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Meeting of Government Experts on Regulatory  
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KEY LEGISLATIVE AND ADMINISTRATIVE ACTS AND MEASURES AFFECTING  
AND REGULATING THE FLOW OF FOREIGN TECHNOLOGY  
IN SELECTED DEVELOPING COUNTRIES<sup>\*</sup>

Extracts compiled by  
UNIDO Secretariat

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## INTRODUCTION

1. This document has been prepared in response to the requests of developing countries and, more particularly, to the recommendations of the Meeting of Heads of National Registries and Similar Institutions in Selected Developing Countries held in Vienna from 6 - 10 March 1976, that data on recent national legislation pertaining to the regulation of the inflow of foreign technology should be compiled in one document. A number of documents recently published by UNIDO <sup>1/</sup> and other United Nations agencies describe in detail the systems applied by different countries.

2. Over the past decade a steadily growing number of governments of developing countries have taken steps to introduce - explicitly or implicitly - national technological policies with a view to increasing inputs into priority sectors of the economy, and into industry in particular. Such policies usually include legislative and administrative measures regulating the inflow of foreign technologies.

3. The expanding role of governments in respect of the transfer and use of imported technology is particularly marked in such Latin American countries as Mexico; a similar trend is to be observed in India and the Republic of Korea, and still more recently in Algeria, Egypt, Ghana, Nigeria, Libya, Malaysia, Pakistan, Philippines, Portugal, Spain and Turkey. It is expected that this trend will continue as the benefits accruing from such policy measures become increasingly apparent.

The measures applied vary greatly: some take on the form of consistent, complex technological policies, others that of limited administrative measures and decisions. It should also be emphasized that the policies applied have evolved over the years, undergoing refinement and improvement, as evidenced in the policies adopted by Argentina, India and the Republic of Korea.

The regulation of technology inflow to developing countries has to be viewed from a dual perspective. On the one hand, institutional control should ensure that restrictive provisions in agreements contrary to the interests of licensee and the economy should be avoided or minimized as far as possible. On the other hand, positive institutional and legislative assistance is necessary to promote the inflow of appropriate industrial technology in order to bridge major technological and production gaps. It is only when a judicious balance has been reached between these two aspects that the licensing of foreign technology can serve as a real effective instrument for technological growth in developing countries.

UNIDO would welcome comments and suggestions for the inclusion in the present document of further information relevant to developments in developing countries in order to improve current knowledge of events in this important field.

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<sup>1/</sup> See, for example, National Approaches to the Acquisition of Technology (UNIDO, Development and Transfer of Technology Series No. 1); and Review of Legislative and Administrative Systems for the Regulation of Technology Transfer Agreements (UNIDO, document No. ID/WG.275/2).

AMERICAN PACT (1)

(Extract.)

DECISION N° 24 (\*)

Common rule of treatment for foreign capitals and on trademarks,  
patents, licenses and royalties.

THE COMMITTEE OF THE CARTAGENA AGREEMENT

IN VIEW OF Articles 26 and 27 of the Cartagena Agreement and Proposition N°  
4 of the Board;

CONSIDERING:

That in the Declaration of Bogotá it was recognized that foreign capital "could make a considerable contribution to the economic development of Latin America, provided it stimulates the capitalization of the country where it is established, it facilitates extensive participation of domestic capital in that process and does not create obstacles for regional integration";

That in the same document the governments proposed the adoption of "Standards which facilitate the use of modern technology, without limiting the market for products which may be manufactured with foreign technology, and coordination of foreign investments with general development plans";

That in the Declaration of Punta del Este the Presidents of America stated that "the integration must be fully at the service of Latin America, which requires a strengthening of Latin American enterprises by means of a vigorous financial and technical support which will permit them to develop and supply in an efficient way the regional market", and they recognized that "foreign private initiative may carry out an important function to assure the obtaining of the purposes of the integration within the national policies of each of the countries of Latin America";

That the Ministers of Foreign Relations of the Member Countries of the

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(\*) The following is an unofficial English-language translation of Decision 24, which incorporates modifications contained in Decisions 37, 37o, and 70.

Cartagena Agreement in their first meeting held in Lima, confirmed the conviction expressed in the Consensus of Villa del Mar "that economic growth and social progress are responsibilities of the people of Latin America, on whose efforts principally depend the obtaining of their national and regional objectives"; reconfirmed their determined support "to the full and sovereign right of nations to dispose freely of their natural resources" and adopted as a common policy "to give preference in the economic development of the subregion to capitals and enterprises which are authentically national of the Member Countries" and recognized that the investment of capitals and transfer of foreign technology constitute a necessary contribution for the development of Member Countries and "must receive guarantees of stability in the measure in which they really constitute a positive contribution".

#### DECLARES :

1. The program of subregional development and expansion of the market will generate new investment requirements in the different sectors of production. Consequently, it is necessary to establish common rules for foreign investment which will be consistent with the new conditions created by the Cartagena Agreement, in order that the advantages derived from it may benefit national or mixed enterprises as defined in the present statute.
2. The contribution of foreign capitals and technology can play an important part in subregional development and help with the national effort in the measure in which it constitutes an effective contribution to obtain the objectives of integration and reach the goals indicated in the national development plans.
3. The standards of the common regime must be clear in the formulation of the rights and obligations of foreign investors and of the guarantees which will protect foreign investments in the subregion. In addition, they must be sufficiently stable for the reciprocal benefit of the investors and of the Member Countries.
4. The treatment given to foreign capitals cannot be discriminatory against national investors.
5. One of the fundamental objectives of the common regime must be the strengthening of national companies, in order to enable them to participate actively in the subregional market.
6. In this same order of ideas, national companies must have the best

possible access to modern technology and to innovations of an administrative nature of the contemporary world. At the same time, it is necessary to establish efficient mechanisms and procedures for the production and protection of technology in the territory of the subregion and to improve the conditions under which foreign technology is acquired.

7. With the purpose of obtaining the objectives mentioned herein, common standards must contemplate mechanisms and procedures which are sufficiently efficient to make possible a growing participation of national capital in foreign companies which now exist or which may be established in Member Countries, in such a form as to reach the organization of mixed companies in which national capital has the major interest and in which national interests may have the capacity to participate in a definite way in the fundamental decisions of such companies. When the participation of national capital is represented by contributions of the Nation or of enterprises belonging to the Nation, it may not be the major interest, provided its capacity to make definite decisions in the company is guaranteed.

8. In compliance with the general spirit of the Cartagena Agreement and with the provisions of Article 92 of that instrument, the common regime must contain standards "which compensate the structural deficiencies of Bolivia and Ecuador and assure the mobilization and assignment of the essential means (resources) for the fulfillment of the objectives which are contemplated in the Agreement in their favor".

9. The common regime should also tend to strengthen the negotiating capacity of the Member Countries before the Nations, the companies which supply capital and technology and before the international organizations who consider these matters.

#### DECIDES:

To approve the following:

### COMMON REGIME OF TREATMENT TO FOREIGN CAPITALS AND ON TRADEMARKS, PATENTS, LICENSES AND ROYALTIES

#### CHAPTER I

Article 1. For the effects of the present regime, the following definitions are understood:

**Direct Foreign Investment:** Contributions coming from abroad, and belonging to foreign individuals or companies, to the capital of a company, in freely-convertible currency, industrial plants, machinery or equipment, with the right to re-export their value and to remit profits abroad.

Likewise, investments in local currency resulting from resources (funds) which are entitled to be remitted abroad, are considered to be as direct foreign investments.

**Foreign Investor:** The owner of a direct foreign investment.

**National Investor:** The Nation, national individuals, national companies which are non-profit and the national companies defined in this Article. Foreign nationals with consecutive residence in the recipient country of no less than one year, who renounce before the competent national body the right to re-export the capital and to transfer profits abroad, will also be considered as national investors.

**National Company:** A company organized in the recipient country and whose capital belongs in more than 80% to national investors, provided that, in the opinion of the competent national body, that proportion is reflected in the technical, financial, administrative and commercial management of the company.

**Mixed Company:** A company organized in the recipient country and whose capital belongs to national investors in a proportion which may fluctuate between 51% and 80%, provided that, in the opinion of the competent national body, that proportion is reflected in the technical, financial, administrative and commercial management of the company.

**Foreign Company:** A company which has capital belonging to national investors in an amount less than 51% or, when that amount is higher, in the opinion of the competent national body, that percentage is not reflected in the technical, financial, administrative and commercial management of the company.

**New Investment:** Investment made after July 1, 1971, in either existing companies or in new companies.

**Re-investment:** Investment of all or part of undistributed profits resulting from a direct foreign investment, in the same company which produced them.

**Recipient Country:** The country in which the direct foreign investment is made.



Committee: The Committee of the Cartagena Agreement.

Board: The Board of the Cartagena Agreement.

Member Country: One of the Member Countries of the Cartagena Agreement.

Portfolio Development Securities: These are the instruments and bonds issued for the purposes of development and in public offering by the State, state firms and quasi-state entities, national and mixed companies, and the Andean Development Corporation, the acquisition of which does not confer in any case a right to participate in the technical, financial, administrative, and commercial direction of the issuing entity and as long as these are so qualified for such purposes by the competent national body.

Article 6. Control of fulfillment of the obligations contracted by foreign investors shall be the duty of the organization which registers the investment, in coordination with the proper government divisions and agencies in each case.

In addition to the functions indicated in other provisions of the present regime and of those established in the respective regulations, the competent national body shall:

- a) Control fulfillment of the commitments of national participation in the technical, administrative, financial and commercial management, and in the capital, of the company;
- b) Authorize in an exceptional way the purchase of shares, participations or rights of national or mixed companies by foreign investors, in accordance with the provisions contained in Articles 3 and 4 of the present regime;
- c) Establish a system of information and control of the prices of the intermediate products which may be furnished by suppliers of foreign technology or capital;
- d) Authorize the remittance abroad, in freely-convertible currency, of every amount which the companies or investors may be entitled to remit in accordance with the present regime and with the national laws of the respective country;
- e) Centralize the statistical, accounting, information and control, registrations connected with direct foreign investments, and;
- f) Authorize licensing contracts for the use of imported technology and for the exploitation of trademarks and patents.

**Article 16.** Remittances abroad made by companies covering amortization or interests due to the use of foreign credits, shall be authorized in accordance with the terms of the registered contract.

For contracts of foreign credit agreed to between the parent company and its affiliates or between affiliates of the same foreign company, the effective rate of annual interest may not exceed in more than three points the rate of interest of first class shares which are current in the financial market of the country of origin of the currency in which the operation may have been registered. For contracts of external credit other than the one previously indicated, the effective rate of annual interest which shall be paid by the companies will be determined by the competent national organization, and it must be closely in relation with the prevailing conditions of the financial market of the country in which the operation may have been registered.

For the purpose of the present Article, effective interest is understood to be the total cost that must be paid by the debtor for the utilization of the credit, including commissions and all kinds of expenses.

**Article 18.** Every contract on importation of technology and on patents and trademarks, must be examined and submitted for the approval of the competent body of the respective Member Country, which must appraise the effective contribution of the imported technology, by means of an estimate of probable profits, the price of goods containing technology, or other specific forms of measuring the effects of the imported technology.

**Article 19.** Contracts on importation of technology must contain, at least, several clauses on the following subjects:

- a) Identification of the forms by which the imported technology is transferred;
- b) Contractual value of each of the elements involved in the transfer of technology, expressed in a form similar to the one used in the registration of direct foreign investments; and
- c) Determination of the period of validity.

**Article 20.** Member Countries will not authorize the signing of contracts concerning the transfer of foreign technology or patents which contain:

- a) Clauses by virtue of which the furnishing of technology bears with it the obligation, for the recipient country or company, to acquire from a certain source capital goods, intermediate products, raw materials or other technologies, or of employing in a permanent way personnel indicated by the company which supplies the technology. In exceptional cases, the recipient country may accept

clauses of this nature for the acquisition of capital goods, intermediate products or raw materials, provided that their price corresponds to current levels in the international market;

b) Clauses in accordance to which the company which sells the technology reserves the right to establish the prices of sale or resale of the products that may be manufactured on the basis of the respective technology;

c) Clauses which contain restrictions regarding the volume and structure of production;

d) Clauses which prohibit the use of competitive technologies;

e) Clauses which establish an option to purchase, totally or partially in favor of the supplier of the technology;

f) Clauses which compel the purchaser of technology to transfer to the supplier the inventions or improvements that may be obtained by virtue of the use of said technology;

g) Clauses which compel ( the users ) to pay royalties to the owners of patents for patents which are not used; and

h) Other clauses with equivalent effects.

Except in exceptional cases, duly qualified by the competent body of the recipient country, no clauses will be accepted in which the exportation of the products manufactured on the basis of the respective technology is prohibited or limited in any way.

In no case shall clauses of this nature be accepted in connection with sub-regional trade ( interchange ) or with the exportation of similar products to third countries.

Article 21. Intangible technological contributions shall grant the right to the payment of royalties, after authorization is given by the competent national body, but they cannot be computed as capital contributions.

When these contributions are furnished to a foreign company by its head office or by another affiliate of the same head office, the payment of royalties will not be authorized and no deduction will be accepted for this reason for income tax purposes.

Article 22. National authorities will undertake a continuous and systematic task of identification of available technologies on the world market for the different industrial fields, in order to make available the most favorable and advisable alternate solutions for the economic conditions of the subregion and will forward the results of their work to the Board. This work will be furthered in a coordinated way with those which may be adopted in accordance with Chapter V of this regime in connection with the production of national or subregional technology.

Article 23. The Committee, upon the request of the Board, shall approve, before November 30, 1972, a program directed towards promoting and protecting the production of subregional technology, as well as the adaption and assimilation of existing technologies.

This program must contain, among other elements:

a) Special benefits, tributary or of another kind, to stimulate the production of technology and especially those connected with the intensive use of items of subregional origin or those which may be designed to take advantage efficiently of subregional productive factors;

b) Development of exports to third countries of products manufactured on the basis of subregional technology; and

c) Channelling of internal saving toward the establishment of subregional or national centers of research and development.

Article 24. The Governments of the Member Countries shall give preference in their acquisitions to products which include technology of subregional origin in the form that the Committee may consider advisable. The Committee, upon request of the Board, may propose to the Member Countries the establishment of taxes (or duties) against the products which use trademarks of foreign origin and which cause the payment of royalties, when technology of public domain or easy access is used in their production.

Article 25. Licensing contracts for the exploitation of trademarks of foreign origin in the territory of the Member Countries, may not contain restrictive clauses such as:

a) Prohibition or limitation to export or sell in certain countries the products manufactured under cover of the respective trademark, or similar products;

b) Obligation to use raw materials, intermediate goods and equipment supplied by the owner of the trademark or his affiliates. In exceptional cases, the recipient country may accept clauses of this nature provided the price of same corresponds to current levels on the international market;

c) Establishment of prices of sale or resale of the products manufactured under cover of the trademark;

d) Obligation to pay royalties to the owner of the trademark for trademarks that are not used;

e) Obligation to permanently employ personnel furnished or indicated by the owner of the trademark; and

f) Other obligations of an equivalent effect.

**Article 26.** The Committee, upon request of the Board, may indicate production processes, products or groups of products, with respect to which no patent privileges may be granted in any of the Member Countries. Likewise, it may decide on the treatment of privileges already granted.

**Article 54.** Member Countries shall create a Subregional Office of Industrial Property (Trademarks and Patents) which will have the following functions:

a) Serve as a liaison organization between the national offices of industrial property (trademarks and patents);

b) Gather and publish information regarding industrial property (trademarks and patents) for the national offices;

c) Prepare typical licensing contracts for the use of trademarks and exploitation of patents in the Subregion;

d) Advise the national offices on all matters connected with application of common regulations on industrial property (trademarks and patents) which may be adopted in the regulations referred to in Provisional Articles G);

e) Further study and present recommendations to the Member Countries on invention patents.

**Article 55.** The Committee, upon request of the Board, will establish a subregional system for the development, promotion, production and adaptation of technology, which in addition will have the function of centralizing the information referred to in Article 22 of the present regime and distribute it among the Member Countries, together with the information it may obtain directly on the same subjects and on the conditions of commercialization of technology.

#### TEMPORARY PROVISIONS

**Article A.** The present regime will become valid when all the Member Countries have deposited in the Office of the Secretary of the Board the instruments by which it is put into practice in their respective territories, in accordance with the provisions of the second paragraph of Article 27 of the Cartagena Agreement.

**Article B.** Foreign investments which exist in the territory of the Member Countries at the time in which the present regime becomes valid, must be registered before the respective competent national body within the following six months.

These investments will continue to enjoy the benefits granted by current provisions in every respect which is not contrary to the present regime.

**Article C.** While the regulations established in Temporary Article G) of the present regime have not become valid, the Member Countries will abstain from signing unilateral agreements on industrial property (trademarks and patents) with third countries.

**Article D.** Within the three months following the date on which the present regime becomes valid, each Member Country will designate the organization or organizations which are competent for the authorization, registration and control of foreign investments and for the transfer of technology, and will inform the other Member Countries and the Board regarding that designation.

**Article E.** All contracts on the importation of technology and on licenses for the exploitation of trademarks and patents of foreign origin, signed prior to the date on which the present regime becomes valid, must be registered before the competent national body within the six months following that date.

**Article F.** Within the six months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will approve the regulations of the Subregional Office of Industrial Property (Trademarks and Patents).

**Article G.** Within the six months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will adopt regulations for applying the provisions on industrial property (trademarks and patents) which will comprise, among others, the subjects which appear in Annex N<sup>o</sup> 2.

**Article H.** Member Countries commit themselves not to establish incentives for foreign investment other than those contemplated in their industrial development legislations at the time that the present regime becomes valid, while the obligation referred to in Article 28, second paragraph, of the Cartagena Agreement, on harmonizing industrial development legislations, has not been fulfilled.

Likewise, before November 30, 1972, the Committee, upon request of the Board, will adopt the necessary measures to harmonize the regime of incentives applicable to the other sectors.

Article 1. Within the three months following the date on which the present regime becomes valid, the Committee, upon request of the Board, will determine the treatment applicable to capital belonging to national investors of any Member Country other than the recipient country.

Within the same period of time, the Committee, upon request of the Board, will determine the rules which are applicable to the investments that the (Corporación Andina de Fomento) Andean Corporation of Development may make in any of the Member Countries.

#### ANNEX N° 1

#### GUIDELINES FOR THE AUTHORIZATION, REGISTRATION AND CONTROL OF FOREIGN INVESTMENTS

Every application for foreign investment must contain:

- I. Individualization of the investor.
  - a) Name or commercial style;
  - b) Nationality;
  - c) Constitution of the Directory;
  - d) Composition of personnel and Management;
  - e) Economic activity;
  - f) Copy of the public deed of organization.
- II. Details of the Investment.
  - a) Financial resources in currency or credit;

- Currency in which the investment is made
  - Capital of national origin
  - Capital of foreign origin
  - Credit from main office ( or parent company )
  - Credit from other sources
  - Effective interest to be paid for credits.
- b) Physical or tangible resources such as:
- Industrial plants
  - New and reconditioned machinery
  - New and reconditioned equipment
  - Spare parts
  - Loose parts and pieces
  - Raw materials
  - Intermediate products.
- c) Resources derived from technology or intangibles such as:
- Trademarks
  - Industrial designs
  - Management capacity
  - Technical knowledge ( know-how ) , patented or not patented
  - Possible alternative technologies

Technical knowledge ( know-how ) may be presented in the following forms:



**I) Objects**

- Samples
- Non-registered models
- Machinery, devices, pieces, tools
- Manufacturing apparatus

**II) Technical documents:**

- Formulas, estimates
- Plans, drawings
- Unpatented inventions

**III) Instructions:**

- Elaboration ( or working up ) notes, manufacturing, functioning ( operation ) of the product or of the process.
- Explanations or practical advice for performance
- Technical booklets
- Complementary explanations of patents
- Manufacturing circuits
- Control methods
- Amounts to be paid for royalties
- Individualization of the receiver of royalties.

**III) Requirements which are satisfied:**

- a) Shortage of internal savings;
- b) Shortage of foreign exchange;

- c) Lack of directive or administrative capacity;
- d) Need of access to scarce technological knowledge;
- e) Lack of capacity or of commercial contacts for the sale of merchandise in international markets;
- f) Lack of local impresarial spirit.

IV. Plan for progressive national participation:

- a) Percentage of shares to be placed in the hands of national investors;
- b) Period of time and conditions to carry out this transfer;
- c) Form of determining the value of each placement.

V. Effects of the new investment:

- a) Approximate date of beginning of normal operations;
- b) Operation capacity;
- c) Exportable production;
- d) Additional employment generated;
- e) Importation of raw materials or intermediate products in annual production;
- f) Use of national raw materials and items.

ANDEAN FACT (2)

ANDEAN GROUP: Inter-American Commission,  
Basis for a Subregional Technological Policy

Contracts for the importation of technology shall contain the following data:

Concessionary (name and profession)

Grantor (name and nationality)

Affiliation between concessionary and grantor, if any

Particulars of the technology being transmitted and its intended use

Description of the subject of the agreement: science technology, product  
technology, trademarks, patents, technical assistance, operative skills,  
training;

Mode of payment of royalties (fixed and variable, parts, and basis for  
the variable payment): amount of the fixed sum; or periodical payment,  
and percentages where payments are variable.

TURKEY

**FOREIGN INVESTMENT ENCOURAGEMENT LAW**

Law No. 6224

Approved on January 18, 1954

**Subject of the Law**

**ARTICLE 1** — This Law shall apply to the foreign capital imported into Turkey and to loans made from abroad by the decision of the Foreign Investment Encouragement Committee and the approval of the Council of Ministers provided that the enterprise in which the investment shall be made

- a) will tend to promote the economic development of the country,
- b) will operate in a field of activity open to Turkish private enterprises,
- c) will entail no monopoly or a special privilege.

«The Foreign Investment Encouragement Committee» referred to in this Article and established according to Article 8, will hereinafter be referred to as «The Committee».

**Foreign capital base**

**ARTICLE 2** — For the purpose of the application of this Law, the term «Foreign Capital Base» shall mean the sum of the values assessed and fixed in the manner described hereunder :

a) The following items imported from abroad for the efficient establishment, expansion or reactivation of an enterprise as envisaged by this Law :

- 1 — Capital in the form of foreign exchange
- 2 — Machinery, equipment, instruments and the like, machinery components, spare parts and materials and other necessary goods approved by the Committee,
- 3 — Intangible rights such as licences, patent rights and trade marks and services,

4 - Profits converted into capital through reinvestment in accordance with Article 3.

b) The experts selected by the Committee will assess the value of the imported capital in the form of goods, services and intangible rights and will determine whether these are goods and values imported for the purpose of the enterprise approved by the Committee.

The assessment made by the experts may be reviewed and modified by the Committee.

The assessment shall be made both in the currency of the country of origin and in Turkish currency at the official rate of exchange prevailing at the time of importation.

The right to appeal provided for in Article 8 being reserved, the decision of the Committee with respect to assessment shall be final.

#### Reinvestment of profits

ARTICLE 3 - Of the profits realized by an approved enterprise under the tax laws in force, the net amount accrued to the owners of the Foreign capital base may be, by the decision of the Committee, reinvested and added, in whole or in part, to the basic foreign capital or invested in some other enterprise meeting the conditions of Article 1.

#### Transfer of profits and capital stock

ARTICLE 4 - (a) The following profits and capital stocks are entitled, subject to the provisions of paragraph (c) of this Article, to transfer abroad in the currency of the country from which the foreign capital base originated and at the prevailing official rate of exchange.

1 - Of the profits realized after December 31, 1953, as determined by the tax laws in force, such net amounts as accrue to the owners of the foreign capital base.

2 - The share of the owners of the foreign capital base in the proceeds of the sale, within reasonable prices, of assets in case of partial or total liquidation of an enterprise subject to this Law.

3 - The proceeds of the sale, within reasonable prices, of part or the whole of the foreign capital base of an enterprise established or in operation in accordance with this Law.

4 - The principal of and interest on a foreign loan contracted according to the provisions of Article 6 of this Law, when due under the terms of the Loan Agreement.

b) The Ministry of Finance or her Committee, may, if they deem it necessary, order

1 - the inspection of the books or account and tax returns of the enterprise subject to this Law, in order to determine the amount transferable in accordance with subparagraph 1 of paragraph (a) of this Article, or

2 - investigation of the bona fide nature of sales shares and assets and of loans to an approved enterprise.

c) The Ministry of Finance shall issue, upon application the requisite permit for the transfer abroad of profits, sales proceeds or the principal of and interest on loans that are eligible for transfer under paragraph (a) of this Article.

#### Transfers of shares

ARTICLE 5 - a) The Ministry of Finance shall execute, upon request, the following guarantees upon stock shares or stock certificates, registered on the books of a Turkish corporation, that represent the foreign capital base, as defined in Article 2.

(The dividends of this stock share are immediately transferable into ... (Foreign exchange of origin) at the official rate of exchange prevailing at the date of transfer, on presentation of this stock share or stock certificate to the Central Bank of the Republic of Turkey or its authorized representatives abroad. The proceeds of the sale of this stock share or stock certificate or that part of the proceeds of the realized value of the assets sold in liquidation, to which the owner of this stock share or stock certificate is entitled, are transferable at the official rate of exchange prevailing at the date of transfer, into ... (Foreign exchange of origin) in accordance with Article 4 of Law No: ... of the Republic of Turkey.)

Minister of Finance  
or  
his authorized deputy

b) Registered stock shares or stock certificates bearing such guarantees shall be freely transferable between persons of all nationalities both in Turkey and abroad. Before the sale of such stock shares or stock certificates to real and juridical persons settled in Turkey, it is obligatory to present them to the Ministry of Finance for the cancellation of such guarantees whether or not new stock shares or stock certificates are issued to replace them.

#### Guaranty of loans

ARTICLE 6 - a) The Ministry of Finance is authorized, subject to a decision of the Council of Ministers, to provide its guaranty against security or bail, for an amount not exceeding 1 billion Turkish Liras, of the principal of and interest on a foreign loan to an enterprise fulfilling the requirements of Article 1 of this law.

b) Such guaranty shall automatically lapse with respect to any part of the principal or interest of a loan so guaranteed that has been repaid.

#### Employment of aliens

ARTICLE 7 - a) The conditions and prohibitions of Laws Nos. 2007 and 2818 shall not apply, during the periods of surveying, crection and operation of an enterprise established in accordance with this Law to aliens investing in such enterprises, to alien representatives of such investors and to alien experts, foremen and other skilled personnel for such period of time as the Committee certifies is necessary to the efficient establishment, expansion, reactivation or operation of such enterprises.

b) The above provisions, shall also apply to alien experts, foremen and other skilled personnel employed by such domestic enterprises as do, in the opinion of the Committee, meet the conditions set forth in Article 1 of this Law.

c) Aliens employed according to the provisions of this Article may, subject to the prior consent of the Ministry of Finance, transfer in the currency of their own respective countries and at the prevailing official exchange rates, that part of their earnings as are stipulated in their respective contract of employment, for the maintenance of their dependents and for their normal savings.

#### Foreign Investment Encouragement Committee

ARTICLE 8 - a) In order to carry out the duties provided for by this Law, a Committee is formed under the chairmanship of the General Manager of the Central Bank of the Turkish Republic and consisting of the following members: the Director General of the Treasury, the Director General of Domestic Trade, the Director General of Industrial Affairs, the Chairman of the Board of Research and Planning of the Ministry of State Enterprises and the Secretary General of the Union of Chambers of Commerce, Industry and Commodity Exchanges. In cases where it finds it necessary, this Committee may ask the opinion, on an advisory basis, of representatives of other Ministries and institutions. The Committee shall give its decision on any application, within 15 days, at the latest of their submittals.

The Director General of Domestic Trade will act as Secretary General of the Committee. If necessary, the Committee may be called to a meeting by the Secretary General.

The remuneration to be paid to the Chairman and members of the Committee will be fixed by the Council of Ministers.

b) Any decision of the Committee may be appealed by the parties concerned within 30 days as from the date of the notification thereof. The competent authority to deal with such appeals is constituted by the Ministers of Finance, Economy and Commerce and State Enterprises. The decisions of this authority are final.

ARTICLE 9 - a) The Ministry of Economy and Commerce is the competent authority in the application of the provisions of this Law.

b) The Ministry of Economy and Commerce shall have the authority to order release from the custody of the customs of foreign capital imported in kind according to the decisions of the Committee.

#### Equal treatment of domestic and foreign capital

ARTICLE 10 - All rights, immunities and facilities granted to domestic capital and enterprises shall be available on equal terms, to foreign capital and enterprises engaged in the same fields.

ARTICLE 11 - a) All rights granted to the investors under Article 31 of Decree No. 13 issued under authority of Law No. 1967 and under Laws Nos. 533 and 5821 are hereby preserved.

b) Investments made under Law No. 5821 between August 1st, 1951 and the date on which this Law enters into force, shall benefit from the provisions of this Law.

#### Repeal of former Law

ARTICLE 12 - Law No. 5821 is hereby repealed.

#### Effective date

ARTICLE 13 - This Law shall be effective from the date of its promulgation.

ARTICLE 14 - The Council of Ministers is charged with the enforcement of this Law.



**NOTE:**

The change which has been made in the law NO:6224 by the Law NO: 933:

Article 6 - The committee which was formed by article 8 (a) of the Foreign Investment Encouragement Law NO: 6224 and dated January 18, 1954 is hereby abolished.

The duties which have been given to the referred Committee are to be confirmed by the State Planning Organization.

The final authority which is referred in the concerned Law is the High Council of Planning.

PHILIPPINES

CENTRAL BANK OF THE PHILIPPINES

Manila

CIRCULAR NO. 393

REGULATIONS GOVERNING ROYALTIES/RENTALS

Pursuant to Monetary Board Resolution No. 2300 dated December 7, 1973, the following regulations for royalties and rentals are hereby promulgated:

**Section 1. Scope of the Regulations - This Circular shall apply to:**

- a. Royalty/rental contracts involving or which may involve the use of trademarks, copyrights and patents as well as the use/transfer of technology or furnishing of services payment for which is based on the value of the article manufactured, used or sold entered into by and between residents and non-residents; and
- b. Rental distribution/royalty contracts between residents and non-residents involving or which may involve movie and television films procured under no-dollar arrangements.

**Section 2. Necessity of Approval and Registration of the Contracts with the Central Bank - The contracts referred to in Section 1 as well as renewals thereof shall be submitted to the Central Bank for approval and registration. In approving/registering such contracts and/or renewals thereof, the Central Bank shall consult the Board of Investments except in case of rental/distribution/royalty contracts covering movie and television films.**

**Section 3. Requirements for Approval and Registration - The requirements for approval and registration as provided for in Section 2 above include, but are not limited to, the following:**

- a. The royalty/rental contracts provide for a fixed term not exceeding five (5) years and shall not contain automatic renewal clauses. This requirement shall not apply to contracts existing as of the date of this Circular, the unexpired term of which does not exceed five (5) years from the date of this Circular.

- b. The royalty/rental contracts shall not contain restrictions or restrictive business practices prohibiting the local licensees to export the products manufactured under the royalty/rental contracts or limiting their exportation abroad only through the foreign licensors as the exclusive distributors; and
- c. The royalty/rental contracts involving "manufacturing" royalty, e.g. actual transfers of technological services such as secret formulate/processes, technical know-how and the like shall not exceed five (5) per cent of the wholesale price of the commodity/ies manufactured under the royalty agreement. For contracts involving "marketing" services such as the use of foreign brands or trade names or trademarks, the royalty/rental rate shall not exceed two (2) per cent of the wholesale price of the commodity/ies manufactured under the royalty agreement. The producer's or foreign licensor's share in the proceeds from the distribution/exhibition of the films shall not exceed sixty (60) per cent of the net proceeds (gross proceeds less local expenses) from the exhibition/distribution of the films.

However, in meritorious cases, the Monetary Board, in consultation with the Board of Investments, may authorize, subject to such conditions it may impose, remittance of royalties on contracts providing for higher royalty/rental rates or for terms longer than five (5) years or containing restrictive provisions prohibiting the local licensees to export the products manufactured under the royalty/rental agreements or limiting their exportation abroad only through the foreign licensors as exclusive distributors.

#### Section 4. Remittances of Royalties/Rentals

- a. Remittances of royalties/rentals arising from contracts registered in accordance with the provisions of this Circular shall be allowed in full, net of taxes, at the prevailing exchange rate at the time of remittance;
- b. Remittances of royalties/rentals arising from existing contracts submitted to the Central Bank prior to the date of this Circular which conform with the requirements provided for in Section 3 hereof shall likewise be allowed in full, net of taxes, at the prevailing exchange rate;

- c. Remittances of royalties/rentals accruing on existing contracts submitted to the Central Bank prior to the date of this Circular which do not comply with the requirements provided for in Section 3 hereof shall continue to be governed by Memorandum to Authorized Agent Banks dated February 21, 1970 as amended by Memorandum to Authorized Agent Banks dated January 5, 1971, unless such contracts are re-negotiated to conform with the said requirements and are submitted to the Central Bank for approval within four (4) months from the date of this circular in which case they shall be entitled to the full remittance privilege provided for in Section 4 (a) above. If no re-negotiation is made within the four-month period, the royalty/rental contracts shall continue to be governed by the afore-cited Memoranda to Authorized Agent Banks.
- d. Royalties/rentals heretofore unremitted on account of the quantitative restrictions provided for in Memoranda to Authorized Agent Banks dated February 21, 1970 and January 5, 1971 may be remitted in full in the following cases, subject to prior clearance from the Central Bank, provided, however, that the remittances shall not be financed from domestic borrowings:
- (i) where the pertinent royalty/rental contracts or renewals thereof from which the unremitted royalties or rentals arose have already expired as of the date of this Circular; and
  - (ii) where the pertinent royalty/rental contracts or renewals thereof continue in force after the date of this Circular and such contracts conform with the requirements provided in Section 3 hereof or are re-negotiated to conform with such requirements and are submitted to the Central Bank within four (4) months from the date of the Circular.

**Section 5. Miscellaneous Provisions**

- a. This Circular shall not apply to royalties/rentals on the reprints of books which shall continue to be governed by Memorandum to Authorized Agent Banks dated February 21, 1970, as amended by Memorandum to Authorized Agent Banks dated August 18, 1971.

- b. All existing Circulars and Memoranda to Authorized Agent Banks inconsistent herewith are modified/amended accordingly.

Section 6. Effectivity of the Circular. This Circular shall take effect immediately.

(SGD.) G. S. LICAROS  
Governor

December 7, 1973

PORTUGAL (1)

**Decree-Law No. 348/77 of 24th August 1977**

(Excerpt)

**Foreign Investment Code**

Decree-Law No. 239/76, of 6 April 1976, defined a code for direct foreign investment in Portugal, and laid down general conditions for this kind of investment and fixed the rights and guarantees inherent in the acceptance of it.

Among the principles underlying this code was the recognition of the value of foreign investment for national economic development, provided it was subordinated to the requirements of that same development and to the general strategy of the State in matters of economic policy. An attempt was thus made in that Decree-Law to establish a point of balance between safeguarding the interests of the country and encouraging the foreign investor.

In the period of somewhat more than a year following the publication of Decree-Law No. 239/76, a number of important events have occurred which have led to a better definition of the overall politico-economic situation; in particular, the new Constitution has been promulgated, the Assembly of the Republic has been elected, the Programme of the Constitutional Government has been approved, and the limits of the private sector in the economic sphere have been defined.

Criticisms and suggestions have meanwhile been received about the said Decree-Law and many of them have showed a proper understanding of the problem of foreign investment in countries such as Portugal, while at the same time the country's economic situation has developed to the point of being now substantially different from what it was at the beginning of 1976.

In these circumstances, it has become necessary to revise the provisions of Decree-Law No. 239/76 and to publish a new code of foreign investment which will take into account the system of selectivity and control which is necessary in the national interest, and at the same time contribute towards the promotion of investment.

The general structure of the new Code attempts to correspond with what is habitually used in similar legislation in other countries and is intended to give the foreign investor all the help he needs. All the regulations laid down are based on the general principle contained in Article 1, which acknowledges the due place of foreign investment in the economic system established in the Constitution.

New foreign investments remain subject to a system of case by case authorisation which will state the general criteria to be followed and which will set out the procedural regulations for foreign exchange purposes. Seeing that certain investments have special characteristics, it seems useful to retain two régimes for the authorisation of the entry of foreign investments into this country: the general régime and the contractual régime.

As regards transfers of technology, the system of case by case authorisation has also been maintained in view of the importance which such transfers may assume in the development of a national technological capacity within the scope of the Plan and their possible contribution toward this objective within the framework of an overall policy; furthermore, existing agreements for the transfer of technology which have not already been appraised by the Bank of Portugal shall be submitted to the Institute for registration purposes, since this will better safeguard not only the national interest but also of the bodies supplying and receiving the technology.

The Institute of Foreign Investment will continue to be responsible for the evaluation of investment projects and for the granting of the respective authorisations as well as for the presentation for approval to a higher authority of applications for investment under the contractual régime.

The said Institute will work closely with the Bank of Portugal and with all State organisations which are required to give an opinion on such projects and will, for all purposes, be the only body with which the investor has to deal.

The Bank of Portugal, as the central bank and under the guidance of the Government will continue to be responsible for monetary and exchange matters and especially for the control of exchange operations.

Recourse to the legal authorities from administrative decisions that affect the rights of the foreign investor is systematically ensured, either by express provision or by appeal through the courts, of which, within the general framework of the law, the investor may always make use.

In these terms:

The Government decrees, under the terms of subparagraph a) of paragraph 1 of Article No. 201 of the Constitution, the following:

## CHAPTER V

### Transfers of Technology

#### Article 25

1. Joint agreements for the transfer of technology between residents in Portugal and residents abroad shall in all cases depend on special and prior authorisation being granted by the competent authority.

2. Appeals against decisions taken by the competent authority may be made to the Minister of Planning and Economic Coordination.

#### Article 26

1. Agreements for the transfer of technology are deemed to cover all acts and transactions in connexion with:

- a) the sale of or the granting of rights for the use of patents, trade names, models, drawings or inventions as well as the transfer of other non-patented know-how;
- b) the rendering of technical assistance in the field of company management, the production or marketing of any goods or services which entail expenditure arising from consultations with or the movement of experts, the drawing up of plans, the supervision of production, market studies or personnel training;
- c) agreements with specialised companies for the construction or maintenance of industrial units, roads, bridges and ports;
- d) any other form of technical assistance.



2. Even when connected with direct foreign investment or with investment in branches of foreign companies, transfers of technology are deemed to be covered by the provisions of this Chapter.

**Article 27**

Only when duly authorised and registered by the competent authority will agreements for the transfer of technology be deemed to be legal and give entitlement to any form of payment.

**Article 28**

1. In agreements for the transfer of technology, particularly where these regulate relations between foreign firms and their branches in this country, the following clauses shall not be permitted:

- a) those which tie the provision of technology to the acquiring of capital goods or of intermediate products and other technologies from a specific source;
- b) those which oblige the purchaser of the technology to transfer free of charge to the seller all or any inventions or improvements arising from the use of the technology concerned;
- c) those which restrict the volume and structure of production;
- d) those which either directly or indirectly restrict markets to which the importer of technology could have access;
- e) those which limit the distribution channels to be used if such limitation is damaging to the buyer of the technology or to the economic and commercial policy of the country;
- f) those which reserve to the seller of the technology the right to fix the selling or re-sale price of products incorporating such technology;
- g) those which insist on the predominance of a foreign language in the agreements for interpretation purposes.

**2.** All agreements for the transfer of technology shall indicate the duration thereof.

**3.** In cases where the transfer of technology assumes special interest for national economy some of the clauses listed in Paragraph 1 above may be authorised.

## CHAPTER VI

### The Foreign Investment Institute

#### Article 29

The Foreign Investment Institute to be set up under the authority of the Minister responsible for Planning shall coordinate, guide and supervise direct foreign investment in Portugal.

#### Article 30

The Foreign Investment Institute shall:

- a) receive and guide potential foreign investors and foreign exporters of technology and ensure the representation before them of all State Departments and bodies responsible for matters in connexion with the fulfilment of their investments or transfers of technology, as well as take action on and submit proposals or give opinions on such legal and administrative measures as are required for the promotion and stimulation of direct investment or of transfers of technology;
- b) grant the authorisations legally required for direct foreign investment and for agreements for the transfer of technology;
- c) submit to the Government, together with its opinion, the papers in connexion with the granting of authorisation of investments under the contractual régime;
- d) carry out all necessary procedures for the registration of direct foreign investments, of foreign reinvestments and of agreements for the transfer of technology in accordance with the terms of the law and maintain an up-to-date record of all companies having foreign capital participation;
- e) act as the controlling instrument of direct foreign investment or of any transfers of technology and accompany the application and implementation thereof except where competence for so doing has been relegated by law to another body;

PORTUGAL (?)

**Decree No. 53/77 of 24th August 1977**

**Regulations governing Transfers of Technology**

Having regard to the provisions governing agreements for the transfer of technology as contained in Articles 25 to 28 of Decree-Law No. 348/77 of 24th August,

The Government decrees, under the terms of sub-paragraph c) of Article 202 of the Constitution, the following:

**Article 1**

The drawing up of agreements for the transfer of technology between residents in Portugal and residents abroad, as well as the alterations or renewal thereof, shall in all cases depend on special prior authorisation being granted by the Institute of Foreign Investment, hereinafter referred to as the Institute.

**Article 2**

1. The provisions of this Decree shall apply to all agreements for the transfer of technology whether or not they involve industrial property rights, whether or not private or public bodies or international organisations are parties thereto and whether or not they are drawn up individually or in conjunction with direct foreign investment.

2. Also covered by the provisions of this Decree are transfers of technology in which the recipients are associate companies, branches or any other form of representation of foreign companies.

**Article 3**

Agreements for the transfer of technology are deemed to cover all acts or contracts in connection with:

- a) The granting or licensing of rights for the use of patents, trade names or marks, models, drawings or inventions as well as the transfer of other non-patented know-how;
- b) the rendering of technical assistance for company management and for the production or marketing of any goods or services entailing expenditure arising from consultation with or the movement of experts, the drawing up of plans, supervision of production, market studies or personnel training;

- c) agreements with companies specialised in the construction and maintenance particularly of industrial units, roads, bridges and ports;
- d) any other form of technical assistance.

**Article 4**

1. Agreements for the transfer of technology as well as all or any alteration thereof shall be deemed legal, especially for payment purposes, only when duly appraised, authorized and registered by the Institute.

2. The full text of draft agreements for the transfer of technology is to be submitted in triplicate to the Institute which may request any clarification necessary for the appraisal thereof and which will give its decision thereon within a period of ninety days renewable for one further period of ninety days by order of the Minister of Planning and Economic Coordination.

**Article 5**

1. The appraisal of transfers of technology shall take into account, primarily, not only their possible effect on the national economy but also the scientific and technological capacity already available in Portugal, such as the availability of research and consultancy services, including engineering, in departments, centres, institutes or companies both public and private.

2. Specific guidelines or criteria for appraisal and authorization purposes may be established for a certain sector, branch of activity or product by means of a joint order of the Minister of Planning and Economic Coordination and the minister responsible for the sector concerned and these shall be taken into account by the Institute.

3. The National Board for Scientific and Technological Research shall keep the Institute informed of the existence in Portugal of those departments, centres, institutes or companies engaged in technological research and its application.

**Article 6**

1. Agreements for the transfer of technology shall contain:

- a) A detailed description of the nature of the transfer and of the practical form it will take as well as the type, form and amount of payments envisaged;
- b) an indication of the period for which the agreement is to remain in force;
- c) a guarantee that the recipient of the technology concerned

will be kept informed of all or any improvements introduced into it during the agreement period unless such improvements are patentable or constitute an invention;

- d) an indication that components, spare parts and services related with the technology concerned will be supplied at the request of the recipient of the technology as well as an indication of the terms governing the supply thereof;
- e) a statement to the effect that the selling price of goods and services will be fixed at levels not exceeding those in force on the international market whenever transactions in such goods and services between the supplier and the recipient of the technology are envisaged.

**2.** Whenever transfers of technology include rights protected in the country receiving the technology by means of patents, trade names, models, drawings or other legal forms of industrial property, the agreement shall include the following:

- a) A detailed list of the ownership of the titles to the industrial property involved;
- b) an indication of the time scale for the use of the rights conferred by means of the titles referred to in the above paragraph

**3.** Agreements for the transfer of technology shall include, whenever possible, appropriate programmes for the training of personnel.

#### **Article 7**

**1.** In agreements for the transfer of technology, particularly those governing relations between foreign companies and their branches in this country, the following clauses shall not be permitted:

- a) Those which tie the provision of technology to the acquiring of capital goods or of intermediate products and other technologies from a specific source;
- b) those which oblige the purchaser of the technology to transfer free of charge to the seller all or any inventions or improvements arising from the use of the technology concerned;
- c) those which restrict the volume and structure of production;
- d) those which either directly or indirectly restrict markets to which the importer of technology could have access;

- e) those which limit the distribution channels to be used if such limitation is harmful to the buyer of the technology or to the economic and commercial policy of the country;
- f) those which reserve to the seller of the technology the right to fix the selling or re-sale price of products incorporating such technology.
- g) those which insist on the predominance of a foreign language in the agreements for interpretation purposes.

2. In cases where the transfer of technology assumes special interest for the national economy, agreements containing one or more of the clauses listed in the preceding paragraph may be authorised.

#### **Article 8**

Whenever one of the contracting parties terminates an agreement for the transfer of technology before the expiry date thereof, the party resident in Portugal shall inform the Institute without delay, stating the grounds on which either of the parties based the decision to terminate the agreement.

#### **Article 9**

1. Applications for the transfer of payments stemming from implementation of the agreements for the transfer of technology which have been duly authorised and registered by the Institute shall be submitted to the Bank of Portugal, which is the body responsible for granting the necessary authorisation.

2. The Institute shall provide the Bank of Portugal with all information having a bearing on payments arising from agreements for the transfer of technology including alterations, renewals or termination thereof.

3. In turn, the Bank of Portugal shall submit monthly to the Institute, in accordance with the latter's instructions, statistical data and all or any other information about payments that are being made as a result of authorisations granted under the terms of Paragraph 1 of this Article.

#### **Article 10**

1. The Bank of Portugal shall, within its legal competence, issue other credit institutions authorised to undertake foreign exchange operations with any technical instructions deemed necessary for effecting and controlling exchange operations connected with payments stemming from the implementation of agreements for the transfer of technology.

2. Credit institutions authorised to undertake foreign ex-

**change business shall not effect any of the said exchange operations before obtaining the necessary permission, in accordance with the provisions of Paragraph 1 of Article 9.**

**Article 11**

**The amounts involved in the exchange operations referred to in the preceding Article shall tally with the payments stemming from implementation of the aforementioned agreements, after the due deduction of taxes payable in Portugal by the non-resident parties to the agreement.**

**Article 12**

**The provision of this Decree shall take effect as of the date of publication thereof.**

VENEZUELA (1)

**TECHNOLOGY CONTRACT REGISTRATION**

**CARLOS ANDRES PEREZ**  
President of the Republic

**DECREE N° 748 - FEBRUARY 11, 1975**

**Artículo 1.** Imported Technology, patent and trademark contracts in effect on January 1, 1974, that were submitted for registration within the period legally established in Decree N° 502 of October 29, 1974, will have to be adjusted on or before December 31, 1975, to the dispositions of Decisión 24 Articles 20, 21, 25 and 51, and to the norms stipulated in Chapter VII of the Reglamento, contained in Decree N° 63 of April 29, 1974, so as to eliminate the prohibited clauses there indicated, as well as those clauses which:

- a) prohibit the manufacture or sale of products made with the imported technology after completion of the contract period;
- b) prohibit the use of technical knowledge acquired through the contracted technology after completion of the contract period;
- c) prohibit the use of commercial trademarks that are similar or resemble the one contracted for, after completion of the contract period;
- d) require the use of a pre-determined system of quality control;
- e) require the user to sell a part, or all, of the production to the technology supplier;
- f) call for royalty payments for technical assistance not transferred;
- g) involve royalty payments even when the user has purchased the technology outright;
- h) oblige the user to pay taxes which are the responsibility of the technology supplier;



- i) require the technology user to grant an irrevocable authorization to the supplier for the sale of the products manufactured with the technology;
- j) require the user to license the technology supplier to use any improvements or inventions made by the user in relation to processes or products covered by the contract.

**Unique Paragraph.** The Superintendency of Foreign Investments can, in each case, evaluate the degree of restriction or prohibition of any of the clauses indicated in this Article, in the context of the technological development and economic and social interests of the nation.

**Article 2.** The Superintendency of Foreign Investments, having received prior approval from the Council of Ministers, may prohibit other clauses as restrictive, defining them as having an effect equivalent to those spelled out in the previous Article, and this not allowable for the purpose of contract registration.

**Article 3.** Imported technology, patent and trademark contracts in effect as of January 1, 1974, which have not been submitted to the Superintendency of Foreign Investments for registration within the legal limits, should be revised within three months of the date of promulgation of the present Decree.

**Article 4.** Within the periods established in Articles 1<sup>o</sup> and 3<sup>o</sup>, the interested parties must present to the Superintendency of Foreign Investments all the documents which contain legal acts, contracts or agreements, duly revised.

**Article 5.** Having first evaluated the content of the documents, with their annexes and other pertinent information, the Superintendency of Foreign Investments will indicate within 90 legal working days following the deadlines established in the previous Articles, or from the moment when the last of the pertinent information is in the hands of the Superintendency of Foreign Investments, whether the contract is acceptable for registration.

**Article 6.** Once the deadlines stipulated in Articles 1°, 3° and 5° have passed, the competent authorities will require the presentation of the technology, patent, or license contract's Proof of Registry issued by the Superintendency of Foreign Investments, in order to concede, or allow, any class of fiscal incentives, assistance, benefits, facilities, or stimulate of any form for companies operating in the country, established by national laws or reglamentos.

**Article 7.** All technology, patent and trademark contracts which foreign, mixed or national companies contemplate signing must receive prior Superintendency of Foreign Investments authorization and be registered after signing with the Superintendency of Foreign Investments. The Superintendency must, in each case, decide within 60 legal working days following the date a petition is submitted, whether a contract is acceptable.

**Unique Paragraph.** When the contract presented for registration corresponds exactly to the draft contract authorized, the period will be reduced to 15 days.

**Article 8.** The National Executive can modify by decree the periods and terms indicated in this Decree.

**Article 9.** The Congress of the Republic shall be notified of the form and content of this Decree before its promulgation.

VENEZUELA (2)

**REGULATION GOVERNING COMMON TREATMENT OF FOREIGN  
CAPITAL, TRADEMARKS, PATENTS, LICENSES AND ROYALTIES  
APPROVED BY DECISIONS Nos. 24, 37, 37A, 70 AND 103  
OF THE CARTAGENA AGREEMENT COMMISSION**

**Decree Number 2.442 - November 8 th, 1977**

**CARLOS ANDRES PEREZ**  
President of the Republic

By virtue of the powers conferred on him by Ordinal 10 of Article 190 of the Constitution and by the Sole Article, Third Paragraph of the "Enabling Act of the Agreement of Subregional Integration or the Cartagena Agreement, subscribed to in Bogotá, Republic of Colombia, on May 26, 1969, and by virtue of the Consensus of Lima, subscribed to in Lima, Republic of Peru on February 13, 1973, by the Plenipotentiaries of Venezuela, Bolivia, Colombia, Chile, Ecuador and Peru, and Decisions Nos. 24, 37, 37A, 40, 46, 50, 56, 70 and 103, of the Cartagena Agreement Commission, in the Council of Ministers,

**Decrees :**

the following

## CHAPTER XI

### Regarding Importation of Technology and the Use And Exploitation of Patents and Trademarks

**Article 63.** All contracts that Foreign, Mixed and National companies plan to sign, which deal with importation of technology, the use and exploitation of patents and trademarks, regardless of their form, must be approved by, and registered with, SIEX.

**Article 64.** All documents which contain heads of agreement, contracts or agreements of whatever nature, regarding the subject matter referred to in the previous Article and which will take effect in national territory regardless of whether payment or compensation is contemplated, are all subject to authorization by, and registration with, SIEX, Specifically subject to this authorization and registry are documents regarding the following subjects.

1. The concession for the use or authorization of the exploitation of trademarks, and distribution of products identified under trademarks, which belong to foreigners.
2. The concession for the use of, or authorization for exploitation of, patents, improvements, models and industrial drawings.
3. The supply of technical know-how by means of plans, diagrams, instructive models, instructions, formulations, specifications, formation and training of personnel, and other such forms.
4. The supply of basic engineering, or of details for installations, the manufacture of products, and the undertaking of industrial and construction projects.
5. Technical assistance in whatever form and managerial shape this may take.

**6. Company administrative operational services in general.**

**Sole Paragraph.** Unless there is a Resolution to the contrary, issued by the Competent National Organism, royalties resulting from the aforementioned heads of agreement, contracts, or agreement which involve such payments as compensation, and which have been registered in accord with legal provisions in effect, may be remitted paid, without any prior authorization requirement. Notwithstanding the obligation to notify SIEX in regard to the amounts remitted.

**Article 65.** The acts (acts) and contracts referred to in the previous Article must contain all the information and data which SIEX requests, particularly in regard to the following items.

- a) Identification of the contracting parties with indication of their nationality and domicile, as well as those of the intermediaries, if any.
- b) Description of the technological contribution and identification of the patents or trademarks, which are the object of the contract.
- c) Identification of the terms and conditions of the technology transfer.
- d) Contractual value of each and every of the elements involved in the transfer of technology which is relevant for the purposes of the authorization, expressed in the form similar to that which is established for the registry of Direct Foreign Investment in Decision 24 of the Cartagena Agreement Commission, and in these Regulations.
- e) Establish the term of the contract, which cannot exceed five years, at which time another contract may be presented for the purposes of authorization and subsequent registration. Nevertheless, SIEX, having received the prior approval of the Ministry -which has the jurisdiction or control over the area of the economy in which the imported technology, or use and exploitation of patents, licenses and trademarks, is to be authorized- may authorize extraordinary contract periods for up to 15 years in those cases where, because of the nature of the contracted activity, this is merited.
- f) Form of payment and country (from which the imported technology or trademark or license comes).

**Article 66.** With the aim of fulfilling the obligations set forth in Articles 20 and 25 of Decision 24 of the Cartagena Agreement Commission, SIEX is hereby authorized to define, having first consulted with the National Executive through the Ministry of Finance, the restrictive commercial and other clauses the presence of which will prohibit the contract's registration.

**Article 67.** Technological contracts signed after these Regulations enter into effect must contain an obligation for the supplier to train Venezuelan personnel required for the better utilization of the contracted technology, as well as to promote technological investigation activities in the country, in accord with conditions and terms that SIEX may fix.

**Article 68.** The technological contributions resulting from the acts, agreements and accords describe in Article 63 and 64 of these Regulations carry with them the right of royalty payment, once prior authorization from SIEX has been received, but they (technological contributions) may not be computed as a capital contribution of the owner, or of the supplier of the technology to the recipient company. When these contributions are supplied to a foreign company by its parent or by another affiliate or subsidiary of the parent, royalty payments or other compensations shall not be authorized, nor can deductions for this concept be allowed for Venezuelan tax purposes. Despite this limitation, specific and occasional services, or those for which the amount does not exceed limits which SIEX will establish in each case, shall be excluded from the previous prohibition, notwithstanding the prior obligation of notifying SIEX. National, Mixed, and Foreign companies which have agreed to transform, are not required to obtain prior authorization from SIEX to contract specific, occasional, and those other services already referred to. In any event, the subsequent obligation to notify SIEX remains in effect.

**Sole Paragraph.** A technological contribution will be considered to be any supply, sale, rental, or cession (of rights) regarding trademarks, patents or industrial models; instruments, models, documents or instructions on processes or methods of manufacture; technical or administrative assistance on procedures utilizing qualified personnel, and whatever other goods or service of similar nature which SIEX, in its opinion, defines as a technological contribution.

**Article 69.** Those foreign companies which have signed a transformation agreement with SIEX so as to convert into National or Mixed, may pay royalties or other compensation to any supplier as of the date of the respective

registry with SIEX of the technological contribution contract.

**Article 70.** SIEX may, at any time, inspect the carrying out of (technological transfer) contracts in regard to the approved terms. For such purpose, the contractual parties, if asked to, must report on activities being developed, especially, in reference to whether the procedure, patent or trademark is being effectively exploited under adequate economic conditions, and in accord with the terms and conditions authorized and registered.

If there is a violation of the terms and conditions of the approved contract, SIEX may suspend or cancel the registration of the contract in accord with the gravity of the violation, by means of a Resolution.

**Article 71.** No payment will be permitted for royalties, nor for other payments resulting from the use of trademarks, procedures, patents or industrial models, for a period greater than that of the industrial property rights which are granted by the respective law. In the case of a judicial or administrative controversy regarding trademarks, procedures, processes, patents or industrial models, royalty payments or the deposit which corresponds to such a payment - the resolution shall be in conformance with what is decided by the administrative or judicial authority handling the conflict.

**Article 72.** The acts (actos), agreement or contracts referred to in Articles 63 and 64 of these Regulations, as well as any modifications, which have not been registered with SIEX, shall have no legal effect and, in consequence, no rights or obligations exist between the (contractual) parties, nor in relation to third parties.

**Article 73.** The National Executive may determine, following a proposal of the Superintendent of Foreign Investment, through the Ministry of Finance, obligatory inclusion or exclusion clauses in the technology import contracts, as well as in those regarding the use of exploitation of trademarks, patents, licenses and royalties.

VENEZUELA (3)

Decree No. 63 of 29 April 1974:  
Regulations under the Common Regime  
for the Treatment of Foreign Capital  
and on Trade Marks, Patents, Licences  
and Royalties. Approved by Decisions 24,  
37, 37A and 70 of the Commission of the  
Cartagena Agreement

Chapter VII. Importation of Technology and Use and Exploitation  
of Patents and Trademarks

54. Any contract concluded by foreign, national or joint enterprises relating to the importation of technology and the use and exploitation of patents and trademarks shall be approved and registered by the Superintendency of Foreign Investments within 30 working days from the date of its conclusion.

55. The following documents shall likewise be subject to registration under the foregoing article: deeds, contracts and agreements of any kind liable to have effects on national territory, irrespective of whether or not such documents involved payment or any consideration, and which have been concluded for the following purposes:

1. license to use or authorization to exploit trademarks;
2. license to use or authorization to exploit patents for inventions, improvements and industrial designs;
3. the supply of technical know how in the form of plans, diagrams, models, instructions, formulae, specifications, the training or preparation of personnel and other forms;
4. the supply of basic or specific engineering in connexion with the installation of plant or the manufacture of goods;
5. technical assistance in whatever form it is provided;
6. administrative and management services.

56. The contracts referred to in the preceding articles shall, as a minimum, contain relevant and detailed information on the following matters:

- (a) the identity of the contracting parties together with express indication of their nationality and domicile, as well as of any intermediaries;
- (b) a description of the technological contribution and identification of the patents or trademarks which are the subject of the contract;
- (c) details of terms and conditions for the transfer of technology;



- (d) the contractual value of all the elements involved in the transfer of technology expressed in a form similar to that provided for registration of direct foreign investment in Decision No. 24 of the Cartagena Agreement and in these Rules;
- (e) the duration of validity which, in the case of technological contracts concluded after the entry into force of these Rules, shall not exceed five years;
- (f) the mode of payment and the recipient country.

57. In accordance with its duties as laid down in Articles 20 and 25 of Decision No. 24 of the Cartagena Agreement the Superintendency of Foreign Investments shall be empowered to define, after consultation with the Minister of Development, those restrictive trade and other clauses which, if contained in the contracts referred to in Articles 54 and 55 of these Rules, would preclude their registration.

58. Technological contracts signed after the entry into force of these Rules shall contain a clause requiring the supplier to train national personnel with a view to making the best possible use of the technology provided under the contract and to promote development and technological research activities in the country.

59. Technological contributions made under the deeds, contracts and agreements referred to in Articles 56 and 58 above shall entitle the supplier to the payment of royalties, subject to the approval of the Superintendency of Foreign Investments, but shall not, however, be deemed a contribution by the owner or supplier of the technology to the capital of the recipient undertaking, whether national or joint.

When the technology is supplied to a foreign enterprise by its parent company or by another branch or subsidiary of the same parent company, the payment of royalties shall not be authorized and no deduction for the purposes of tax shall be admissible under this heading.

First paragraph: The following shall be deemed to be technological contributions: any supply, sale, lease or assignment relating to trademarks, patents or industrial designs; assistance with technical processes and administrative procedures through the provision of qualified personnel; instruments, models, documents or instructions concerning manufacturing processes and techniques; and any other article or service of a similar nature which the Superintendency of Foreign Investments deems should be classed as such.

Second paragraph: This provision shall not apply to personal services which are occasional or which represent an amount below the relevant ceiling fixed by the Superintendency of Foreign Investments. The duty to inform the Superintendency of Foreign Investments in advance shall be applicable in all cases.

60. The Superintendency of Foreign Investments may at any time verify that contracts are carried out in accordance with the approved terms and, in this connexion, the contracting parties shall, if so requested, report on the activities performed under the contracts and, in particular, on whether the process, patent or trademark is being effectively exploited in satisfactory economic conditions.

In the event of a breach of the terms of an approved contract, the Superintendency may, according to the gravity of the breach, suspend or revoke the registration of the contract, stating its reasons for so doing.

61. Contracts relating to the importation of technology and to patents and trademarks, which were concluded before January 1, 1974, and are still in force, shall be submitted to the Superintendency of Foreign Investments for registration within six (6) months from the date of entry into force of these Rules.

62. Payments of royalties and other fees for the use of trademarks, patents or industrial designs shall not be permitted beyond the period of validity of the industrial property titles granted under the Industrial Property Law.

63. The deeds, agreements or contracts, as well as amendments thereto, referred to in Articles 56 and 58, which have not been registered with the Superintendency of Foreign Investments, shall have no legal effect and accordingly shall have no effect either as between the parties or as against third persons.

MEXICO

**LAW FOR THE REGISTRATION OF THE TRANSFER OF TECHNOLOGY  
AND THE USE AND EXPLOITATION OF PATENTS AND TRADE-MARKS  
ADOPTED BY CONGRESS ON DECEMBER 28, 1972 AND PUBLISHED IN  
THE OFFICIAL BULLETIN ON THE 30TH. OF THAT MONTH.**

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LUIS EUSEBIO ALVAREZ, Constitutional President of the  
United States of Mexico, to its inhabitants, GREETINGS:

The Hon. Congress of the Union has sent to me the following

**D E C R E E**

The Congress of the United States of Mexico hereby decrees:

**LAW FOR THE REGISTRATION OF THE TRANSFER OF TECHNOLOGY  
AND THE USE AND EXPLOITATION OF PATENTS AND TRADE-MARKS.**

**ARTICLE 1.** The National Register for the Transfer of Technology,  
in charge of the Ministry of Industry and Commerce, is hereby created.

The National Council of Science and Technology shall be a  
Consulting body, as provided in the Law creating the Council.

**ARTICLE 2.** The registration in the Register mentioned in the  
preceding article, is obligatory for all documents containing acts,  
contracts or agreements of every nature which are effective in the National  
Territory and which have been entered into for the following purposes:

- a) The licensing of the use or exploitation of trade-marks.
- b) The licensing of the use or exploitation of patents for  
inventions, improvements, industrial models and drawings.
- c) The furnishing of technical information by plans, diagrams,  
models, instruction sheets, instructions, formulas,  
specifications, formation and training of personnel or  
otherwise.
- d) The supplying of basic or detailed engineering plans for  
the building of facilities or manufacture of products.
- e) Technical assistance in whatever form it may be furnished.
- f) Services for the administration and operation of business  
enterprises.

**ARTICLE 3.** The following shall have the obligation to apply for  
the registration of the acts, agreements or contracts specified in the  
preceding article when they are parties to or beneficiaries thereof:

- I . Individuals or companies of Mexican nationality.
- II . Foreigners residing in Mexico and the foreign companies established in the country.
- III. Agencies or branches of foreign companies established in the Republic.

The suppliers of Technology who reside in a foreign country may request the registration in the National Register for the Transfer of Technology of the acts, agreements or contracts to which they are parties.

ARTICLE 4. The documents containing the acts, agreements or contracts referred to in Article 2, shall be filed with the Ministry of Industry and Commerce for registration in the National Register for the Transfer of Technology, within 60 days from the date of their execution. If filed within this period, the registration shall be effective from the date of their execution. Upon expiration of said period, the registration shall be effective only from the date of filing.

Further, any amendment of the acts, agreements or contracts referred in Article 2, must be filed for registration with the Ministry of Industry and Commerce, as provided in Article 2. When the parties terminate the contracts or agreements prior to the termination date stipulated therein, notice shall be given to the Ministry of Industry and Commerce within 60 days from the date of termination.

ARTICLE 5. Proof of registration shall be required in order to enjoy the benefits, incentives, aids or facilities provided by the Law of Promotion of New and Necessary Industries or other provisions or regulations governing the establishment or expansion of industrial business, or for the establishment of shopping centers along the border or in the free zones or areas, or for the approval of the manufacturing programs of persons who, being required to do so, have not registered the acts, agreements or contracts mentioned in Article 2 or the amendments thereof, in the National Register for the Transfer of Technology.

ARTICLE 6. The acts, agreements or contracts mentioned in Article 2 and its amendments, which have not been registered in the National Register for the Transfer of Technology, shall not have any legal effect and therefore may not be enforced before any authority and compliance thereof may not be enforced before the National Courts.

Also, the above mentioned acts, agreements or contracts, the registration of which has been canceled by the Ministry of Industry and Commerce, shall have no legal effect and their compliance may not be enforced in the National Courts.

ARTICLE 7. The Ministry of Industry and Commerce shall not register the acts, agreements or contracts mentioned in Article 2 in the following cases:

- I. When their purpose is the transfer of Technology freely available in the country, provided this is the same Technology.
- II. When the price or consideration does not represent the Technology acquired or constitutes an unjustified or excessive burden on National Economy.
- III. When provisions are included which permit the supplier to regulate or intervene, directly or indirectly, in the administration of the transferee of the Technology.
- IV. When there is an obligation to assign onerously or gratuitously to the supplier of the Technology, the patents, trademarks, innovations or improvements obtained by the transferee.
- V. When limitations are imposed on technological research or development by the transferee.
- VI. When there is an obligation to acquire equipment, tools, parts or raw materials exclusively from any given source.
- VII. When the exportation of the transferee's products or services is prohibited, against the best interests of the country.
- VIII. When the use of complementary technologies is prohibited.
- IX. When there is an obligation to sell the products manufactured by the transferee exclusively to the supplier of the Technology.
- X. When the transferee is required to use permanently personnel designated by the supplier of the Technology.
- XI. When the volume of production is limited or sale and resale prices are imposed for domestic consumption or for exportation.
- XII. When the transferee is required to appoint the supplier of Technology as the exclusive sales agent or representative in Mexico.
- XIII. When an unreasonable term of duration is established. Such term shall in no case exceed 10 years, obligatory for the transferee.
- XIV. When the parties submit to foreign Courts for decision in any controversy in the interpretation or enforcement of the foregoing acts, agreements or contracts.

The acts, agreements or contracts referred to in Article 2, which are effective in Mexico shall be governed by the laws of Mexico.

ARTICLE 8. The Ministry of Industry and Commerce may register in the National Register for the Transfer of Technology the acts, agreements or contracts which do not satisfy one or more of the requirements mentioned in the preceding article, when the Technology transferred is of special interest to the country. This exception shall not apply to the requirements cited in Sections I, IV, V, VII, XIII, and XIV of the preceding Article.

ARTICLE 9. The acts, agreements or contracts required to be registered in the National Register for the Transfer of Technology do not include those relating to:

- I. The immigration of foreign technicians for installation of factories and machinery or for making repairs.
- II. The furnishing of designs, catalogues or advice, in general, which is acquired with the machinery or equipment and which may be necessary for the installation thereof, provided this does not include the making of subsequent payments.
- III. The assistance in repairs or emergencies, provided these are part of any act, agreement or contract previously registered.
- IV. The instructions or training furnished by institutions of learning, personnel training centers or by the Company to its workers.
- V. The operation of "Assembly Plants" shall be governed by the legal provisions or regulations applicable thereto.

ARTICLE 10. The Ministry of Industry and Commerce shall pass on the registration and non-registration in the National Register for the Transfer of Technology within a period of 90 days following the filing with it of the documents containing the acts, agreements or contracts referred to in Article 2. Upon the termination of this period without the Ministry having rendered its decision, the respective act, agreement or contract shall be registered in the National Register for the Transfer of Technology.

ARTICLE 11. The Ministry of Industry and Commerce may cancel the registration in the National Register for the Transfer of Technology, of the acts, agreements or contracts when the terms under which they were registered are amended or modified contrary to the provisions of this Law.

ARTICLE 12. The Ministry of Industry and Commerce is authorized to verify at any time the compliance of the provisions of this Law.

ARTICLE 13. The official personnel who participates in the proceedings relating to the National Register for the Transfer of Technology shall be required to keep secret all technological information concerning the processes or products covered by the acts, agreements or contracts being registered. This shall not include information which is in the public domain pursuant to other laws or regulations.

**ARTICLE 14.** The persons who consider themselves to be affected by the rulings of the Ministry of Industry and Commerce may, as provided in this Law, request within eight days from the effective date of notice thereof, the reconsideration of such rulings, submitting the evidence which they may deem appropriate.

The petition for reconsideration shall be filed in writing with the Ministry.

In the petition for reconsideration the petitioner shall offer proof and submit that in his possession. Oral and confessional evidence shall not be admitted. The Ministry may introduce the evidence it may deem pertinent in rendering its ruling.

When the period of proof has elapsed, the Ministry shall render its decision within a period not to exceed 45 days. Upon the expiration of this period without a decision being rendered, the reconsideration shall be deemed to be in favor of the petitioner.

#### TRANSITORY ARTICLES

**FIRST.** This Law shall become effective 30 days following its publication in the "Diario Oficial" of the Federation.

**SECOND.** The acts, agreements and contracts referred to in Article 2 which have been entered into prior to the effective date of this Law, shall be adjusted to conform to the provisions hereof and registered in the National Register for the Transfer of Technology within two years following the effective date thereof. The Ministry of Industry and Commerce may extend this period when special circumstances so justify.

The documents containing the acts, agreements or contracts shall be filed with the Ministry of Industry and Commerce for its information, without passing on their comments, within 90 days following the date the Law becomes effective.

**THIRD.** When the provisions of the previous article are complied with, within the periods therein established, the parties may continue to enjoy the benefits and incentives referred to in Article 5, which have been previously granted to them. Otherwise, such benefits and incentives shall be canceled.

**FOURTH.** Until the acts, agreements, or contracts referred to in Article 2 have been adjusted to the provisions of this Law and have been registered, the parties shall not have the right to enjoy the benefits, incentives, aids or facilities referred to in Article 5, nor shall their manufacturing programs be approved.

**FIFTH.** Upon the termination of the periods referred to in Transitory Article Second and the extensions thereof, the acts, agreements and contracts which have not been registered in the National Register for the Transfer of Technology, shall not be legally effective, as provided in Article 6.

SIXTH. In the case of acts, agreements or contracts which have been executed prior to the date of this Law, the ruling of the Ministry of Industry and Commerce on their registerability in the National Register for the Transfer of Technology, shall be issued within 120 days following the date of filing the documents.

Mexico, D. F., December 28, 1972. "YEAR OF JUAREZ".

In compliance with Section I of Article 89 of the Federal Constitution of the United States of Mexico and for its publication and observance, I hereby issue the Law in the residence of the Executive Power in the City of Mexico, Federal District, on December 28, 1972. "YEAR OF JUAREZ".



BRAZIL

2. BRAZIL: Law No. 5,648 of 11 December 1970 establishing the National Institute of Industrial Property

Article 1: The National Institute of Industrial Property (INPI) is hereby established as an autonomous federal organ attached to the Ministry of Industry and Trade, with head office and domicile in the Federal District.

Sole paragraph. The Institute shall enjoy the privileges of the State in respect of the assets, income and services relating to or deriving from its essential purposes.

Article 2. The primary purpose of the Institute shall be to execute at the national level the provisions of law governing the social, economic, legal and technical functions of industrial property.

Sole paragraph. Without prejudice to any other duties that may be allotted to the Institute, it shall adopt for the purpose of national economic development measures to accelerate and regulate the transfer of technology and to improve conditions for the negotiation and use of patents. It shall also advise on the signature, ratification and denunciation of conventions, treaties, contracts and agreements relating to industrial property.

Article 3. The assets of the Institute shall comprise the property, levies and securities belonging to the Union, at present attached to the National Department of Industrial Property or in its charge, and transferred to the Institute by this Law; also the income deriving from the Institute's execution of its services and from the national budgetary resources allocated to it.

Article 4. The Executive is authorized to open a special credit in favour of the Institute with funds derived from the balances of the budgetary allocations of the National Department of Industrial Property.

Article 5. The President of the Institute shall be nominated by the Minister of Industry and Trade and may be appointed and dismissed only by the President of the Republic.

Article 6. The Executive shall make regulations for the structure, duties and operation of the various organs of the Institute and for the conduct and engagement of its staff.

Article 7. The National Department of Industrial Property shall be dissolved by the Executive, which shall abolish its posts and functions progressively as the manning tables of the organ established by this Law are approved.

Sole paragraph. When the National Department of Industrial Property has been abolished, its functions shall be assumed by the Institute.

Article 8. The Executive Power shall take steps to redistribute the staff of the National Department of Industrial Property. The Institute may employ staff of the former Department possessing the qualifications necessary to occupy posts or perform the functions listed in its manning tables.

Article 9. The Institute shall issue its own periodical to publish its activities, decisions, recommendations, and matter relating to its services.

Sole paragraph. The regulations made under this Law shall govern the transfer to the periodical provided for in this article of the publications at present issued, in accordance with and for the purposes of Legislative Decree No. 2,131 of 12 April 1940, in the Official Journal of the State, section III.

Article 10. This Law shall enter into force and contrary provisions shall be rescinded on the date of its promulgation.

**BRAZIL**  
**Normative Act No. 015**  
**(Registration of Contracts Providing for**  
**the Transfer of Technology and Related**  
**Agreements)**  
**(of September 11, 1975)\***

The President of the National Industrial Property Institute (INPI), acting in pursuance of the authority conferred upon him and having regard to the provisions of Section 2, sole paragraph, of Law No. 5.648 of December 11, 1970, and of Section 126 of Law No. 5.772 of December 21, 1971,<sup>1</sup>

**Resolves:**

1. To establish basic principles and rules for the registration of contracts providing for the transfer of technology and related agreements, in pursuance of the Industrial Property Code (Law No. 5.772/71).

1. — Registration of a contract shall be the condition for:

- (a) legalizing payments deriving therefrom, whether in Brazil or abroad, subject in both cases to the legal provisions and restrictions in force;
- (b) allowing tax deductions, where applicable, subject to the provisions of the relevant legislation;
- (c) affording evidence, where appropriate, of the effective working of a patent or the effective use of a mark in the country, subject to the other conditions stipulated in the Industrial Property Code.

1.1 — Contracts for the transfer of technology and related agreements shall be classified according to their objective and for the purposes of registration, in five categories, as follows:

- (a) license contracts for the exploitation of a patent;
- (b) license contracts for the use of a mark;
- (c) contracts for the furnishing of industrial technology;

<sup>1</sup> See *Industrial Property*, 1972, p. 175.

\* Portuguese title: Ato normativo No. 015 de 11 de setembro de 1975.

Entry into force: September 16, 1975.

Source: *Revista da propriedade industrial*, No. 256, September 16, 1975.

(d) contracts for technical and industrial cooperation; and

(e) contracts for specialized technical services.

1.1.1 — Since the applicable provisions are different for each objective, there must be one corresponding specific contract in the appropriate category.

1.1.2 — In the case of contracts as provided for in subparagraph (e) and where the parties are domiciled in the country, the contracts shall be subject to registration in the INPI only when the technical services are directly related to activities inherent in the production system.

1.2 — Where the licensor, supplier, cooperator or furnisher of services has control over or participates in the capital, whether directly or indirectly, the following situations shall be taken into consideration for the purposes envisaged by the present Normative Act:

- (a) total control;
- (b) majority participation;
- (c) minority participation.

1.3 — The following shall be subject to registration:

- (a) contracts the parties to which are resident or domiciled in Brazil;
- (b) contracts wherein the licensor, supplier, cooperator or furnisher of specialized technical services is resident or domiciled abroad;
- (c) contracts wherein the licensor, supplier, cooperator or furnisher of specialized technical services is resident or domiciled in Brazil.

1.3.1 — In the cases referred to in subparagraph (c), registration of the contracts concerned shall not be subject to the other provisions of this Normative Act.

2. — Concept and Basic Conditions of a License Contract for the Working of a Patent

2.1 — *Objective.* A "license" contract shall be deemed to be a contract specifically designed to

authorize the actual working by third parties of the subject of a patent regularly filed or granted in Brazil, where an industrial property right has been duly established in terms of Law No. 5.772/71 (Industrial Property Code).

2.1.1 — The license concession must cover:

- (a) the supply of all the technical information and data, formulae, specifications, including materials, drawings and models, processes, operations and other similar elements, relevant to the use of the process and/or the manufacture of the product;
- (b) where applicable, the furnishing of technical assistance by the licensor's technicians, and the training of specialized technical personnel of the licensee.

2.1.2 — A patent that has been filed may be the subject of a license contract only after publication of the corresponding application for privilege and when the relevant request for examination has been made.

2.1.3 — If the patent is not granted or where it expires, under the provisions of the Industrial Property Code, all the effects of registration shall lapse.

2.1.4 — If proceedings are instituted to nullify or cancel the privilege, all the effects of registration shall be suspended.

2.2 — *Remuneration*. Where remuneration is permitted, it shall be established, taking into account the type of production or field of activity, according to the degree of essentiality, and shall be specifically related to the beginning of effective working of the subject of the patent, and likewise directly linked to sale of the product resulting from application of the subject of the patent.

2.2.1 — The amount of the remuneration shall be calculated on a percentage basis or as a fixed value per product unit, in either case having regard to the net sales price or, where applicable, shall likewise take into account the profit derived from the product that is the subject of the license.

**NOTE:** For the purpose of calculating the remuneration, the "net price" shall be deemed to be the invoice value, based on actual sales, after deduction of taxes, charges, inputs and components imported whether from the licensor or from any supplier directly or indirectly linked to him, commissions,

return credits, freight, insurance and packaging expenses, and any other deductions agreed upon by the parties.

2.2.2 — In the case of acquisition of a patent (by assignment or purchase), the value thereof may be fixed.

2.2.3 — Where, under a legal ruling or by agreement between the parties, the grant of a license as provided for in subitem 2.1.1 is effected free of charge, this circumstance shall be expressly stated in the contractual conditions.

2.2.4 — Where applicable, provided it is fixed at a level considered reasonable and that the patent rights have already been granted, a fixed value may be established for the technical documentation initially furnished, which shall constitute an advance on the remuneration due in pursuance of subitem 2.2.1 above.

2.2.5 — The total amount of the remuneration of the technicians of each contracting party, payable to the licensor in foreign currency, must be estimated on the basis of the following criteria:

- (a) the number of technicians;
- (b) the individual daily rates—not including subsistence costs—which must be consistent with the criteria and standards customarily adopted, including in the country of origin, determined on the basis of the specialization and category of each technician and likewise on the nature of the services concerned;
- (c) an estimate of the period deemed to be sufficient for the furnishing of technical assistance and implementation of the personnel training program.

2.2.6 — The subsistence costs, where relevant, in respect of foreign technicians in Brazil (daily rates, allowances etc.) shall be estimated and determined on an individual basis and shall be paid in cruzeiros directly to each technician.

2.2.7 — The registration of the contract shall have no effect in respect of payments if the patent licensed or acquired falls within the following situations:

- (a) the patentee is resident or domiciled abroad and, whether directly or indirectly, has control over, or a majority participation in, the capital of the licensee or assignee;
- (b) the patent has been filed in Brazil, without proof of priority in the country of origin;

(c) in the case of a transfer, the previous proprietor was not entitled to remuneration in terms of the preceding paragraphs.

2.2.8 — In the cases to which the preceding subitem refers, registration shall be for the exclusive purpose of fulfilling one of the conditions established in the Industrial Property Code in order to prove effective working of the patent in Brazil and avoid a declaration of nullity, as well as to allow the transfer of ownership of the patent to be recorded.

### 2.3 — Form of Payment

2.3.1 — of subitem 2.2.1 — in accordance with the periods stipulated (quarterly, half-yearly or any other), by means of duly authenticated statements established by the licensee, less the amount paid for the furnishing of technical documentation, where applicable.

2.3.2 — of subitem 2.2.4 — after the contract enters into force, in one lump sum or in installments, by means of a duly legalized invoice established by the licensor and constituting evidence that the technical documentation has been handed over.

2.3.3 — of subitem 2.2.5 — as and when the services are effectively furnished by the technicians, by means of an invoice established by the licensor, duly itemized and legalized.

2.4 — *Term*. The contractual bond resulting from a grant of the license may not extend beyond the period of validity in respect of protection of the industrial property rights relating to the patent:

- (a) patent of invention—up to 15 years;
- (b) patent of utility model—up to 10 years;
- (c) patent of industrial design—up to 10 years.

### 2.5 — Other Basic Conditions of the License

2.5.1 — The contract shall:

- (a) expressly indicate the number and title of the application of the patent in Brazil;
- (b) state whether the license is "exclusive" or "nonexclusive," and whether sublicensing is permitted;
- (c) stipulate the obligation to furnish, with the license, all formulae, specifications, drawings and other information, and all data necessary for effective execution of the subject of the patent;

(d) specify that the licensee will own the rights in any improvements or developments introduced by him into the product or process to which the license pertains, and that the relevant information may be transmitted to the licensor;

(e) comprise the obligation for the licensor to immediately furnish detailed information to the licensee on any improvement or development introduced by him into the product or process to which the license pertains.

NOTE: Where such particularities have been the subject of a patent also in Brazil, a contractual addendum will have to be signed.

(f) specify precisely and clearly the scope or field of activity of the technicians, in the country and abroad, through whom the technical assistance to be given by the licensor will effectively be furnished and the training program for the licensee's specialized technicians will be carried out, ensuring that optimum use is made of all information pertaining to the product or process licensed;

(g) stipulate the obligation for the licensee effectively to work the subject of the patent;

(h) determine, in respect of income tax due in Brazil, the responsibility for payment thereof;

(i) define and clarify other responsibilities and obligations, whether of the licensor or the licensee.

2.5.2 — The contract may not:

(a) provide for the performance of any other service, agreement or negotiation between the parties which is unrelated to the license to which the contract pertains;

(b) contain, whether implicitly or explicitly, clauses restricting and/or preventing effective exploitation of the subject of the patent, or likewise the activities of the licensee, which are referred to, directly or indirectly, by Law No. 5.772/71 (Industrial Property Code) and Law No. 4.137/62 (governing the repression of abuse of economic power), in particular any clause which:

(i) regulates, determines, alters or limits the production, sale, price, publicity or dissemination, distribution, marketing or export, and likewise the hiring of personnel and the reservation or allocation of

markets or the exclusion of any of them, except, in this last case, when permitted by the industrial property legislation, when required with evidence thereof under specific legislation of the licensor's country, or when deriving from an international instrument or agreement to which Brazil is a party;

- (ii) sets any obligation or condition in respect of the purchase of inputs or components necessary for manufacture or for utilization of the process, or likewise of materials, machinery and equipment from the licensor and/or from any source determined by him, including those of domestic origin;
- (iii) prevents the free use of the data and information handed over, after the patent lapses;
- (iv) contains provisions liable to limit, regulate, alter, interrupt or hinder the licensee's policy and activities in regard to research and technological development;
- (v) is designed to prevent the licensee from challenging, whether administratively or through legal proceedings, the industrial property rights claimed or obtained in the country by the licensor;
- (vi) exempts the licensor from liability in the event of any action brought by third parties and arising from faults or defects inherent in the content of the subject of the license to which the contract pertains;
- (vii) transfers to the licensee the liability and responsibility, including financial responsibility, for the industrial property right granted to the patent in the country.

### 3. — Concept and Basic Conditions of a License Contract for the Use of a Trademark or Publicity Slogan

3.1 — *Purpose.* A "license" contract shall be deemed to be a contract specifically designed to authorize the effective use, by third parties, of a mark or publicity slogan that has been properly filed or registered in the country, where an industrial property right has been duly established in terms of Law No. 5.772/71 (Industrial Property Code).

3.1.1 — If the trademark or publicity slogan has not been registered or if the registration lapses, under the provisions of the Industrial Property Code, registration of the contract shall have no effect.

3.1.2 — If proceedings are initiated for the nullification or cancellation of registration under the provisions of the Industrial Property Code, the effects of registration of the contract shall be suspended.

3.1.3 — The products or services to be distinguished by the trademark or publicity slogan to which the license pertains must fall within the licensor's field of activity, as specified in the application for registration or in the certificate of registration.

3.1.4 — If the license is granted in respect of figurative publicity (tags, labels and the like) registered in the name of a proprietor resident or domiciled abroad, it may be used only with the wording translated into Portuguese, except in the case of a nominative trademark which is an integral part of the whole, and likewise of any necessary term that has no equivalent in Portuguese, the colors, layout and proportions of the original whole being maintained as registered.

3.2 — *Remuneration.* The remuneration, when permitted, must be directly linked to the services or products distinguished by the trademark or publicity slogan.

3.2.1 — The amount of the remuneration shall be established on a percentage basis or as a fixed amount per product unit, and in either case shall be assessed on or related to the net sales price, net proceeds from sale or from services, or, where applicable, shall be related to the profits derived from the product or service to which the license pertains.

NOTE: For the purpose of calculating the remuneration, "net price" or "net proceeds" shall be deemed to be the amount invoiced, based on actual sales or on receipt of the services furnished, less taxes, charges, inputs and components imported whether from the licensor or from any supplier directly or indirectly linked to him, commissions, return credits, freight, insurance and packaging expenses, together with any other deductions agreed between the parties.

3.2.2 — In the case of acquisition of the registration (assignment or purchase), the value thereof, where applicable, may be fixed.

3.2.3 — When, in pursuance of the law or by agreement between the parties, the grant of a license

in terms of Item 3.1 is free of charge to the licensee, this circumstance must be expressly stated in the conditions of the contract.

3.2.4 — Registration of the contract shall be without effect in regard to payments if the trademark or publicity slogan licensed or acquired falls within one of the following situations:

- (a) the proprietor is resident or domiciled abroad and, whether directly or indirectly, has control over, or a majority participation in, the capital of the licensee or purchaser;
- (b) the filing has been effected in Brazil, without proof of priority in the country of origin;
- (c) the relevant registration is the result of renewal;
- (d) in the case of a transfer, the previous proprietor was not entitled to remuneration in terms of the preceding paragraphs.

3.2.5 — In the cases to which the preceding subitem refers, registration of the license shall be for the exclusive purpose of fulfilling one of the conditions established in the Industrial Property Code in order to prove effective use of the trademark or publicity slogan in Brazil and avoid a declaration of nullity, as well as to allow the transfer of ownership of registration to be recorded.

3.3 — *Form of Payment.* In accordance with the periods stipulated (quarterly, half-yearly or any other), by means of duly authenticated statements established by the licensee.

3.4 — *Term.* The contractual bond resulting from grant of the license may not extend beyond the period of validity in respect of protection of the industrial property rights relating to the registration of the trademark or publicity slogan.

### 3.5 — *Other Basic Conditions of the License*

3.5.1 — The contract shall:

- (a) expressly indicate the number and date of the application or the registration, in Brazil, and likewise the identification of the trademark or publicity slogan;
- (b) state whether the license is "exclusive" or "nonexclusive," and whether sublicensing is permitted;
- (c) stipulate that the licensee has the option, if he deems appropriate, likewise to use his own

trademark or publicity slogan together with the trademark or publicity slogan licensed to him, or separately, when manufacturing or marketing products or furnishing services other than those to be specifically distinguished by the trademark or publicity slogan to which the license pertains;

- (d) provide that the products or services to be distinguished by the trademark or publicity slogan shall comprise identical specifications, and be of the same kind and quality as the products and services originally produced by the licensor, excepting the rules and standards established at internal level by the competent authorities in this respect;

Note: In the event that it is proved that the use of the trademark or publicity slogan under license is contrary to such provisions, the effects of registration may be suspended, principally in order to protect the consumer.

- (e) stipulate the obligation for the licensee effectively to use the trademark or publicity slogan to which the license pertains, in accordance with the Industrial Property Code;
- (f) determine, in respect of income tax due in Brazil, the responsibility for payment thereof;
- (g) define other responsibilities and obligations, whether of the licensor or the licensee.

3.5.2 — The contract may not:

- (a) provide for the performance of any other service, agreement or negotiation between the parties which is unrelated to the license to which the contract pertains;
- (b) establish that the licensor may waive the agreement at any time, without providing for the reciprocal right of the licensee to waive the agreement under the same conditions;
- (c) contain, whether implicitly or explicitly, clauses restricting and/or preventing the manufacture or marketing of the product or the actual furnishing of the service distinguished by the trademark or publicity slogan, or the activities of the licensee, which are referred to, directly or indirectly, by Law No. 5.772/71 (Industrial Property Code) and Law No. 4.137/62 (governing the repression of abuse of economic power), in particular any clause which:

- (i) regulates, alters, determines or limits the production, furnishing of services, sale, price, distribution, marketing or export, and likewise the hiring of personnel and the reservation or allocation of markets or the exclusion of any of them, except, in this last case, when permitted by the industrial property legislation, when required with evidence thereof under specific legislation of the licensor's country, or when deriving from an international instrument or agreement to which Brazil is a party;
- (ii) sets any obligation or condition in respect of the purchase of inputs, materials, machinery or equipment necessary for manufacture or for marketing of the product, or likewise for furnishing of the service distinguished by the trademark or publicity slogan, from the licensor or from any source determined by him;
- (iii) contains provisions liable to limit, regulate, alter, interrupt or hinder the licensee's policy and activities in regard to research and technological development;
- (iv) is designed to prevent the licensee from challenging, whether administratively or through legal proceedings, the industrial property rights claimed or obtained in the country by the licensor;
- (v) exempts the licensor from liability in the event of any actions brought by third parties and inherent in the content of the license to which the contract pertains;
- (vi) introduces rules that restrict the publicity or dissemination that might be carried out by the licensee, under the legal provisions in force;
- (vii) transfers to the licensee the liability and responsibility, including financial responsibility, for maintaining the industrial property right granted to the registration in the country.

#### 4. — Concept and Basic Conditions of a Contract for the Furnishing of Industrial Technology

4.1 — *Purpose.* A contract "for the furnishing of industrial technology" shall be deemed to be a contract specifically designed to allow the acquisition

of knowledge and techniques not covered by industrial property rights filed or granted in the country and which are to be applied in the production of consumer goods or inputs in general.

4.1.1 — The contract must cover in particular:

- (a) the supply of all the technical engineering data for the process or the product, including the methodology of technological development used to obtain it, such data being represented by the body of formulae and technical information, documents, industrial designs, instructions for operations and other like elements allowing manufacture of the product referred to in subitem 4.1;
- (b) the furnishing of data and information to update the process or product;
- (c) the furnishing of technical assistance by the furnisher's technicians, and the training of specialized technical personnel of the acquirer;

4.1.2 — Where coming from abroad, the technology to be transferred must:

- (a) be consistent with the criteria of priority selection based on the nature of the product or process and its significance for national development, according to government policy for the sector concerned;
- (b) correspond to levels that cannot be attained or obtained in the country, as verified by comparison with effective and available domestic capacity to carry it out or with already existing alternative sources;
- (c) afford, within the short term, effective advantages for progress in the sector concerned, consistently with the objectives of national policy or plans in regard to industrial technology and development;
- (d) create qualitative conditions for the product resulting from its application, primarily with a view to export;
- (e) permit import replacement in respect of the product, including inputs and components necessary for its manufacture.

4.2 — *Remuneration.* The remuneration shall be established mainly on the basis of the parameters indicated below, and shall be directly linked to the beginning of effective manufacture of the product resulting from application of the technology:



- (a) the degree of novelty of the technology, evaluated on the basis of the length of time for which it has been known and used;
- (b) the degree of complexity of the technology, by comparing it, where feasible, with techniques and processes designed for the same objective, whether furnished by the same or another party;
- (c) the qualitative level of the product resulting from application of the technology, in the market context;
- (d) the continuing and subsequent furnishing of everything relevant to the updating of the information and technical data, particularly in the case of a sector in which technology is dynamic, i.e. is subject to continuing development and where innovations are not eligible for protection;
- (e) the reputation and importance of the furnisher in the sector;
- (f) where applicable, the furnisher's capacity for research and development;
- (g) the type of production or branch of activity, according to the degree of essentiality;
- (h) the term stipulated for complete transfer of the content of the technology and for full and complete absorption of it by the acquirer.

4.2.1 — The amount of the remuneration shall be calculated on a percentage basis or as a fixed value per product unit, in either case on the basis of or in relation to the net sales price, net receipts from sales or, where applicable, shall likewise take into account the profit derived from the product resulting from application of the technology.

NOTE: For the purpose of calculating the remuneration, the "net price" shall be deemed to be the invoice value, based on actual sales, after deduction of taxes, charges, inputs and components imported whether from the furnisher of technology or from any furnisher directly or indirectly linked to him, commissions, return credits, freight, insurance and packaging expenses, and any other deductions agreed upon by the parties.

4.2.2 — Where appropriate, a fixed value may be established for the technical documentation initially furnished, which shall constitute an advance on the remuneration due in pursuance of subitem 4.2.1.

4.2.3 — The total value of the remuneration of technicians of each contracting party, payable in

foreign currency to the furnisher of technology, shall be estimated on the basis of the following criteria:

- (a) the number of technicians;
- (b) the individual daily rates—not including subsistence costs—which must be consistent with the criteria customarily adopted, including in the country of origin, determined on the basis of the specialization and category of each technician and likewise on the nature of the services concerned;
- (c) an estimate of the period deemed to be sufficient for the furnishing of technical assistance and implementation of the personnel training program.

4.2.4 — The subsistence costs, where relevant, in respect of foreign technicians in Brazil (daily rates, allowances etc.) shall be estimated and determined on an individual basis and shall be paid in cruzeiros directly to each technician.

4.2.5 — Where applicable, the total amount of the remuneration for the furnishing of technology may be fixed or estimated in advance, taking into consideration the maximum amount that may be paid during the period of validity of the contract, including that in respect of the subsequent furnishing and updating of technical documentation and the furnishing of technical assistance and implementation of the training program for specialized technical personnel.

4.2.6 — For the purposes of the provisions of the preceding subitem, the following shall be observed:

- (a) in the event that the payments reach the fixed maximum amount before the contract expires, only the other contractual provisions shall remain in force;
- (b) where the effecting of payment is linked directly to actual manufacture of the product resulting from application of the technology, in terms of subitem 4.2.1:
  - (i) in the case provided for in subparagraph (a) above, the criteria prescribed in that provision shall be applicable in respect of the estimated amount;
  - (ii) in the event that, when the contract expires, the payments have not reached the total estimated amount, the difference shall not be deemed payable.

#### 4.3 — *Form of Payment*

4.3.1 — of subitem 2.1 — in accordance with the periods stipulated (quarterly, half-yearly or any other), by means of duly authenticated statements established by the recipient undertaking, less the amount paid in advance for the furnishing of technical documentation, where applicable.

4.3.2 — of subitem 4.2.2 — after the contract enters into force, in one lump sum or in installments, by means of a duly legalized invoice established by the furnisher and constituting evidence that the technical documentation has been handed over.

4.3.3 — of subitem 4.2.3 — as and when the services are effectively furnished by the technicians, by means of invoices established by the furnisher, duly itemized and legalized.

4.3.4 — of subitem 4.2.5 — in the case provided for in subparagraph (a), after the contract has entered into force, in one lump sum or in installments, by means of a duly legalized invoice established by the furnisher; in the case provided for in subparagraph (b), in accordance with the periods stipulated (quarterly, half-yearly or any other), by means of duly authenticated statements established by the recipient undertaking.

4.4 — *Term*. The contractual bond, always of a temporary character, must establish the period of time deemed necessary to enable the acquirer to master the technology, by adequate use thereof and the obtaining of concrete results deriving from its incorporation.

4.4.1 — In order to attain this objective, the acquirer must present, separately, information on his technological capacity (technical and administrative infrastructure), with an explanation of the time schedule for absorbing the technology and for implementing the training program in respect of his specialized technical personnel.

4.4.2 — The INPI reserves the right to oversee, at any time during the period of validity of the contract, whether directly or through a duly authorized body or entity, the execution of the time schedule for absorption of the technology and for the personnel training program.

#### 4.5 — *Other Basic Conditions*

4.5.1 — The contract shall:

(c) explicitly determine and define all the body of data and technical information relevant to the technology to be transferred, and like-

wise specify clearly and precisely the scope or field of operation of the technicians, in the country and abroad, through whom the technical assistance will be effectively furnished and the training program will be implemented for specialized technicians of the acquirer, with a view to consequent absorption of the technology;

- (b) identify precisely the product or products, and likewise the activity or industrial sector wherein the technology is to be applied;
- (c) make provision for the furnishing of supplementary data and technical information, linked specifically to the technology transferred;

**NOTE:** In the event that these innovations have been patented in Brazil, a specific "license contract" will have to be drawn up in respect thereof, observing the conditions applicable to contracts of this kind, except in regard to remuneration.

- (d) stipulate that it is compulsory for the furnisher, during the period of validity of the contract, to afford technical assistance to the acquirer, so as to ensure optimum use of the transferred technology;
- (e) make adequate provision for the content of the technology to be transferred in a total, complete and sufficient manner to ensure attainment of the objectives envisaged and the autonomy necessary to that end;
- (f) include a guarantee to the effect that the furnisher may not at any time claim any industrial property rights that may be related to the contents of the technology transferred, except in respect of future innovations connected with that technology, provided these are properly protected in Brazil, with duly substantiated priority in the furnisher's country of residence or domicile, and furthermore subject to observance of the provisions of the "Note" to subitem (c) above;
- (g) stipulate who is responsible for payment of income tax in Brazil;
- (h) define and specify any other responsibilities and obligations incumbent on the furnisher or on the acquirer of the technology.

4.5.2 — The contract shall not:

- (a) include, whether implicitly or explicitly, any references to industrial property rights, such

as "license," "grant of license or rights," "licensed product or process," "patented information," "industrial property rights of protected third party," "manufactured under license from" or any others customarily included in a "license contract".

**Note:** While complying with the provisions of subparagraph (a) above, the contract may indicate the patent which the furnisher of technology holds only in the country of origin.

- (b) stipulate that it is compulsory for the acquirer to assign, free of charge, any innovations or improvements introduced or obtained by him in the country in respect of the technology transferred, and that such innovations or improvements may be transmitted to the furnisher under the same conditions as those applicable to the technology transferred;
- (c) provide for the performance of any other service, or for any other arrangement or negotiation between the parties that is not related to the subject of the contract;
- (d) comprise, whether implicitly or explicitly, clauses that restrict and/or prevent the furnishing of the technology or, likewise, the activities of the acquirer, as referred to, directly or indirectly, by Law No. 5.772/71 (Industrial Property Code) and Law No. 4.137/62 (concerning the repression of abuse of economic power), and in particular any clause which:
  - (i) regulates, determines, alters or limits the production, sale, price, publicity or disclosure, distribution, marketing or export, and likewise the hiring of personnel and the reservation or distribution of markets or the exclusion of any market except, in the latter case, when permitted by the industrial property legislation, when it is proved to be required by specific legislation of the furnisher's country, or furthermore when resulting from an international instrument or agreement to which Brazil is a party;
  - (ii) stipulates as an obligation or condition the purchase of inputs or components necessary for manufacture of the product or utilization of the process, or of machinery and equipment, from the furnisher of the technology and/or any other source de-

- termined by the latter, including those of domestic origin;
- (iii) imposes the use of a foreign trademark or publicity slogan for the furnishing of the technology;
- (iv) contains provisions likely to limit, regulate, alter, interrupt or hinder the research and technological development policy and activities of the acquirer of the technology;
- (v) is designed to prevent the acquirer from challenging, whether administratively or through legal proceedings, the industrial property rights claimed or obtained in the country by the furnisher of the technology;
- (vi) prohibits the free use of technology after a reasonable period of time has elapsed following each transfer of the latest information;
- (vii) exempts the furnisher from responsibility in the event of any action brought by third parties in respect of faults, defects, or infringement of industrial property rights inherent in the technological content of the contract.

#### **5. — Concept and Basic Conditions of a Contract for Technical-Industrial Cooperation**

**5.1 —** A contract for "technical-industrial cooperation" shall be deemed to be a contract for the specific purpose of acquiring knowledge, techniques and services required for the manufacture of industrial units and subunits, machinery, equipment, components thereof and other capital goods, upon order.

**5.1.1 —** The contract must make provision in particular for:

- (a) the furnishing of all the technical data, drawings and engineering specifications in respect of the "product" and the materials used for its manufacture, and likewise of all the methodology of the technological development used to obtain it (calculation notes, etc.);
- (b) the furnishing of data and information for updating the product;
- (c) the furnishing of technical assistance by technicians of the cooperator and the training of specialized technical personnel of the recipient undertaking.

5.1.2 — When coming from abroad, the services to be produced must:

- (a) correspond to levels that cannot be attained or obtained in the country, as verified by comparison with effective and available domestic capacity to carry them out or with already existing alternative sources;
- (b) afford, within the short term, effective advantages for progress in the sector concerned, consistently with the objectives of national policy or plans in regard to industrial technology and development,
- (c) create qualitative conditions for the product resulting from its application, likewise with a view to export;
- (d) permit import replacement in respect of the product and of the components necessary for its manufacture.

5.2 — *Remuneration.* The amount of the remuneration must:

- (a) when directly linked to effective manufacture of the product resulting from application of the technology, be calculated on a percentage basis or as a fixed value per product unit, in either case on the basis of or in relation to the net sales price, net receipts from sales or, where applicable, shall likewise take into account the profit derived from the product resulting from application of the technology.

*Note:* For the purpose of calculating the remuneration, the "net price" shall be deemed to be the invoice value, based on actual sales, after deduction of taxes, charges, inputs and components imported either from the furnisher of technology or from any furnisher directly or indirectly linked to him, commissions, return credits, freight, insurance, packaging expenses, and any other deduction agreed upon by the parties.

- (b) in the case of a fixed price, on the basis of "cost plus fixed fee," exclude any other form of payment based on percentages of receipts or volume of production.

5.2.1 — Where appropriate, a fixed value may be established for the technical documentation initially furnished which shall constitute an advance on the remuneration due in pursuance of subparagraph (a) of the preceding subitem.

5.2.2 — The total amount of the remuneration of technicians of each contracting party, payable in

foreign currency to the cooperator, shall be estimated on the basis of the following criteria:

- (a) the number of technicians;
- (b) the individual daily rates—not including subsistence costs—which must be consistent with the criteria customarily adopted, including in the country of origin, determined on the basis of the specialization and category of each technician and, likewise, the nature of the services concerned;
- (c) an estimate of the period deemed to be sufficient for the furnishing of technical assistance and implementation of the personnel training program.

5.2.3 — The subsistence costs, where relevant, in respect of foreign technicians in Brazil (daily rates, allowances etc.) shall be estimated and determined on an individual basis and shall be paid in cruzeiro, directly to each technician.

### 5.3 — *Form of Payment*

5.3.1 — of subparagraph (a) of subitem 5.2 — in accordance with the periods stipulated (quarterly, half-yearly or any other), by means of duly authenticated statements established by the recipient undertaking, less the amount paid for the furnishing of technical documentation, where applicable.

5.3.2 — of subparagraph (b) of subitem 5.2 — after the agreement enters into force, by means of a duly legalized invoice established by the cooperator, specifying the services produced and the relevant amount.

5.3.3 — of subitem 5.2.1 — after the agreement enters into force, in one lump sum or in instalments, by means of a duly legalized invoice established by the cooperator, constituting evidence that the technical documentation has been handed over.

5.3.4 — of subitem 5.2.2 — as and when the services are effectively furnished by the technicians, by means of invoices established by the cooperator, duly itemized and legalized.

5.4 — *Term.* The contractual bond, always of a temporary character, must establish the period of time deemed necessary to enable the acquirer to master the technology, by means of actual absorption thereof, its adequate use and the obtaining of concrete results deriving from its incorporation, observing for this

purpose a period of five years as from the effective start of production, which period may be extended.

5.4.1 -- In order to attain this objective, the acquirer must present, separately, information on his technological capacity (technical and administrative infrastructure), with an explanation of the time schedule for absorbing the technology and for implementing the training program in respect of his specialized technical personnel.

5.4.2 -- To this same end and where an extension is granted, the applicable criterion shall be that of remuneration progressively decreasing over the period, so as to allow a larger share of domestic engineering.

5.4.3 -- In respect of the furnishing of services connected with production engineering for undertakings manufacturing capital goods and components thereof, and with a view to helping the acquirer to master the technology transferred, those services must be rendered to such undertakings except where it is shown that they do not have the relevant technical and administrative capacity, in which case the contractual arrangement must be made by or through a national engineering and/or consulting undertaking, taking into consideration the aspect of effective absorption of technology.

5.4.4 -- The IEPi reserves the right to oversee, at any time during the period of validity of the contract, whether directly or through a duly authorized body or entity, the execution of the time schedule for absorption of the technology and for the specialized technical personnel training program.

#### 5.5 -- *Other Basic Conditions*

5.5.1 -- The contract shall:

- (a) explicitly determine and define all the body of data and technical information relevant to the technology and the services to be transferred, and likewise specify clearly and precisely the scope or field of operation of the technicians, in the country and abroad, through whom the technical assistance will be effectively furnished and the training program will be implemented for specialized technicians of the acquirer, with a view to consequent absorption of the technology;
- (b) identify precisely the product or products, and likewise the activity or industrial sector wherein the technology is to be applied;

- (c) make provision for the furnishing of supplementary data and technical information, linked specifically to the technology transferred and the services produced;

NOTE: In the event that these innovations have been patented in Brazil, a specific "license contract" will have to be drawn up in respect thereof, observing the conditions applicable to contracts of this kind, except in regard to remuneration.

- (d) stipulate that it is compulsory for the cooperator, during the period of validity of the contract, to afford technical assistance to the acquirer so as to ensure optimum use of the technology transferred;
- (e) make adequate provision for the content of the technology to be transferred in a total, complete and sufficient manner to ensure attainment of the objectives envisaged and the autonomy necessary to that end;
- (f) include a guarantee to the effect that the cooperator may not at any time claim any industrial property rights that may be related to the contents of the technology transferred, except in respect of specific features of the product or future innovations connected with it, and provided these are properly protected in Brazil, with duly substantiated priority in the cooperator's country of residence or domicile, and that they are covered by license contracts;
- (g) stipulate who is responsible for payment of income tax in Brazil;
- (h) define and specify any other responsibilities and obligations incumbent on the cooperator or on the acquirer of the technology and services.

5.5.2 -- The contract shall not:

- (a) include, whether implicitly or explicitly, any references to industrial property rights, such as "license," "grant of license or right," "licensed product or process," "patented information," "industrial property rights of protected third parties," "manufactured under license from" or any others customarily included in a "license contract";

NOTE: (1) While complying with the provisions of subparagraph (a) above, the contract may indicate the patent which the cooperator of technology holds only in the country of origin.

(2) If the product comprises a component or a specific feature that is the subject of a patent properly filed or granted in Brazil, and priority has been established for the cooperator's country of residence or domicile, a remuneration-free license contract must be signed, in accordance with the relevant conditions for a contract of this kind, except those in respect of remuneration.

(b) stipulate that it is compulsory for the acquirer to assign, free of charge, any innovations, improvements or developments obtained in the country in respect of the technology transferred and the services produced, and that such innovations, improvements or developments may be transmitted to the cooperator under the same conditions as those applicable to the technology transferred and the services produced;

(c) provide for the performance of any other service, or for any other arrangement or negotiation between the parties that is not related to the subject of the contract;

(d) comprise, whether implicitly or explicitly, clauses that restrict and/or prevent the furnishing of the technology and the services or, likewise, the activities of the acquirer, as referred to, directly or indirectly, by Law No. 5.772/71 (Industrial Property Code) and Law No. 4.137/62 (concerning the repression of abuse of economic power), and in particular any clause which

(i) regulates, determines, alters or limits the production, sale, price, publicity or disclosure, distribution, marketing or export, and likewise the hiring of personnel and the reservation or distribution of markets or the exclusion of any market except, in the latter case, when permitted by the industrial property legislation, when it is proved to be required by specific legislation of the cooperator's country, or furthermore when resulting from an international instrument or agreement to which Brazil is a party;

(ii) stipulates as an obligation or condition the purchase of inputs or components necessary for manufacture of the product, or of machinery and equipment, from the cooperator and/or any other source determined by the latter, including those of domestic origin;

(iii) imposes the use of a foreign trademark or publicity slogan for the furnishing of the technology and services;

(iv) contains provisions likely to limit, regulate, alter, interrupt or hinder the research and technological development policy and activities of the acquirer of the technology and services;

(v) is designed to prevent the acquirer from challenging, whether administratively or through legal proceedings, the industrial property rights claimed or obtained in the country by the cooperator;

(vi) inhibits the free use of the technology and services, after a reasonable period has elapsed following each of the latest information transfers;

(vii) exempts the cooperator from responsibility in respect of any faults or defects inherent in the technological content of the contract, and likewise in the event of any action brought by third parties for infringement of industrial property rights.

## 6. — Concept and Basic Conditions of a Specialized Technical Services Contract

6.1 — *Subject.* A "technical services" contract shall be deemed to be a contract for the specific purpose of planning, programming and formulating studies and projects, and likewise for the performance or furnishing of services of a specialized kind that are needed by the country's production system.

**NOTE:** In cases where urgent technical services are furnished individually by foreign technicians and the total amount of remuneration does not exceed US \$20,000, or the equivalent amount in some other currency, the contract formality may be waived and registration may be made directly on the basis of the invoice, in which the services must be duly specified.

6.1.1 — The contract must make provision in particular for:

(a) the formulation of master plans, technical-economic and financial pre-feasibility and feasibility studies, organizational, management or other studies and plans in general, including those pertaining to engineering services;

- (b) the formulation of plans, preliminary drafts, basic and implementing drafts and projects and, likewise, the formulation, implementation and technical supervision of engineering projects in all their branches and at all their various stages;
- (c) the installation, assembly and putting into operation of machinery, equipment and industrial units;
- (d) other specialized technical or professional engineering and/or advisory services;
- (e) the hiring of foreign technicians to carry out a particular specialized professional service within a specified period.

6.1.2 — When they are produced by undertakings or persons resident or domiciled abroad, the technical services must:

- (a) correspond to technical levels that cannot be attained or obtained in the country, as verified by comparison with effective and available domestic capacity to carry them out or with already existing alternative sources;

**NOTE:** To assist in the determination, the INPI may require justification of the need to contract abroad, by consulting national undertakings in the branch in which the foreign contractor is engaged and specialized, duly accredited professional associations or by any other means deemed appropriate.

- (b) afford, within the short term, effective advantages for progress in the sector concerned, consistently with the objectives of national policy or plans in regard to industrial technology and development;
- (c) whenever possible, be contracted by or through a national consulting and/or engineering undertaking, having regard to the aspect of technology absorption.

6.1.3 — Contracting abroad by private undertakings not primarily concerned with the performance of consulting and/or engineering services, without the intervention of domestic undertakings in this sector, may be carried out only where the said undertakings are shown to have a sufficient number of technicians on their permanent staff to absorb the specific part to be imported.

6.1.4 — For the attainment of the objective referred to in the latter part of the preceding subitem, which shall likewise be applicable to consulting and/or engineering undertakings, separate information shall

be presented concerning their relevant technical, professional and administrative capacities, of a permanent nature, with a detailed time schedule for effective absorption of the technology.

6.1.5 — The INPI reserves the right, at any time during the term of the contract, to oversee, whether directly or through a duly authorized body or entity, the implementation of the time schedule for absorption of the technology.

6.1.6 — The contracting, with foreign undertakings, of technical consulting and/or engineering services by governmental bodies at the federal, state or municipal level, shall be subject to compliance with the provisions of the specific legislation in this respect.

6.2 — *Remuneration.* The remuneration shall be established as a fixed price, on the basis of proved cost and, in particular, having regard to the following criteria:

- (a) the nature of the services to be produced;
- (b) the degree of importance of the project;
- (c) its significance in relation to the total amount of investment;
- (d) the criteria and standards customarily adopted for such cases.

6.2.1 — The total amount of the remuneration of the technicians of the furnisher of services, payable in foreign currency, shall be estimated on the basis of the following criteria:

- (a) the number of technicians;
- (b) the individual daily rates—not including subsistence costs—which must be consistent with the criteria and standards customarily adopted, including in the country of origin, determined on the basis of the specialization and category of each technician and likewise the nature of the services concerned;
- (c) an estimate of the period deemed to be sufficient for furnishing of the services.

6.2.2 — The subsistence costs, where relevant, in respect of foreign technicians in Brazil (daily rates, allowances etc.) shall be estimated and determined on an individual basis and shall be paid in cruzeiros directly to each technician.

6.2.3 — In such cases, no other form of payment based on percentages of earnings or production volume shall be accepted.

**6.3 — Form of Payment** — Payment of the established amount shall be made by installments during the performance and furnishing of the services, upon presentation of an invoice specifying the services produced and the relevant amount.

**6.3.1** — The effecting of payment may be made conditional upon complete and proper use of the services and upon the obtaining of real results derived from their performance.

**6.4 — Term.** The contractual bond shall take into account the period of time deemed necessary for the furnishing of services by the technicians, presentation of the project or completion of the work.

**6.5 — Other Basic Conditions**

**6.5.1** — The contract shall:

- (a) explicitly determine and define the services to be produced, and likewise specify clearly and precisely the scope or field of operation of the technicians;
- (b) identify precisely the activities or industrial sector wherein the services or works are to be applied;
- (c) specify that it is compulsory for the furnisher of services, during the period of validity of the contract, to furnish supplementary technical information and, likewise, to afford technical assistance to the acquirer, so as to ensure optimum use of the services or works received;
- (d) make adequate provision for the content of the services to be furnished or performed in a total, complete and sufficient manner to ensure attainment of the objectives envisaged and the autonomy necessary to that end;
- (e) include a guarantee to the effect that the furnisher of services may not at any time claim any industrial property rights that may be related to the contents of the technology trans-

ferred, except in respect of future innovations connected with it, and provided these are properly protected in Brazil, with a duly substantiated claim of filing in the country of origin of residence or domicile of the furnisher of services, and are covered by a license contract in compliance with the conditions for contracts of this kind, except in respect of remuneration;

- (f) stipulate who is responsible for payment of income tax in Brazil;
- (g) define and specify any other responsibilities and obligations incumbent on the furnisher of services or on the acquirer thereof.

**6.5.2** — The contract shall not:

- (a) include, whether implicitly or explicitly, any references to industrial property rights, such as "license," "grant of rights or license," "licensed product," "royalties," "patented information," "industrial property rights of protected third parties," "manufactured under license from" or any others customarily included in a "license contract";
- (b) contain any restriction whatsoever on the free utilization of inquiries and data received for purposes of the performance or the furnishing of services;
- (c) impose other obligations of the sort enumerated in subitem 5.5.2 and which, by extension, are applicable to contracts of this category.

II. — Contracts concerning other categories and contractual terms and conditions which are expressly provided for or included in the present Normative Act will be submitted for a preliminary study to the INPI which will provide the necessary regulations.

III. — The present Normative Act takes effect on the date of its publication.



SPAIN

SPAIN: MINISTRY OF INDUSTRY ORDER OF 5 DECEMBER 1973  
REGULATING THE ENTRY OF CONTRACTS FOR THE TRANSFER  
OF TECHNOLOGY IN THE REGISTER ESTABLISHED BY  
DECREE NO. 2343 OF 21 SEPTEMBER 1973

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Section 1

1.1 The duty to apply for entry of documented contracts, covenants and agreements in the Register established by Decree No. 2343 of 21 September 1973 shall relate to all contracts, covenants and agreements under which foreign technology is acquired directly or indirectly through the agency of a Spanish national, regardless of the nature of the consideration given by the recipient of the technology: that is to say, in a tangible form, monetary or otherwise, or in an intangible form.

1.2 Such application shall be made by any individual or corporation domiciled, resident or legally established in Spain who is a recipient of technology.

1.3 The application shall be submitted in triplicate in the form of a request to the Director General of Industrial Development and Technology and shall be accompanied by three copies of the contract, which for the purposes of this Order shall be drawn up in Spanish, of the memorandum and of the documentary evidence specified in sub-paragraphs 1.5 and 1.6 below.

1.4 The memorandum shall include information and data on the contracting parties, the technological content of the transfer, the scope and terms of the agreement, and any other data supporting the content.

The appropriate forms for the application and the memorandum shall be provided by the office of the Ministry of Industry.

1.5 The documentary evidence shall comprise -

- (a) A public document declaring the applicant's representative status;
- (b) Where the applicant is an industrial enterprise, a copy of the entry relating thereto in the Industrial Register or, where appropriate, the most recent addition thereto;
- (c) A copy of the Government's decision, if any, authorizing foreign participation in the capital;
- (d) Where advisory or project development services are concerned complete texts of the agreed technical offers and specifications;
- (e) Any other documents that the Ministry of Industry may consider necessary.

1.6 The organizations, entities and enterprises referred to in article 9 of Decree No. 617 of 4 April 1968 which contract for the provision of technical studies and services by foreign advisory and project development enterprises shall attach to their applications documentary evidence of an attempt to obtain the required services from at least two enterprises which are listed in the special section of the Register of Consultant and Industrial Project Development Enterprises established under the aforesaid Decree, and which work in the sector to which the contract belongs.

The aforesaid evidence shall include the definite proposals by the Spanish enterprises or, failing these, some other authentic means of proof. If such evidence cannot be furnished because only one enterprise or non capable of providing the required service is listed in the aforesaid special section, the applicant shall enclose with any offer by the listed enterprise the appropriate certification issued by the Office of the General Direction of Industrial Development and Technology.

Where the certification referred to in the preceding paragraph establishes the inability of enterprises listed in the aforesaid special section to supply a specific percentage - less than 85 per cent - of the required services, it shall also be necessary to produce evidence of attempts to obtain the services corresponding to the remaining percentage from the enterprises listed in the special section, provided that the activities covered by each of those percentages are technically separable.

## Section 2

2.1 Applications shall be submitted directly to the Office of the Director General of Industrial Development and Technology of the Ministry of Industry or in accordance with any other procedure provided in article 66 of the Administrative Procedure Act.

2.2 The applications shall be classified by the Office of the Director General of Industrial Development and Technology in accordance with the provisions of the following paragraphs indicating the procedure to be followed in each case:

- (a) Contracts relating to the transfer of technology for the production or use of defence equipment. The document shall be sent to the appropriate military department, which shall report whether the existence of restrictive clauses is justified by the national interest, in accordance with the provisions of article 5, third para., of the Decree;
- (b) Contracts for the transfer of technology concluded under agreements for international technical co-operation which lay down in adequate detail the specific conditions under which private individuals or corporations shall co-operate shall be registered according to article 5, fourth paragraph, of the Decree;

- (c) Contracts not covered by either of the foregoing paragraphs and, because of the subject of the transfer or of the type of technology agreed on, falling within the competence of a ministerial department other than the Ministry of Industry. The documents shall be submitted to the Technical Office of the Secretary-General of the particular Ministry, together with a request for the report referred to in article 4, first paragraph, of the Decree. If the conclusion of the report is non-registration with notes, the circumstances and objections to be communicated to the party shall be stated in the report, as provided for in article 5, fifth paragraph, of the Decree and section 2.4 of this Order;
- (d) Contracts not covered by the foregoing paragraphs whose investigation is the responsibility of the Ministry of Industry because of their subject. The appropriate sectoral department shall examine such contracts and indicate, if necessary, the importance and scope of the restrictive clauses contained therein, if any, and the special effect of the expenditure entailed in the light of the industrial policy of the sector for which the transfer is intended. The sectoral department shall propose the category, if any, under which the contract should be registered.

2.3 For the purposes of registration of contracts classified under categories (c) and (d) which limit a "resident's" export possibilities or his sources of supply, the competent Ministry shall request from the Ministry of Trade the mandatory report referred to in article 5, second paragraph, of the Decree.

2.4 When during the processing of a case circumstances arise in which in accordance with the provisions of this Order, there appear to be grounds for not registering a contract or for registering it with notes, the Office of the Director General of Industrial Development and Technology shall so inform the party concerned, in all cases before any hearing is held, in order that he may within one month remedy or modify the defects which cause the contract to be placed in the category in question. Such remedial measures shall be specified in an appropriate document signed by the same contracting parties and providing that the defects originally agreed on which are referred to in the communication from the Office of the Director General of Industrial Development and Technology shall be omitted or amended.

### Section 3

For the purposes of the provisions of article 5 of Decree No. 2343 of 1973, the Ministry of Industry or the Ministry competent to deal with the matter shall make a comprehensive evaluation of the situation of the sector and of the features of the process and the product for which the technology

covered by the contract is to be used, in relation to the rights and obligations which the parties assume under the contract.

In this comprehensive evaluation, provisions of the following types shall be among those regarded as unfavourable terms or aspects of the contract:

1. Provisions which prohibit, impose conditions on, or limit the use of the recipient's own technology or the acquisition of technology from other sources, or the use of non-patented special knowledge on the expiry of the contract, or which impose conditions on, limit or annul research, innovation and technological development by the recipient;
2. Provisions for the obligatory transfer of the patents, improvements or innovations introduced or developed by the recipient after acquiring the technology covered by the contract;
3. Provisions for the transfer of technology in packages which include unnecessary parts or components or in respect of which there is proved to exist an available domestic supply of equivalent quality and reliability; provided that such parts or components are technically separable from the other considerations covered by the contract;
4. Provisions for the transfer of technology which is wholly or partially obsolete, insufficiently competitive or deficient for other similar reasons or by reasons of an obligatory standardization of typification of quality incompatible with the standards established by Spanish law, unless the product is intended primarily for markets in which such standards and qualities are required;
5. Provisions prohibiting, imposing excessive geographical restrictions on, or not expressly authorising in respect of specific areas, the export of goods produced by the recipient, and provisions obliging the acquisition of raw materials or components and other intermediate goods or equipment from the transferor or suppliers specified in the contract;
6. Provisions establishing minimum levels of activity or limiting the freedom of the recipient to determine features of production in respect of levels, model, competitive articles, prices and terms or entitling the supplier to fix unilaterally the prices of the goods produced by the recipient;
7. Provisions imposing conditions favourable to the interests of the supplier on the sale in the domestic market of goods produced by the recipient, and obliging the recipient to form an exclusive relation with the supplier or to use brands registered by the supplier in Spain;
8. Provisions obliging the recipient to sell, under conditions contrary to the interest of the Spanish economy, to the supplier or to specified third parties goods produced with the assistance of the transferred technology;

9. Provisions giving the supplier a right, not acquired previously by other means to intervene in, control or impose conditions on the business management of the recipient or his strategy of expansion or diversification;

10. Provisions requiring payments appreciably higher than those normally charged in the market in similar situations, or minimal counterpart services when the payments are based on fees proportional to the various levels of activity;

11. Provisions establishing payments in the form of fees proportional to the level of production without deduction of the value of products or components imported and incorporated in the production process to which the acquired technology is applied, or without excluding invoicing for lines of goods not affected by the acquired technology;

12. Provisions establishing payments based on fees above the level of activity of the recipient, where he is a subsidiary of the supplier and his share of the supplier's authorized capital exceeds 50 percent, or where the supplier of the technology has furnished raw materials or intermediate products used in the process in quantities exceeding 30 percent of the total cost of the product, or where the recipient is an advisory or project developing enterprise and process technology is not transferred for activities in which the process is continuous;

13. Provisions "overpricing" (charging a difference between the prices agreed on in the contract and those charged on the international market by the supplier or his principal competitors) for supplies, materials and equipment associated with the process of technology transfers and obtained from the transferor or from suppliers specified in the contract;

14. Provisions fixing an unsuitable duration, either too short or too long, for the contract or its direct consequences, or providing for an automatic extension of the contract and fixing payments for a period longer than the life of the patents involved;

15. Provisions stipulating that where the contract has been drawn up in a language other than Spanish the foreign-language version shall prevail in its interpretation.

#### Section 4

4.1 A decision that a contract for the transfer of technology shall be entered in the Register shall be communicated to the applicant, the Office of the Director General of Foreign Trade of the Ministry of Trade and to the competent department of the Ministry of Industry within ten days of its signature.

The communication to the Office of the Director General of Foreign Trade shall be accompanied by a copy of each of the following documents: application, contract, memorandum, documentary evidence produced and, where appropriate, report by other competent ministerial departments.

4.2 A decision to register the contract with notes shall specify the restrictive circumstances and clauses in the contract which have given rise to its inclusion in that category and shall be communicated to the applicant and to the Office of the Director General of Foreign Trade of the Ministry of Trade within the period and in the manner specified in paragraph 4.1, and to the competent department of the Ministry of Industry, for the purposes stated in article 7 of the Decree.

4.3 A decision not to register the contract shall specify the restrictive clauses which, because they prevent, jeopardize or impede the technological development of the recipient, or, limit his freedom of enterprise, or constitute an abuse by the supplier of the technology, have caused that decision to be reached. It shall be communicated within the period specified above to the applicant and to the competent department of the Ministry of Industry for the purposes referred to in paragraph 4.2.

4.4 In any case, any decision on a contract shall be communicated to the competent ministries which have submitted reports because of the subject of the transfer or the type of technology agreed on by the contract.

#### Section 5

In accordance with the provisions of article 3 of Decree No. 2343 of 21 September 1973 and notwithstanding the provisions of articles 6 and 7 thereof, the validity of any documented contract, covenant or agreement to which this Order applies shall depend on its prior entry, with or without notes, in the Register of Contracts of Transfer of Technology.

#### Section 6

6.1 Any change made in a contract entered in the Register shall be communicated to the Office of the Director General of Industrial Development and Technology within two months, in accordance with the provisions of article 8 of the Decree, and shall be accompanied by three copies of the new amended and agreed text, the memorandum provided for in section 1 of this Order, and the appropriate documentary evidence.

6.2 The memorandum shall include, in addition to the matter specified above, information on the execution of the contract until the time of its amendment and the reasons for any substitutions, extensions, variations or changes in the original text.

6.3 In the examination of such changes in the previous sections for the initial registration, the procedures and time-limits to be observed shall be the same as those provided.

6.4 If as a result of the amendments to the agreement it is entered in the Register in a different category, or is deleted from the Register, the procedure established for general purposes shall apply by analogy.

ARGENTINA (1)

LAW NO. 21,617

TRANSFER OF TECHNOLOGY LAW

Buenos Aires, August 12, 1977.

Exercising the powers conferred by Article 5 of the Statute for the National Reorganization Process, the President of the Argentine Nation enacts and promulgates as Law:

ACTS INCLUDED

Article 1: Any voluntary act of legal consequences having as its principal or accessory object the transfer, assignment or licensing of technology or trademarks by persons domiciled abroad, for a price or free of charge, to physical or corporate persons, whether public or private, domiciled in this country, must be registered in the National Register of License Contracts and Transfers of Technology established by Law No. 19,231 and confirmed by Law No. 20,794 and always provided such acts produce effects in this country.

Article 2: The following voluntary acts of legal consequences are included in the preceding article, their enumeration being merely illustrative:

- (a) The acquisition of rights or the grant of licenses for the use of patents, industrial designs and models, trademarks or any other industrial property right that may be established in the future.
- (b) The supply of technical knowledge by means of the description of processes, formulae, specifications, or other means, for the manufacture of products or the rendering of services.
- (c) Technical consultancy, assistance and services.
- (d) The supply of basic and detail engineering.

**Article 2:** The voluntary acts of legal consequences included in the preceding articles whereby technology or trademarks originating from abroad are transferred to another person also domiciled in this country, must be registered even though the supplier is domiciled in this country. The local supplier of such technology or trademarks shall be liable for the damages that may be suffered by the recipient because of failure to register an act included in this article, when he does not notify such recipient of the existence of the conditions stated therein.

#### EXEMPTIONS

**Article 4:** The following are exempt from the system of this law:

- a) Acts executed by the Armed or Security Forces or by agencies connected with national defence when by Decree of the National Executive they are classified as Military Secrets.
- b) In works contracts, the supply of technology furnished by the owner to the contractor for the latter to execute the works.
- c) Acts licensing the use or reproduction of copyrights, or other related, similar or kindred rights even when they include the use of a name, pseudonym, trademark, emblem, logotype or any other particular sign that serves to identify the holders of such rights and to permit the necessary control of their reproduction.

**Article 5:** The voluntary acts of legal consequences that have as their object the rendering of the following services, shall be exempt from the obligation to register set forth in article 1 of this Law:

- a) The supply of drawings, catalogues or other written information that are acquired with machinery or equipment.
- b) Acts for the transfer, assignment or licensing of technology that are executed free of charge by the companies defined in Article 9 of this Law. With the exception of those acts executed free of charge whereby basic or detail engineering is furnished or which are included in a contract.

**Article 6:** Voluntary acts of legal consequences having as their exclusive object the rendering of any of the following services shall be automatically registered without prior examination:

- a) The entry of technicians from abroad for the installation and starting up of factories or machinery or to perform repairs.
- b) Assistance for repairs or in emergencies.
- c) Acts of assignment or licensing of trademarks that are executed free of charge.
- d) The supply of basic or detail engineering required for the installation and starting up of machinery or equipment purchased abroad, always provided that such supply does not entail the obligation to make additional payments.

In the foregoing cases, without prejudice to the obligation to furnish, subsequent to registration and even to the rendering of the services, the information that, pursuant to what the regulatory decree may determine, must be supplied to the Enforcement Authority, the latter shall verify that the services, if pertinent, and the conditions of such acts conform to normal market practice and to the other provisions of this law. Such verification will be effected subsequent to registration.

#### PRIOR EXAMINATION AND BINDING CLAUSES

**Article 7:** Voluntary acts of legal consequences which, in accordance with the preceding articles, are subject to nonautomatic registration according to the provisions of this Law, shall be subject to prior examination by the Enforcement Authority. For the act to be approved, it must at least include the following clauses:

- a) Identification of the services which will be rendered by the supplier of the technology or trademarks.
- b) Identification of the services which will be rendered by the recipient of the technology or trademarks. The consideration for each one of the services rendered by the supplier shall be specified with the greatest accuracy possible.
- c) Determination of the effective term of the contract.

d) In acts that involve the transfer of technology, the technical aims which the recipient intends to achieve by said transfer must be indicated.

e) A declaration by the supplier of the technology that he is familiar with this Law.

#### IMPLICIT CLAUSES

**Article 8:** Any act included in the system of this Law, will be subject to the following provisions whether or not they are included in its text, except when the Enforcement Authority expressly decides otherwise and gives grounds for such decision at the time of approval.

- a) The supplier guarantees that the technology to be transferred, enables the recipient, through such acquisition, to achieve his proposed technical aims with the scope described in the voluntary act of legal consequences in accordance with paragraph d) of the preceding article.
- b) The supplier of technology shall directly or indirectly supply adequate training for assimilation and handling of that technology, if such training should be necessary.
- c) In the event that the party receiving the trademarks or technology has no alternative other than to purchase capital goods, inputs, raw materials and/or spare parts from the supplier of said technology or trademarks, or to sell its production to the latter, the sale or purchase price shall be in keeping with that of such goods or products ruling in the international market. The Enforcement Authority will be authorized to estimate this price when no current international price quotation is available.
- d) The recipient shall keep confidential those technical secrets specified as such in the voluntary act of legal consequences for the agreed term, which may exceed the term of the contract.
- e) In those acts that include the use of the supplier's trademark or name or similar forms of identification vis-a-vis customers, the recipient shall maintain the quality levels of products or



services rendered in the voluntary act of legal consequences which products or services are identified by means of such trade marks or names.

When the Enforcement Authority deems it expedient, it may request that the foreign providers be expressly mentioned in the act to be registered as a condition for its approval.

#### TREATMENT OF RELATED COMPANIES

Article 9: Voluntary acts of legal consequences which, in accordance with the preceding articles, are subject to the provisions of this Law, and are entered into between a local foreign capital company, and the company by which it is directly or indirectly controlled, or another affiliate of the latter, may be approved by the Enforcement Authority, with all the consequences provided for in this law, when an examination thereof shows that their obligations and conditions are in accordance with usual market practice between independent parties. However the following limitations will apply:

- a) No royalty payments will be permitted for the use of trademarks.
- b) The payments to be made by the local company—which may not consist of fixed sums—shall be deemed to accrue in annual periods coinciding with the closing date of the financial year and may only be paid after that date.

In these cases, the resolution issued by the Enforcement Authority approving the registration, must contain a detail of the items and data which have been considered and have led to the conclusion that the voluntary act of legal consequences is similar to one executed between independent parties.

#### CONTRACTUAL FEATURES THAT MAY BE LIABLE TO OBJECTION

Article 10: Registration of those voluntary acts of legal consequences that are subject to non-automatic registration, according to the foregoing articles, may be rejected when they incorporate one or more of the following features:

- a) When technology to be transferred can be proven to be obsolete.
- b) When the technology having the same specifications, nature and quality as that which is the object of the transfer can be proven to be of public knowledge and freely available in this country. It shall be understood

that it is of public knowledge when it is not protected by secrecy or by rights inherent to industrial property. It shall be understood that technology is freely available in this country when any interested party may have access thereto under reasonable conditions.

- c) They forbid or limit exports by the recipient, except to those countries where the supplier produces for its own account or has granted exclusive production, use or sales licenses.
- d) The agreed consideration bears no relation to the transferred technology or trademarks and to the direct or indirect benefits to be achieved through their use.

It will be presumed that such lack of relation exists, unless proof to the contrary can be produced when:

1. The acts consist of licenses to use trademarks without the contribution of technology, and the payment to the supplier or for his account exceeds one percent (1%) of the net sales value of the products or services using such trademarks.
2. It is technology related to the final motor vehicles or auto parts industries, according to the definition of Law N° 19,135 and the payment to the supplier or for his account exceeds two percent (2%) of the net sales value of the products manufactured with such technology.
3. In other cases, payments to the supplier or for his account, exceed five percent (5%) of the net sales value of the products manufactured or services rendered with the transferred technology. When it is a case of single or periodic fixed payments, the percentage equivalent of such payments in relation to the recipient's estimated sales during the full term of the contract shall be taken into account.

- e) They compel the recipient to assign or grant licenses with respect to the innovations, improvements or developments that may be achieved in regard to the transferred technology, except when a reciprocity clause exists.

f) They do not grant the recipient the right to receive the improvements relating to the transferred technology that the supplier may develop during the life of the voluntary act of legal consequences.

g) They exempt the supplier from the liability to which it may be subject towards the recipient or by reason of eventual legal action by third parties, arising from flaws or defects that are inherent in the products or services rendered by the supplier under the act in question. Such liability shall include both that arising from the event of the assignment of industrial property rights of third parties, as well as that which may correspond, under the applicable legal provisions, as a consequence of damages suffered by the recipient or by third parties that are the direct and immediate result of the correct use of the transferred technology or of the use that may result from the supplier's instructions, if any.

h) They impose the obligation to acquire raw materials, intermediate products or capital goods from a specified origin or source of supply.

i) They establish sales prices to wholesalers, retailers, to the public or to the supplier of the technology or trademarks, or the application to third parties of unequal conditions for the sale of equivalent merchandise or services.

j) They impose upon the recipient the obligation to employ personnel to be appointed by the supplier, whose remuneration shall be for the account of the recipient, unless such obligation is considered indispensable taking into account the work to be performed by such personnel in relation to the transferred technology and that the remuneration of such personnel is in line with that generally current in the international market for the services to be rendered by the aforesaid personnel.

k) They allow the supplier to control or regulate the production or marketing of the recipient beyond what is necessary for the protection of his rights under the act in question.

- ... use of any equipment of his own to do this.
- b) They respect the intellectual character of the technology which may arise from the interpretation or combination of the set of laws and regulations other than the laws and regulations covered by the present Law, without prejudice to the recipient's right to sue the supplier before the courts of the latter's domicile.
  - c) They establish a regime which, without hindrance, furthers the use of competitive technology. For this purpose, the differences in quality must consider the nature and features of the technology of which use is forbidden and the possible damage which the absence of such classes may cause the supplier of the technology. If the acts which are exempt from the obligation to register, or those whose autonomous registration is provided for in Articles 5 and 6, contain one or several of the elements listed in this article, their authors shall be obliged to be registered, without prejudice to the right of the parties, requests their express approval. Notwithstanding what is stated above, the Enforcement Authority may, on the date the technology is transferred to the recipient in this country, it shall ensure this validity and respect registration.

**DEBIT OF PAYMENTS AND TAXES**

- Article 10: The value shall be calculated as the invoice value, ex-factory price, or value of domestic production, or value as well as excise duty and value added tax, or those taxes that may substitute, unless to supplement them in the future and any other tax that may be levied in the future on the same taxable acts.
- Article 11: The supplier's obligations set forth in articles 1 and 2 of this Law may take the form of capital contributions to the recipient company when this is permitted by the law governing Companies. In such cases the Enforcement Authority of this Law shall establish the contributions.
- Article 12: In the case of acts resulting in the acquisition of property rights, their term may not exceed the period of time granted, or its equivalent renewal. In the case of licenses in the non-patented know-how, the term shall not exceed the period of its validity.

... shall be presumed to be five years unless proof to the contrary is produced.

**INFORCEMENT AUTHORITY AND PROCEDURE**

Article 14: The Chief of the Protection Under Secretariat, subordinate to the Secretariat of State for Industrial Development, shall be the Enforcement Authority of this Law. In the exercise of its duties it shall have the powers necessary to ensure the fulfillment of the provisions of this Law and of the regulations that may be issued in accordance with the National Register of Licenses, Contracts and Transfer of Technology. The Enforcement Authority, in its law and regulations, it will be the advisory body of the Enforcement Authority in all matters relating to the legal system and must answer the enquiries made to it regarding said system by interested parties.

Article 15: Voluntary acts of legal consequences governed by this Law, their amendments and extensions must be filed before the Enforcement Authority within a term of thirty calendar days as from the date of their execution for their registration in the National Register of Licenses, Contracts and Transfer of Technology. In such case they shall be considered valid as from the date of their execution in accordance with the terms of their approval. In the event they are not filed within such term they shall only be considered valid as from the date of their approval.

Article 16: Any of the parties to the voluntary acts of legal consequences governed by this Law may initiate and/or take part in the procedure for registration thereof.

Article 17: For the purpose of applying for registration of the voluntary acts of legal consequences subject to this Law, the following must be filed before the Enforcement Authority:

- a) Authentic copies of the instrument evidencing the existence of the act in the Spanish language, except for technical terms that have no equivalent in Spanish.
- b) Evidence of the legal status of the intervening parties.
- c) Establishment of legal domicile in this country by both parties.

Against presentation of these documents and according to the provisions which will be set forth in the regulations, the Enforcement Authority shall deliver to the party requesting a voucher evidencing the date of such presentation.

Article 18: Within a term of fifteen calendar days (15) as from the date of such filing the Enforcement Authority shall notify the other concerned party omission of the information or documents referred to in the foregoing article. Once this term has elapsed without any objection having been raised by the Enforcement Authority, it shall be understood that the information and documents have been duly filed, notwithstanding any objections that may be required during the course of the procedure.

Article 19: The Enforcement Authority shall decide on the administrative constitution of the acts filed before it within ninety (90) calendar days as from the date of their filing, or from the date when the omissions it may have noted in the information or documents filed have been corrected. In the event of approval the act will be registered without further procedure and the pertinent certificate shall be delivered to both parties.

Article 20: Should the Enforcement Authority receive an objection, both parties will be notified thereof and the Enforcement Officer (20) will be obliged to state their views. Within a term of fifteen (15) calendar days either party may request suspension of procedure in order to correct the act according to the objections raised.

Article 21: Following the notification mentioned in the foregoing article to the Enforcement Authority, within a term of fifteen (15) calendar days—issue a resolution concerning approval of the act. If this be in the affirmative, the act will be registered. If not, further procedure.

Article 22: In the event of a refusal in the registration, or if the Enforcement Authority does not receive applications for registration within the mentioned time limit, the proceedings will, without further procedure, pass on to the Secretary of State for Industrial Development for the latter to issue his final resolution within thirty (30) calendar days.

Article 23: All final resolutions issued by the Enforcement Authority and the Secretary of State for Industrial Development, with supporting documents, shall be published in the Official Gazette of the Argentine Republic.

**GENERAL PROVISIONS**

Article 24: The voluntary acts of legal consequences that must be registered at the National Register of Licenses, Contracts and Transfer of Technology in accordance with the provisions of this Law, and their

amendments and extensions, shall be null and void for all legal purposes if not registered at such Register, or if their registration has expired or been cancelled. However, in the event of the term provided for in Article 15 having been complied with, and should the supplier have furnished technology that was not protected by restrictive rights of industrial property during the processing of the contract before the Enforcement Authority, if the registration is finally registered, the secrecy clauses incorporated into the contract executed by the parties, will be exempt from the nullity provided for in the previous paragraph, as will those clauses that require the return of technical documents delivered and those forbidding subsequent use of the transferred technology.

**Article 25:** Once the voluntary acts of legal consequences subject to this law have been registered at the National Register of License Contracts and Transfer of Technology the recipient will be authorized to effect the payments provided for in said acts, in this country or abroad, and to deduct pertinent expenses and disbursements for tax purposes.

**Article 26:** The registration of acts at the Register will lapse as a matter of law when their performance has not commenced within the term stipulated in each case by the Enforcement Authority, which term may not exceed two (2) years as from date of registration. The Enforcement Authority may authorize re-registration when so required prior to expiry date of the term established, always provided it is deemed to be in order as a consequence of the renewed evaluation of the act.

**Article 27:** Public mention of the existence of acts subject to the provisions of this Law that have not been registered in accordance herewith shall be forbidden.

**Article 28:** The term within which instruments corresponding to voluntary acts of legal consequences subject to this Law must be stamped with the respective stamp tax, will commence as from the date on which notice is served of the resolution approving their registration. Provincial authorities are hereby invited to include provisions similar to this article in their legislation.

**Article 29:** Proceedings for registration as well as all documents related thereto shall be of a confidential nature and may only be examined by the parties thereto or by their representatives. The officials and employees of the Enforcement Authority and of the Re-

gister shall keep in strict confidence all information that comes to their knowledge by reason of their intervention in such proceedings.

**Article 30:** In the case of voluntary acts of legal consequences that are subject to this law, that are entered into for a consideration, fines of ONE (1) to TWENTY (20) percent of the contractual amount estimated by the Enforcement Authority will be imposed on those physical or corporate persons who incur in any of the following infringements of the system of this Law:

a) Those executing voluntary acts of legal consequences subject to this law:

I) Without having filed them with the Enforcement Authority;

II) When their registration has lapsed under the terms of Art. 26, of this Law;

III) After expiration of their term; or,

IV) When their registration has been rejected;

V) Regarding those contracts which have been registered automatically, when subsequent examination shows that they contain a breach of the provisions of this law and said contractual provisions have been fulfilled.

b) Those who infringe the prohibition established in Article 27 of this Law.

c) Those who act fraudulently by concealing, hiding or altering, before the Enforcement Authority, the true content of the acts subject to this Law.

When the voluntary act of legal consequences subject to this law is of a gratuitous nature, fines of up to twenty million pesos (A\$ 20,000,000) will be imposed on the physical or corporate persons who incur in any of the aforesaid infringements. In both cases the Enforcement Authority will fix the fine according to the magnitude and gravity of the offense.

**Article 31:** The registration of the voluntary acts of legal consequences involving the infringements described in paragraph c) of the preceding article will be cancelled by resolution of the Enforcement Authority.

**Article 32:** The fines provided for in the preceding articles shall be imposed by the Enforcement Authority after an inquiry during which the accused parties will be

heard in accordance with sufficient guarantee to adequately safeguard their rights.

## APPEALS

**Article 33:** The fines established in this Law, as well as the resolutions rejecting final registration, shall be subject to appeal before the National Appeals Court for Federal and Administrative Matters of the Federal Capital, unless it is chosen to lodge the appeals provided for in the Law of Administrative Procedure. The appeal before the National Appeals Court for Federal and Administrative Matters of the Federal Capital, must be lodged and the grounds therefore filed before the Enforcement Authority within twenty (20) calendar days as from the date on which notice of the resolution under appeal was served.

## TEMPORARY PROVISIONS

**Article 34:** Voluntary acts of legal consequences which have not been registered at the National Register of License Contracts and Transfer of Technology prior to the effective date of this Law, will be subject to its provisions. The Enforcement Authority must issue its resolution regarding registration procedures already in process within a term of one hundred and eighty (180) calendar days as from the effective date of this Law.

**Article 35:** The validity of the provisional registration of voluntary acts of legal consequences registered automatically under Law N° 19231 which have been adapted to the requirements of SEDI Resolution N° 119/73, is hereby extended until the date on which a definite resolution is issued by the Enforcement Authority approving or rejecting final registration.

**Article 36:** This Law is a matter of public order and as from the date of its enforcement repeals Law N° 20791 with the exception of its Article 33 insofar as it confirms Article 1 of Law N° 19231 which creates the National Register of License Contracts and Transfer of Technology and also with exception of its art. 14 which is repealed as from August 24, 1976. It also repeals Article 30 of Law N° 19115, Decrees Nos. 6187 71, 669 72, 1125 71, Resolutions MIM 294/72, MIM 378/73, ME 97/73, SEDI 301 75, SEDI 351 75 and SEDI 1117 75 (the latter as from its enactment) and any other regulation contrary to its provisions.

**Article 37:** Let it be communicated, published, given to the National Administration of Official Records and filed.

ARGENTINA (2)  
(Extracts)

Law No. 20.557 of 29 November 1973  
on foreign investments

Article 26. In respect of agreements creating debts owed by natural or artificial persons of public or private law domiciled in Argentina to persons domiciled abroad, the effective annual rate of interest shall not be more than two percentage points higher than the rate for first-class securities on the financial market of the country of origin of the currency in which the transaction has been registered. In no case may such rates be higher than those authorized by the Central Bank of the Argentine Republic for the debts referred to in article 24. For the purposes of the present article, effective interest means the total amount to be paid by the debtor for the use of the credit concerned, including costs, premiums and sums payable on any other account.

The present article does not cover relationships between subsidiaries and their parent companies or between subsidiaries themselves or relationships of structural dependency existing between a domestic and a foreign enterprise; in such cases any financial, technological or other contribution from one such person to another, regardless of the legal status of the persons concerned, shall be governed by the legislation on capital contributions or profits as the case may be.

NICARAGUA

The Nicaraguan law consulted for the purposes of this study contains no specific provisions relating to the transfer of technology.

PARAGUAY

The Paraguayan legislation consulted contains no specific provisions on the transfer of technology.

URUGUAY

The Uruguayan legislation consulted contains no specific provisions on the transfer of technology.

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COLOMBIA

Apart from the provisions that are applicable to it in virtue of the Common Regime for the Treatment of Foreign Capital, the Colombian legislation consulted contains no specific provisions on the transfer of technology.

CHILE (Extracts)

Decree-Law No. 600 of 11 June 1974.  
Foreign Investment Provisions.

Article 2. The inputs referred to in the preceding article may take the following forms, duly assessed by the Committee on Foreign Investment:

.....

(d) Technology in its various forms when it can be capitalized, and

.....

Article 10. An input which takes the form indicated in article 2 (a), as well as the foreign exchange which needs to be acquired to make the remittances referred to in article 9 or to fulfil other obligations flowing from the application of these provisions, will be settled at the highest rate of exchange prevailing on the banking market at the time of the settlement concerned.

If the input takes the form indicated in paragraphs (b), (c), (d) and (e) of article 2, the Committee on Foreign Investment will make an initial estimate of this, to be confirmed or modified in line with the final evaluation made at the time of importation, taking into account either the technical customs evaluation made by the Customs service for appraisal purposes or other evaluations issuing from the appropriate specialized technical agencies. These evaluations will be made on the basis of the exchange rate referred to in the previous paragraph.

EQUATOR

Apart from the provisions applicable under the Common Regime, the Ecuadorian legislation consulted contains no specific provisions on technology transfer.

PERU (Extracts)

Decree-Law No. 18,999 of  
18 October 1971, to  
Regulate Aspects of the Common  
Regime for the Treatment of  
Foreign Capital (Decision 24)

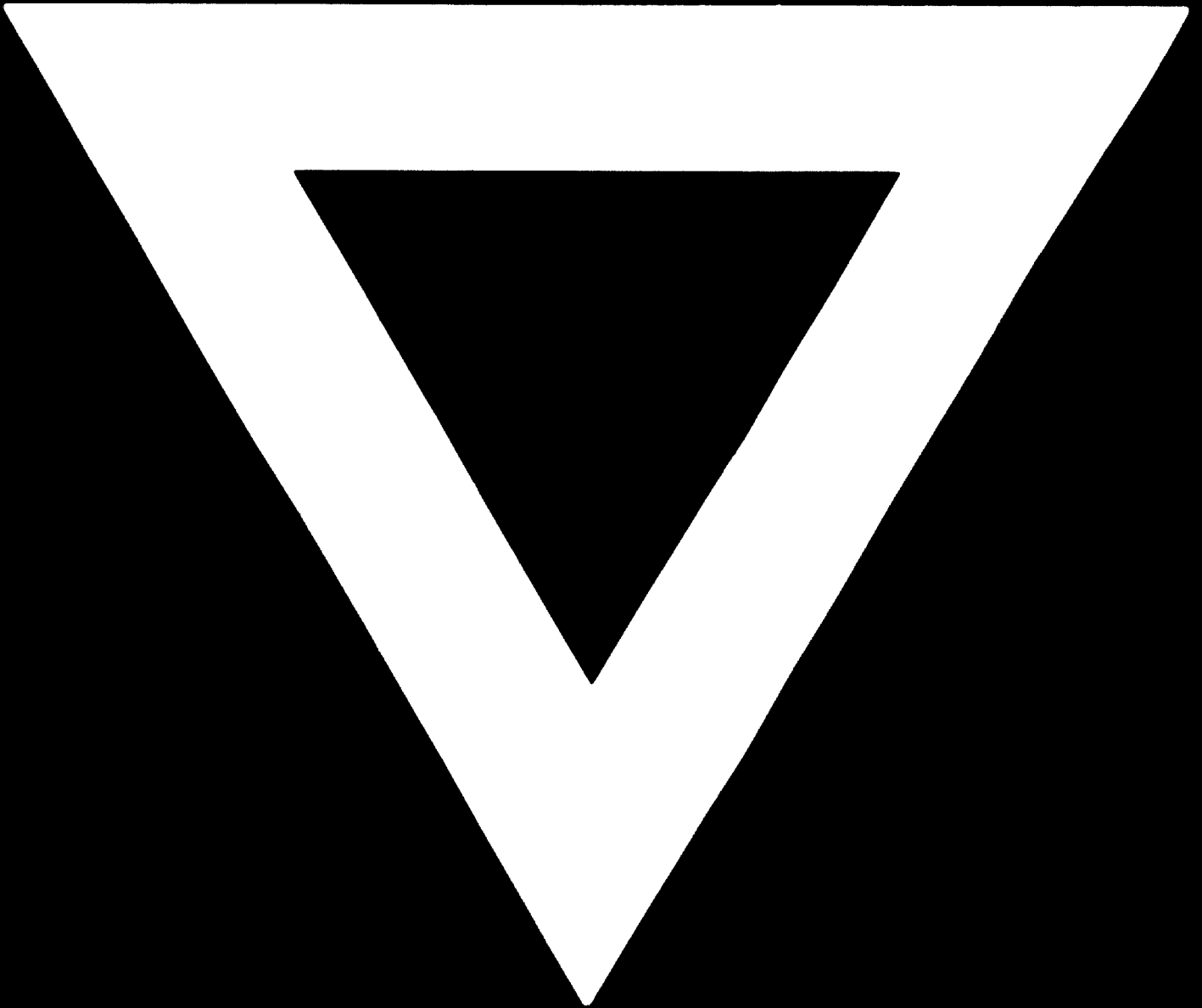
Article 7. Any natural or legal person who has entered into a contract, in force on 1 July 1971, concerning the importation of technology and concerning trade marks, patents and licences of foreign origin, or concerning royalties payable abroad, shall be obliged to submit to the Office of Industrial Property and Registration of the Ministry of Industry and Commerce, within a period elapsing on 31 December 1971, a legally certified copy of the contract concerned and a Sworn Declaration, using the special form which will be drawn up by the said Office, as to whether he is in the relationship of parent firm or branch, subsidiary or daughter firm to the holder of the technology, trade mark, patent, licence or royalty covered by the contract.

Article 8. Contracts concerning the importation of technology and concerning trade marks, patents or licences of foreign origin, or concerning royalties payable abroad, in force on 1 July 1971, will retain their full validity until such time as the Office of Industrial Property and Registration of the Ministry of Industry and Commerce takes a decision, following due examination, on their confirmation, amendment or voidance, unless the contract in question provides for its own lapsing prior to this decision.

For this purpose the time-limits for decision laid down by Supreme Decree No. OCI-IC-DS of 25 January 1971, regulating General Law on Industry No. 18350, shall not be valid; the Office for Industrial Property and Registration of the Ministry of Industry and Commerce shall base itself on the criteria laid down by Decree-Law No. 18900 and supplementary legal provisions.



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