

Limiting Factors on Technology Transfer Agreements

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Abstract

Today, the difference in the knowledge and technology of the countries of the world is the field of competition and exercise of power and the principles of assessing a country's development. Hence, the developing world to meet the needs of access to knowledge and technology, and developed countries in order to make a profit and sell their technology deal with technology transfer in various ways such as licensing, franchising, Joint Venture and key turn. But the acquisition of technology for developing countries has not happened, as it was expected. One of the factors contributing to this failure is incompetence contract templates to be used and their major limiting factors. The present study examines the factors limiting technology transfer agreements, and the results show that Technology transfer limiting factors can be divided into three general categories: restrictions related to contracts, restrictions on taking technology to the production and distribution of goods and restrictions on the time after the expiration of property rights. These divisions are further line of world markets segmentation between technology owners instead of supporting developing countries and it is the main problem limiting the achievement of the expectations of the technology transfer contract.

Key words: Technology transfer contract, Limiting factors, The formation of contracts, Obtaining technology

INTRODUCTION

Development does not rely only on labor and capital as factors of production but the use of technology and using its techniques is more important with pervasive impact on economic growth and its measurement. On the one hand, technology in the world is mainly in the developed countries and developing countries need this technology should be provided through technology transfer contracts. This is where the legal body has become an important issue and high importance of technology transfer as far as the technology of the patented product or earlier product promotion as an intangible asset in today's world is one of the most valuable assets for countries. It is considered the important business transactions and contracts at the international level. This article addressing the issue of

technology and technology transfer agreements and a variety of features in different domestic and international areas by considering the importance of the link between the economy and the national economy with international trade law and finally state and analyze the constraints arising from it according to existing laws and contract deals.

LITERATURE REVIEW

Different limits of technology transfer

In examining the limits of technology transfer has also encountered more basic concepts and the explanation of these concepts will be presented in the statement of them such as the principle of free will and so on. It should be noted that the restrictions mentioned in this article is only through the unity of criteria, rules and conventions and in none of the cases described the rules is as restrictions on technology transfer.

Technology transfer limiting factors divided into three categories in this research: restrictions and limitations related to contracts, restrictions relating to the acquisition of technology for production and distribution of goods and

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Month of Submission : 06-2017
Month of Peer Review : 06-2017
Month of Acceptance : 07-2017
Month of Publishing : 07-2017

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restrictions on the time after the expiration of property rights. The first category includes restrictions such as limits and restrictions on the commitment to co-work and the determined outcome of it. Second group of restrictions are also restrictions on taking technology to the production and distribution. These restrictions can be found in the territory, tract distribution, export, technology development and scientific capacity and pricing fit. The third category is limited to the period after the expiration of industrial property rights which is divided into two groups: restrictions on the right to file a complaint and lack of competitiveness with the transferer. In most countries, provided no objections and no claim in contract, is unfair and restrictive procedure.

1. Restrictions on Contracts and Obtaining Technology

These restrictions related to the contract and take the first step of obtaining technologies, it is including: 1. Limitations of non revoking offer; 2. limitation of the obligation to cooperate with the transferee to receive Technology and 3. Limit the transferee to achieve concrete results and utmost the production of goods resulting from technology.

A. Limitation of non revoking offer

Offer is the first composition usually one of the two parties, takes precedence over the other (Shahidi, 2007, p. 30). Based on this principle, which is required to accept, but if the special law prevails over technology transfer contract between the parties also accept its limitations in addition to its positive aspects and negative aspects of the law. For this type of limitation, aragraph 1 of Article 4 of international commercial contracts stated:

1. If required can be turned prior to the conclusion of the contract, that is made before sending demands accepted by the audience.
2. But can not be turned in 2 cases of necessity: A) If necessary indicate that non-referral; and B) If the audience is reasonable demands that can not be required to accept as positive appeal (Article 4 -1-2 principles of international commercial contracts) (Akhlaghi and Imam, 2006, pp. 47-46).

B. Limitations on the obligation to cooperate with the transferee to receive technology

In expressing these limitations, we need to refer to the principle of free will. The principle of freedom and the rule of law in the contract in accordance with Article 10 of the Civil Code stated, the principle that are known, accepted and specific terms of the contract for which is fixed or indefinite or does not complex in all legal systems and as has been said, certain contracts placed in the shadow of the same principle and no preference over other contracts (consistory, 1995, p. 6). According to this principle, every owner or holder of technology can be free to transfer its

technology in the form of contract to another, assign or license the operation of it to another. As well as to choose their counterparty is completely free and autonomous. As well as the transferee has to identify and select the required and most appropriate technology. Both sides can accept and works contracts tailored to their needs and determine Agreement.

For this type of limitation, the principles of international commercial contracts in Article 3 1 5 stated: If common and reasonably cooperation be expected from the other side of the commitment, both sides should cooperate with the other party (Akhlaghi and Imam, 2006, p. 163). Technology transfer agreement merely is not a meeting point for conflicting interests of the transferor and the transferee; it can also be used to a certain extent, as a joint project to look at where each of the parties must work together. This point of view, clearly relate to the principle of good faith and fair dealing (Article 7 1) which is penetrated in contract law as well as a commitment to reduce losses in the event of non-performance (Article 8 4 7). All of which can be regarded as a restriction on transfer. The duty to cooperate with the transferee and transferor of technology should be limited to a certain extent in order that division of duties does not alter the performance of contractual obligations.

C. Limits the transferee to achieve concrete results and utmost the production of goods resulting from technology

In relation to achieving concrete results the production of goods resulting from technology the unification of the criteria of Article 4 1 5 Principles of International Commercial Contracts, which says:

1. To the extent that the transferee's commitment entails a duty to achieve a specific result, he is bound to achieve that result.
2. To the extent that the transferee's obligation to carry out the task requires maximum effort in carrying out an activity, the other side is committed to this effort in a manner that the ordinary person of the same kind in the same circumstances does it.

This explanation is necessary regarding this type of restriction: In some cases, the transferor to the transferee provides technology limitations that he is required to achieve a certain result; For example manufactured goods have a certain quality through technology or transferee obtained the technology to produce its utmost to make.

2. Restrictions on Taking Technology to the Production and Distribution of Goods

These limitations can be divided into two groups: restrictions on obtaining technology for production and

distribution. In production limitations can be outlined limitations such as restrictions on the operation of the transferred technology, restrictions on the use of competing technologies and its own technology, restrictions on the quantity produced, limitations on the creation of monopolies in partnership, restrictions on technology requiring the recipient to purchase additional restrictions relating to quality control and restrictions on the duration of the contract. But in terms of distribution, these restrictions can be found in the territory, tract distribution, export, technology development and scientific capacities and the price.

A. Limitation of the operation of the transferred technology

This restriction will be included when the contracts of technology transfer relevant technologies are usable in different areas and fields. Transferor to insert this restriction will be able to use the technology transferred to the transferee limited to a particular sector. This restriction causes the assignee is excluded of the advantages of the technology of purchased technology, because it can not develop their production to other goods and other industrial sectors. Result of this limitation is that the transferee deprived of production of certain goods that are more likely to export to the global market or is necessary for local needs (UNCTAD, 1973, p. 10, quoting from Zahedan, 2007, p. 239) and another consequence is that if the operation is allowed to be a large company with multiple branches will be granted a wide range of innovation in all aspects of business activity as a result of the exploitation license; If the company's business activities are limited to the narrow scope of the invention is then carried out only within the specific operation and the rights to exploit the invention limited to a specific field dehumidified. That makes it the subject invention, transferable to other companies that are active in other aspects of the invention, as well. Thus it is seen that most of the rights of the transferee by operation of technology transfer restrictions are violated.

B. Restrictions on the use of technology and its rival technology

Technology holders are very careful about competing technologies, at the time of transfer of technology. It seems that the transferee of a complementary technology is more appropriate to share and transfer contract to the party of a rival technology, because, unlike the holder of competing technologies, the holder of complement technology is going to develop the quantity and quality of his products. This limitation first limits the freedom of recipients to receive technology and the use of similar technologies in the market and as a result he requires choose an alternative technology that belong to the transferor. Technology

owners provide reasons to justify the restrictive practices and o believe that a competing technology in many cases associated by cooperation agreements between the recipient and third parties and this partnership makes their technical knowledge and technology will be transferred to third parties without their economic interests to be considered. While on the contrary, developing countries believe that transferor for development and adapting its technology to the needs and circumstances has heavy duty that the restrictive practices makes this task be forgotten (UNCTAD, 1975, p. 115, quoting, Zahedan, 2007, p. 240).

Second, this type of restriction is prohibitive to transferee on the use of its technology. The Europe Union is predicted limits on regulation. By virtue of Article (1) 4 relations between competitors, restrictions on the use of its technology transferee of such restrictions is considered as illegitimate; but relations between non-competitors can not be seen on the condition stipulated in Article (2) 4 and therefore it should not be considered strictly as a restriction. It is even possible given the particular circumstances of the contract when it endorsed the legitimacy especially in the case of a plurality of similar technologies in that field and the lack of resources necessary for the development and operation of the technology, accepting its legitimacy, is not devoid of strength.

1. Limitations on the Quantity of Production

Restrictions on the quantity of production manifested in many forms such as: the minimum and maximum amount of production, limited facilities for the production of a product or prohibiting the use of technology in other machines. This limitation can occur indirectly, For example, the obligation to pay heavy after production exceeds a certain level or obligation to provide the product in the packaging of predetermined volume and weight. Adverse outcome of the procedure on the economy of country taking technology is insufficient production to the extent that it is required for exports or has to produce it in a way that is not competitive with others in the market. Because the market price is influenced by supply and easy access to the consumer, production quotas to keep the price are ultimately to the detriment of the ordinary consumer (UNCTAD, 1982, p. 18, quoting from Zahedan, 2007, p. 240). In this case also saw the imposition of a condition that the recipient has limited capacity of all production and allow full use of production capacity and take part of the market that can offer a product requires further permissions or restrictions will be permanent.

Restrictions about the creation of monopolies in partnership

Utilization of transfer authorization technology can be defined as a non-exclusive or exclusive. Exclusive

exploitation license generally want more by the transfer of technology makers, especially when the transferee should perform high-risk to exploit large investors to enter the market. Few companies are willing to accept such investments.

Although restrictions would create a monopoly in collaboration and freedom of competition for the technology, but do not take interest in public and community as the recipient has immunity from the competition in the production and improve product quality, so inactivity and lack of dynamism occur (Blakeney, p. 40, quoting from Zahedan, 2007, p. 241). If a monopoly in co-working, recipient of the technology can exclusively get new technology and with the participation of the costs associated with the production and the introduction of the product on the market - because other manufacturers are excluded from obtaining the technology- make safe and security against the damage caused by imports of similar foreign products. Although the exclusive agreements in the granting of industrial property rights has positive effects for technology recipient but such agreements are often mutually limit the buyer right to choose to participate in other transactions, such as sales, agency or production and use of similar technologies. This condition is considered to be unduly restrictive, especially in cases where it is not necessary to inserted in order to respect the rights of all technology purchases.

Restrictions on the recipient's obligation to purchase additional technology

Requiring the recipient to purchase additional products is usually realized contract extension; that is, the transferor prior to the transaction, offers the contract with the condition to the transferee and he will have only two choices, or must all accept or refuse to accept that all (katozyan, 1997, p. 111).

These contracts are usually a series of negative effects in the form of obligations imposed on the transferee and it seems that it could be considered comparable transactions with emergency trading.

Article 206 of the Civil Code states of emergency warrant transactions (if anyone as a result of the emergency, make a transaction, it is not considered an abomination and an emergency deal will be valid). Obviously, this provision merely states that the transaction as soon as there is an emergency, do not lose its credibility, but in the case of the complainant if other factors, can affect the accuracy and influence it or not, it seems that the law is silent about it

Requiring the recipient of technology, to purchase additional products and add these items to the subject

matter of the contract such as machinery and equipment, raw materials, intermediate goods or technology other than the technology required, are another restrictive business practices. In this limiting way, recipient of the technology has been asked Apart from technology, the above-mentioned goods from the transferor or any other source that he set. This means in some cases spread even forced to recipients on the use of certain workers. This condition insists in most technology transfer contracts which inserted along trademark license and transfer it.

Limitations on the duration of the contract

In continuous contracts, according to the nature of these contracts, to-be considered the period of time for implementation. This time period is the life of the contract and by expiration of it the contract does not remain (Ahasaniafroz, 2016, p. 1). Technology transfer contracts are awarded to both short term and long term each of them has advantages and disadvantages for each of the parties. As long-term contracts more favorable to the transferor and the transferee gains are more considered on short-term contracts. Thus, the transfer of technology providers can limit the time factor as a technology transfer benefit.

Restrictions about the quality control

Restrictions on quality control are applied by both the transferor and the transferee. Quality control limitation obliged the recipient of technology to be consistent with the level of quality standards. This restrictive procedure, included in most of those contracts that transfer of technology will be included with the license to use the trademark. Quality control can be achieved through commitment to quality considerations, commitment not to change the technology purchased or commitment to a particular and determined process, imposed to the recipient (Lby, p. 135, quoting, Zahedan, 2007, p. 244). In developing countries, this method are introduced unduly restrictive and as a mean and justification in their commitment to the compulsory purchase of raw materials or goods and additional and accessories services. Transferor, as well as will oversee business activities of the transferee. On the other hand, delays and stops purchased technology adaptable to the needs of local and national sources by applying quality controls and the obligation to observe a minimum level of quality that is desired for transferor.

2. Restrictions on Taking Technology to Distribute the Product

A. Limitations on the territory

It is obvious that technology transfer at national level, depending on the technological, economic comparative advantage in different parts of it or deal with it (Persistent, 2011, p. 309). However, technology transfer agreements often determine geographic area of technology transfer or supply of its products to the market. It is a legitimate

right from the viewpoint of developing countries and the technology holders. However, the territorial limits are usually the means of dividing the global market between the owners of technology. By stating this procedure in technology transfer agreement, stripping potential and actual exports of developing countries and development and increased marketing skills among these countries is impeded. The final result of this is continued dependence on a small number of large multinational companies or cartels of product distribution (UNCTAD, 1975, p. 67, quoting from Zahedan, 2007, p. 244).

Indeed, the legal support of the transfer of technology, absolutely done in terms of territory while restrictions on freedom of the will of the transferor to transfer technology are limited to third parties too and out of it will be no limit with others for the signing (Ahsaniafroz, 2011, p. 178). While the territorial limits of technology transfer is only limited to the contracting parties, technology transferor is only committed not to transfer it to third parties, assigned or licensed but he only is allowed to use technology in the territory of the designated contract. Such restrictive clauses include territory for activities and the use of technology, or restrictions on the client and consumer and restrictions on the type and extent of research and development.

B. Restrictions on distribution channels

By inserting these restrictive practices, technology transferor reserve their exclusive rights to distribute and market the products designated (Ghamami and Esmaili, 2010, p. 157). Therefore, the transferee will be required technology agreements for the exclusive right to sell or represent products with the transferor or anyone conclude that he set-up. Adverse outcomes of the procedures imposed on the economies of developing countries, namely the country's dependence on technology transferor for the distribution of manufactured goods and restrictions on the export of products (UNCTAD, 1975, p. 154, quoting, Zahedan, 2007, p. 245). As a result, transferee technology products are able to freely sell only in their own country and loses the possibility to export it to other countries greatly or simply to gain markets that are not of interest of transferor and this creates dependence on the transferor country.

C. Restrictions on exports

Restrict freedom to export manufactured products by the transferee technology he or giving permission to others, is the most common restrictions be included on technology transfer agreements. Through this procedure, the assignee is prohibited of the export of all or part of the product in all countries or certain countries. The ban makes restrictions for developing countries, both in terms of exports and imports of goods (UNCTAD, 1982, p. 45, quoting from Zahedan, 2007, p. 245).

Restrictions on exports of the product can be explained directly, indirectly or implicitly in technology transfer contracts. If this procedure is directly mentioned in the contract, creates complete restriction on the export of commodities and receiver technology, to be banned to export specific products to certain countries or geographical regions. This limitation may also include the export products regardless of the geographic location. Indirect export restrictions encompass a wider range and variety and as a precondition to be included in the contract. Responsibility for marketing in the local market, while paying royalties on produced products, special quality supervision and enforcement of clear standards when exporting the goods or obligation to sell proprietary products, including examples of indirect export restrictions.

D. limitations on technology development and scientific capacity

The basis of new scientific innovation, is the scientific and technological practices of the former that develop and spread through the time or can be changed as a local technology. So innovation in transferred technology and innovation can be considered one of the technology transfer stages (Mondegar, 2014, p. 46). In the technology development must be said that after the acquisition of the necessary technology and its creation and operation of it and after completion of various aspects of technology absorption, using a set of these experiences have been achieved, to create newer and more diverse technology used in the interior. This must be taken into account that some of the types of technologies are in the early transition and if development and innovation is not done in them, are not actually appropriate efficacy.

Research and development in technology means innovation in current technology or finding new process or much better technology. It should be noted that some of the research and development activities for innovating is itself innovation and others may not new but are necessary for the realization of innovation (Saber, 2011, p. 35). Considering research and development, technological transferee may face restrictions that allow it to be taken away from him.

E. Restrictions about the pricing of the product

Transferor by indicating the restriction of price in transfer agreements, reserves the right to fix prices for manufactured products. In this way, the price of goods and products produced is determined by the transferor and the transferee must offer their goods to markets at prices that determined by transferor. Transferring technology limits the grounds that the products will not be competitive in the export market are included in the transfer agreements (Blakeney, 1989, p. 39, quoting from Zahedan, 2007,

p. 251). However, it is clear that the practice has adverse effects on the economies of recipient countries and causes the limitation in maneuverability of those countries to export and ultimately can not create balance in their trade surpluses. Some countries have laws prohibiting this type of ban explicitly.

3. Contractual Limitations and Restrictions on the Time After the Expiration of Industrial Property Rights

Limitations of this category can be divided into two groups: restrictions on the right to file a complaint and lack of competitiveness with the transferor. In most countries, provided no objections and no claim in contract, is unfair and restrictive procedure.

A. limitation on Lawsuit disclaimer

Disclaimer especially the right to complain about the technology by the transferee may be provided in the contract of technology transfer and thus there is a limit to the transferee, That is:

Technology transfer agreements sometimes include the condition that the recipient of the technology not the symptoms of their right to claim the invalidity scheme for industrial property rights in the agreement. Since the obligation to pay is on the validity of industrial property rights for the transferee and the buyer signed technology transfer contracts and paid a large sum, such inadmissibility procedural guarantees payment of royalties. Even if it later turns out to be counterfeit or technology subject to the rights of private property being lost and is as public assets. In most countries the condition of “no objection”, “not claimed” in contracts, is unfair and restrictive procedure (UNCTAD, 1982, p. 20, quoting from Zahedan, 1386, p. 250). In response to the question of how technology transfer recipients can be relieved of the time limit on complaints Disclaimer It must be said that the only way is to transfer the recipients as well as to impose the law on technology transfer so at the request received from a third country, that country is also required to follow the rules of the law.

B. Restrictions about the lack of competition with the transferor of technology

If the transferor and the transferee technology has provided a common market for their products each will try to offer less expensive or more facilities, attract more customers and none of the transferor and the transferee should not be limited, to enter the market. As a result, it can be said that in common markets, the transmitter will be affected in this way because make a competitor for himself. Obviously, this procedure could adversely affect the productive capacity and competitiveness of the recipient's technology and lack of ability to deal with competitors of

the transferor. As a result, the recipient had to provide all or the majority of raw materials or equipment and their requirements exclusively from the transferor (Lby, p. 32, quoting from Zahedan, 2007, p. 250).

CONCLUSION

Technology transfer agreements influenced by the different industrial, commercial, legal, political and social conditions. In order to explain the nature of this type of contract, we compare it with similar agreements, such as licensing, franchising, joint venture and key turn agreements but in terms of concept and their characteristics, none of them in accordance with the technology transfer contract and can not be considered good evidence to explain the nature of the technology transfer contract. In terms of technology transfer agreement, after determining its owner and explanation of the principle of freedom at the conclusion of this type of contract It was concluded that the parties may determine the circumstances and consequences of the contract in accordance with their wishes and adjust their legal relationship. Although the principle of freedom of contract recognizes in the light of Article 10 of the Civil Code but the problem is that in relations between developing countries and developed countries the principle is not respected and it is the leading economic power that determines the legal requirements. As a result, the economic power of the developed higher is more bargaining power and the result is that further restrictions imposed on the less developed party.

Generally these limitations can be placed in three categories in order to prevent the prolongation of the words some of the limitations of each category are as follows:

The first category restrictions relating to restrictions on the formation and signing contracts and obtaining technology that is for example: the principle of freedom of contract and contractual restrictions, legal restrictions on freedom of contract principle.

The second category restrictions relating to restrictions on the taking technology to the production and distribution of goods that is for example: restrictions on the use of technology, the use of competing technologies, on the quantity of production and so on.

The third category of limitations is on time after the expiration of industrial property rights that is for example: Disclaimer limitations on filing a complaint and lack of competition with the transferor. Finally, one of the most important results of the study is importance and need of fair and proportional control legislation to monitor practices,

procedures, and factors limiting the technology transfer contracts in developing countries and less developed ones. This requires that lawyers and experts survey the various aspects of contracts within the framework of existing laws in the field of technology transfer agreements and set and run the solutions necessary to meet the legal limitations.

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How to cite this article: Shahidipour M, Mazaree A. Limiting factors on technology transfer agreements. Int J Sci Stud 2017;5(4):82-88.

Source of Support: Nil, **Conflict of Interest:** None declared.