to improve and adapt the licensed technology or restrict the transferee access to continue improvements in techniques and processes related to the licensed technology ; or

(l) clauses which forbid the use by the transferee of complementary technologies; prevent the manufacture of products different from those covered by the agreement or prevent the manufacture of products similar to those covered by the technology transfer agreement; or

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(m) clauses which require the consent of the transferor before any modifications to products, processes or plants can be effected by the transferee or which impose on the transferee obligations to introduce unnecessary designs; except where the licensed technology is used to manufacture specific products under a license or trademark; or

(n) clauses which limit the scope, volume of production or the sale or resale prices of the products manufactured by the transferee; or

(o) clauses which impose on the transferee an obligation to sell all its manufactured products to the transferor at a price fixed by the latter or to any other person or enterprise designated by the transferor; except that this provision shall not apply where—

(i) the transferee is engaged exclusively in the manufacture of intermediate products, parts or components for subsequent transformation, assembly or finishing by the transferor, and the transferor is the sole potential buyer of such intermediate goods; or

(ii) the requirement is related exclusively to certain export markets; or

(iii) the transferor can prove that it possess an adequate distribution system or enjoys sufficient prestige in the trade to be able to market the products covered by the agreement more efficiently than the transferee.

Provided always that the transferee shall at all times not be coerced into any such transaction.

Regulation 5—Provision of Training by Transferor.

Every technology transfer agreement made under the Code or regulations made under the Code shall include a clause for the provision by the transferor of requisite training for the transferee and its personnel in the effective utilization of licensed technology and there shall be attached to the agreement a detailed training schedule which shall guide and be adhered to by the transferor in the provision of the training.

Regulation 6—Taxes on Royalties.

Every technology transfer agreement shall provide that taxes due on royalties shall be paid by the transferor.

Regulation 7—Other Obligations of Transferor.

(1) It is the duty of the transferor to give full description of the technology and to supply all necessary documentation and information in the English language.

(2) The transferor shall guarantee the efficient performance of the technology and the continuous availability of essential spare parts during the tenure of the agreement.

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(3) The transferor shall inform the transferee of improvements and innovations relating to the technology and shall supply them on terms mutually acceptable to the parties.

Regulation 8—Confidentiality Obligation of Transferee.

(1) The transferee shall keep the licensed know-how confidential and use it only for its own production during and after the expiration of the agreement.

(2) The transferee shall not, except with the consent of the transferor and on terms acceptable to both parties, sub-license the licensed know-how.

Regulation 9—Duration of Agreement.

The duration of a technology transfer agreement shall be for a period not exceeding ten years, but an agreement may be renewed where it is considered desirable by the parties for subsequent terms each not exceeding five years.

Regulation 10—Applicable Law.

Technology transfer agreements made under the Code or regulations made thereunder shall be governed by the laws of Ghana.

Regulation 11—Dispute.

(1) Where any dispute arises between the transferor and transferee in respect of any technology transfer transaction, all effort shall be made through mutual discussions to reach an amicable settlement.

(2) Any dispute between the transferor and transferee in respect of any technology transfer transaction which is not amicably settled through mutual discussions may be submitted to arbitration:

(a) in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law; or

(b) within the framework of any bilateral and multilateral agreement on investment protection to which the Governments of the transferor and transferee are parties; or

(c) in accordance with any other international machinery for the settlement of investment disputes agreed to by the parties.

Regulation 12—Effective Date of Agreement.

Unless otherwise provided in the agreement, a technology transfer agreement made under the Code shall come into force on the date it is registered by the Centre.

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Regulation 13—Performance Guarantee.

Process performance warranties shall be provided in agreements covering large projects which involve considerable technical complexity not explained to the transferee at the time of negotiations or before the transferee makes front-end payments.

Regulation 14—Payment for Technology.

Royalty in respect of know-how patents and other industrial property rights shall range from 0% to 6% of net sales of the technology recipient.

Regulation 15—

(1) Fee for Technical Service/Assistance (including know-how) shall range between 0% to 5% of net sales.

(2) Fee for know-how shall not exceed 2% of net sales.

(3) The parties shall have the option of allowing "running" or "lump sum" fee considering the nature of the technical service, its duration and dependence of the transferee on continued foreign technical expertise. Where continuing service is deemed to be required "running" fees will be favored.

Regulation 16—Management Service Fees.

(1) Management fees shall range between 0% and 2% of profit before tax.

(2) Management services of projects for which profit is not anticipated during the early years shall attract a fee ranging from 0% and 2% of net sales during the first 3 to 5 years.

(3) the level of payments provided under sub-paragraphs (1) and (2) of this paragraph shall be reduced pro rata if the transferor has 60% or more of the equity share capital of the transferee company.

Regulation 17—Provision of Management and Technical Services.

Where a transferor provides management/ technical services, in addition to patents know-how and trademarks, the total fee shall not exceed 8% of net sales.

Regulation 18—Fees Higher than Specified.

Any request for fees higher than the upper levels specified in sections 14, 15, 16 and 17 shall be subject to the approval of the Centre.

Regulation 19—Incentive Royalties.

Incentives royalties shall be available for sale of licensed products in overseas territories if marketed under the trademarks of the transferor; any such approvals shall extend to subsidiaries of overseas firms.

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Regulation 20—Interpretation.

In these Regulations unless the context otherwise requires:

"**agreement**" means a technology transfer agreement made under the Code or regulations under the Code;

"**Centre**" means the Ghana Investment Centre;

"**Code**" means the Investment Code, 1985 (P.N.D.C.L. 116);

"**net sales**" means ex-factory selling price of the product exclusive of sales tax and excise duties levied by Government or the net income accruing from a service, minus the landed cost or payment for any component, materials and supplies imported from the technology supplier other than initial capital equipment and the first round of components, materials and supplies imported therefrom.

P.V. OBENG

Chairman of the Board, Ghana Investments Centre

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