

The role of technology service contracts in the transfer of technical knowledge: A model of technical cooperation contract

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Abstract---Technical assistance is a fundamental requirement that must be fulfilled to enable the recipient or importer to assimilate technical knowledge. This is particularly important given the recipient's lack of experience in the transferred knowledge. Technical services enhance the recipient's efficiency and technological capabilities when they include the necessary expertise, knowledge and information for acquiring the appropriate technology. They are a key part of the supplier's commitment to transferring technical services to the importer.

Keywords---technical assistance, technology, technical knowledge, technical services.

Introduction

The technological gap between industrialised countries and developing countries necessitates change and development. Technological development is not merely about adopting the latest available technologies or importing modern machinery from more advanced countries to increase production. Rather, it refers to the knowledge employed and the ability to apply scientific research to manufacture a specific product.

In order to reduce the technological knowledge gap between importers and suppliers of technology, there has been an increase in the use of technology transfer contracts. These contracts involve the transfer of technical knowledge and aim to stimulate commercial and economic growth.

Technology providers and recipients have different perspectives. Suppliers view technology as a means to an end, with the aim of preserving their strategic informational resources involved in technology

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transfer and of benefiting financially from the cost of the transferred technology. Importers, on the other hand, seek to utilise the transferred technology to achieve comprehensive development across all commercial, investment and economic activities at project, organisational and national levels.

Technical knowledge transfer contracts are one of the tools that contribute to securing the transfer of technical knowledge from exporting to receiving countries in a way that can help reduce the apparent gap in industrial, economic and scientific development between nations.

Accordingly, we pose the following question: How can a technical cooperation contract facilitate the effective transfer of technology to the receiving party?

Section One: The Technical Cooperation Contract as a Means of Transferring Technical Knowledge

Technical assistance is provided within the framework of technology transfer contracts, through mechanisms that are defined in the contract between the involved parties. This contract sets out the obligations and rights of each party. This section will address the concept of technical assistance and the mechanism for providing it.

Subsection One: The Concept of Technical Cooperation

It is defined as training to assimilate the technology that has been transferred. Through this, the contracted service provider assists in completing a physical, intellectual, industrial or commercial task¹. It can also be defined as providing the necessary services to implement the transferred technical knowledge².

Due to the evolution of the concept of technical assistance, it has become necessary to distinguish it from technical knowledge and industrial cooperation.

The common thread between technical assistance and technical knowledge is their connection to technical know-how. Furthermore, technical assistance is distinguished from technical knowledge by the personal nature of its execution, which is evident in documents and technical records. Meanwhile, technical assistance focuses on the expertise and skills acquired by technicians³.

In order to illustrate the distinction between technical assistance and industrial cooperation, it is important to define the latter. The United Nations Economic and Social Council's Economic Commission for Europe defines industrial cooperation contracts as 'processes that go beyond the simple sale and purchase of goods and services, necessitating the establishment of a common interest between different countries for a specific period. These processes often have a developmental character'. From this definition, it can be inferred that industrial cooperation contracts often occur between equally developed parties, i.e. developed countries. This is the basis for the distinction between technical assistance and industrial cooperation⁴.

Subsection Two: The Mechanism for Providing Technical Cooperation

Technical assistance is provided through two main methods, which enable the receiving party to acquire expertise and control over the transferred technology until they can manage and employ it independently. These methods are associated and independent technical assistance contracts.

1. Associated technical cooperation:

This refers to the assistance provided within production delivery contracts. This method is effective and impactful within the contractual relationship between two projects with a relatively similar technological

¹- Philippe Le Tourneau, *Engineering, Technology Transfers, and Industrial Mastery*, LexisNexis, Paris, 2016, p. 205.

²- J. Jbust, *Technical Assistance in Technology Transfer Contracts*, Recueil, Dalloz, Sirey, 1979, p. 2.

³- Mahmoud Kazem Dargham, *The Legal Status of the Recipient in Technology Transfer Contracts*, Al-Halabi Legal Publications, Lebanon, 2017, p. 215.

⁴- Mahmoud Kazem Dargham, *Previous Reference*, p. 215.

level. Therefore, technical assistance for the recipient, who possesses self-reliant technological capabilities, is secondary rather than fundamental⁵.

The provider is committed to offering technical assistance to the recipient, whether in an abstract moral form or accompanied by a material component. The former involves developing the recipient's ability to initiate activities and covers various details, including administrative, informational and marketing issues, as well as maintenance and training tasks. The latter involves providing guidance on procuring, storing and marketing goods⁶.

Within the limits required by the recipient's company and in a reasonable manner, the provider offers all possible technological assistance to the recipient to ensure profits from reasonable technology. The provider also provides all technology transfer specialists available to the provider whom the recipient's company urgently needs for technological assistance. The provider also trains the recipient's employees and transfers some of them to the supplier's facility during the implementation of the transferred technical method⁷. The recipient covers the travel expenses of the employees and all related costs, and ensures that the provider's experts teaching and training the recipient's users possess the necessary qualifications and skills⁸.

Due to the recipient's lack of competence and ability to absorb the transferred technology, the provider is obliged to offer them technical assistance, which is considered one of the contract's requirements, even if it is not explicitly stated. This obligation arises from the recipient's unfamiliarity with the technology in question. Consequently, the purpose of the assistance is to achieve the desired outcome and ensure the effective transfer of technical knowledge and technology. The recipient's right to obtain technology in exchange for the substantial amount they have paid is manifested in the necessity of achieving the result they sought in the contract. However, technical assistance may not necessarily be a contractual requirement, meaning the provider may not be obligated to offer it if the recipient can manage the technology without assistance⁹.

The obligation to provide technical assistance corresponds to the recipient's technical level. If the technological levels of the provider and recipient are similar, the recipient will have the capability to implement the technology without technical assistance.

Legal opinions on this matter are divided into two camps. Some argue that the provider is not obligated to offer technical assistance unless it is stated in the contract, and that it must be mentioned in the contract for this obligation to be recognised. Conversely, others believe that this obligation still applies even if it is not mentioned in the contract, as it is required by the principle of good faith to enable the recipient to absorb and control the technology. Dr. Mortada Jumaa Ashour argues that the obligation to provide technical assistance exists even when it is not explicitly stated in the contract¹⁰.

2. Unassociated technical cooperation:

If a request for technical assistance is included as an explicit clause in the contract, it constitutes a requirement of the contract and the provider is obliged to transfer it to the recipient. The provider is bound by this obligation since the contract serves as the law of the contracting parties, and the parties have included the clause in their agreement.

The French Court of Cassation adopted this classification when it ruled in 1958 to reject an appeal by a company against a judgment that had annulled the contract due to the appellant company's failure to fulfil its obligation to provide technical assistance. Similarly, in 1976, the Supreme Court in Paris ruled

⁵- Walid Ouda Al-Hamshari, *Technology Transfer Contracts: Mutual Obligations and Restrictive Conditions: A Comparative Study*, 1st edition, Dar Al-Thaqafa, Amman, 2009, p. 100.

⁶- Amal Ben Azza, 'The Role of Technology Transfer Contracts in Transferring Technical Knowledge', Doctoral Dissertation, Private Law Specialisation, Abou Bakr Belkaid University, Tlemcen, Academic Year 2017–18, p. 206.

⁷- Mahmoud Al-Kilani, *Commercial and Banking Encyclopedia: International Trade Contracts in Technology Transfer*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, p. 160.

⁸- Amal Zidan, *Confidentiality Obligations in Technology Contracts: A Comparative Study*, Dar Al-Noor for Publishing, Germany, 2008, p. 290.

⁹- Walid Ouda Al-Hamshari, *Previous Reference*, p. 102.

¹⁰- Amal Ben Azza, 'Previous Reference', pp. 207, 206.

that, in the absence of an explicit clause in the contract, the licensor is not obliged to provide technical assistance to the recipient¹¹.

Subsequent judicial rulings have generally established the obligation of the provider, whether as a seller or lessor, to offer technical assistance as long as the recipient lacks sufficient technological competence and skills to control and absorb the transferred technology without it.

The importance of providing technical assistance has increased due to the widespread conclusion of technology transfer contracts aimed at achieving industrial and technological control, given the significant role that technical assistance plays in this process. This assistance facilitates the implementation of the contract's main subject and is a legal obligation, even if the contract lacks a specific reference to it. This assistance is linked to the essence of technical knowledge and represents one of the ways in which it is transferred to the receiving party. It is a complementary obligation to the technology transfer contract¹².

From the preceding discussion, we can conclude that technical assistance plays a critical role in technology transfer, particularly in the industrial sector. Industrial machines and equipment may cease to function properly soon after the provider stops offering assistance to the recipient. However, caution must be exercised to prevent the provider from abusing their authority when providing technical assistance to the recipient, as this could lead to violations, exceeding the recipient's independence and resulting in economic dependency on the provider.

Section Two: The Technical Cooperation Contract as a Mechanism for Transferring Technical Knowledge

Technical assistance is continuous, beginning before the contract is concluded and continuing throughout its duration, as it is linked to the transferred technical knowledge. This knowledge is not delivered all at once at the time of contracting, but in three distinct stages: before, during and after the contract.

Subsection One: Stages of Providing Technical Cooperation

The temporal scope includes several phases that begin before any contractual relationship is established between the provider and the recipient¹³. During this initial period, the provider conducts preliminary market, social, economic and financial studies to evaluate the feasibility of the proposed project. This includes a specific study related to the project's location and sources of raw materials, as well as assistance in developing detailed work plans concerning the construction site, machinery, engineering work, and tools and equipment. The recipient must use the provider's facilities and equipment during working hours in a way that does not conflict with the provider's commercial interests¹⁴.

Additionally, the provider grants the recipient the right to visit their facilities to showcase the technology and equipment used. The recipient must provide the provider with advance notice of their visit within a reasonable timeframe, and these visits should be subject to standards and conditions related to the contract, the provider's operations, and the circumstances of employees and clients¹⁵.

The second phase, which involves providing technical assistance during the execution of the contract, is considered one of the most important stages of the process. During this phase, the recipient can benefit from the provider's expertise and advice, which has been available since activities began. This technical assistance includes verifying that the facilities, machinery, production methods, goods and services meet the approved specifications and standards. This also encompasses assistance with purchasing the necessary equipment for the project, operational management, implementing production methods and helping the recipient to train staff and implement the project. While the provider assists the recipient in the selection and appointment processes, the recipient retains decision-making authority and bears full

¹¹- Nada Kazem Al-Mawla, *The Legal Effects of Technology Transfer Contracts*, 1st edition, Wael Publishing House, Amman, 2003, p. 185.

¹²- Nada Kazem Al-Mawla, *Previous Reference*, p. 159.

¹³- Amal Zidan, *Previous Reference*, p. 191.

¹⁴- Amal Zidan, *'Same Reference'*, pp. 292, 291.

¹⁵- Amal Ben Azza, *Previous Reference*, p. 209.

responsibility for the outcomes of their decisions. The provider's involvement is limited to technical aspects¹⁶.

This situation leads to the provider's technical authority predominating over the recipient's administrative authority, since the provider has oversight of technical matters and the authority to assess the recipients' absorption of training and competency. If the provider deems the recipients unsuitable, the employment relationship, in which the provider was not a party, will end. The provider often bases termination of the employment relationship on economic reasons, which removes them from effective judicial oversight¹⁷. The technical assistance provided at the start of the activity establishes the foundation upon which the project's success is built, positioning the recipient for launch and enabling them to benefit from the provider's expertise. Failure to offer consultations and advice is considered a breach of the provider's obligation to provide assistance.

Throughout the duration of the contract, the provider is responsible for continuing to offer technical assistance to the recipient on a periodic and ongoing basis. During this period, the provider offers advice and guidance, and the nature of the support provided may be commercial, technical, promotional, administrative, legal or financial. This continuous support includes training and qualifications to improve technical knowledge, as well as keeping the recipient informed of any ongoing modifications¹⁸.

During this phase, technical assistants are assigned a general task involving active contribution to project operations and production enhancement. Initially, the assistants conduct the necessary studies to prepare management and train employees in all techniques related to the exploitation of the facilities. They also contribute to improving production and utilising the project effectively. Technical assistance throughout the contract period is essential for the recipient to maintain their understanding of technical knowledge. At this stage, technical assistance is provided from the start of the activity until the end of the contract. This prolonged assistance can result in the recipient becoming subordinate to the provider, which maintains the provider's control over the technology and, simultaneously, over the recipient's project and the host country's markets. This results in the recipient losing independence for the duration of the contract, a situation often referred to as a lack of true independence¹⁹.

The significance of technical assistance in this phase lies in its role as a complement and support in the transfer of technical knowledge. Consequently, any updates and developments to this knowledge must be communicated by the provider to the recipient. The role of technical assistance is thus highlighted, as it acts as a means for the recipient to keep pace with ongoing developments and is crucial during this phase, playing an important role in enabling the recipient to comprehend the content of the technical knowledge and any improvements that occur continuously²⁰.

Technical assistance is an obligation placed on the provider that lasts for the entire duration of the contract. If this obligation is not met, the recipient has the right to request termination or annulment due to a defect in the technology transfer contract. This involves the provider supplying the recipient with all the information needed for the application process, as well as training workers and employees on how to use the technical knowledge. This obligation can either be defined when the contract is concluded, or it can be continuous throughout the execution period. In any case, the principle of good faith in contract performance requires this assistance, as it enables the true transfer of technical knowledge²¹.

Regardless of the form of technical assistance, the aim should be to support the recipient until they can fully understand and utilise the technical knowledge effectively and in a way that suits their economic, technical and social circumstances. It is important to note that the provision of technical assistance by the provider imposes additional financial burdens on the recipient, necessitating careful organisation within the contract, including the specification of financial compensation, the location of the assistance,

¹⁶- Faisal Ahmed Abdullah Al-Sabri, 'The Role of Franchise Contracts in Technology Transfer', Doctoral Dissertation, Faculty of Law, Egypt, 2019, p. 141.

¹⁷- Faisal Ahmed Abdullah Al-Sabri, 'Same reference', p. 141.

¹⁸- Amal Zidan, 'Previous Reference', p. 294.

¹⁹- Faisal Ahmed Abdullah Al-Sabri, 'Previous Reference', p. 141.

²⁰- Faisal Ahmed Abdullah Al-Sabri, 'Same Reference', p. 140.

²¹- Amal Zidan, 'Previous Reference', p. 295.

the number of trainers, their qualifications, and other details that must be precise and clear within the contract between the parties²². If the obligation to provide technical assistance is worded ambiguously, this may benefit the provider by enabling them to monitor the transferred technology and include restrictive conditions that could lead to the provider monopolising the technology.

Subsection Two: Means of Providing Technical Cooperation

The obligation to provide technical assistance involves conveying all relevant information and technical resources to the recipient, as well as providing a number of qualified specialists with high technical skills. The contract should specify the terms for providing this assistance, including the type of training, its subject, location, duration and other details²³.

There are several ways to provide technical assistance to help the recipient overcome technical issues. The provider intervenes to supply the necessary resources to enable the recipient to apply the technical knowledge. These methods vary depending on their nature and the type of activity, and can be either tangible or intangible, as outlined below.

Tangible documents:

These include transferred knowledge in the form of manuals containing operating methods and ways to utilise technical knowledge, which the recipient will use throughout the contract period. They serve as a model for operation that the recipient must follow during the execution of the contract. These documents are not part of the contract and are provided after it has been concluded. They may contain methods for selecting the project location, employees and maintenance procedures for equipment and machinery. They may also include magazines and periodicals that provide detailed accounts of the provider's guidelines and their previous positive and negative experiences, from which the recipient can benefit²⁴.

Experts and technical assistants:

The provider selects experts with sufficient experience and skills, and assigns them to visit the recipient's project to train users and prepare them to understand and implement the transferred technical knowledge and operational requirements. Alternatively, the provider may assign a distinguished technical team to assist with operating the recipient's project, or to continue working within the recipient's organisation for a specified period. Providing technical assistance through the provider's experts is necessary to help the recipient absorb the transferred technology, and to train their technical and administrative staff and assist them in operating and comprehending the technology²⁵.

The process of selecting experts and technical assistants is subject to precise conditions and criteria. They must have participated in previous projects, meaning they should possess the necessary experience and qualifications to convey their expertise and skills to others. Experts and technical assistants have a direct working relationship with the provider and are not subject to the recipient's authority. They execute the provider's technical instructions exclusively and the recipient is responsible for paying their salaries and benefits.

Training and education:

Training and education are among the most effective means of acquiring technical skills and knowledge. They enable the provision of qualified technical staff to manage the operational processes of a specific production unit. During the training process, the provider is committed to transferring a set of technical knowledge and necessary information so that the recipient's technical team can effectively utilise the

²² Ilham Ben Sa'id, 'Technology Transfer Contracts and Their Relation to Development', Doctoral Dissertation, Mohammed Khedar University, Biskra, 2011–12, p. 130.

²³ Abdul Hadi Muhammad Al-Ishri, *The Legal System of Technology Transfer and Recent Developments in Public International Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2011, p. 7.

²⁴ Amal Ben Azza, 'Previous Reference', p. 211.

²⁵ Faisal Ahmed Abdullah Al-Sabri, 'Previous Reference', p. 136.

technology. The quality of training depends on careful selection of trainees, their number, the training course duration and the programmes to be conducted, all of which should be specified in the contract²⁶. Training includes two phases: theoretical and practical. Theoretical training covers basic core skills such as language learning, computer science and more, addressing the foundational knowledge of workers who may not possess the required technical level. This theoretical training is often conducted through contracts between the provider and vocational training centres or service institutions²⁷.

Practical training aims to transfer technical knowledge that supports and complements the technical information included in the technology, with the involvement of technicians and engineers affiliated with the provider. Through its experts, the technology provider is committed to training the recipient's workers on how to use the technology²⁸. The aim is to establish a local team capable of managing and investing in the technology to achieve the technology transfer process's desired objectives. This commitment must be clearly set out in the contract, detailing all aspects related to the training, the qualifications of the experts and the costs of their recruitment. It should also outline their technical competencies²⁹.

Training and education are considered a tangible and concrete method of effectively transferring technology and technical knowledge to recipients, enabling them to benefit fully and adequately from the transferred technology. Training the recipient requires establishing and preparing a long-term programme, or conducting training at their facilities if necessary. The programme should specify the level and type of training to be provided, the number of trainees and their qualifications, the training's duration and location, and its financial costs.

Here is the direct English translation of the text you provided:

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Training is of great importance in providing technical assistance and transferring technological control to the recipient. As training represents a commercial process aimed at generating additional income, especially if linked to the supply of machines and equipment, the provider has an obligation to exercise due care.

According to Magnin, the delivery of documents or even the conclusion of a training contract is sometimes insufficient for the effective utilisation of technical knowledge, particularly in specialised technical fields. Often, the recipient lacks sufficient experience and thus strives to obtain a commitment from the supplier to provide technical assistance³⁰.

Technical assistance is defined as the process of transferring technical knowledge from research laboratories to market locations. In other words, it involves an exchange of information between research scientists offering innovations and end users³¹.

Technical and technological capabilities can only be transferred to recipients through a set of obligations and varied performances placed on the provider. One of the most significant of these obligations is the assignment of technical personnel from the provider to teach and train the recipient's users, equipping them with the necessary skills and experience for application in the production

²⁶. Walid Ouda Al-Hamshari, *Previous Reference*, p. 79.

²⁷. Hamid Saltani, *International Technology Transfer Contracts: A Study of the Legal Mechanisms for Protecting and Transferring Industrial Technical Knowledge*, Doctoral Dissertation, University of Algiers 1, Academic Year 2017–18, pp. 184–185.

²⁸. Ahmed bin Fahd bin Hamin Al-Fahd, 'Technology Transfer Contracts', Doctoral Dissertation, Imam Muhammad bin Saud Islamic University, Saudi Arabia, 2012, p. 316.

²⁹. Amal Zidan, 'Previous Reference', p. 195.

³⁰. François Magnin, *Know-How and Industrial Property*, Paris, 1974, p. 316.

³¹. Sandra Pellet, *Technology Transfers to Developing Countries*, Éditions La Découverte, Paris, 2009, p. 229.

process. Technical assistance to recipients may be stipulated as a condition or clause in contracts, such as turnkey or deliverable product contracts, or it may exist as a separate contract³².

Conclusion

Technology is a fundamental factor for countries experiencing changes to their systems and legal environments. This leads to the emergence of new contracts that offer several economic advantages, including technology transfer contracts. This contract has emerged as a result of increasing international economic relations and the expansion of investment witnessed by many countries, particularly developing nations.

The technology transfer contract involves the transfer of technical knowledge, which the supplier must provide to the importer. Technical knowledge is an essential component of technology and the main focus of technology transfer operations at an international level. This contract plays a crucial role in enabling developing countries to access technical knowledge, which is currently confined to a small number of advanced countries. This has resulted in an increasing disparity between these countries.

From this, we draw the following conclusions:

The core subject of the technology transfer contract is technical knowledge, obliging the provider to transfer various technical skills and experiences to the recipient.

Technical knowledge is central to technology transfer operations at an international level.

Technical knowledge is of significant importance within the framework of technology transfer, particularly in the industrial sector.

We also offer the following suggestions:

- The codification of the technology transfer contract should stipulate that the contract is void if it contains any restrictive conditions that limit the importer's freedom to use the technology.

There is a need to seek suitable frameworks that assist developing countries in gaining technological capability, including legal mechanisms that prevent technology-owning companies from obstructing or limiting the effective transfer of technology.

We call on the Algerian legislator to enact specific legislative texts to regulate technology transfer processes. These texts should ensure that all necessary elements are in place for the national recipient to understand and control technological knowledge appropriately. This should be in line with the country's legal system and achieve the desired economic and technological interests.

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³²- Amal Zidan, 'Previous Reference', p. 195.

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