



FRED- YOUNG & EVANS
LEGAL PRACTITIONERS

Legal Framework for Transfer of Technology in Nigeria

The Transfer of Technology in Nigeria is governed by the **National Office for Technology Acquisition and Promotion Act**, Cap, N62 Laws of the Federation 2004 (“**the Act**”). The Act established the National Office for Technology Acquisition and Promotion (“**NOTAP**”). The principal function of NOTAP pursuant to the provisions of the Act is to monitor the transfer of foreign technology to Nigeria.

The Act makes it mandatory to register all contracts or agreements for the transfer of foreign technology entered into by any person in Nigeria with NOTAP as well as registration of every contract or agreement entered into by any person in Nigeria with another person outside Nigeria within 60 days from the execution or conclusion of the contract.

Contracts Registrable under the Act

The Act provides that every contract is registrable if its purpose or intent is, in the opinion of NOTAP, wholly or partially in connection with any of the following purpose:

1. The use of trademarks;
2. The right to use patented inventions;
3. The supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever;
4. The supply of basic or detailed engineering;
5. The supply of machinery and plant; and
6. The provision of operating staff or managerial assistance and the training of personnel.

Procedure for Registration

The procedure for registration is as follows:

1. The transferee of the technology will lodge with NOTAP a duly completed NOTAP application form
2. The application must be accompanied with the following documents:
 - a) Application fee made out in bank draft payable to the Director of NOTAP,
 - b) Memorandum and Article of Association of the company,
 - c) Two certified true copies of the agreement registered,

- d) Two copies of duly completed questionnaires (Revised Form NOTAP 2-84),
 - e) A copy of the relevant feasibility study; and
 - f) Annual audited account (if not new company) and if it is a new company, a copy of the Certificate of Incorporation should be submitted as evidence.
3. NOTAP would scrutinises the agreement in detail and may request from the applicant more relevant information
 4. When the agreement is finally approved by NOTAP (either in its original form or in an amended form) a registration fee becomes payable to NOTAP.

Refusal of Application for registration of a contract by NOTAP

The Act stipulates that a contract should not be registered by the Director of NOTAP if it falls under any of the following speculations provided in Section 6(2) of the Act. Some of the speculation provided therein includes:

1. That the technology is readily available in Nigeria;
2. The price of the technology is not commensurate with market prices;
3. There is a term of the contract permitting the supplier to regulate or intervene directly in its execution, which is unnecessary in the opinion of the Director of NOTAP;
4. Where there is onerous or gratuitous obligation on the transferee of the technology to assign to the transferor or any other person designated by the transferor, patents, trademarks, technical information, innovations or improvements obtained by such transferee with no assistance from the transferor or such person;
5. Where there is an obligation therein to acquire equipment tools, part or raw materials exclusively from the transferor or any other person or given source;
6. Where it is provided that the exportation of the transferee's products or services is prohibited or unreasonably restricted or where there is an obligation in such transferee to sell the products manufactured by it exclusively to the supplier of the technology concerned or any other person or source designated by the transferor;
7. Where there is provision for payment in full by the transferee for transferred technology which remains unexploited by him.

Effects of non-registration of contracts registrable with NOTAP

Where a contract registrable with NOTAP is not registered, it does not void the contract. However, no payment will be made in Nigeria to the credit of any person outside Nigeria on the authority of the Federal Ministry of Finance, the Central Bank of Nigeria ("CBN") or any licensed bank in Nigeria in respect of any payments due under the contract unless the Certificate of Registration together with a copy of the contract or agreement certified by NOTAP is presented by the party or parties concerned.