

# Technology Transfer

## Legislation

The Civil Code of which the former was passed by the National Assembly 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 passed by the National Assembly on 29 November 2006, and its implementing Decree No.133/2008/ND-CP issued by the Government, on 31 December 2008, as amended and supplemented by Decree No.103/2011/ND-CP dated 15 November 2011 ("Decree 133") and Decree No.120/2014/ND-CP dated 17 December 2014 ("Decree 120").

## Scope of Technology Transfer

The scope of technology transfer is quite broad. Technology to be the transfer must not fall within the lists technologies of which transfer is restricted or prohibited as stipulated in Appendices 2 and 3 of Decree 120. Technology objects which shall be eligible for transfer shall be a part or the whole of the following technologies:

- (i) Technical know-how;
- (ii) Technical information about technology shall be permitted to be transferred in the form of the technological plans, technological processes, technical solutions, formulae, technical specifications, drawings, technical maps, computer programs and information files;
- (iii) Solutions for production optimization and for renovation of technology; and
- (iv) Franchising.

Technology objects shall permitted to be transferred whether attached or unattached to industrial property objects.

## Contents of the Contract

Parties entering into a technology transfer contract may reach

agreement on inclusion of the following particulars:

- (i) Name of the technology transfer contract, clearly stating the name of the transferred technology;
- (ii) The technology object which is being transferred and the products created from the technology;
- (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) Date of effectiveness and term of validity of the contract;
- (viii) Definitions of terms and concepts (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) Applicable law for dispute resolution;
- (xiv) Tribunal for dispute resolution; and
- (xv) Other agreements, on condition that they are not contrary to the law of Vietnam. It is required that a technology transfer contract 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 contract language shall be as agreed by the parties, but in the case of a transaction in Vietnam there must be a contract 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 to the price, the supplies, term of validity, etc.

### **Registration and Timing**

Compared to the old regulations, the existing regulations permit the parties to a technology transfer contract to

register at their own discretion only for obtaining incentives under applicable laws instead of required registration as in the past.

According to Decree 133, the competent levels of certifying the registration of technology transfer contracts, are:

- (i) At the central level, the MOST shall issue technology transfer contract registration certificates for technologies of investment projects in which investment is approved by the Prime Minister. One copy of a technology transfer contract registration certificate shall be sent to the DOST in the locality where the transferee is headquartered for coordinated monitoring and inspection of contract performance; and
- (ii) At the local level, the DOST shall issue technology transfer contract registration certificates for technologies other than those specified above. One copy of a technology transfer contract registration certificate shall be sent to the MOST for management.

It is required that the technology transfer contracts must be registered within 90 days from the signing date. And as a routine, and subject to the satisfaction of the registration file, the contract registration certificate shall be issued within 15 days from the receipt of the satisfactory file.

A file for registration of technology transfer contract must include the following:

- (i) Registration letter;
- (ii) The original or a certified copy of the technology transfer contract in Vietnamese and a foreign language. In case the parties to technology transfer are Vietnamese organizations or individuals, technology transfer contracts may be in Vietnamese only. The contract must be signed and sealed by the contracting parties and must be initialed and sealed by the contracting parties on every two adjoining pages and annexes in case a contracting party is an organization.

#### **Taxation**

Taxes applicable to transferors are well described in [Section 16](#) hereunder.

---

# Foreign Contractor

Foreigners can take part in biddings for doing projects and other business undertakings in Vietnam. However, it is quite confused for them to do business in Vietnam because of the absence of general regulations on this matter.

## Legislation

At the moment, Decree No.59/2015/ND-CP dated 18 June 2015 of the Government, on the management of construction projects, replacing Decision No.87/2004/QĐ-TTg dated 19 May 2004 of the Prime Minister, promulgating the regulation on management of operations of foreign contractors in the construction domain in Vietnam, as amended and supplemented by Decision No.03/2012/QĐ-TTg dated 16 January 2012 of the Prime Minister; Circular No. 12/2009/TT-BXD dated 24 June 2009 of the Ministry of Construction (“MOC”), detailing the issuance of construction practice certificates (to be replaced by Circular No. 17/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines on the capacities of organizations and individuals involved in construction activities as from 1 September 2016); Circular No.14/2016/TT-BXD dated 30 June 2016 of the MOC providing guidelines for the issuance of construction licenses and the management of foreign construction contractors in Vietnam; Circular No. 53/2015/TT-BCT dated 30 December 2015 of the MOIT, detailing the registration of imported goods and temporarily-imported goods of foreign construction contractors in Vietnam; and Circular No.103/2014/TT-BTC dated 6 August 2014 of MOF, providing guidelines for fulfillment of tax liability of foreign entities doing business in Vietnam or earning income in Vietnam, are the most reference legal documents. Subject to the nature of business, the contractor activities shall be subject to the specific sectorial regulations, including technology transfer, construction, etc. Below are some regulations on foreign construction contractors and sub-contractors.

## Requirements

To become a foreign construction contractor or sub-contractor in Vietnam, an applicant must satisfy the following criteria:

- (i) Having posted information on the website of the MOC and provincial-level Department of Construction (“DOC”) in charge;
- (ii) Having won biddings or having been selected by the owner

for contracting and having full capability suitable to contracted works according to Vietnamese laws on construction if bidding packages not subject to Vietnamese laws on tendering; and

(iii) Setting up a partnership with a Vietnamese contractor or employing Vietnamese sub-contractors, unless the Vietnamese contractor is not qualified to execute any tasks of the bidding package.

### **Applications**

For a construction license, 1 set of application file must be submitted directly or by post to the licensing agency (including the specialized construction authority directly under the MOC or the DOC of the locality where the project is conducted).

Each set of application file applicable to organizations must contain the following papers:

(i) Application for licence made in Vietnamese according to set form;

(ii) A certified copy or a digital file containing a color copy of the original which is an image or other format (\*.pdf) of a report on bidding results or decision on lawful contract award;

(iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (\*.pdf) and Vietnamese translation of the establishment license (or the business registration certificate of organizations) and the professional practice certificate (if any) granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted;

(iv) A digital file containing a color copy of the original which is an image or other format (\*.pdf) of a report on experiences in construction activities related to the contracted job, made according to a set form and the audited financial report for the latest 3 years (for cases where the contractors undertaking bidding packages not subject to the compulsory application of the provisions of Vietnamese bidding legislation);

(v) A digital file containing a color copy of the original which is an image or other format (\*.pdf) of the partnership contract with a Vietnamese contractor or a contract with Vietnamese sub-contractor (already included in the bids or

bidding dossiers), which specifies the tasks of the Vietnamese contractor;

(vi) Lawful authorization letter, for persons other than the contractor's representative at law according to set form; and

(vii) A digital file containing a color copy of the original which is an image or other format (\*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

Each set of application file applicable to individuals must contain the following papers:

(i) Application for licence made in Vietnamese according to set form;

(ii) A certified copy or a digital file containing a color copy of the original which is an image or other format (\*.pdf) of a report on bidding results or decision on lawful contract award;

(iii) A legalized copy or a digital file containing a color copy of the original which is an image or other format (\*.pdf) and Vietnamese translation of the operation license or professional practice certificate granted by the country of which the foreign contractor bears the nationality or by the country where the construction project is conducted, and a notarized/certified copy and Vietnamese translation of passport;

(iv) A digital file containing a color copy of the original which is an image or other format (\*.pdf) of the decision to invest in the project or the investment certificate or the written approval for the investment policies.

Application files for contracting licenses arising in the same year are not necessary to include the documents referred to in (iii).

Subject to the nature and scale of the bidding projects, construction contractor license shall be issued by either the specialized construction authority directly under MOC or provincial-level DOC, within 20 working days from the receipt of the satisfactory file.

Foreign construction contractor shall pay a fee of VND2 million when receiving the license.

### **Permitted Activities**

Once being licensed, foreign construction contractors have the following obligations:

(i) To set up their executive offices (to have office lease contracts or executive offices at the localities where the projects exist, where the owners' offices are headquartered or where a part of the work is located, subject to the awarded contracts); and to register the addresses, communications meansphone number, fax number, email address, transaction seal, accounts and tax codeplaces where they open transaction accounts of their work executive offices and representatives for contract performance at the concerned agencies according to the regulations of the People's Committees of the provinces where the contracted projects exist. Regarding contracts pertaining to the formulation of construction planning, formulation of construction investment project, construction survey or construction design, the foreign contractor may establish an Executive office at the place where the office of the project owner is headquartered.

After registering the above-mentioned information about the Executive officet the same time, the foreign contractor shall send to a written notify notice such information directly or by post to the Pprovincial-level MoCDOC of the locality where the Executive office is located, the specialized construction authority directly under the MOC and relevant agencies using the standard formthe Ministry of Public Security, the Ministry of Finance ("MoF"), the Ministry of Trade (now Ministry of Industry and Trade – MoIT), State Bank of Vietnam ("SBV"), and the People's Committees of the provinces and centrally-run cities where construction works are located. If any information about the executive office is modified, the foreign contractor shall notify such agencies;

(ii) To register the use of seals of their work executive offices at the Police Offices of the provinces and centrally-run cities where construction works are located. Foreign contractors shall only use these seals for affairs in service of contract performance in Vietnam according to the provisions of their contracting licenses. Upon the expiry of contracts, foreign contractors must return their seals to the agencies which have granted them;

(iii) To register and pay taxes according to Vietnamese law provisions; to observe the accounting regime, open accounts and make payments as guided by the MOF and the SBV in service of business activities under contracts;

(iv) To recruit and employ Vietnamese and foreign workers according to the Vietnamese labour legislation. To register only economic managerial and technical experts and highly skilled workers whom Vietnam lacks for entry into Vietnam;

(v) To carry out the procedures for exporting or importing supplies, machines and equipment related to the contracts in Vietnam according to Vietnamese law provisions and the MOIT's guidance, including:

- Registration for temporary import for re-export of construction supplies, machines and equipment;
- Registration of the list of import raw materials, fuels, materials, complete and synchronous equipment for works under the contracts;

(vi) To perform partnership contracts already signed with Vietnamese contractors or use Vietnamese subcontractors determined in the application file for the issuance of a construction licence;

(vii) To purchase insurance according to Vietnamese law provisions for contractor's works, including: insurance for professional liability of contractors providing investment and construction consultancy; insurance for assets and goods for procurement contractors; insurances of various kinds for construction contractors and other insurance regimes according to Vietnamese law provisions;

(viii) To register for inspection of the quality of supplies and equipment imported and supplied under the contracts;

(ix) To register the safety of construction equipment and transport means related to business activities of foreign contractors according to Vietnamese law provisions;

(x) To observe the regulations on norms, standards, management of quality of construction works, labour safety and environmental protection as well as other relevant Vietnamese law provisions;

(xi) To send the periodical reports according to standard form on the project implementation situation (on 20 December every year) to the license issuing agency and the provincial-level DOC of the locality where the contracted projects exist; and

(xii) Upon the completion of works, foreign contractors shall have to compile dossiers on work completion; provide warranty; make the settlement of imported supplies and equipment; handle unused supplies and equipment in work construction contracts



according to the regulations on export and import; re-export construction supplies and equipment already registered for temporary import – re-export; and liquidate the contracts. And at the same time, to notify the concerned State management agencies of the expiry of the contracts, terminate operation of their executive offices.

### **Taxation**

Taxes applicable to foreign contractors and sub-contractors in Vietnam are well described in the [Section 16](#) hereunder.

---

## **Processing Activities**

Foreigners can hire local companies and foreign-invested companies for processing of goods of all kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the lists of goods the import and export of which is subject to issuance of a permit, business entities may only enter into processing contracts after they have been issued with a permit by the MMOIT. The processing contract must be in writing or in another form with equivalent legal validity in accordance with the Commercial Law, and must minimally include certain prescribed terms.

### **Legislation**

Local processing for foreigners are being governed by the Commercial Law dated 14 June 2005; Decree No.187/2013/ND-CP dated 20 November 2013 of the Government making detailed provisions for implementation of the Commercial Law with respect to international purchases and sales of goods, and agency for sale and purchase, processing and transit of goods involving foreign parties, as amended and supplemented by Decree No.77/2016/ND-CP dated 1 July 2016 of the Government);

and Circular No.38/2015/TT-BTC dated 15 August 2011 of the MOF on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods.

## **Contents of the Contract**

Having the similar contents of a formal economic contract, a processing contract must include: Names and addresses of contracting parties and of the party directly conducting the processing; name and quantity of processed products; price for processing; time-limit for and method of payment; list, quantity and value of imported raw materials, sub-materials and supplies and domestically produced raw materials, sub-materials and supplies (if any) for processing; levels of use of raw materials, sub-materials and supplies; level of consumption of supplies and wastage rate of raw materials in processing; list and value of machinery and equipment leased, lent or donated for the purpose of processing (if any); measures to treat scrap and discharged waste and principles for dealing with leased or borrowed machinery and equipment and with left-over raw materials, sub-materials and supplies upon termination of the processing contract; location and time of goods delivery; trade mark of goods and origin appellations of goods; and duration of validity of contract. Trademark and the origin of goods in relation to the processing activities are normally falling within the responsibilities of the foreign principals.

As a matter of fact, a list defining quantities and values of input raw materials, auxiliary materials and supplies for processing activities with a defined rate of consumption and waste, and a list defining values of the machinery and equipment leased, borrowed or donated for processing service, should be present in the contract. Dealings on relevant equipment are also contracted due to the fact that equipment are often leased to local processors from foreign principals in most cases. Both input materials and equipment can be imported into Vietnam on the basis of temporary import and re-export.

## **Permitted Activities**

Foreign principals are entitled to receive and remit abroad finished products, surplus input materials and leased equipment. To supervise the local processing activities and guide on technical issues, foreign experts can be seconded to Vietnam by foreign principals.

## **Taxation**

Input materials and equipment serving for the local processing activities are in principle, being exempted from taxes prevailing in Vietnam.

---

# **Agent Activities**

Foreigners can request for local agent for sale and purchase of goods of various kinds, except for goods on the lists of goods the import and export of which is prohibited or temporarily suspended. With respect to goods on the list for which import or export is subject to issuance of a permit, the business entity shall only be permitted to sign an agency contract after the competent agencies have issued a permit. The agency contract must be in writing or in another form with equivalent legal validity. Under the Commercial Law, agent activities vary by the following forms: commission agent, package agent, exclusive agent and general agent.

## **Legislation**

The same legal basis applicable for the processing for foreigners is effective to the agent activities for foreigners in Vietnam.

## **Contents of the Contract**

A sale and purchase agent contract is requested to contain quite simple contents in comparison to the other types of commercial or economic contracts. Only the following are compulsory present therein: the description about both principals and agents; the contractual goods: name, specifications, quality, quantity, volume; Time-limit for, method and place of goods delivery; Price; Commission rate and costs; Method and time of payment; Bonuses, penalties and indemnity; and duration of validity of contract.

### **Permitted Activities**

Amongst others, foreign principals can decide at their own discretion the selling or purchasing price and service charge to customers, and the price which the principal fixes for the agent; request the agent to implement security measures; receive deposits or documents on mortgaged assets from the agents, and request the agents to make payment or deliver goods in accordance with the signed contracts. To inspect and supervise the contract performance, foreign principals can second their people to agents' facilities in Vietnam.

As a matter of fact, the following actions are often carried out by local agents instead of foreign principals, which include the dealing with the import/export procedures, the declaration and payment of relevant taxes on behalf of foreign principals.

### **Taxation**

Contractual goods are likely subject to the import/export duties of Vietnam.