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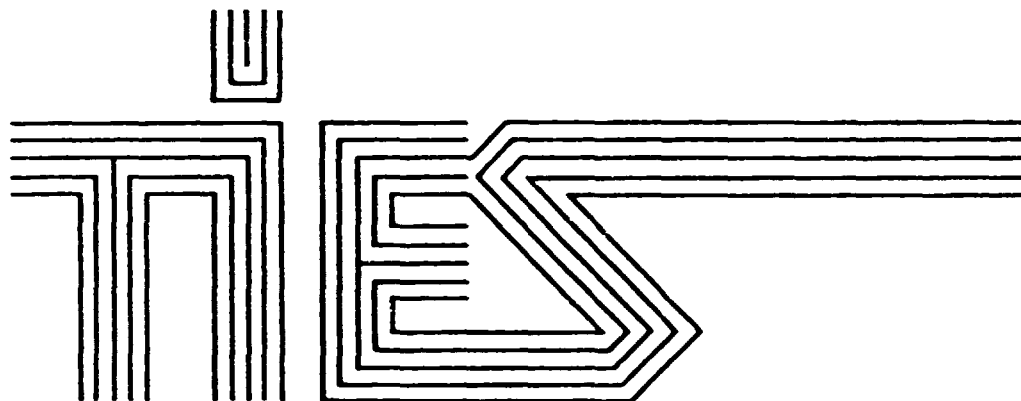
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NEWSLETTER

Technological
Information
Exchange
System

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Compiled by the Industrial Technology Promotion Division, Department for Industrial Promotion, Consultations and Technology, UNIDO, P.O. Box 300, A-1400 Vienna, Austria.

Dear Reader,

In previous issues of the *TIES Newsletter* we made reference to the *Manual on Technology Transfer Negotiations*. This *Manual* is being prepared by UNIDO as a teaching tool for its educational programmes on technology acquisition and negotiation.

The *Manual* rests on the philosophy that a thorough, precise, well balanced and fair agreement, which spells out the economic aims and purposes of the agreement and considers and protects and righteous interests of both parties, is a key to the successful transfer of technology. With the *Manual* as a key instrument, UNIDO aims at being able to equip negotiators with the understanding and skills to achieve such an agreement. This not only implies the ability to structure an agreement, but also a keen awareness of the issues of negotiation as they relate to the evaluation and negotiation of contracts, as well as aspects that influence technology options, the behaviour of parties and the contract implementation itself, their legal bases and interrelationships. Although inspired by the problems of developing countries, the *Manual* aims to impart professional knowledge and skills that could be useful for technology transfer negotiators in general, be they from developing or developed economies.

In this issue of the *TIES Newsletter* we are pleased to report that the *Manual* has in fact reached a stage of preparation that enables the use of existing modules in UNIDO's educational activities on the basis of specific requirements of particular audiences. For instance, the *Manual* was used at the Regional Workshop on Technology Negotiation and Contracting held in Cairo (Egypt) in December 1990; the Workshop on Technology Transfer and Contracting held in connection with the UNIDO Technology Days in the USSR in March 1991; the National Workshops on Negotiation held in Dakar (Senegal) and Lagos (Nigeria) in September and October 1991; and a similar workshop held in Lagos in preparation for the Investment Promotion Forum in April 1991.

As a means of highlighting the work we are doing in this direction and the opportunities available with reference to UNIDO's training programme on technology acquisition and negotiation, we present a brief description of the *Manual* together with a write-up on UNIDO's training programmes on technology transfer operations. We would appreciate receiving feedback from you on this important aspect of UNIDO's work. This would allow us to take advantage of your experience and incorporate it in the revision of the existing modules and finalization of the remaining ones.

Technology Policy, Acquisition and Negotiation Unit
Industrial Technology Promotion Division

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UNIDO News

UNIDO AND APCTT ON A JOINT PROJECT ON BUILD-OPERATE-TRANSFER (BOT) FOR PROJECT FINANCING AND IMPLEMENTATION

UNIDO, through the Technology Policy, Acquisition and Negotiation Unit (TPAN) and the Asian and Pacific Centre for Technology Transfer (APCTT) have jointly embarked on a project to introduce and promote the use of the BOT scheme in the ESCAP member countries both for project financing and implementation.

BOT is a relatively new scheme for financing and implementing large industrial and infrastructural projects in developing countries. In general, it involves an arrangement whereby a contractor (domestic or foreign) undertakes construction, including financing, of a given project or infrastructure facility and the operation and maintenance thereof. The contractor operates the facility over a fixed term, in the process providing technology transfer and training. During the same period, it is allowed to recover its operating and maintenance expenses and its investments in the project, plus a reasonable rate of return such as through the charging of tolls, fees or rentals. The contractor then transfers the facility to the government at the end of the term of concession.

For the government of a developing country, this scheme offers some advantages. First, projects are financed from private resources and in principle without the direct involvement of public debt. Second, the government does not have to issue a formal guarantee of repayment of the debt and therefore the project does not increase the public debt. Third, the BOT scheme increases private sector involvement in economic development in general, especially in the area of infrastructural services, which has traditionally been a public sector monopoly. It also allows for the transfer of industrial risk to the private sector and is in principle an avenue for an efficient transfer of technology.

The joint UNIDO/APCTT project aims to raise awareness on the use of this facility, its financial, legal and technical implications and in the process provide guidance on how to achieve maximum utility and benefit from its use. The project completed its fact-finding phase in June 1991 with a survey mission of a UNIDO consultant to selected countries in the ESCAP region with a potentially high demand for assistance in this field. As the project's highlight, a seminar was held in early December of this year. The seminar provided participants with an in-depth understanding of BOT as an arrangement for financing and implementing projects, particularly large and high investment industrial and infrastructural projects; the financing issues of BOT; the design, structure, analysis and negotiation of BOT contracts; legal considerations in BOT arrangements; the BOT as an innovative form of technology transfer; and an evaluation of BOT opportunities. At the same time, it provided a forum for an exchange of ideas, know-how and experience on BOT application.

The seminar was designed for government policy makers and senior level officials from the public and private sectors who are involved in the planning, analysis, negotiation, financing and regulation of infrastructure

projects and public sector projects.

UNIDO-LES CO-OPERATION IN HIGH GEAR

A high-level delegation of the Licensing Executives Society (LES) visited UNIDO on 11 June 1991 for discussions on possible co-operative activities relating to UNIDO's technology transfer and negotiation programme.

LES is a highly reputable and influential organization composed of corporate executives, lawyers and technologists, who are mostly concerned with activities in the field of technology licensing and dissemination of information on international conditions of technology transfer. Over the years, the Technology Programme of UNIDO has cultivated a fine working relationship with LES. There has been a regular exchange of material, the engagement of LES members as UNIDO consultants and the convening of several meetings between LES representatives and members of TIES. These meetings have served to create a better understanding between technology suppliers and recipients particularly regarding their various problems and expectations, and thereby improving the general atmosphere of international technology transfer transactions.

At their June visit, the LES delegation reaffirmed their interest to co-operate with UNIDO in the final production, as well as in the marketing and promotion of the *UNIDO Manual on Technology Transfer Negotiations*. There was unanimous acceptance of the value and marketability of the *Manual*, both to developed and developing country audiences. Preliminary details of this co-operation were discussed, such as the setting up of a joint UNIDO-LES editorial committee to review the content of the *Manual*. Another area of co-operation concerned UNIDO's educational activities in the form of the joint production of video films on technology transfer operations. Contacts have also been made with officials of the LES Educational Committee and exchanges are now taking place on the details of this collaboration.

The LES delegation was composed of Mr. Fernando Noetinger, President of LES International; Mr. Akira Mifune, President-Elect; Mr. Leonard Mackey and Mr. Vance Smith, past presidents; and Mr. Edward Grattan, LESIAC Chairman.

UPDATE ON THE AFRICAN-TIES PROJECT

As envisaged under the African-TIES project, two national workshops on technology transfer negotiations took place - one in Dakar (Senegal) on 23-27 September 1991 and another in Lagos (Nigeria) on 30 October to 1 November 1991. These activities are meant to lead to the building up of national core teams of potential trainers of technology transfer negotiators, which is one of the objectives of the project. National experts participated in these workshops as lecturers on specific topics.

Both workshops utilized modules from the *Manual on Technology Transfer Negotiations*, which is now gaining the reputation of a highly professional educational material for negotiators of technology transfer. The African-TIES project has no doubt contributed substantially to the progress achieved, both in the preparation and in providing exposure to

the *Manual*.

In conjunction with the national workshop hosted by Nigeria, the Fourth African-TIES meeting was convened from 28-29 October 1991. The meeting provided an opportunity for the African TIES participants to assess the activities, not only of this particular project, but the entire African-TIES concept itself. A programme of action was drawn up on the basis of a needs assessment in the area of technology acquisition and negotiation of countries in the region. A more detailed report on the proceedings and outcome of the meeting will be made in the next issue of the *TIES Newsletter*.

Another component of the African-TIES project, which saw implementation in September/October 1991, was the on-site training for African-TIES participants in the more advanced technology transfer offices of the region. The National Office of Technology Acquisition and Promotion (NOTAP), formerly the National Office of Industrial Property (NOIP), of Nigeria and the General Organization for Industrialization (GOFI) of Egypt, served as the training venues for officials from Cameroon, Ethiopia, Sudan, Tanzania, Tunisia and Togo.

The training programme focussed on the following topics: technology policy and links with national development policies; institutional machineries dealing with technology acquisition, negotiation and monitoring; guiding philosophies and principles of legal framework; procedural aspects; evaluation and negotiation issues; monitoring and information systems and links with R&D institutions and the private sector.

REGISTRY NEWS

LIBERALIZATION TRENDS RELATING TO TREATMENT OF TECHNOLOGY FEES – THE CASE OF VENEZUELA, COLOMBIA AND BRAZIL

Hereunder, we summarize recent changes in legislation in selected countries, which have a bearing on the treatment of technology fees.

1. In Venezuela, Decree 727 of January 1990 allows parties to any arms-length transaction to freely establish the terms and conditions they choose. The only existing limitation in terms of royalty fixing is in the parent/subsidiary relation, where up to five per cent of net technological sales is allowed and anything above would require authorization of the Foreign Investment Authority.

2. In Colombia, under Resolution No. 09 issued by the Royalties Committee on 18 May 1990, automatic approval of agreements are ensured as follows:

- for agreements on transfer of technology, use of trademarks and patents, when royalties are less than four per cent of net sales;
- for agreements on hotel management, when royalties are less than twenty per cent of net profit;
- for software distribution agreements, royalties may not exceed forty per cent of the cost of the license.

3. In Brazil, under Resolution 20 issued on 27 February 1991, the National Institute of Industrial Property (INPI) must approve or reject transfer of technology applications as follows: those with a value of less than 25 million Cruzeiros within 10 days (except those which, with an object of providing technol-

ogy, contain clauses of secrecy or non-alienation of the technology); those with a value over 25 million Cruzeiros including those which, with an object of providing technology contain clauses of secrecy or non-alienation within 20 days; and within 45 days for contracts which depend upon an expert opinion or external information. Otherwise applications will automatically be considered as registered.

TECHNOLOGY ACQUISITION

MANUAL ON TECHNOLOGY TRANSFER NEGOTIATIONS

Purpose

The *Manual on Technology Transfer Negotiations* under preparation by UNIDO has been designed to cover, in a comprehensive manner, the range of subjects that entrepreneurs, decision-makers and government officials dealing with technology acquisition are likely to be confronted with along the various phases of the technology transfer process. These not only include those directly related to the evaluation and negotiation of contracts, but also the aspects that influence technology options, the behavior of the parties and the result of negotiations.

The *Manual* is intended to serve the purposes of teaching on technology transfer negotiations, developing skills of trainers and be useful as a working tool for negotiators.

Target groups

The preferential target groups are:

- Entrepreneurs, project promoters, managers and professionals of industrial enterprises, consultancy firms, financial institutions, etc. who are responsible for handling or participating in negotiations for the acquisition of technology;
- Government institutions and officials with responsibilities related to the acquisition and negotiation of technology at the policy level or at the level of evaluation and negotiation of technology transfer agreements;
- Institutions with a vocation for conducting training programmes for negotiators, as well as potential trainers from developing countries who may contribute to national self-sufficiency in the training of negotiators.

Structure of the Manual

The *Manual* is formed of chapters, or modules, each covering a major topic related to technology transfer negotiations. The different chapters are harmonized according to a format, which comprises:

- A note for the trainer;
- An advance hand-out;
- The subject of the chapter;
- A set of visuals.

The *Manual* will also contain a list of bibliographic references and will be supplemented by a glossary of terms and definitions.

Table of chapters

The chapters of the *Manual* are intended to cover the following main categories of subjects and issues:

(a) General aspects of transfer of technology. These are subjects of interest for policy makers, government officials and professionals who deal with technology transfer issues at the macro-economic level.

Examples:

Role of technology transfer in the development process;

- Technology market characteristics;
- Channels of transfer of technology;
- Success factors for the transfer of technology;
- Technological infrastructure;
- Trends in technology transfer and emerging forms of enterprise co-operation;

(b) Legal framework for contracting and licensing, including notions on the world's main legal systems, the formation of contracts and the legal environment for technology transfer, namely in industrialized countries and in developing countries.

Examples:

- Principles and basic notions of civil codes/laws;
- Legal environment in industrialized countries;
- Legal environment in developing countries;

(c) Technology transfer contracts and contractual issues. The subjects dealt with in this set of chapters are of direct interest to those who have to draft or negotiate different types of transfer of technology agreements.

Examples:

- Principles of contract drafting;
- General structure of transfer of technology agreements;
- Channels of transfer of technology and related contracts;
- Technology transfer through joint ventures
- The technology package and contractual options (contracting for complex industrial projects);
- Training in technology transfer (how issues of training are dealt with in the contract);
- Payments in transfer of technology agreements;
- Guarantees and insurance in technology transfer;

(d) Surrounding topics. The chapters in this area are intended to respond to a range of problems that may arise along the technology transfer process.

Examples:

- Sources of information;
- Financing sources for technology transfer;
- Technology evaluation;
- The bidding system;
- The negotiation process -- strategies and tactics;

TECHNOLOGY TRANSFER NEGOTIATIONS

Training programmes offered by UNIDO

The Technology Policy, Acquisition and Negotiation Unit of UNIDO regularly organizes training programmes addressed at government officials, entrepreneurs and professionals responsible for conducting technology transfer negotiations or evaluat-

ing technology transfer agreements.

The programmes are organized upon request of the interested counterparts in developing countries and designed according to the specific needs of the target groups concerned.

The following examples illustrate different formats of training programmes offered by UNIDO can implement in the field of technology transfer negotiations.

Example A

Basic technology transfer courses

Typical programme of workshops with a duration of 3-4 days addressing a mix of participants, namely officers of government institutions dealing with technology acquisition as well as enterprise managers and professionals.

Topics

- The role of transfer of technology in the development process;
- Technological infrastructure for development;
- Technology market characteristics;
- Structure and types of contracts;
- Principles of contract drafting;
- Payments in transfer of technology agreements;
- Guarantees and warranties;
- Technology transfer through joint ventures;
- Success factors for technology transfer.

Example B

Specialized workshops

Typical programme of workshops of a week's duration, to be conducted on an intensive basis and focussing on the acquisition of equipment and processes for heavy industries, e.g., the steel industry.

Topics

1. General issues related to the technology transfer process. The characteristics of the technology market. Proprietary nature of technology, patents, know-how and trade secrets.
2. Anatomy of an industrial project and possible forms of contracting, e.g., turnkey contracts and cost reimbursable schemes. Unpackaging. Advantages and disadvantages of the different types of contractual arrangements.
3. The bidding process. Pre-qualification. Bidding systems and procedures and explanation of cases. Screening and evaluation of offers. The bidding systems and the international financing mechanisms. The implications of financing schemes.
4. Contract structures and the negotiation process. The meaning, content and implications of the different contractual clauses, for example: the obligations of the parties; bonds and guarantees; payments; possible forms of payment and respective assessment; price escalation formulas; claim procedures; penalties; resolution of disputes.
5. The implementation of the project and its relation to the negotiation process. The project team. Time and cost controls. Expediting. Commissioning and start-up procedures. Management and post-contractual responsibility.

Example C

Courses on Technology Transfer

Typical programme for a comprehensive course on technology transfer negotiations. The duration may range from 2-4 weeks and the organization of the course requires the substantive involvement of appropriate counterpart institutions in the host country both in terms of facilities and locally available expertise.

Modules

Technology Transfer and Development

Technology and transfer of technology. Basic notions. Appropriateness of the technology. Technological infrastructure. The innovation process. Characteristics of the technology market. Trends in technology transfer and emerging issues. New forms of enterprise co-operation, e.g., joint research and related contractual arrangements.

Technology Transfer Contracts

Legal foundation of contracts. Principles of civil codes. General structure of contracts. Licensing agreements and analysis of the contractual clauses and conditions. Channels of technology transfer and variations in technology transfer contracts. Principles of contract drafting.

Contracting for Industrial Projects

Technology evaluation and selection. The bidding process. International competitive bidding. Sources of financing and their requisites. The components of the technology package and possible contractual relationships. Turnkey contracts. Packaging vs. unpackaging: advantages and disadvantages.

Special Considerations

The law of the contract and its implications. Guarantees, warranties and insurance in transfer of technology transactions. Litigations and settlement of disputes. Arbitration and conciliation. Technology payments: methods and evaluation of payments.

International Legal Issues

Intellectual property protection and its role in technological development and technology transfer. Basic notions. International conventions. Legal environment for transfer of technology in industrialized countries: Anti-trust regulations (USA) and Rules of Competition (EEC). Regulations in developing countries.

Technology Transfer Through Joint Ventures

Types of joint ventures. The joint venture as a vehicle for transfer of technology. The motivations of the parties in a joint venture agreement. Joint ventures in developing countries: policy issues and the role of governments. Structure of joint venture agreements. Package of agreements associated to joint ventures and negotiation strategies.

The Negotiation Process

Intercultural and interpersonal issues. Approaches to the negotiation process. Negotiating an agreement without giving in. Negotiation with mutual gain. The methods of negotiating. Strategies and tactics.

Case Studies

Case studies based on real situations will be designed to allow for simulated negotiations through which the participants will exchange their experiences and sharpen their negotiating skills. The case studies and the duration of the exercise will be adapted to the level and needs of the target groups concerned.

LEGISLATION

TRANSLATION OF BRAZILIAN TECHNOLOGY TRANSFER RULES

Ministry of Justice

National Institute of Industrial Property -- INPI

Resolution No. 22 of 27 February 1991

The President (of INPI ... a recitation of his authority is given ...)

RESOLVES To issue norms to orient the process of registration of Acts and Contracts of Technology Transfer, through its organs and administrative units, in the form of the Industrial Property Code and Complementary Legislation.

REGISTRATION

Article 1

INPI shall register those acts and contracts which involve transfer of technology to stimulate or create technology, and to produce effects in relation to taxation and currency exchange.

CATEGORIES OF CONTRACTS

Article 2

To accomplish registration, consideration shall be given to:

I. Contracts of Technology Transfer, whose objects shall be classified by INPI as:

- (a) patent exploitation;
- (b) trademark use;
- (c) supply of technology;
- (d) with supplying technical and scientific services.

II. Acts of Technology Transfer, which are represented by valid documents that produce the same effects as a contract.

Article 3

The Contract of Technology Transfer, beyond a clear indication of its object, shall describe in full detail the process through or by which the transfer of technology shall be made and indicate the industrial property titles involved.

THE CONTENTS OF CONTRACTS

Article 4

A Contract of Patent Exploitation shall stipulate the conditions for actual exploitation of the object of a patent properly registered or granted in Brazil

Article 5

A Contract for Use of Trademarks or Distinctive Signs shall stipulate the conditions for actual use of a trademark properly registered in Brazil.

Article 6

The Contract of Patent Exploitation and of Trademark Use shall define whether the exploitation of the patent and use of

the trademark is to be exclusive or non-exclusive and whether sub-licensing is permitted. The period of the contract shall not exceed the life of the patent or trademark.

Article 7

A Contract for the Supply of Technology shall stipulate the conditions of acquisition of know-how and technology not protected by industrial property rights registered or granted in Brazil.

Sole Paragraph: A contract which relates to this article may contain clauses of secrecy and of non-alienation of negotiated technology.

Article 8

A Contract for Provision of Scientific and Technical Services shall stipulate the conditions for the acquisition of techniques, methods of planning and programming as well as researches, studies and projects, intended for execution or provision of specialized services.

Sole Paragraph: A contract which relates to this article shall set the term necessary to provide the services, specifying the activities of the technicians involved, their specializations, programmes of training and including an indication of (their) remuneration.

Article 9

In Technology Transfer Contracts the supplier shall supply the recipient with all data and technical information as well as the necessary technical assistance for its application and the updating of its object, (in order) to promote effective absorption and technological capability building.

Article 10

A Technology Transfer Contract shall stipulate the responsibility of each party in relation to the financial onus which results from complying with tax obligations.

REMUNERATION

Article 11

The remuneration to the technology supplier may be established as a fixed price, as a percentage of net sales, (or) of net profit, or even as a fixed amount per each unit produced, in conformity with contractual stipulations, except for Service Agreements for Technical and Scientific Assistance.

Sole Paragraph: For the purposes of calculating remuneration, the net price shall be the invoiced value, based on actual sales, deducting the fees, taxes and other charges as may be agreed to between the parties.

Article 12

In assessing the remuneration there should be taken into consideration the price levels which prevail nationally and internationally in similar arrangements.

THE PROCESS OF REGISTRATION

Article 13

A Request for Registration, made in the proper form, shall be accompanied by an original of the contract or instrument which represents the act; INPI may request other accom-

panying documents.

Article 14

The Request for Registration shall be approved, rejected, wait for further clarification or be put on file, according to the following periods and conditions:

(a) Ten (10) working days, for an analysis of Acts or Contracts with values under 25 million Cruzeiros, except for those which, with the objective of providing technology, contain clauses of secrecy or non-alienation of the technology;

(b) Twenty (20) working days, for an analysis of Acts or Contracts with a value of over 25 million Cruzeiros, including those with the objective of providing technology and which contain clauses of secrecy or non-alienation (of the technology);

(c) Forty-five (45) working days, for analysis of Acts or Contracts which depend upon an expert opinion or external information.

Paragraph 1. If the terms envisaged in this article are not fulfilled, the contract shall be registered upon an attachment signed by the parties or their representatives giving satisfaction to such terms.

Paragraph 2. If the requirements formulated by INPI are not fulfilled by the interested part(ies) within a term of 12 months, the process shall be archived.

Paragraph 3. After fulfillment of the requirements or receipt of information, or external expert opinion, INPI shall render its decision in observance of the terms set out in this article.

Article 15

The President of INPI may determine the re-examination of requests for registration that were rejected, by means of written request, when the parties demonstrate that the decision was contrary to the express provisions of the law.

SUSPENSION OF REGISTRATION

Article 16

INPI may, hearing the parties, suspend or annul the registration, by reason of violation of the legislation in force, ceasing its effects and immediately notifying the relevant agencies/organs to take the appropriate measures.

MONITOR THE TRANSFER OF TECHNOLOGY

Article 17

INPI may monitor the process of negotiated transfer of technology.

GENERAL PROVISIONS

Article 18

The requirements for registration of Acts and Contracts for Transfer of Technology shall be formulated on the basis of Brazilian legislation.

Article 19

The following Normative Acts of INPI are hereby revoked: No. 15/75, No. 30/78, No. 32/78, No. 43/90, No. 55/81, No. 56/81, No. 60/82, No. 61/82, No. 64/83, No. 65/83, No. 74/85, No. 81/86, No. 85/87, No. 93/88 and No. 99/89.

This Resolution shall enter into force on the date of its publication (which was 27 February 1991).
(signed) Paulo Afonso Pereira, President

ECUADOR

The following is an official translation of the regulation relating to the treatment of foreign capital, trade marks, patents, licences and royalties of Ecuador, as submitted to UNIDO through the Permanent Mission of Ecuador to UNIDO.

RODRIGO BORJA, CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF ECUADOR

Executive Decree No. 2501

CONSIDERING:

That it is necessary to update the required regulation relating to the treatment of foreign capital and of trademarks, patents, licenses and royalties.

According to the authority given me by Article 78 of the Political Constitution of the Republic in compliance with the guidelines of Decisions 291 and 292 of the Cartagena Agreement Commission, published in the Supplement of the Official Register No. 682, 13 May 1991

I DECREE

The following regulations for the application of Common Rules for the Treatment of Foreign Capital and of Trademarks, Patents Licenses and Royalties.

CHAPTER I

Competent National Agencies

Article 1

The Ministry of Industries, Commerce, Integration and Fisheries (MICIP) is the competent national agency for the facts established in the Decision 291 and 292 of the Cartagena Agreement Commission, concerning this regulation.

The MICIP in order to apply this regulation and within the scope of its competence, can dictate all pertinent decrees or resolutions.

Article 2

Direct foreign investment, sub-regional investments and neutral investments must be registered in the Central Bank of Ecuador, the competent national agency.

Contracts for transfer of technology, trademarks, patents, licenses and royalties must be registered in the Ministry of Industries, Commerce, Integration and Fisheries.

General management expenditure contracts, related to Article 14 of the Ecuadorian Tax Legislation must be approved by MICIP and must be registered by the Central Bank of Ecuador.

Article 3

Resolutions issued by MICIP cause administrative conditions and it is possible to file an appeal before the involved administrative tribunal. Concerning the decision of the

Central Bank of Ecuador, it is possible to turn to the Monetary Council. If a person disagrees with a decision he may file an appeal before the involved administrative tribunal.

CHAPTER II

Direct Foreign Investment, Sub-regional Investments and Neutral Investments

Article 4

According to Article 14 of the Political Constitution of the Republic and Article 2 of Decision 291, foreign, sub-regional and neutral investments enjoy in Ecuador the same rights and are submitted to the same treatment as national investments.

In regard to Article 1 of Decision 291, the capitalization of non-distributed profits will be considered as reinvestment. Consequently, the Central Bank of Ecuador will register the reinvestments as direct foreign, sub-regional or neutral investments. For calculation matters it is necessary to consider the exchange rate in force in the free market on the date of the registration.

Article 5

Except as established in Articles 6 and 8, direct foreign investment, sub-regional investments and neutral investments can be made in all economic sectors without any previous authorization issued by MICIP, and they [the investors] enjoy the same treatment as natural or legal Ecuadorian persons.

Article 6

The competent national agency will not authorize direct foreign investment, sub-regional or neutral investments in the following sectors:

- (a) Defense and national security;
- (b) Radio, television and the media; and
- (c) Other sectors considered in special legislations.

Article 7

Direct foreign, sub-regional or neutral investments in the sector of mining, fishery, maquila and free zones are subjected to legislation.

Article 8

The following direct foreign investments, sub-regional and neutral investments require a previous authorization issued by MICIP:

(a) Those that are intended to be made in the public services sector.

(b) Those that are intended to be made in the sector of commercial banking, insurance, reinsurance and financing companies. In these cases, the previous authorization of the Superintendency of Banks is necessary. Investments cannot exceed 49 per cent of capital shares.

(c) The transfer of shares or participation of national investors in favour of foreign investors, when because of such transfer the recipient company of the investment will be considered a foreign enterprise in accordance with Decision 291.

(d) The transfer of shares participation of national investors company law. In these cases, the transfer is authorized within 15 days, provided that a request is signed by the owner or his representative.

Article 9

The insurance companies established in Ecuador and considered as foreign enterprises according to Decision 291 of the Cartagena Agreement and companies set up in Ecuador can participate in accordance with Articles 30 and 31 of the general law of insurance companies, in the subscription of capital of banking companies, of insurance, financing and reinsurances, without any express authorization.

Authorization is not necessary to buy shares in accordance with Articles 30 and 31 of the insurance companies general law, made by insurance companies mentioned in the previous paragraph, and issued by banking companies, insurance companies, financing companies and reinsurance companies created in Ecuador.

Article 10

Companies created in Ecuador, considered as foreign enterprises in accordance with Decision 291 of the Cartagena Agreement Commission and subsidiaries of foreign companies, cannot participate in the capital shares of banks and other financing institutions to be established in Ecuador with a percentage larger than 49 per cent.

Also, companies created in Ecuador considered as foreign enterprises and having investment on the date of issue of the present regulation in the capital of banks and other institutions of private financing systems already established in Ecuador, can participate in the increase of capital in agreement with companies where they already have investments, through contributions in currency, for conversion of reserve (stock) into capital, for profits not distributed, for compensation of credits of dividends declared by the general board of shareholders, provided that there is not an increase by percentage of investment; otherwise an authorization of the Superintendency of Banks and MICIP, is necessary.

Article 11

Concerning the request for authorization for direct foreign, sub-regional, and neutral investments, MICIP must pronounce a decision within 15 days after the date of the presentation of the request, provided that additional documentation has not been requested within the same period.

If MICIP, in order to grant authorization, needs the review or advice of other private and public agencies and institutions, it will request them in written form, and will allow them 15 days to present the answer. MICIP must communicate the particular issue to the petitioner. The period granted to MICIP for authorization is delayed until the consulted agency delivers the answer.

Article 12

The registration of foreign investment must be requested by the foreign investor or his representative within 30 working days after the date of inscription of the appropriate title deed in the Mercantile Register, the accounting transfer, that verifies the change of capital subscribed or the registration in the books of shares and shareholders, depending on circumstances. For

registration, it is necessary to present the copy of the title deed, voucher of sale of foreign currencies or permit for import of non-reimbursible currencies or a document that verifies the transfer of shares in agreement with the type of investment.

In case duly justified, the Central Bank of Ecuador can extend the period until 90 days.

A written letter from the foreign investor will be sufficient to appoint a representative for him.

Article 13

The Superintendence of Banks, Superintendence of Companies and the Central Bank of Ecuador and other public institutions may not ask for more requirements than those established by the law and these regulations related to authorizations and approvals of acts to be fulfilled by recipient companies of investments or its investors.

CHAPTER III

Transfer of Profits and other Guarantees

Article 14

Direct foreign, sub-regional and neutral investors may transfer, in free convertible currency, the net profits resulting from their registered investment.

The transfer of profits may take place only after payment of income tax. It is necessary to inform the Central Bank of any transfer of profits.

Article 15

According to Decision 291 foreign enterprises may avail of all mechanism of export promotion in the same conditions stipulated for national or mixed enterprises.

Article 16

The advantages provided by the Cartagena Agreement customs exemption programme will be enjoyed by goods produced by national, mixed or foreign enterprises, provided that they fulfill special norms or specific requirement of origin.

Foreign enterprises with agreements in force for conversion, according to Chapter II of Decision 220, can request to the pertinent competent national agency to leave without any effect such conversion.

CHAPTER IV

Investment Considered as National

Article 17

MICIP's specific functions are to qualify as national investors those natural foreign persons with legal residence in Ecuador of more than one year or residents in the country.

Also, a subsidiary of a foreign company located in Ecuador for more than two years can invest in an existing company in Ecuador. In such a case this investment is considered as national. Accordingly, the investor considered as national will enjoy the same rights and obligations as a national investor.

CHAPTER V

Transfer of Technology

Article 18

Each contract for the import of technology and for patents and trademarks must be registered in MICIP provided that they fulfill the requirements established in the Articles 12 to 15 of Decision 291. Accordingly, parties should submit to MICIP a notarized copy of the contract within 30 days after the date of subscription.

Article 19

The following contracts for transfer of technology will require the previous approval of MICIP:

(a) Contracts involving fixed or percentage payments exceeding more than 5 per cent of base annual net sales of goods produced under the contract;

(b) Contracts to be celebrated for foreign enterprises in terms of Decision 291 or branch companies in the country with the parent company; and

(c) Contracts regarding general management expenditures subscribed between parent companies and affiliates, subsidiaries or agencies in Ecuador as for that Article 14 of tax legislation. It is considered a parent company when the capital belonging exceeds 50 per cent of the capital of the local enterprise and such parent company has a reduced participation but it holds the technical, financial, administrative and commercial management.

ROMANIA

PARLIAMENT OF ROMANIA ASSEMBLY OF DEPUTIES/SENATE

FOREIGN INVESTMENT LAW

The Parliament of Romania passes the present law.

To induce foreign investment in Romania the present law is passed comprising provisions meant to confer foreign investors guarantees and incentives as well as the complete and unrestrained use of the results of their activity.

CHAPTER I

General Provisions

Article 1

For purposes of this law, the term "Foreign Investment" shall mean:

(a) establishment of new companies, subsidiaries and branches, either having wholly owned foreign capital or by association with Romanian legal or natural persons, with observance of Company Law No. 31 of 1990;

(b) participation in the increase of registered capital of an existing company or the acquisition of shares or capital stock belonging to such companies, as well as bonds and other securities;

(c) concession, lease or administration, as provided for by the law, of businesses, public services, production subunits,

pertaining to autonomous state enterprises or to regular companies;

(d) acquisition of ownership rights over movable and immovable property as well as other real estate rights, except for the land ownership rights;

(e) acquisition of industrial and intellectual property rights;

(f) acquisition of personal estate rights or other rights related to services having economic value that are associated to an investment;

(g) purchase of production spaces and other buildings, except for residence buildings not related to the investment, as well as the construction thereof;

(h) participation in agreements for exploration, exploitation and production sharing of natural resources.

Article 2

"Participation" of foreign investors in Romania may consist of:

(a) funds in freely convertible currencies;

(b) machinery, equipment, means of transport, components, spare parts and other goods;

(c) services, industrial and intellectual property rights (patents, licenses, know-how, trademarks, copyrights), expertise and methods of organization and management;

(d) profits lawfully obtained in freely convertible currencies or in Lei from business activities carried out in Romania.

Article 3

The term "Foreign Investor" shall mean any natural or legal person residing or, as the case may be, having its place of business abroad, and which is conducting investment in Romania under any of the forms set forth by this law.

Article 4

Foreign investments may be effected in all sectors of industry, exploration and production of natural resources, agriculture, infrastructure and communication, civil and industrial works, scientific research and technology development, trade, transportation, tourism, banking and insurance services and other services, provided that they shall not:

(a) infringe the regulations in force meant to protect the environment;

(b) affect Romania's national security and defense interests;

(c) harm the public order, health and good morals.

CHAPTER II

Guarantees

Article 5

The foreign investments in Romania shall not be nationalized, expropriated, requisitioned or subjected to other measures of like effects, except in the public interest, with observance of the legal procedures set forth by the law and against payment of a compensation equivalent to the affected investment, which shall be prompt, adequate and effective.

Article 6

The compensation shall be assessed in relation to the market value of the investment upon the date of occurrence of one of the acts set forth in Article 5.

Article 7

In case the compensation cannot be ascertained as provided in Article 6 hereinabove, then it shall be determined by the parties on equitable principles, taking into account the capital invested, its appreciation or depreciation and the current returns.

Article 8

Should such determination of the compensation as per Article 6 and Article 7 herein not be satisfactory to the foreign investor's request, it shall be established through the courts of law, in accordance with the legal provisions.

Article 9

The foreign investors shall enjoy the rights to:

(a) participate in the management and administration of the investment, in keeping with the terms of the contracts and by-laws agreed upon;

(b) assign its contractual rights and obligations to other Romanian or foreign investors;

(c) transfer abroad the profit in freely convertible currency to which they are entitled, as well as the portion of the profits in Lei, as established by Article 16 herein;

(d) transfer abroad, in keeping with the provisions of the contracts concluded, the amounts collected for copyrights, technical assistance, expertise and other services;

(e) transfer abroad the amounts obtained in freely convertible currencies from total or partial sale of stocks, shares, bonds and other securities or from liquidation of investments as well;

(f) transfer abroad in freely convertible currencies in three annual installments the amounts in Lei obtained as a result of winding up the investments;

(g) transfer abroad in the agreed upon freely convertible currency the amounts achieved as compensation in the event of one of the acts set forth in Article 5 hereinabove.

Article 10

The foreign investments, in accordance with the provisions of this law shall for the whole duration of their existence enjoy the legal status set forth hereby.

Article 11

The foreign investors shall enjoy the legal status set forth by this law irrespective of their citizenship or, as the case may be, nationality.

CHAPTER III

Incentives

Article 12

Imported machinery, equipment, installations, means of transport and any other outfits, constituted as participation of the foreign investor, are exempt from import customs duties.

Article 13

The raw materials, supplies and components imported for production purposes are exempt from import customs duties for a period of two (2) years of activity, counted from the date the project is commissioned.

Article 14

Foreign investments are exempt from payment of tax on profit as follows:

(a) investments in industry, agriculture and the construction sector, for a period of five (5) years from commencing productive operations;

(b) investments in the exploration and production of natural resources, communications and transports, for a period of three (3) years from commencing the respective operations;

(c) investments in trade, tourism, banking and insurance services, as well as any other services, for a period of two (2) years from commencing the respective operations;

Article 15

In addition to the exemptions provided for hereinabove, reductions of the tax on profits are further granted after the expiration of the initial tax holiday period, as follows:

(a) a 50 per cent reduction of the tax due for the profits reinvested in enterprises set up in Romania with a view to widening and upgrading the technical and material basis, improving the manufacturing technologies or expanding the activity, to obtain additional profits, as well as for the investments aimed at securing the protection of the environment;

(b) a 25 per cent reduction of the tax due, on the condition that:

- at least 50 per cent of the necessary raw materials, energy and fuel are provided through importation;
- at least 50 per cent of the products and services are exported;
- more than 10 per cent of the expenditures are made for scientific research and development of new technologies in Romania and for professional training;
- at least 50 per cent of the machinery and other equipment necessary for developing existing investments are obtained from domestic production;
- at least 50 (fifty) new jobs are created through a new investment or expansion of existing investments.

Article 16

Foreign investors are entitled to transfer abroad in freely convertible currency, through currency exchanges conducted by the Romanian Bank for Foreign Trade or other authorized banks, a portion of the annual profits in Lei equivalent to 8 - 15 per cent of their contribution in cash and in kind in freely convertible currency paid to the registered capital, as follows:

(a) 15 per cent of the paid contribution to the registered capital for investments made in the fields of special importance for the technologies, as established by Government Decree;

(b) 12 per cent of the paid contribution to the registered capital for investments made in the fields of exploration and production of natural resources, industry, agriculture, the construction sector, communications and transports, other than those provided for at paragraph (a) herein above;

(c) 10 per cent of the paid contribution to the registered capital for investments made in other fields of finance, banking and insurance;

(d) 8 per cent of the paid contribution to the registered capital for investments made in other fields of activity.

Article 17

Upon suggestions prepared by the Romanian Development Agency, the fields of special importance for the national economy shall be established through Government decision. Additional incentives could be granted by law upon Govern-

ment proposal for investments effected in the fields mentioned at paragraph one above.

Article 18

In case voluntary liquidation of foreign investments occurs within a time span shorter than twice the period for which foreign investors enjoy the exemptions provided for at Article 14 hereinabove, foreign investors shall pay the taxes on profits imposed by the law for the whole duration of the investment. The taxes due in accordance with the provisions of the above paragraph shall be paid with priority out of the results deriving from the liquidation of the investment or out of the other rights the foreign investors are entitled to.

CHAPTER IV

Registration of the Applications for Foreign Investments

Article 19

Foreign investments in Romania, irrespective of their legal status, shall be made on the basis of an application by the foreign investor registered with the Romanian Development Agency.

Article 20

The Romanian Development Agency shall study the reliability of the investor, the field and the legal form of the investment and the amount of the capital to be invested.

Article 21

The Romanian Development Agency answers applications of foreign investors on the basis of data and information that it has available or that it may obtain upon request from the central and local organization of public administration as well as from autonomous state enterprises and regular companies in the field of activity where the foreign investment shall be made.

The ministries and the other central and local organizations of public administration shall answer within 10 days to the request of the Romanian Development Agency.

Article 22

The Romanian Development Agency shall answer the applications of foreign investors within 30 days from their registration.

In the event that no confirmation is received by the foreign investor during the time period set forth in the above paragraph, the investment shall be deemed to have been approved and may be implemented.

Article 23

The foreign investors have the right to effect investments under the conditions set forth in the Romanian law, either on the basis of the confirmation issued by the Romanian Development Agency, or on the basis of foreign investor's application in the absence of any response from the Agency.

Article 24

The position of foreign investors in Romania is proven by the "Certificate of Investor" issued by the Romanian Development Agency.

The "Certificate of Investor" shall be issued at the foreign investor's request within 15 (fifteen) days from registering the applications, upon presentation of relevant documents — the

contract of association and the statutes, the commercial contracts and other legal papers drafted in accordance with the provisions of the Romanian law and taking into consideration the legal status of the investment.

The "Certificate of Investor" is opposable to the Romanian authorities for the establishment of the foreign investors' rights.

CHAPTER V

Financial, Foreign Currency and Commercial Operations

Article 25

The collection and payment operations related to the foreign investments shall be effected through Lei and freely convertible currency accounts open with banks having the place of business in Romania or through freely convertible currency accounts open with banks having the place of business abroad.

Joint ventures and other foreign investors may freely dispose of the balances of their own accounts.

Article 26

The accounts in freely convertible currency shall be fed by the financial contribution of the investors, the foreign currency borrowings and by the foreign currency revenues.

Article 27

Joint ventures and other foreign currencies from local financing institutions or loans in freely convertible currencies from foreign banks and financial institutions.

Article 28

The activity of the joint ventures and of the foreign investors shall be carried out on the basis of commercial contracts concluded with the observance of legal provisions and at agreed-upon prices in Lei and in foreign currency.

Article 29

The payments in freely convertible currency, including the amounts due to the foreign investor, shall be effected only from the balances of the foreign investor's or, as the case may be, the joint venture's bank accounts.

Article 30

The profits in freely convertible currency and in Lei due to the foreign investors can be used to make new investments in Romania, to buy Romanian goods and services or they may be exchanged in the financial market with due consideration to the legal provisions.

CHAPTER VI

Final Provisions

Article 31

In the event the foreign investments in Romania are made by setting-up commercial companies in association with Romanian natural or legal persons, the contribution of the Romanian associates to the registered capital may consist of the right of property or other real rights over land or other immovable necessary estate for the whole duration of the

joint venture.

Article 32

The expatriate personnel necessary to implement the foreign investment shall be agreed upon by the contracting parties or by the foreign investor, as the case may be; such personnel shall be employed in management and expert jobs only.

Article 33

The wages of local and expatriate personnel employed by foreign investments shall be settled by the agreement of the parties.

Article 34

The provisions of this law shall be applied to the extent that they do not countervene to the international agreements and arrangements of foreign investments undersigned by Romania.

Article 35

Upon coming into effect of this law the Decree No. 424 of 1972 ruling the establishment and functioning of joint venture in Romania, the Decree-law No. 96 of 1990 for inducement of foreign investment in Romania, as well as other contrary legal provisions, are abrogated.

This law was passed by the Senate on March 29, 1991.

(signed) President of Senate

This law was passed by the Assembly of Deputies on March 29, 1991.

(signed) President of Assembly of Deputies

Based on Article 82, paragraph (m) of the Decree-Law No. 92 of 1990 for the election of Parliament and President of Romania, we hereby enact the foreign investment law and order that it be published in the Official Gazette of Romania.

(signed) The President of Romania

Ion Iliescu

No.35

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