

LAW

ON TECHNOLOGY TRANSFER

NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM
LEGISLATURE XI, 10TH SESSION

(from 17 October to 29 November 2006)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001- QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

This Law regulates technology transfer.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Law regulates technology transfer activities in Vietnam, from Vietnam to overseas, and from overseas to Vietnam; the rights and obligations of entities participating in technology transfer activities; the authority of State administrative bodies; and measures for encouragement and promotion of technology transfer activities.

Article 2. Applicable entities

This Law shall apply to Vietnamese entities, Vietnamese residing overseas, and foreign entities participating in technology transfer activities.

Article 3. Interpretation of terms

In this Law, the following terms shall be construed as follows:

1. *Technical know-how* means information accumulated and discovered during the process of research, production and business by the technology owner, which information is decisive for the quality and competitive capacity of the technology and technological products.
2. *Technology* means solutions, processes and technical know-how, whether attached or unattached to tools and facilities, used to convert resources into products.
3. *High technology* means technology with a high content of scientific research and technological development; which creates products and services with high quality and high added value; and which is capable of forming a new manufacturing or services industry or of modernizing an existing manufacturing or services industry.
4. *New technology* means technology created for the first time in Vietnam.
5. *Progressive technology* means technology of the first rank and of a higher technological standard than the standard of current technology of the same type.
6. *Establishment fostering technology* [and/or] *establishment fostering technological enterprises* means a place with favourable conditions in terms of infrastructure and supply of necessary services and assistance in order to foster technology [and/or] technological enterprises.
7. *Technology markets, technology fairs and exhibitions, and technology transaction centres* means places for the display and introduction of technology, for the purchase and sale of technology, for the promotion of technology transfer and for the provision of other technology transfer services.

8. *Technology transfer* means transfer to a transferee of the ownership right or the right to use either a part or the whole of a technology by the party with the right to transfer such technology.

9. *Technology transfer in Vietnam* means transfer of a technology between entities operating within the territory of Vietnam.

10. *Technology transfer from overseas into Vietnam* means an entity operating overseas transfers a technology to an entity operating within the territory of Vietnam.

11. *Technology transfer from Vietnam to overseas* means an entity operating within the territory of Vietnam transfers a technology to an entity operating overseas.

12. *Technology transfer services* means support activities during the process of seeking, entering into and performing technology transfer contracts.

13. *Appraisal of technology* means the activity of determining the standard, the value and the economic effectiveness of a technology and its socio-economic and environmental impact.

14. *Valuation of technology* means the activity of determining the price of a technology

15. *Assessment of technology* means the activity of inspecting and rating the specifications of transferred technology as compared to the specifications of such technology as stipulated in the technology transfer contract.

16. *Technology transfer activities* comprise both technology transfer and technology transfer services.

17. *Technology transfer brokerage* means the activity of assisting parties with technology and parties who need technology to other parties with whom to sign technology transfer contracts.

18. *Technology transfer consultancy* means the activity of assisting parties to select technologies and to negotiate, sign and perform technology transfer contracts.

19. *Fostering technology* means the activity of assisting the creation and perfection of technology which has the potential for practical application and commercialization from technological ideas or from results of scientific research and technological development.

20. *Fostering technological enterprises* means the activity of assisting entities to perfect technology, to raise investment capital, to organize production and business, to conduct marketing, to conduct legal procedures and providing other essential services in order to set up enterprises using newly created technology.

21. *Promotion of technology transfer* means the activity of promoting, creating and seeking opportunities for the transfer of technology; providing services of advertising, exhibiting and introducing technology; and organizing technology markets, technology fairs and exhibitions and technology services centres.

Article 4 *Applicable law*

1. Technology transfer activities must comply with the provisions of this Law and other relevant laws; in the case of specialized technology transfer activities as stipulated in another law, the provisions of such other law shall apply.

2. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those in this Law, then the provisions of such international treaty shall apply.

3. In the case of technology transfer activities with foreign elements, the parties may agree in the contract on the application of foreign law or international commercial practice, on condition that such foreign law or international commercial practice is not contrary to the fundamental principles of the law of Vietnam.

Article 5. State policy on technology transfer activities:

1. To secure the lawful interests of entities conducting technology transfer activities and to facilitate such entities in order to service the requirements for rapid and sustainable socio-economic development of the country.
2. To prioritize the development of high technology and progressive technology; to develop technological manpower simultaneously with investment in renovation of technology.
3. To strongly develop technology markets; to encourage and promote activities of fostering technology and fostering technological enterprises; to promote the conversion of research results into production and business.
4. To concentrate on improvement of the quality and effectiveness of technology transfer activities in rural areas and mountainous areas; to encourage and facilitate such activities in areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions.
5. To raise the effectiveness of international co-operation and to facilitate entities to engage in international co-operation during technology transfer activities.

Article 6. Contents of State administration of technology transfer activities:

1. To promulgate legal instruments on technology transfer and to organize their dissemination and implementation.
2. To formulate strategies, plans, programs, measures, regimes and policies for the promotion of technology transfer activities and for the renovation of technology, and to direct implementation of same.
3. To exercise uniform administration of technology transfer activities.
4. To conduct international co-operation regarding technology transfer activities.
5. To conduct checks and inspections of compliance with the law on technology transfer; to resolve complaints and denunciations, and to deal with breaches of the law on technology transfer.

Article 7. Technology objects which are eligible for transfer

1. Technology objects which shall be eligible for transfer shall be a part or the whole of the following technologies:
 - (a) Technical know-how;
 - (b) Technical information about technology shall be permitted to be transferred in the form of technological plans, technological processes, technical solutions, formulae, technical specifications, drawings, technical maps, computer programs and information files;
 - (c) Solutions for production optimization and for renovation of technology.

2. Technology objects shall be permitted to be transferred whether attached or unattached to industrial property objects.

Article 8. Right to transfer technology

1. A technology owner shall have the right to transfer the ownership or right to use such technology.
2. Any entity which is permitted by the technology owner to transfer the right to use such technology shall have the right to transfer the right to use such technology.

3. Any entity with technology being an industrial property object for which the term of protection has expired or which is not protected in Vietnam shall have the right to transfer the right to use such technology.

Article 9. Technologies the transfer of which is encouraged

A technology the transfer of which is encouraged means high technology or progressive technology which satisfies one of the following requirements:

1. It creates new products which are highly competitive.
2. It creates a new industry or new services.
3. It saves energy or raw materials.
4. It uses new energy resources or recycled energy.
5. It protects the health of humans.
6. It prevents or fights natural disasters or epidemics.
7. It results in clean production or is environmentally friendly.
8. It develops traditional crafts and industries.

Article 10. Technologies the transfer of which is restricted

Transfer shall be restricted in the case of a technology aimed at any one of the following objectives:

1. Protection of the national interest.
2. Protection of the health of humans.
3. Protection of national cultural values.
4. Protection of animals and plants, natural resources or the environment.
5. Implementation of a provision in an international treaty of which the Socialist Republic of Vietnam is a member.

Article 11. Technologies the transfer of which is prohibited:

1. A technology which fails to satisfy the requirements stipulated by the laws on occupational safety, labour hygiene, protection of human health, and protection of natural resources and the environment.
2. A technology which creates products causing harm to socio-economic development and having an adverse impact on national defence and security or social order and safety.
3. A technology not permitted to be transferred pursuant to a provision in an international treaty of which the Socialist Republic of Vietnam is a member.
4. A technology on the list of State secrets, unless a provision of law provides otherwise.

Article 12. Forms of transfer of technology

The transfer of a technology shall be permitted to be implemented via the following forms:

1. An independent technology transfer contract.
2. A section on technology transfer in the following projects or contracts:
 - (a) An investment project;
 - (b) A franchising contract;
 - (c) A contract transferring industrial property rights;

(d) A contract for purchase and sale of machinery or equipment to which the transfer of a technology is attached.

3. Other forms of transfer of technology as stipulated by law.

Article 13. *Conduct strictly prohibited during technology transfer activities:*

1. Taking advantage of technology transfer activities in order to cause harm to national defence and security interests, or to the lawful rights and interests of entities.

2. Destroying natural resources and the environment; causing harm to the health of the people, or to Vietnamese fine customs and ethics.

3. Transferring a technology on the list of technologies the transfer of which is prohibited; unlawfully transferring a technology on the list of technologies the transfer of which is restricted; transferring a technology when a clause in the technology transfer contract stipulates that transfer to a third party is not permitted.

4. Breaching the technology transfer right in terms of ownership and use of the technology.

5. Acting fraudulently during formulation and performance of a technology transfer contract or of a technology transfer services contract, or during preparation of a statistical report on technology transfers.

6. Impeding or refusing the supply of information about technology transfer activities relevant to the contents of a check or inspection by a competent State administrative body.

7. Taking advantage of one's duties or powers in order to seek a bribe or to cause difficulties, or failing to promptly implement requests in accordance with law from entities participating in technology transfer activities.

8. Disclosing technological secrets, or impeding technology transfer activities.

9. Other conduct which is strictly prohibited by the law on technology transfer.

Chapter II

TECHNOLOGY TRANSFER CONTRACTS

Article 14. *Principles for signing and performing technology transfer contracts*

1. A technology transfer contract shall be entered into via the form of a written contract or some other written form with equivalent validity such as a telegram, telex, facsimile or data message or other form as stipulated by law.

2. The language in a written technology transfer contract shall be as agreed by the parties, but in the case of a transaction in Vietnam there must be a contract in Vietnamese. The Vietnamese and the foreign language versions of a contract shall be of equal validity.

3. A technology transfer contract shall be entered into and performed in accordance with the provisions of this Law, the *Civil Code*, the *Commercial Law* and other relevant laws.

Article 15. *Contents of technology transfer contracts*

Parties entering into a technology transfer contract may reach agreement on inclusion of the following particulars:

1. Name of the technology transfer contract, clearly stating the name of the transferred technology.

2. The technology object which is being transferred and the products created from the technology.

3. Transfer of the ownership of [and/or] right to use the technology.

4. Method of transfer of the technology.

5. Rights and obligations of the parties.
6. Price and mode of payment.
7. Date of effectiveness and term of validity of the contract.
8. Definition of terms and concepts (if any) used in the contract.
9. Plan and schedule for transfer of the technology, and location for implementing the transfer of the technology.
10. Liability to provide a warranty for the transferred technology.
11. Penalties for breach of contract.
12. Liability for breach of contract.
13. Applicable law for dispute resolution.
14. Tribunal for dispute resolution.
15. Other agreements, on condition that they are not contrary to the law of Vietnam.

Article 16. *Transfer of ownership of technology*

1. Transfer of ownership of technology means the owner of a technology transfers the entire right of possession, the right to use and the right to dispose of such technology to another entity in accordance with article 18 of this Law.
2. If a technology is a protected industrial property rights object, then transfer of ownership of such technology must be implemented together with transfer of ownership of the industrial property rights in accordance with the law on intellectual property.

Article 17. *Transfer of right to use technology*

1. Transfer of the right to use a technology means an entity as stipulated in article 8 of this Law permits another entity to use the technology in accordance with clause 2 of this article and article 18 of this Law.
2. The scope of transfer of the right to use a technology shall be as agreed by the parties, comprising:
 - (a). Exclusive or non-exclusive right to use the technology;
 - (b) Permission to re-transfer the right to use the technology to a third party or a prohibition from doing so;
 - (c) Fields of use of the technology;
 - (d) The right to improve the technology, and the right to receive information about improvements to the technology;
 - (dd) The exclusive or non-exclusive right to distribute and sell products created from the transferred technology;
 - (e) Geographical area in which it is permitted to sell products created from the transferred technology;
 - (g) Other rights related to the transferred technology.
3. If a technology is a protected industrial property rights object, then transfer of the right to use such technology must be implemented together with transfer of ownership of industrial property rights in accordance with the law on intellectual property.

Article 18. *Forms of transfer of technology:*

1. Transfer of data about the technology.
2. Provision of training the technology transferee for a specified period stipulated in the technology transfer contract to enable the transferee to properly understand and master the technology.
3. Appointment of a technical consultancy expert to enable the technology transferee to put the technology into production with the technological and product quality satisfying the specifications and schedule stipulated in the technology transfer contract.
4. Other forms of transfer as agreed by the parties.

Article 19 *Time of effectiveness of technology transfer contracts*

1. The time of effectiveness of a technology transfer contract shall be as agreed by the parties, except for the case stipulated in clause 2 of this article; if the parties do not agree on such time, then the contract shall be of full force and effect when the last party completes signing the contract.
2. A contract for the transfer of a technology on the list of technologies the transfer of which is restricted shall only take effect after the competent State body has issued a technology transfer permit.

Article 20. *Rights and obligations of technology transferors*

1. A technology transferor shall have the following rights:

- (a) To require the technology transferee to correctly implement the contractual commitments;
- (b) To request the competent State body to protect lawful rights and interests related to the transferred technology;
- (c) To receive full payment in accordance with the contract and to enjoy other rights and interests as agreed in the contract; to enjoy incentives stipulated in this Law and in other relevant laws;
- (d) To require the technology transferee to apply measures to remedy, and to pay compensation for loss and damage if the technology transferee fails to correctly discharge the contractual obligations, except where the parties agree otherwise;
- (dd) To lodge a complaint or to institute legal proceedings for breach of contract in accordance with law.

2. A technology transferor shall have the following obligations:

- (a) To guarantee that the right to transfer the technology is lawful and is unrestricted by third party rights, except where the parties agree otherwise;
- (b) To correctly implement the contractual commitments; to pay compensation for loss and damage suffered by the technology transferee or third parties as a result of breach of contract;
- (c) Upon request of another negotiating party, to maintain confidentiality of information obtained during the process of negotiating and signing the technology transfer contract;
- (d) To notify the technology transferee and to take appropriate measures on discovery of any technical difficulties which result in the transfer results failing to satisfy the requirements stipulated in the contract; to pay compensation for loss and damage sustained by the technology transferee or third parties and due to failure to perform the contractual commitments;
- (dd) To conduct procedures applying for a technology transfer permit in the case of a transfer from Vietnam to overseas of a technology on the list of technologies the transfer of which is restricted;
- (e) Not to agree on clauses restricting competition which are prohibited by the *Law on Competition*;
- (g) To discharge financial and other obligations as stipulated by law.

Article 21. Rights and obligations of technology transferees

1. A technology transferee shall have the following rights:

- (a) To require the technology transferor to correctly implement the contractual commitments;
- (b) To request the competent State body to protect lawful rights and interests related to the transferred technology;
- (c) To hire domestic or foreign entities to provide technology transfer services in accordance with law;
- (d) To require the technology transferor to apply measures to remedy, and to pay compensation for loss and damage if the technology transferor fails to correctly discharge the contractual obligations, except where the parties agree otherwise;
- (dd) To lodge a complaint or to institute legal proceedings in accordance with law for breach of contract;
- (e) To enjoy the incentives stipulated in this Law and in other relevant laws.

2. The technology transferee shall have the following obligations:

- (a) To correctly implement the contractual commitments; to pay compensation for loss and damage suffered by the technology transferor or third parties as a result of breach of contract;
- (b) Upon request of another negotiating party, to maintain confidentiality about the technology and other information obtained during the process of negotiating and signing the technology transfer contract;
- (c) To conduct procedures applying for a technology transfer permit in the case of a transfer from overseas into Vietnam of a technology on the list of technologies the transfer of which is restricted;
- (d) To discharge financial and other obligations as stipulated by law.

Article 22. Price of and method of payment for technology transfer

1. The payment price stipulated in a technology transfer contract shall be as agreed by the parties.

2. Payment must be made by one or a combination of the following methods:

- (a) One-off payment or payments in instalments in money or by goods;
- (b) Transfer of the value of the technology as capital contribution to an investment project or to capital of an enterprise as stipulated by law;
- (c) Other payment methods as agreed by the parties.

Article 23. Procedures for issuance of a technology transfer permit in the case of a technology on the list of technologies the transfer of which is restricted

1. Any entity with a need to receive or to be transferred a technology on the list of technologies the transfer of which is restricted shall forward the application file stipulated in article 24.1 of this Law to the State body authorized to issued technology transfer permits.

2. The State body authorized to issue technology transfer permits shall provide written approval within a time-limit of thirty (30) days from the date of receipt of a valid application file. In a case of refusal to approve, the State body shall provide a written response specifying its reasons for the refusal.

3. After receipt of written approval from the competent State body, the entity with the need to receive or to be transferred the technology shall sign a technology transfer contract.

4. After the technology transfer contract has been signed, one of the signatories shall forward the application file stipulated in article 24.2 of this law to the State body authorized to issue technology transfer permits.

5. Within a time-limit of ten (10) days from the date of receipt of a valid application file, the State body authorized to issue technology transfer permits shall be responsible to consider the consistency of the technology transfer contract with the items stipulated in the written approval in order to issue a decision on issuance of a permit. In a case of refusal to issue a permit, the State body shall provide a written response specifying its reasons for the refusal.

6. If there is a need to change the items stipulated in the technology transfer permit during the process of performance of the technology transfer contract, then one of the signatories to the contract must apply for a new permit.

Article 24 *Application files for approval of technology transfer, and application files for issuance of a technology transfer permit in the case of a technology on the list of technologies the transfer of which is restricted*

1. An application file for approval of the transfer of a technology on the list of technologies the transfer of which is restricted shall comprise:

- (a) Written request to enter into a technology transfer contract;
- (b) Document on the legal status of the applicant;
- (c) Explanatory statement on the technology in accordance with regulations of the Ministry of Science and Technology.

2. An application file for issuance of a technology transfer permit in the case of a technology on the list of technologies the transfer of which is restricted shall comprise:

- (a) Written request for issuance of a technology transfer permit;
- (b) Written approval from the competent State body to transfer the technology;
- (c) Document on the legal status of the parties to the technology transfer contract;
- (d) Original or copy of the technology transfer contract;
- (dd) List of technological data and technological equipment (if any) attached to the technology transfer contract.

Article 25. *Right to registration of technology transfer contracts and procedures for registration*

1. The parties entering into a technology transfer contract shall have the right to register such contract with the competent State administrative body for science and technology as the basis for the parties to enjoy the incentives stipulated in this Law and in other relevant laws.

2. An application file for registration of a technology transfer contract shall comprise:

- (a) Request for registration of the technology transfer contract;
- (b) Original or copy of the technology transfer contract

3. Within a time-limit of fifteen (15) days from the date of receipt of a valid application file, the competent State administrative body for science and technology shall consider and issue a decision on issuance of a certificate of registration of the technology transfer contract.

Article 26. *Obligation to maintain confidentiality during issuance of technology transfer permits and issuance of certificates of registration of technology transfer contracts*

The bodies and individuals responsible for issuance of technology transfer permits and of certificates of registration of technology transfer contracts shall also be responsible to maintain

confidentiality of the technologies and business secrets in application files for issuance of technology transfer permits and in application files for registration of technology transfer contracts.

Article 27 *Dealing with breaches of technology transfer contracts*

1. The following sanctions shall apply to entities in breach of a technology transfer contract:

- (a) Fine for a breach;
- (b) Payment of compensation for loss and damage;
- (c) Compulsory correct performance of the contract;
- (d) Temporary stay of performance of the contract;
- (dd) Suspension of performance of the contract;
- (e) Rescission of the contract;
- (k) Other measures as agreed by the parties, on condition that such other measures are not contrary to the fundamental principals of the law of Vietnam, not contrary to international commercial practice, nor contrary to an international treaty of which the Socialist Republic of Vietnam is a member.

2. The measures of temporary stay of performance, suspension of performance and rescission of a contract shall not apply to a non-fundamental breach of a technology transfer contract, except where the parties agree otherwise.

3. The parties may agree to a limit on the amount of compensation payable for loss and damage resulting from breach of a technology transfer contract, unless a provision of law provides otherwise.

4. Application of the sanctions stipulated in clause 1 of this article shall be implemented in accordance with law.

Chapter III

TECHNOLOGY TRANSFER SERVICES

Article 28. *Technology transfer services*

1. Technology transfer services shall comprise:

- (a) Technology transfer brokerage;
- (b) Technology transfer consultancy;
- (c) Appraisal of technology;
- (d) Valuation of technology;
- (dd) Assessment of technology;
- (e) Promotion of technology transfer.

2. Entities conducting technology transfer services business must have a business registration certificate for technology transfer services.

Article 29 *Principles for entering into and performing technology transfer services contracts*

1. A technology transfer services contract shall be entered into via the form of a written contract or in another form as stipulated by law.

2. A technology transfer services contract shall be entered into and performed in accordance with the provisions of this Law, the *Civil Code*, the *Commercial Law* and other relevant laws.

Article 30. *Rights of entities conducting technology transfer services business*

Entities conducting technology transfer services business [services providers] shall have the following rights:

1. To conduct technology transfer services activities for which the services provider has business registration.
2. To require services users to supply necessary information and data to enable the services provider to provide the technology transfer services.
3. To employ domestic and foreign associates in order to assist the technology transfer services activities of the services provider.
4. To receive fees and other benefits for the provision of services in accordance with an agreement.
5. To require services users to pay compensation for loss and damage caused to the services provider and due to the fault of such services users.
6. To conduct [business] co-operation and joint ventures with domestic and foreign entities in order to conduct technology transfer services activities.
7. To participate in domestic, regional and international professional associations in accordance with law.

Article 31. Obligations of entities conducting technology transfer services business

Entities conducting technology transfer services business [services providers] shall have the following obligations:

1. To provide technology transfer services correctly in accordance with the registered business items of such services provider.
2. To strictly perform signed technology transfer services contracts.
3. To be liable to services users for the results of implementation of technology transfer services contracts by the services provider.
4. To pay compensation for loss and damage caused to services users and due to the fault of the services provider.
5. To maintain confidentiality of information in accordance with the agreements in a technology transfer services contract.
6. To discharge financial and other obligations as stipulated by law.

Article 32. Technology assessment services

1. Technology assessment services means either a business or non-business activity conducted in the form of an assessment of a technology in order to verify the actual status of a transferred technology and other matters related to such transfer at the request of one or more parties to a technology transfer contract or at the request of a competent State administrative body.
2. Entities providing technology assessment services and parties requesting assessment of a technology must comply with the provisions of this Law and other relevant laws.

Article 33. Criteria for technology assessors

Technology assessors must satisfy all the following criteria:

1. Have college, university or higher qualifications and have the appropriate expertise for the requirements and field of technology to be assessed.
2. Have at least three years' working experience in the field of technology to be assessed.

3. Have an assessor's certificate in the field of technology to be assessed if the law stipulates that such a certificate is necessary.

Chapter IV

INCENTIVES FOR ENCOURAGING AND PROMOTING TECHNOLOGY TRANSFER

Article 34. *Development of the technology market*

1. The State encourages entities to participate in development of the technology market in the following forms:

(a) By investing in construction of infrastructure for the technology market comprising technology markets, technology fairs and exhibitions, technology transaction centres, establishments fostering technology, establishments fostering technological enterprises and other forms;

(b) By announcing, disseminating, presenting and introducing technologies and by participating in domestic and overseas technology markets, technology fairs and exhibitions.

2. The Ministry of Science and Technology shall co-ordinate with ministries, ministerial equivalent bodies, Government bodies and people's committees of provinces and cities under central authority (hereinafter referred to as *provincial people's committees*) to take measures to encourage and create favourable conditions for domestic and foreign entities to invest in holding technology markets, technology fairs and exhibitions, and to invest in other forms of technology transfer; and shall take measures to attract all economic sectors to participate in development of the technology market.

Article 35. *Encouraged technology transfer to rural areas, mountainous areas, areas with difficult socio- economic conditions and areas with specially difficult socio-economic conditions:*

1. Technologies in the fields of protection and development of gene sources; cross breeding, and improving and raising the economic value of plant varieties and animal varieties.

2. Technologies for the production, preservation and processing of agricultural, forestry and aquaculture products.

3. Technologies for prevention and treatment of natural disasters and epidemics, and for community health care.

4. Technologies for prevention and treatment of epidemics affecting plant varieties and animal varieties.

5. Technologies using recycled energy.

6. Technologies supplying fresh water and protecting the environment.

7. Technologies for improvement of output, quality and effectiveness of traditional products of craft villages.

Article 36. *Responsibilities of entities during technology transfer activities in rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio- economic conditions*

1. Programs and projects on dissemination of plant varieties and animal varieties or technologies for the production, preservation and processing of agricultural, forestry and aquaculture products must contain items of technology transfer.

2. Any entity which disseminates or transfers technology for production, preservation and processing of agricultural, forestry and aquaculture products must report to the State administrative body for science and technology in the locality in which such entity commences implementation of the technology transfer.

3. Any entity which provides plant varieties and animal varieties or which transfers technology for the production, preservation or processing of agricultural, forestry and aquaculture products shall be responsible to provide guidelines on such technology for the users and must pay compensation for loss and damage arising from the provision of such plant variety or animal variety or from transfer of such technology.

Article 37. *Responsibilities of State bodies during technology transfer activities in rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions*

1. Local State administrative bodies for science and technology shall be responsible to provide guidelines and to facilitate activities of dissemination and transfer of plant varieties and animal varieties or technologies for the production, preservation and processing of agricultural, forestry and aquaculture products; and to promote technology transfer activities within their localities, and to inspect, detect and promptly prevent the dissemination or supply of plant varieties and animal varieties or of other technologies which cause loss and damage to users.

2. On an annual basis, the Ministry of Science and Technology shall preside over co-ordination with relevant ministries, ministerial equivalent bodies and Government bodies to conduct appraisals of technology transfer activities in rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions.

Article 38. *Program for national technological renovation*

1. The program for national technological renovation shall be aimed at achieving the following objectives:

(a) Improvement of the national technological capacity and of the effectiveness of technology transfer activities;

(b) Servicing major national economic programs;

(c) Facilitating small and medium-sized enterprises to replace outdated technologies, to apply progressive technology and to master technology which is transferred from overseas to Vietnam;

(d) Strengthening technological resources in rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions.

2. Based on the tasks for socio-economic development in any one period, the Ministry of Science and Technology shall preside over co-ordination with relevant ministries, ministerial equivalent bodies and Government bodies to formulate the program for national technological renovation and shall submit such program to the Government for approval.

3. Ministries, ministerial equivalent bodies, Government bodies and provincial people's committees shall, within the scope of their respective functions and powers, be responsible to organize implementation of the program for national technological renovation.

Article 39. *National Technological Renovation Fund*

1. The National Technological Renovation Fund shall be established, aimed at achieving the following objectives:

(a) Supporting small and medium-sized enterprises to conduct the transfer, renovation and perfection of technologies the transfer of which is encouraged as stipulated in article 9 of this Law;

(b) Promoting the transfer of technologies which service the development of agriculture, forestry and aquaculture in rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions;

- (c) Supporting the fostering of technology and technological enterprises;
- (d) Supporting the training of scientific and technological manpower to service the transfer, renovation and perfection of technologies.

2. The National Technological Renovation Fund shall support the transfer, renovation and perfection of technologies in the following ways:

- (a) By making preferential loans;
- (b) By providing support for loan interest rates;
- (c) By providing loan guarantees;
- (d) By providing capital assistance.

3. The National Technological Renovation Fund shall be formed from the following sources:

- (a) From voluntary contributions by domestic and foreign entities;
- (b) From loan interest;
- (c) From State budget funds reserved for scientific and technological development;
- (d) From other sources.

4. The Government shall issue specific regulations on the establishment, administration and use of the National Technological Renovation Fund.

Article 40. *Transfer of results of State funded scientific and technological development research*

1. The State shall allocate ownership of technology from results of State funded scientific and technological development research to the organization which presided over such research, unless a provision of law provides otherwise.

2. The owner of the results of State funded scientific and technological development research shall be obliged to use and transfer such technology to satisfy the requirements for socio-economic development, for national defence and security, and for the prevention and treatment of disease or for other essential requirements of society.

3. If the owner fails to implement the provisions in clause 2 of this article, then the competent State administrative body for science and technology shall transfer the right to use such results of scientific and technological development research to another organization.

Article 41 *Mortgages of State owned assets in order to implement technology transfer activities*

State owned science and technology organizations shall be permitted to mortgage State owned assets which have been assigned to such organizations in order to borrow loans for implementation of technology transfer activities in accordance with law.

Article 42 *Distribution of revenue from State funded technology transfer activities*

Revenue from State funded technology transfer activities shall be distributed as follows:

1. The author of an invention, industrial design or layout design of a semi-conductor integrated circuit for which a protection title has been issued shall be entitled to receive remuneration in accordance with the provisions of the *Law on Intellectual Property*.

2. If a collective or individual creates a technology not within the category stipulated in clause 1 of this article, the organization presiding over scientific and technological development research and which was allocated ownership of the technology created with State funding must provide specific regulations on ratios of distribution of benefits, and publicly announce the regime for such ratios in accordance with the following principles:

(a) Any collective or individual creating a technology shall be entitled to a percentage of the selling price of products created from such technology for a minimum period of ten (10) years if the organization presiding over the scientific and technological developmental research uses such technology for production;

(b) Any collective or individual creating a technology shall be entitled to from twenty (20) to thirty- five (35) per cent of the monetary proceeds generated by the technology transfer contract.

3. The owner of a technology shall, after paying remuneration to the collective or individual which created the technology, use fifty (50) per cent of the remaining revenue to invest in scientific and technological development research and fifty (50) per cent for the welfare and reward fund.

4. Where technology is created by using a number of funding sources including State funding, then distribution of revenue generated from the portion of State funding shall be implemented in accordance with clauses 2 and 3 of this article.

Article 43. *Capital contribution by way of technology to investment projects*

Any entity with the right to transfer technology as stipulated in article 8 of this Law shall have the right to contribute capital by technology to investment projects. The value of such capital contribution shall be the price of the technology agreed in the technology transfer contract.

Article 44 *Tax policies in order to promote technology transfer activities:*

1. Income tax exemption for any entity contributing capital by an invention patent licence [and/or] technology licence.

2. Import duty exemption on goods imported for direct use in scientific and technological development research or in renovation of technology, such goods to comprise machinery, equipment, accessories, materials and transportation facilities not yet able to be produced domestically; technologies not yet able to be created domestically; and scientific data and textbooks.

3. Specialized use machinery, equipment and transportation facilities in the category not yet able to be produced domestically which service performance of a technology transfer contract shall not be subject to value added tax.

4. Production and business establishments investing in the construction of new production lines, expansion of scale, renewal of technology, improvement of the ecological environment or increase of production capacity shall be exempted from corporate income tax in respect of any increase in income for four years and shall be granted a fifty (50) per cent reduction of income tax payable for the seven subsequent years.

5. Enterprises investing in renovation of technology which receive a technology on the list of technologies the transfer of which is encouraged shall be exempted from [corporate] income tax for four years on condition that the total value of the exempted tax does not exceed fifty (50) per cent of the total funding of the investment in renovation of technology.

6. Enterprises in an area with difficult socio-economic conditions or in an area with specially difficult socio-economic conditions which receive technology when implementing an investment project shall be entitled to the following incentives:

(a) Exemption from corporate income tax for four years from the time when taxable income arises and a fifty (50) per cent reduction of tax payable in the nine (9) subsequent years on condition that the total value of the exempted tax does not exceed fifty (50) per cent of the total funding of the investment in renovation of technology;

(b) Import duty exemption on goods servicing the replacement or renovation of technology and on raw materials, materials and electronic components used for production for five (5) years from the time of commencement of production with the new technology.

7. Entities which transfer technology in the sector of priority transfer to rural areas, mountainous areas, areas with difficult socio-economic conditions and areas with specially difficult socio-economic conditions shall be granted a fifty (50) per cent reduction of income tax payable on income generated from the technology transfer [and/or] from the provision of plant varieties or animal varieties.

8. Establishments fostering technology [or] fostering technological enterprises shall be exempted from [corporate] income tax for four years and shall be granted a fifty (50) per cent reduction of [corporate] income tax payable for the nine (9) subsequent years and shall be exempted from land use rent.

Article 45 *Encouraging enterprises to apply and to renovate technology*

Enterprises shall be permitted to deduct a portion of their annual pre-tax profit to establish a science and technology development fund in order to conduct scientific and technological development research and in order to renovate technology. If the fund is not used or if it is used for incorrect purposes during a period of five (5) years, then the enterprise must pay to the State budget corporate income tax on the portion of pre-tax profit which the State allowed the enterprise to deduct plus interest arising on such pre-tax profit portion.

The Government shall make a submission to the National Assembly to issue a decision on the level of deduction of pre-tax profit stipulated in this article.

Article 46. *Encouraging foreigners and Vietnamese residing overseas to transfer technology to Vietnam*

Foreigners and Vietnamese residing overseas who participate in transfer of a technology on the list of technologies the transfer of which is encouraged or who transfer a technology in an area with difficult socio-economic conditions or in an area with specially difficult socio-economic conditions shall be entitled to the following incentives:

1. The incentives stipulated in article 44 of this Law.
2. Individuals and their family members shall be issued with a multiple entry/exit visa for a term consistent with the duration for implementation of the technology transfer contract.
3. Favourable conditions for residence and travel.
4. Other incentives as stipulated by law.

Article 47. *Encouraging development of technology transfer services organizations*

The State encourages and shall facilitate domestic and foreign entities to set up establishments fostering technological enterprises, technology trading floors, technology markets, technology fairs and other technology transfer services organizations; and to organize establishments presenting, introducing, applying and transferring technology in rural areas and mountainous areas in order to promote technology transfer activities.

Article 48 *Responsibilities of overseas Vietnamese representative diplomatic bodies regarding technology transfer activities*

Overseas Vietnamese representative diplomatic bodies shall be responsible to support and promote technology transfer activities, and to facilitate entities to conduct promotional activities for the transfer of technology from overseas to Vietnam and from Vietnam to overseas.

The Government shall provide specific regulations on the responsibilities of overseas Vietnamese representative diplomatic bodies regarding technology transfer activities.

Article 49. *Announcement, presentation and introduction of technology*

1. The competent State administrative body for science and technology shall have the following responsibilities for the announcement, presentation and introduction of technology:

- (a) To annually announce a list of technologies created with State budget funding, except where a provision of law provides otherwise;
- (b) To encourage and assist entities to announce new technologies created by such entities.

2. The State shall have measures to support entities with new technology created domestically to undertake the announcement, presentation and introduction of such technologies and to participate in technology markets and technology fairs both within Vietnam and overseas.

Article 50. *Statistics on technology transfer*

1. Statistics on technology transfer comprise statistics on technological data which has been transferred, on new technologies, and on technologies which have been renovated; and such statistics shall comprise one of the items in the annual statistical report of the State administrative body for statistics.

Statistics on technology transfer shall be implemented in accordance with the law on statistics.

2. Enterprises, scientific research and technological development organizations, universities, colleges and other training establishments shall be responsible to annually provide their own statistics on technological transfer to the State administrative body for science and technology.

3. The Central Statistics Body shall preside over co-ordination with the Ministry of Science and Technology to provide specific regulations on the regime for reporting statistics on technology transfer.

Chapter V

RESPONSIBILITIES OF STATE ADMINISTRATIVE BODIES FOR TECHNOLOGY TRANSFER ACTIVITIES

Article 51. *Responsibilities of the Government*

The Government shall have the following responsibilities for the exercise of State administration of technology transfer activities:

1. To exercise uniform State administration of technology transfer activities.
2. To direct the formulation and promulgation of strategies, plans, programs, regimes, policies and measures for promotion of technology transfer activities and for renovation of technology consistent with each stage of socio-economic development of the country, and to organize implementation of such items.
3. To direct inspection of implementation of the law on technology transfer; to disseminate and teach the law on technology transfer.
4. To decentralize and allocate functions of State administration of technology transfer activities.
5. To promulgate the list of technologies the transfer of which is encouraged, the list of technologies the transfer of which is restricted, and the list of technologies the transfer of which is prohibited.
6. To conduct checks and inspections, to resolve complaints and denunciations, and to deal with breaches of the law during technology transfer activities.

Article 52. Responsibilities of the Ministry of Science and Technology

The Ministry of Science and Technology shall have the following responsibilities for the exercise of State administration of technology transfer activities:

1. To be responsible before the Government for exercising administration of technology transfer activities; to promulgate legal instruments on technology transfer in accordance with its authority.
2. To preside over co-ordination with ministries, ministerial equivalent bodies and Government bodies in formulation of strategies, plans, measures, regimes and policies for promotion of technology transfer activities and renovation of technology, and to submit same to the Government for promulgation.
3. To formulate the list of technologies the transfer of which is encouraged, the list of technologies the transfer of which is restricted, and the list of technologies the transfer of which is prohibited; to submit such lists to the Government for promulgation; and to organize implementation thereof.
4. To issue and revoke technology transfer permits in the case of technologies on the list of technologies the transfer of which is restricted; to issue and revoke certificates of registration of technology transfer contracts.
5. To announce, in accordance with law, the list of technologies created with State funding.
6. To organize the work of compiling statistics on technology transfer in accordance with law.
7. To organize the work of checks and inspections, resolution of complaints and denunciations, and dealing with breaches of the law on technology transfer.
8. To carry out other duties as authorized or delegated by the Government.

Article 53. Responsibilities of ministries and ministerial equivalent bodies

Ministries and ministerial equivalent bodies shall have the following responsibilities for the exercise of State administration of technology transfer activities:

1. To co-ordinate with the Ministry of Science and Technology in formulating the list of technologies the transfer of which is encouraged, the list of technologies the transfer of which is restricted, and the list of technologies the transfer of which is prohibited; and in formulating strategies, plans, programs, measures, regimes and policies for promotion of technology transfer activities and for renovation of technology.
2. To organize implementation of the program for national technological renovation in the fields for which responsibility has been delegated to them.
3. To facilitate technology transfer activities, especially technologies the transfer of which is encouraged and technology transfer in geographical areas to which the transfer of technology is encouraged.
4. To organize dissemination and training of the law on technology transfer.
5. To carry out other duties as authorized or delegated by the Government.

Article 54. Responsibilities of people's committees at all levels

People's committees at all levels shall have the following responsibilities for the exercise of State administration of technology transfer activities:

1. Provincial people's committees shall exercise State administration of technology transfer activities within their localities in accordance with authority delegated to them by the Government.

2. People's committees at all levels shall be responsible, within the scope of their respective duties and powers, to facilitate technology transfer activities within their localities.

Chapter VI

DISPUTE RESOLUTION, COMPLAINTS AND DENUNCIATIONS, AND DEALING WITH BREACHES

Article 55. *Dispute resolution during technology transfer activities*

Dispute resolution during technology transfer activities shall be implemented in the following forms:

1. Negotiation between the parties.
2. Conciliation between the parties as mediated by an entity selected by agreement between the parties.
3. Resolution by a domestic or foreign arbitrator or court.

Article 56. *Principles for dispute resolution*

1. Any dispute arising during technology transfer activities to which the parties are Vietnamese entities shall be resolved in accordance with the provisions of this Law and other relevant laws.
2. With respect to any dispute arising during technology transfer activities to which one party is a foreign entity, the parties shall have the right to select the dispute resolution tribunal and the applicable law in accordance with article 4 of this Law in order to resolve the dispute.
3. Any dispute arising during technology transfer activities in which the parties do not reach agreement on selection of applicable law shall be resolved in accordance with the law of Vietnam.

Article 57. *Complaints and denunciations*

1. Organizations and individuals shall have the right to lodge a complaint with the competent State administrative body about conduct during technology transfer activities infringing the lawful rights and interests of such organization or individual, or to institute court proceedings in accordance with law.
2. Individuals shall have the right to make a denunciation to the competent State administrative body about conduct in breach of this Law.
3. Complaints and denunciations during technology transfer activities and their resolution shall be implemented in accordance with the law on complaints and denunciations.
4. Any administrative decision of a competent State administrative body for technology transfer which is effective shall remain enforceable throughout the period during which any organization or individual lodges a complaint, makes a denunciation, or institutes legal proceedings; only when there is a decision resolving a complaint or denunciation from the competent State administrative body for technology transfer or when there is a verdict of the court shall enforcement be implemented in accordance with such decision or verdict.
5. Competent State administrative bodies for technology transfer at all levels shall be responsible to resolve complaints and denunciations made by organizations and individuals which are within the jurisdiction of such bodies.

Article 58. *Dealing with breaches of the law on technology transfer*

1. Any entity in breach of the law shall, depending on the nature and seriousness of the breach and its consequences to technology transfer activities, be dealt with in one of the following forms:
 - (a) Be subject to a penalty in accordance with the law on dealing with administrative breaches during technology transfer activities;

(b) Be subject to criminal prosecution in accordance with law.

2. If a breach of law during technology transfer activities causes loss and damage to the interests of the State or to the legal rights and interests of other entities, then the offender must pay compensation in accordance with law.

Chapter VII

IMPLEMENTING PROVISIONS

Article 59. Transitional provisions

1. Any technology transfer contract which the competent State administrative body certified for registration or approved prior to the date on which this Law takes effect shall continue to remain effective until expiry of the effective term of the contract.

2. Any application file for registration of a technology transfer contract which was lodged with the competent State administrative body prior to the date on which this Law takes effect but which has not yet been resolved shall be governed by this Law.

3. Organizations providing scientific and technological services which were established and operating prior to the date on which this Law takes effect shall not be required to re-register their operations if they satisfy the operational conditions stipulated in this Law. Any such organizations which fail to satisfy the operational condition stipulated in this Law must conduct re-registration of their operations within a period of twelve (12) months from the date on which this Law takes effect.

Article 60. Effectiveness

This Law shall be of full force and effect as from 1 July 2007.

Article 61. Implementing guidelines

The Government shall provide detailed regulations and guidelines for implementation of this Law.

This Law was passed by Legislature XI of the National Assembly of the Socialist Republic of Vietnam at its 10th Session on 29 November 2006.

CHAIRMAN OF THE NATIONAL ASSEMBLY

Nguyen Phu Trong

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