

LEGAL UPDATE

LAW ON TECHNOLOGY TRANSFER

On 19 June 2017, the new Law on Technology Transfer No. 07/2017/QH14 (**new LTT**) was adopted. The new LTT will come into effect on 1 July 2018 and replace the old Law on Technology Transfer enacted in 2006 (**2006 LTT**).

Like the 2006 LTT, the new LTT's main aim is to improve the technology transfer framework by eliminating obsolete technologies that may adversely influence the country's development; promoting the adoption of advanced technologies; encouraging technology innovation by businesses; and developing a strong science and technology market in Vietnam.

Hereafter you will find the main points of the new LTT.

1. Technologies to be transferred

The new LTT will limit the transfer of technologies and machinery that are 'old-fashioned' and polluting and do not satisfy national standards and technical regulations from abroad into Vietnam and within Vietnam. On the contrary the new LTT will stimulate the transfer of advanced, modern and green technologies. Worth noting is that technology and machines that are promoted should have a focus on introduction of new varieties in agriculture, saving resources, energy and fuel; generation or use of new or renewable energy; improvement of educational and training quality; the pharmaceutical and healthcare industry to improve and protect health; prevention of natural disasters and epidemic diseases; protection of the environment, coping with climate change and reduction of greenhouse gas emission.

The government will issue implementation regulations providing the lists of the technologies being encouraged, limited or prohibited to be transferred from Vietnam to foreign countries and vice versa.

2. Technology screening and assessment

2.1 General

To prevent the transfer and use of unwanted technologies in the country, the new LTT introduces a technology screening and assessment process. Investment projects using technologies the transfer of which are restricted by

law or technologies which may have negative impact on the environment will be not approved without the government's assessments of involved technologies.

For new investment projects required to obtain in-principle approvals, being large projects or projects with significant economic-social impacts as defined in the Law on Investment, the assessments are compulsory.

2.2 Application file

In the application files, the investors are expected to address, *among others*, rationality for the selection of the technologies; name and origin of technology; technology process diagram; list of main machinery & equipment, their status and specifications; preliminary environmental impact assessment (if applicable); and products and their quality standards. Draft technology transfer agreements must be included if one of the investors will make a capital contribution in form of technology.

2.3 Competent authorities

The State Appraisal Council will assess technologies of all investment projects approved by the National Assembly. The ministry specialising in the relevant technologies will coordinate the assessments involving different government agencies and advise the Prime Minister on the technology matters. A similar process will be applied to the approvals of investment projects required technology screening and assessment at the municipal level.

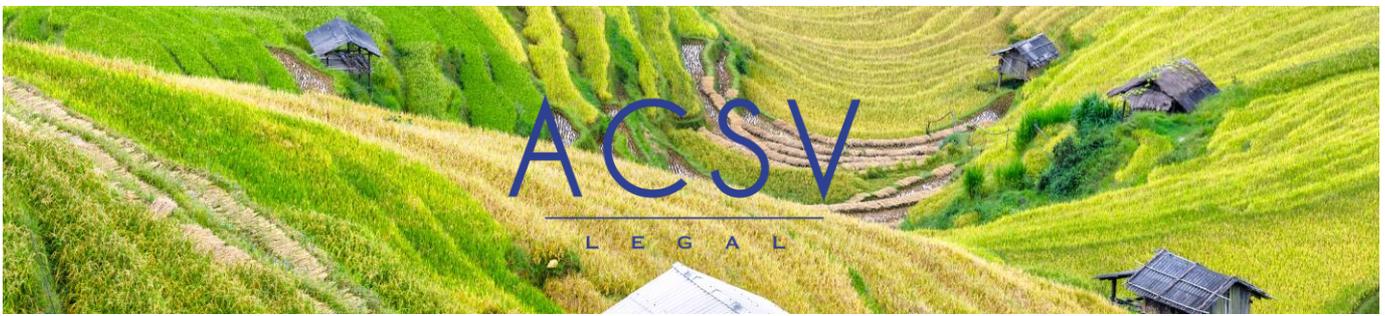
A project may be re-assessed during the implementation if there are significant changes or modifications to the assessed and approved technologies.

3. Technology Transfer Contract

3.1 Registration

Under the 2006 LTT, it was the contracting parties' discretion to register the technology transfer contract with the competent authorities. It may not be the case under the new LTT as to be effective, the following technology transfer contracts must be registered with the competent authorities:

- a. technologies transferred from abroad into Vietnam;



- b. technologies transferred from Vietnam to another country; and
- c. domestic technology transfer funded by state funding or state budget, excluding the cases where a certificate of outcome registration of science and technology task has been obtained.

Other technology transfer contracts are not required but encouraged to register with the government.

For those technologies of which the transfer is restricted by law, the contracting parties may not enter into the technology transfer contracts until such transfers are pre-approved by the Ministry of Science and Technology. Within 60 days after the execution of the technology transfer contracts, the parties will be required to apply for the technology transfer permits. The technology transfer contracts of the restricted technologies will take effect from the dates of the technology transfer permits.

3.2 Price

The parties are free to agree on the price for transferred technology, but the price may be subject to audits and restrictions under the Laws on taxations and prices depending parties and their connection. It is recommended that the contracting parties register their technology transfer contracts with the government regardless of whether the registration is compulsory or not. To be deductible, technology transfer fees will, as a matter of practice, be subject to the audits and inspections by the tax authorities which often require the technology transfer contract registration dossiers for their evaluation.

4. Calculation of payment methods

Under the 2006 LTT, technology transfer fee can be paid by one-off payment or in instalments; in cash or in goods; or as capital contribution to the investment project or enterprise. The new LTT provides with more options to pay for the technology transfer, payment can also be a percentage of:

- a. the net selling price;
- b. the net revenue; and
- c. the earnings before income taxes of the transferee.

5. Technology innovation and its advantages

Under the new LTT, businesses are encouraged to be innovative and invest in technology innovation projects. They may use their science and technology development

funds to finance, *among others*, technology innovation and development projects and start-ups, and research commercialisation.

Rights arising from findings on scientific research and technology development the value of which may be determined are considered as property rights and can be used as collaterals for loans from the government's Technology Innovation Fund or credit institutions to fund the same.

In addition, tax incentives might also be given to, *among others*, innovative start-ups and other businesses engaging in scientific research and technology development, and science and technology market intermediaries.

6. Research commercialisation

Commercialisation of scientific breakthroughs has become more formalised in the new LTT. The new LTT clarifies issues related to the transfer, ownership and the right to use results of scientific research and technology development that are funded by the State as well as the distribution of profits obtained from commercialisation of results of scientific research and technology development that are funded by the Vietnamese government. The authorities may also provide financial support to self-funded researchers if their research findings are considered valuable by the State agencies, or even acquire those findings which are found important for the socio-economic development or national defence and security. Further legal instruments guiding the implementation of these measures are expected to be issued.

7. Development of the market

The government seeks to develop the science and technology market through by creating the supply and the demand for the market; and building up capacity for science and technology market intermediaries.

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