

# The Civil Law - Technology Transfer

**Part six**  
**INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER**

**Chapter III**  
**TECHNOLOGY TRANSFER**

**SECTION 1 - GENERAL PROVISIONS**

**Article 806. The Objects of Technology Transfer**

1. The objects of technology transfer shall include:
  - a. Objects of industrial property attached to or separated from the machines or equipment permitted by law to be transferred;
  - b. Know-how and technical knowledge in the forms of technology processes, technological solutions and processes, computer software, drawings, formulas, technological data, and technical plans with or without attached machines and equipment.
  - c. Technical services, the training of technicians and information concerning the transferred technology;
  - d. Methods for rationalising production.
2. If the objects of technology transfer are protected as objects of industrial property, then the transfer of ownership or the right of use thereof must be carried out in accordance with the law before the technology is transferred.

**Article 807. The Right of Technology Transfer**

1. The State shall guarantee the legitimate interests of individuals and legal persons and other subjects in technology transfers;
2. Those legal persons and individuals and other subjects who own or have the right to dispose of industrial property objects as well as those who own know-how or technology shall have the right to transfer the right to use such objects.

**Article 808. Cases Where Technology Transfer Shall Not Be Allowed**

Technology transfer shall not be carried out in the following cases:

1. When the technology does not meet the requirements set forth by the competent state authority;
2. In other cases as per the law.

**SECTION 2 - CONTRACTS FOR TECHNOLOGY TRANSFERS**

**Article 809. The Forms of Technology Transfer Contracts**

1. A contract for a technology transfer shall be in writing, and shall be registered with, or permitted by, the competent state authority if the law so provides.
2. Technology transfers by the decision of the competent state authority must also be carried out pursuant to a written contract.

#### **Article 810. The Duration of Technology Transfer Contracts**

1. A technology transfer contract shall be valid for a period of not more than seven years from the moment when the contract takes effect. In extraordinary circumstances, the competent state authority may extend the contract, provided that in total the term of the contract shall not be beyond ten years.
2. The duration of technology transfer under the foreign investment projects shall be computed according to the term of the investments.

#### **Article 811. The Moment When a Technology Transfer Contract Takes Effect**

The parties to a technology transfer contract may agree on the moment when the contract shall take effect.

If technology transfer is required to be registered with, or to have permission from, the competent state authority, the contract shall take effect only from the moment of such a registration or the issuance of such permission.

#### **Article 812. The Contents of a Technology Transfer Contract**

Subject to the objects of technology transfer contracts, the parties may agree on the following essential areas:

1. The object of the contract and the name, contents, specific features and application results of the technology;
2. The quality of the technology and the contents and terms of guarantees;
3. The place, time and schedule of the technology transfer;
4. The scope and level of the technology confidence;
5. The price of the technology to be transferred and of the mode of payment;
6. The liability of the parties in protecting the technology;
7. The training obligations relating to the technology transfer;
8. The obligations in respect of the mutual exchange of information;
9. The conditions for altering or terminating a contract;
10. The liability for the breaches of the contract and the mechanism for dispute resolution.

#### **Article 813. The Price of Technology Transfer**

The price of technology transfer shall be determined by the parties. If there is a price structure fixed by law for the technology transfer, the parties must comply with that structure.

#### **Article 814. The Quality of the Transferred Technology**

The parties may agree on the quality of the transferred technology, taking into consideration the following factors:

1. The reasons for using the technology;
2. The technical and economic outputs to be achieved given the objectives of the technology;
3. The quality standards of the products that are to be made with the transferred technology;
4. The specifications of the product's configuration;
5. The implications for the protection of the environment.

#### **Article 815. Warranties and Their Duration**

1. The transferor of technology is bound to guarantee that the transferred technology shall conform to the quality agreed to in accordance with the provisions of Article 814 of this Code.
2. The warranty period shall be determined by the parties or shall be governed by law.
3. Within the guarantee period, if the transferred technology is found to be below the agreed quality, the transferor shall be obliged to repair the defects at his own expense.

4. If the transferor has exerted all of his best efforts, but the transferred technology remains unsatisfactory per the agreed quality, the transferee shall then be entitled to terminate the contract and demand payment of damages.

**Article 816. The Rights of a Transferee of Industrial Property Whose Usage Rights Are Infringed by a Third person**

1. The transferee of industrial property is entitled to demand that its owner, the courts or the competent state authorities force persons infringing his right of usage to cease such violations.
2. If a person who has the right to use the transferred industrial property brings a suit to a court, then its owner must participate in the proceedings to protect the legitimate right and interest of the former.

**Article 817. The Protection of the Transferred Technology Against Restrictions by Third Parties**

1. The parties shall agree on the territorial scope of the protection of the transferred technology against restriction by third party rights. Where the parties have not agreed on this issue, the territorial scope of protection shall be the territory of Vietnam.
2. If the usage of the transferred technology within the territorial scope of protection stipulated in Paragraph 1 of this Article is restricted by the rights of a third party, the transferee shall be entitled to demand that the transferor overcome such restrictions at his own expense or reduce the price. If such restrictions cannot be overcome or can be overcome only at very great expense, the parties shall have the right to terminate the contract, and the transferee shall be entitled to demand compensation for damages.

**Article 818. The Right to Improve the Transferred Technology**

1. The transferee of the transferred technology shall be entitled to improve the transferred technology without notifying the transferor unless the parties have agreed otherwise.
2. If the transferor is interested in the results of such technology improvement, the parties may agree on the transfer of the achieved results on the basis of mutual benefit.

**Article 819. The Transfer of Technology by the Transferee to Third Parties**

1. A transferee of technology may in turn transfer the technology to other persons if the transferor consents thereto.
2. A transferor cannot refuse such a transfer if it is pursuant to a decision of the competent state authority for the sake of the State's interests, or the public interest.

**Article 820. The Obligation to Keep Secrets**

1. The parties may agree on the limits and extent of the obligation to keep secret the transferred technology. If there is no agreement on this matter, the parties shall be deemed to have the obligation to keep secret all information that are the contents of or directly relating to the transferred technology during the term of the contract in the same way as they keep their own secrets.
2. The transferee of technology must compensate the transferor for damages caused by any breach of the obligations stipulated in Paragraph 1 of this Article.

**Article 821. Contracts for the Transfer of the Exclusive Right to Use the Patented Inventions, Utility Solutions, Industrial Designs and Trademarks**

1. Where the parties agree to the transfer of the exclusive right to use patented inventions, utility solutions, and industrial designs or registered trademarks, then the transferor must not transfer the right to use such objects to any third person.
2. If the transferor of such an exclusive right breaches the obligations stipulated in Paragraph 1 of this Article, the transferee shall be entitled to demand that the transferor cease this violation, and that he

pay compensation for the damages caused, or that the contract be terminated.

**Article 822. The Contract for the Transfer of the Right to Use Trademarks**

1. In a contract for the transfer the right to use protected trademarks, the parties may agree that products circulated by the transferee under such trademarks shall be bound to be of a quality similar to that of the transferor's products.
2. The transferor of the protected trademarks shall have the rights to supervise the quality of the transferee's products, to demand the transferee to take the measures necessary to ensure the goods are of the stipulated quality, and to terminate the contract and to demand compensation for damages if the transferee fails to take the requested measures or performs them unsuccessfully.

**Article 823. The Contract for the Transfer of the Results of Research and the Implementation of New Technology**

1. In a contract on the transfer of the results of research and the implementation of new technology, the parties may agree on measures for protecting the industrial property rights involved, and on the mode and rate of royalty payments to the authors of the research, or of the implementation of new technology if such results are used.
2. If the parties have not agreed on the measures for protection of industrial property rights the transferee shall then be entitled to apply for the protection of the results of the research or the implementation of the new technology, and shall be bound to pay remuneration to the authors when these results are used.

**Article 824. Contracts for Supplementary Services, Technology Consultation, Training Technical Personnel and Technology Information Supply**

1. In contracts for supplementary services, technical consultation, training technical personnel and supplying technical information, the parties must agree on the quality of services, the term and mode of rendering services, the qualification of the persons rendering the services and the results to be achieved.
2. Where the parties do not agree in the contract on the quality and the results to be achieved, the party rendering the services shall be deemed to have performed his obligation properly if he renders the stipulated services with due care, with proper qualifications and within the stipulated time.

**Article 825. Alterations and Terminations of a Contract**

1. The parties must inform each other about new scientific and technical knowledge that may affect the performance of the contract and, based on such new knowledge, must consider the possibility of altering or terminating the contract.
2. Article 809 of this Code - which governs the forms of contracts - shall also be applicable to the alteration and termination of contracts.
3. In case the contract is altered or terminated due to the influence of new scientific or technical knowledge which the parties could not foresee at the moment of concluding the contract, the transferor shall be liable for the expenses incurred as a result of this alteration or termination, unless they have agreed otherwise.