

Legal news

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Law on Transfer of Technology

Tech transfer straightened out

By Hoang The Thang

For the first time, definitions of “high technology”, “new technology” and “advanced technology” have issued.

The new Law on Technology Transfer is set to paint technology issues with an even brush. When the seven-chapter, 61-article law dated November 29, 2006 by the National Assembly (the “Law”) comes into force from July 1, 2007, superseding Decree No. 11 dated February 2, 2005 (“Decree 11”), technology transfer (TT) activities will be governed by a higher level legal document and this is expected to create more unification of TT regulations with other Vietnamese laws, in particular, the Civil Code of 2005.

For the first time, definitions of “high technology”, “new technology” and “advanced technology” have been introduced, serving as a basis to provide various incentives that the parties can obtain through TT activities. In addition, the definition of “technology transfer” is stated more generally than “a form of purchasing and selling technologies based on the contract of TT as agreed and in respect of laws” as set out in Decree 11. Under the law it is defined as “the transfer of ownership or use right partly or wholly from the party having the right to the technology transfer to the receiver of the technology”. Definitions in the law of different kinds of technologies as well as a broader definition of “technology transfer” will create a more solid legal basis for and hopefully will result in an increase of TT activities in Vietnam.

Form of the TT contract

Under Decree 11, all TT activities must be carried out on the basis of a written contract, while under the law, the forms of such contract have been broadened. A TT contract may be made by way of a written agreement or other forms equivalent to writing which include telegraph, telex, fax and data messages and other forms as provided by laws. This new provision gives more flexibility to TT implementation by both licensee and licensor.

Effective date of a TT contract

Concerning the effectiveness of a TT contract, Decree 11 provided that where a contract does not fall within the category requiring registration, it becomes effective from the date agreed by the parties. For contracts which must be registered, their time of effectiveness is the date on which the state management authority certifies the registration. However, the provisions on this matter under the law are more flexible than those of Decree 11 because the parties can agree to the effective date of the TT contract, unless the contract falls within the list of technologies which are limited to be transferred, and these will come into force on the date the competent state authority grants the TT permit. Moreover, the law also states that, in the event

the parties have not agreed on the effective date, such date shall be the date where the last party completes the procedures for contract execution.

Registration of a TT contract

Decree 11 required all contracts for transfer of TT from abroad to Vietnam or from Vietnam to abroad or local TT contracts having a value of VND500,000,000 or more are to be registered, and the parties to local TT contracts of a value under VND500,000,000 are encouraged to register to enjoy incentive policies on TT. According to Article 25 of the law, the registration of TT contracts by the Ministry or Department of Science and Technology officially confers on the parties the right to incentives as provided for in the law and its implementing regulations.

The registration dossier under Decree 11 was cumbersome including the application for registration in accordance with the template provided by the Ministry of Science and Technology. The dossier under Decree 11 comprised of the TT contract; signed and/or sealed by parties and accompanied by appendices (if any), of which every page should bear the signature or seal of the parties and the summary of contents of technology transferred (or feasibility study of the related project); documents certifying the legal status of the parties to the contract (operational licenses) including legal status of the representatives of the parties to the contract; documents protecting industrial property rights in Vietnam in the case of a transfer of ownership of or right to use objects of industrial property protected in Vietnam and other required documents for specific cases. A written approval to the contract from the investment decision-making body in accordance with the regulations of the government on management of investment and construction would be needed if the project used State funds, State credit funds for investment and development or funds guaranteed by the State. In the event the transferee had State-owned capital and the charter of the transferee required the annual financial plan to be approved by its Board of Management, a minutes from the Board of Management approving the TT contract was also necessary. Moreover, a certificate of assessment and evaluation of any technology on the list of sectors of technology for which a certificate of assessment and evaluation is compulsory must be added.

Under the law, the application file has been simplified to comprise only the application for registration of the TT contract and the original or copy of the contract. In addition, the compulsory period of 90 days from the signing date within which the dossier had to be submitted to a competent authority has been abrogated.

The filing for transfer of technologies on the list of technologies limited to be transferred is performed through two following steps:

- Files requiring approval of the TT contract must include a request for signing the TT contract, document on legal status of the applicant and an explanatory document on technology as provided by the Ministry Department of Science and Technology; and
- Files requiring permit of transfer of technologies on the list of technologies limited to be transferred must include a request for permit of TT, written approval of the state competent authority for the TT, documents on legal status of parties to TT contract, the original or copy of the TT contract; list of

technological documents and technological equipment (if any) attached to the TT contract.

Furthermore, the time for registration procedures has been shortened. Under the law, within 15 days from the receipt date of a complete file, the Ministry or Department of Science and Technology is to consider and decide on grant of the Certificate of registration of the TT contract. The time under Decree 11 was 15 working days upon receipt of a complete file plus a duration of 10 working days in case there were any amendments or supplements to the dossiers required for the registration of the TT contract.

In relation to the transfer of technologies on the list of technologies limited to be transferred, the law also provides the separate procedures for the approval and obtaining the license of technology transfer.

Terms of TT contract

In compliance with the Civil Code of 2005 on the term of a TT contract, the law abrogates the maximum terms of seven years or 10 years under Decree 11. As a result, TT contracts can have terms of more than 10 years and have provisions for renewal of the term.

Furthermore, the law also deals with services of TT including intermediation of TT, consultancy on TT, evaluation of TT, pricing TT, assessing TT, promotion for TT and contains measures and state policies for promotion of TT. These provisions are welcomed as they are necessary not just for the purpose of governing TT activities in Vietnam but as well as promoting these activities. In conclusion, with the issuance of the law, hopefully the transfer of modern and efficient technologies from more developed countries to Vietnam will be smoother resulting in accelerated development of the economy.

Other Sectors

Finance

- On March 22, 2007, the Minister of Finance issued Decision 18/2007/QĐ-BTC on printing, distribution, using and management of electronic air tickets.
- Circular 32/2007/TT-BTC of the Ministry of Finance, dated April 9, 2007 guiding the implementation of Decree 158/2003/NĐ-CP, dated December 10, 2003, Decree 148/2004/NĐ-CP, dated July 23, 2004 and Decree 156/2005/NĐ-CP, dated December 15, 2005 with detailed regulations on the implementation of the Law on Valued Added Tax and the Law on amendment of and supplementation to a number of articles of the Law on Valued Added Tax.

- On April 2, 2007, the Ministry of Finance issued Circular 25/2007/TT-BTC guiding the financial settlement in converting State-owned enterprises into one member limited liability companies.
- Circular 24/2007/TT-BTC of the Ministry of Finance, dated March 27, 2007 providing guidelines on financial status of one member limited liability companies under the ownership of State, political organizations and politico – social organizations.

Banking

- On April 20, 2007, the Government issued Decree 69/2007/ND-CP on foreign investor's purchase of shares in commercial banks of Vietnam.
- Decision 15/2007/QD-NHNN of the State Bank of Vietnam, dated April 11, 2007 on amending Point 3, Annex 3 of Regulations on the system of bank codes used in payment transactions through the SBV, which is attached to Decision 02/2006/QD-NHNN of the Governor of the SBV.
- On April 11, 2007, the Ministry of Finance issued Circular 36/2007/TT-NHNN on amendment of and supplement to Circular 88/2002/TT-BTC of the Ministry of Finance, dated October 02, 2002 providing the regime of collection, submission and management of use of fees for granting bar codes.

Securities

- Decision 15/2007/QD-BTC of the Ministry of Finance, dated March 19, 2007 stipulating a pro-forma charter applied to companies listing on the Stock Exchange/Securities Trading Centres.
- On March 13, 2007, the Ministry of Finance issued Decision 13/2007/QD-BTC providing a template for prospectus when registering a public offer and registration for listing securities on Stock Exchange/Securities Trading Centres.
- Decision 12/2007/QD-BTC of the Ministry of Finance, dated March 13, 2007 stating Regulations on corporate governance applied to companies listing on Stock Exchange/Securities Trading Centres.
- On April 18, 2007, the Ministry of Finance issued Circular 38/2007/TT-BTC guiding the publication of information in respect of the securities market.
- Circular 18/2007/TT-BTC of the Ministry of Finance, dated March 13, 2007 providing guidelines on purchase and resale of shares and some cases of additional issue of public companies' shares.
- On the same day, the Ministry of Finance issued Circular 17/2007/TT-BTC with guidelines on Registration dossier for public offers of securities.

Insurance

- Decree 46/2007/ND-CP, dated March 27, 2007 providing the financial regime applied to insurance enterprises and enterprises of insurance mediation.
- On the same day, the Government issued Decree 45/2007/ND-CP with detailed regulations on the implementation of a number of articles of the Law on Insurance Business.
- Interministerial Circular 06/2007/TTLT-BYT-BTC of the Ministry of Finance, the Ministry of Health, dated March 30, 2007 guiding the implementation of optional health insurance.

Trading – Import-Export

- On April 6, 2007, the Government issued Decree 55/2007/ND-CP regulating the trade of fuel.
- Decision 25/2007/QD-BTC of the Ministry of Finance, dated April 16, 2007 on the amendment of and supplement to Decision 09/2006/QD-BTC of the Minister of Finance, dated February 28, 2006 setting out the list of goods and rates of special preferential import-export taxes of Vietnam to implement the “Treaty on Common Effective Preferential Tariff – CEPT” of ASEAN countries in the period from 2006 to 2013.
- On April 4, 2007, the Ministry of Trade issued Circular 04/2007/TT-BTM guiding the operations of export, import, processing, liquidation of imported goods and products distribution of foreign invested enterprises as provided for in Decree 108/2006/ND-CP, dated September 22, 2006 with detailed regulations and guidelines on the implementation of a number of articles of the Law on Investment.

Labour

- Law No. 84/2007/QH11, dated April 2, 2007 on amendment of and supplement to Article 73 of the Labour Code.
- Interministerial Circular 01/TTLT-TLDDVN-BLDTBXH of the General confederation of Labour of Vietnam, the Ministry of Labour, War Invalids and Social Affairs guiding the implementation of a number of articles of Decree 96/2006/ND-CP on Provisional Executive Board of Trade Unions in enterprises.

Health

- Decision 03/2007/QD-BTS of the Ministry of Fisheries, dated April 3, 2007 providing Regulations on registration for circulation of fishery drugs and products treating and upgrading the feeding and planting environment of fishery.
- On March 29, 2007, the Prime Minister of Government issued Decision 43/2007/QD-TTg approving the Project on "development of pharmaceutical industry and building the model of drugs supplying system of Vietnam for the period of 2007-2015 and orientation to 2020".
- Decision 1120/2007/QD-BYT of the Ministry of Health, dated March 27, 2007 stating 6 foreign companies authorized to operate in the field of vaccines and health bio-products in Vietnam.
- On March 2, 2007, the Ministry of Health issued Decision 779/2007/QD-BYT stating 4 foreign companies authorized to operate in the field of vaccines, health bio-products in Vietnam.
- Decision 674/2007/QD-BYT of the Ministry of Health, dated February 26, 2007, providing the List of vaccines, health bio-products and the List of chemicals, insect killing products and sterilizing products used in house and health services which are imported at the demand under code HS.

Science and Technology

- On April 10, 2007, the Government issued Decree 63/2007/ND-CP dealing with administrative violations in the field of information technology.
- Decision 55/2007/QD-TTg of the Prime Minister of Government, dated April 23, 2007 on the approval of the list of prioritized industrial sectors and pointed ones for the period of 2007-2010, orientation to 2020 and some development promotion policies and guidelines for the implementation of a number of articles of Law on Intellectual Property in relation to industrial property.
- On April 12, 2007, the Prime Minister of Government issued Decision 51/2007/QD-TTg approving the Program on the development of the Vietnamese software industry to 2010.
- Circular 09/2007/TT-BKHHCN of the Ministry of Science and Technology, dated April 6, 2007 guiding the implementation of a number of articles of Decree 89/2006/ND-CP, dated August 30, 2006 on trademarks.

Environment

- On April 9, 2007, the Government issued Decree 59/2007/ND-CP on the management of hard waste.

- Decision 47/2007/QD-TTg of the Prime Minister of Government, dated April 6, 2007 on the approval of the Plan organizing the performance of Kyoto Protocol under the frame convention of the United Nations referring to climate changes in the period from 2007 to 2010.

Miscellaneous

- On March 8, 2007, Standing Committee of the National Assembly promulgated Ordinance 31/2007/PL-UBTVQH11 amending a number of articles of Ordinance on dealing with administrative violations.
- Decree 53/2007/ND-CP, dated April 4, 2007 dealing with administrative violations in the field of planning and investment.
- On April 5, 2007, the Ministry of Post and Telematics issued Decision 5/2007/QD-BBCVT providing Regulations on settlement of claims and guidelines for handling disputes between the user and post, mail express, telecom and internet service providers.

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