

The Contracting Party's Legal Standing In The Context Of Industrial Property Technology Transfer

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Abstract:

One of the key issues in the area of technology transfer in the field of industrial property is the contracting party's legal status. with the goal of striking a balance between safeguarding the rights of the contracting party and making sure they receive the full value of the transferred technology, as well as by means of a legal structure that specifies the rights and responsibilities of the contracting parties, in order to promote the interests of all parties involved in technology transfer in industrial property.

Keywords: industrial property, technology transfer agreement, rights of contracting parties.

Introduction:

In the era of modern technology, technology transfer has become one of the most important elements contributing to the development of industry and innovation. The technology transfer contract in the field of industrial property is considered one of the legal mechanisms that enable the transfer of knowledge and technologies protected by intellectual property rights from their owner to other parties interested in benefiting from them. This contract forms a legal framework that defines the rights and obligations of the participating parties and ensures the protection of industrial property and the legitimate benefit from the technology.

By using the technology transfer contract in the field of industrial property, the exchange of technical and technological knowledge between companies and institutions is achieved, contributing to enhancing innovation and developing new products. Technologies protected by intellectual property rights are legally and legitimately converted into ownership rights and used in production and services, enabling the benefiting parties to achieve progress and sustainable development in their industrial activities.

In general, technology transfer contracts in the field of industrial property are regulated under national and international laws and regulations related to intellectual property protection. The conclusion of this contract requires clear understanding and cooperation between the contracting parties, where ownership rights, usage, exploitation, financial terms, confidentiality obligations, and other aspects related to the transferred technology are determined.

With the increasing importance of technology in the global economy, the technology transfer contract in the field of industrial property becomes a vital tool for developing industries and enhancing technical and commercial cooperation between companies and countries. This

contract contributes to achieving sustainable technology and the transfer of modern technical knowledge, which enhances innovation and improves the quality of products and industrial processes. Hence, the problem of the study arose as follows:

What are the regulations governing the usage of technology transfer agreements in the area of intellectual property?

We divide the study into two axes as follows in order to address this issue:

Legislative framework for agreements pertaining to technology transfer is the first axis.

The Second Axis: Regulations Governing the Use of Technology Transfer Agreements in the Area of Industrial Property

1/The Legislative Framework for the Technology Transfer Contract

In the modern landscape, the technology transfer agreement has evolved into a critical commercial instrument, distinguished by its unique clauses that often necessitate its treatment as an exception to standard legal principles. This agreement pertains to technology, an incorporeal asset, and its execution, driven by pragmatic factors inherent in commercial operations, generates entities with particular characteristics. Furthermore, it serves as a primary mechanism for the global dissemination of technology and its advancement within domestic contexts.

1/1/The Definition of the Technology Transfer Contract:

Numerous legal experts and academics contend that a singular, standardized legal framework for technology transfer agreements is nonexistent. Instead, the practice involves a collection of diverse agreements, each possessing a unique character and governing legal structure, which collectively facilitate, to varying degrees, the conveyance of technology. Consequently, a precise definition and clarification of the concept of a technology transfer agreement is required, as follows:

1/1/1/ The Definition of Technology:

Technological advancement, broadly defined as the application of understanding, instruments, capabilities, and assets to create and implement novel approaches and research-based answers across diverse areas of human activity, plays a crucial role in economic progress, societal evolution, and cultural advancement in contemporary society.¹

From a jurisprudential standpoint, this encompasses the conveyance of an entitlement from one entity to another, like the transference of proprietorship or relocation from one locus to another, alongside the international remittance of financial resources.²

1/1/2 Internal and external transfer of technology:

Both mean the following:

• ***Internal technology transfer :***

This refers to the activities occurring inside the project's boundaries, including internal movements like relocation of staff and resources from the main company to international branches dispersed globally. This involves leveraging technology directly through these new units, viewing technological movements in a similar manner to financial and material flows within the project's operational framework. In this instance, technology transfer is distinguished by its confinement to the multinational project's control. The parent company retains ownership and receives all benefits derived from the technology's use, effectively restricting the technology's application to internal operations.³

• ***External technology transfer (international):*** It is the transfer of technology from one country to another, usually from a developed or developing country, or it is the transfer carried out by a multinational project from the parent company or one of its subsidiaries to other

independent projects in different countries, resulting in the division of the market between two independent producers, the technology sender and the receiver.⁴

1/1/3 The jurisprudential definition of a technology transfer contract:

According to jurisprudence, it is an agreement whereby the technology importer agrees to and commits to a technology transfer that includes the transfer of technical data to the technology importer who uses it to manufacture, improve, assemble, or operate machinery or equipment, or offer services. The acquisition, sale, lease, or rental of commodities, as well as the sale of trademarks or the licensing of their usage, are not seen as technology transfer unless it is a component of the technology transfer agreement.⁵

1/1/4/ The Legal definition of technology transfer contract:

In Article 73 of the Egyptian Commercial Code, the Egyptian legislator characterizes a technology transfer agreement as a contractual arrangement between two entities. This agreement stipulates that one entity, designated as the provider, commits to convey, enhance, or furnish specific know-how or to implement or manage equipment and machinery. This commitment is undertaken in exchange for remuneration.⁶

The Algerian legislator did not establish a particular institution to handle technology transfer agreements, so there is no clear definition of what constitutes a technology transfer. In Algerian law, a technology transfer contract is regarded as a crucial instrument for attaining goals in the area of intellectual property. technology transfer, innovation, and improving industrial cooperation between parties. The goal is to give the recipient the ability to legitimately and legally use and profit from the transferred technology. Additionally, it mandates financial agreements and particular terms to safeguard the rights of the parties to the contract and ensure mutual advantages.

1/2/ The legal nature of the technology transfer contract

The legal character of the technology transfer agreement is defined differently by jurisprudence. The prevailing opinion in developing nations is that it is mainly administrative in nature, especially with regards to contracts signed by the government and its associated businesses. Another method views the contract as private, asserting that it is still private even if the government is a party to it. In its contracting, will continue to rely on private law remedies⁷. Therefore, we will begin by discussing the theory that the contract is administrative in character, followed by the theory that it is private in nature.

1/2/1/The administrative nature approach:

A perspective within legal theory classifies investment agreements, encompassing technology exchange accords entered into by the government or associated entities, as administrative contracts.⁸

On the basis that the technology transfer contract is similar or identical to the administrative contract.⁹

The proponents of this trend rely on a number of arguments.¹⁰

Technology transfer agreements, while seemingly designed to benefit the provider, are primarily intended to regulate a public utility from the perspective of the importing nation.

Because they dominate international trade transactions, the state or one of its public firms are frequently one of the parties to a technology transfer agreement, particularly in developing nations.

Tech transfer agreements cover a wide range of unique conditions not found in private law contracts. These include the in-kind benefits that are given to investors, regardless of whether they are in the form of cash. domestic or foreign, such as tax and customs duty exemption, among others. Moreover, these agreements include concepts that are not included in private law agreements, such as tax and customs duty exemption, among others the idea of public authority and the restoration of financial equilibrium to the contract.¹¹

Thus, applying the administrative contract theory to a technology transfer contract makes the latter subject to the same legal system as the administrative contract, as the contracting state can unilaterally amend or terminate the contract without any contractual liability.

As for the criticism of the opinion of this trend, which accepted that the technology transfer contract is an administrative contract, it is based in supporting their point of view with the following arguments:¹²

- The requirement that the contract include a significant amount of code in order for the host nation to be able to seize foreign technology and strike a balance between its own interests and the interests of the contracting party, and this is what falls within the purview of carrying out the administrative agreement.

In the Investment Law, the extraordinary terms are specified in the investor's best interests and against the government, not the other way around.

- The claim is that in order to pursue their interests and establish strong economic ties abroad, nations are compelled by international trade rules to sign contracts in the same way that anyone else does.

1/2/2/The private nature approach

Jurists of this approach view investment contracts concluded by the state with a foreign private party, including technology transfer contracts, as administrative contracts, and they consider them as contracts of private law.

The proponents of this approach base their position on the following arguments:

- A significant degree of flexibility must be available in technology transfer contracts to allow for the alignment of the interests of both the state and the foreign investor, which is not present in administrative contracts.

- Most investment and technology transfer legislations seek to distance state contracts from the concept of administrative contracts.

- While the state can exercise public law methods within its territory and over its nationals due to its sovereignty, the state's contractual activity with foreigners can only be based on legal equality between the parties, relying on the fact that state sovereignty is limited in scope within the state's territory. Outside this territorial scope of sovereignty, the state stands as an ordinary person vis-à-vis the other contracting party, and therefore does not enjoy any exceptional powers over the foreign party except to the extent allowed by the contract terms.¹³

The mere involvement of the government in a contract doesn't alter its fundamental character. It remains a business agreement if its primary aim is to facilitate commerce or if it falls within the scope of typical economic undertakings.¹⁴

The state's engagement in international commerce has prompted its adoption of private law principles in dealings with foreign entities. By establishing contractual relationships governed by private law, the state aims to foster confidence and incentivize foreign actors to collaborate on endeavors deemed essential. This recourse to private law mechanisms signals a commitment to parity, positioning the state as an equal partner in contractual agreements, thereby contributing to the relinquishment of sovereign immunity.¹⁵

2/ Rules for employing technology transfer contracts in the field of industrial property

Before concluding any contract, regardless of its type, the parties must understand, discuss, and consult on its provisions in a manner compatible with the capabilities of each party, both before entering into the contract and during its execution.

2/1/ Industrial Property Rights Before Entering into a Technology Transfer Contract:

Prior to finalizing a technology transfer agreement, a structured process involving multiple phases is typically undertaken by the involved entities to establish an equitable distribution of benefits. The technology provider, aiming to safeguard their intellectual property rights, will engage in discussions with the recipient to secure provisions that ensure robust protection of the proprietary rights encompassed by the accord.

2/1/1/ Negotiations Before Concluding a Technology Transfer Contract:

The negotiation stage represents a critical juncture in the formation of international trade contracts, particularly that involving technology transfer. It serves as a validation point for the signatories' commitment to achieving a mutually beneficial accord concerning the terms and conditions of the proposed agreement. Furthermore, it illuminates each party's underlying motivations and projected outcomes. This phase holds significant weight due to the reciprocal disclosure of sensitive information; the provider imparts knowledge regarding their technological assets, while the recipient reveals their technical and economic resources. Consequently, given the sensitivity of this exchange, it is imperative to implement safeguards that ensure the requisite discretion for both parties, thereby protecting their respective interests, with specific regard to proprietary rights and confidential information relevant to the contract.

Negotiation: It is the exchange of proposals, compromises, correspondences, reports, and technical and commercial studies exchanged by the parties to understand the intended transaction and the rights and obligations that will result from the agreement for the parties, through the best Legal formulation that preserve Their interest.¹⁶

The presentation highlights negotiation as a process facilitating communication and the reciprocal sharing of viewpoints. Within this framework, parties advance propositions concerning areas of contention with the overarching aim of achieving mutually acceptable outcomes. This outcome ideally reflects an equilibrium between the benefits sought by each negotiating entity, recognizing that each participant typically endeavors to emphasize their own priorities, potentially at the expense of others.

Confidentiality:

One of the most crucial duties between contracting parties is to maintain the confidentiality of the contract both before and after it is signed. The parties to a technology transfer agreement must make this commitment because it includes crucial details regarding: its topic, which includes trade secrets and patents. If this commitment is violated, technological secrets will be revealed and leaked to rivals.

Confidentiality of information is an obligation that requires the negotiator to remain silent regarding everything that comes to their knowledge or is discovered during the course of negotiations, or through what is exchanged with the other negotiator in documents, or through discussions between them, or by chance, or through research and studies required for concluding the contract.¹⁷

The purpose of ensuring confidentiality is to maintain the secrecy of information and data related to the subject of the intended contract, especially in certain types of contracts that require confidentiality.¹⁸

2/2/ The rights Ownership Industrial during to implement a contract transfer Technology The Warranty:

The Algerian legislator stipulated the provisions of the guarantee through Article 371 and the following of the Civil Code.,As the legislator stated,RHe forgot about the guarantee through Article 1625 and the following of the Civil Procedure Code, according to Article 1625 of the Civil Procedure Code.¹⁹

It is pertinent to acknowledge that a warranty constitutes a juridical duty in the majority of exchange agreements that effectuate a transfer of title or any other real property interest. The incorporation of warranty stipulations within the sales contract chapter of numerous statutes should not be interpreted as a limitation of their applicability to alternative contractual arrangements. Rather, this placement reflects the historical convention of situating such provisions within the framework of sales law. In actuality, the warranty provisions observed in sales contracts represent fundamental principles that warrant consideration as applicable across a broader spectrum of agreements.

Types of Guarantee:

***Guarantee against Exposure:** Referring to the general rules of guarantee provisions, a definition of the guarantee against exposure can be provided, as stipulated in Article 371 of the Civil Code..²⁰

***Hidden Defects Guarantee:** The supplier guarantees hidden defects that may infiltrate the technology subject to the transfer process. A hidden defect is any malfunction or damage that may affect the elements of the technology subject to the transfer process and is beyond the supplier's control, i.e., caused by an external factor. The supplier guarantees the hidden defect upon its discovery by repairing the damage and restoring the situation to its natural state. If this is impossible, the supplier shall replace the defective technology elements under the contract with sound ones at their own expense. For example, if the supplier delivers advanced equipment involved in the production of a certain product, and the recipient suddenly discovers a defect in that equipment used in producing the technology.

2/2/2 Unauthorized Sub-licensing:

As long as industrial property rights are transferable by their owners, the law grants them several mechanisms for disposition, such as the right to exploit and the right to assign, whether for consideration or gratuitously, and the right to license others to exploit. It was necessary to subject these transactions to special provisions regulating them to ensure the protection of those rights from all kinds of infringement.

Licensing is considered an important tool for technology transfer, as it involves transferring technical knowledge and the right to exploit patents, industrial designs, or trademarks from the licensor to the licensee. If it is the subject of a contract involving the transfer of certain technology through industrial property rights, the contract must include special provisions regulating their exploitation. Therefore, this contract is considered a composite contract, as it regulates special provisions related to technology transfer on one hand, and provisions related to the exploitation of intellectual property rights on the other.²¹

Conclusion:

In summary, this research on the legal standing of those involved in technology transfer and industrial property highlights its crucial role in structuring relationships and fostering confidence and collaboration. Developing Algeria's technological and industrial landscape demands collaboration between government and private entities, along with stronger international ties and the adoption of global best practices. Streamlining relevant regulations and increasing contractor and investor awareness are essential for ensuring proper comprehension of technology transfer and legal protection requirements.

Furthermore, promoting innovation and industrial investment through incentives and public-private partnerships is vital. Effective technology transfer and industrial property development can significantly boost Algeria's economic and social progress and improve the global competitiveness of its local industries.

Consequently, bolstering the legal position of contracting parties and improving the overall climate for technology transfer and industrial property in Algeria is a significant undertaking that necessitates collaborative efforts from all stakeholders.

Suggestions:

The aforementioned study supports the following recommendations:

1. Enhancing the legislative and regulatory environment: The laws and laws pertaining to technology transfer and industrial property in Algeria need to be modernized and developed in order to maintain pace with current advances in this area and establish an adequate legislative framework for contracting parties.
2. Improving legal safeguards: Effective procedures must be in place to protect the rights of the contracting party and ensure the proper performance of contracts as well as the responsibilities of the parties.
3. Increasing awareness and education: It is crucial to educate the public about the significance of protecting industrial property and technology transfer, as well as to offer training, to ensure that the relevant parties are well-informed about the laws and regulations pertaining to technology transfer, as well as about their rights and responsibilities.
4. Fostering worldwide collaboration: Coordination and cooperation with the international community and relevant international organizations in the area of industrial property and technology transfer should be strengthened. be improved to take advantage of global knowledge and practices.
5. Promoting investment and innovation: Facilitating measures, tax incentives, and other policies should be implemented to create a supportive climate for innovation and investment in Algeria's industrial sector. incentives, and fostering collaboration between the public and commercial spheres.

In conclusion, the legal status of the contracting party in the context of technology transfer in the area of industrial property would be improved by putting these recommendations into practice. Technology, innovation, and investment in Algeria's industrial sector can be fostered, and Algerian legislation can be enhanced.

Bibliography:

¹- Malika Hamaida, The Legal System of Patent Licensing Contracts in the Field of Technology Transfer, Master's Thesis, Faculty of Law, University of Algiers, 2002/2001, p. 49.

²- *ibid*, p. 50.

- ³- Fawzia Abdullah, "Foreign investment as a technology transfer mechanism" Illizi Journal of Research and Studies, Issue 01, Illizi University Center, Algeria, 2016, p. 119.
- ⁴Wafaa Mazid Falhout, Legal Problems in Technology Transfer Contracts to Developing Countries, 1st ed., Al-Halabi Legal Publications, 2008, p. 12.
- ⁵- Nabil ounnougui, "The legal framework for technology transfer contracts and their direct effects" Hot Law Journal, Volume 5, Issue 1, Faculty of Law and Political Science, University of Setif, 2018, p. 418.
- ⁶-Article 73, Egyptian Commercial Law, A technology transfer contract is an agreement by which a technology supplier undertakes to transfer, in return for a fee, technical information to a technology importer who uses it to produce, develop, or install certain goods, operate machines or devices, or provide services..
- ⁷- Zuhair Khalil Farqad, The Legal System of the Technology Transfer Contract, Council of the Faculty of Law, University of Babylon, 2007, p. 43
- ⁸- Fayza Al-Sayed Al-Haddad, Contracts Concluded Between States and Foreign Persons, Alexandria: Dar Al-Fikr Al-Jami'i, 2001, p. 462.
- ⁹- Farqad Zuhair Khalil, previous reference, p. 43.
- ¹⁰- Ibid, p. 44.
- ¹¹- Bashar Muhammad Al-Asaad, Investment Contracts in International Private Relations, Cairo: Dar Al Nahda Al Arabiya, 2004, p. 212.
- ¹²- Rafika Qasouri, "The Legal System of Technology Transfer Contracts", Issue 05, University of Batna, 2018, 184.
- ¹³Jamal Mahmoud Al-Kurdi, Globalization of Technology from a Legal Perspective, First Edition, Cairo: Dar Al Nahda Al Arabiya, 2001, p. 35.
- ¹⁴- Farqad Zuhair Khalil, previous reference, p. 51.
- ¹⁵- Farqad Zuhair Khalil, previous reference, p. 52.
- ¹⁶- Baroud Mohammadi Mahmoud "The legal value of agreements that occur during the pre-contractual negotiation phase in the field of international trade contracts", Journal of the Islamic University, Humanities Studies Series, Vol.13, number 02, 2005, p. 5.
- ¹⁷- Ali Ahmed Saleh, Negotiations in International Commercial Contracts, Dar Houma, Algeria, 2011, p. 421.
- ¹⁸- Al-Arabi Belhaj, The legal framework for the stage prior to concluding the contract in light of Algerian civil law A Comparative Study, Algeria: Dar Wael, 2010, p. 73.
- Civil Code: Article 1625 Created on 06-03-1804, promulgated on March 16, 1804 « The guarantee ¹⁹ that the vendor must use in the acquéreur, a deux objets: The first is the easiest possession to choose the fund, the second, the defaults in the caches of this lost or the vices »*
- ²⁰Article 371 of the Penal Code "The seller guarantees that the buyer will not be hindered from enjoying the sale in whole or in part, whether the hindrance is his own doing or the doing of a third party who has a right to the sale at the time of the sale that he can challenge the buyer with, and the seller is required to guarantee it, even if the right of that third party was proven after the sale, and this right was transferred to him from the seller himself."
- ²¹- Hossam El Din El Sagheer, "Intellectual Property Licensing and Technology Transfer" and WIPO National Intellectual Property Advisory to Members of the Shura Council, Oman March 23/24 2004, p. 2.