



Technology transfer in Malaysia: turnkey contracts

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One of the primary ways that transfer of technology commonly occurs in Malaysia is through turnkey contracts. Turnkey arrangements work best for proven and tested technologies, and are generally not appropriate for new technologies where there will be a huge reliance on the turnkey contractor for support and maintenance.

A turnkey contract is not a contract for "works" to be performed; rather, it is a contract for the delivery of an "end-product" to a customer in accordance with the requirements and specifications of the customer. As such, it is important to note that there is no standard form of a turnkey contract. Such a contract is usually drafted based on the strategy, objectives, requirements and specifications of the customer. A turnkey contract for technology transfer will describe in detail the technological content and principal features of the technology, quality and specifications of the end-product, warranties on the performance of the end-product, and particulars of technical assistance and support services provided. It will comprise the licensing structure, underlying know-how, patents, engineering design and site development services, full specifications for installation and operation, request for proposals to suppliers and sub-contractors, general contracting and commissioning of operation, supply of consumables, on-going support services, access to technology improvement, and guarantees of technology performance.

The technology in a turnkey arrangement is either licensed or assigned. An assignment of intellectual property rights takes place when all the rights to a technology are transferred – without any restriction in time or other condition – by the owner of the patented technology to another person. Alternatively, an owner of the technology may license an entity to perform activities which are covered by the exclusive rights to the patented technology in a particular jurisdiction for a prescribed period of time. These activities may take the form of the making

or using of a product that includes the invention, or making of products by a process that includes the invention. A licence may also be granted in relation to know-how. Know-how refers to the knowledge and expertise in a given technological field, and may be communicated in a tangible form by way of documents, specifications, engineering designs, drawings etc., or in an intangible form by way of a consultant explaining a technical process to the technology recipient.

The sale, purchase and import of machinery and equipment needed for the manufacture of products or the application of a technical process also forms part of the turnkey arrangement. Consultancy arrangements under a turnkey contract relate to the support, advice or other technical assistance provided by a consultant in designing a new plant, preparing tenders for the construction of a new building, plant or equipment, enhancing existing technology, or other activities for which expert advice with relevant know-how may be required.

Turnkey contracts have proven to be a rapid way of technology transfer in Malaysia and most governmental infrastructure projects are constructed on a turnkey basis. It is appealing due to its "one point contact – one point responsibility" concept. In addition, turnkey contracts have also worked better in Malaysia as they avoid the 'passing the buck' mentality which is prevalent. Turnkey arrangements should, however, not be perceived as a simple solution to problems involving lack of local technical skills and expertise. In the final analysis, the decision on the type of technology transfer arrangement to adopt depends very much on factors internal to a particular organisation and the specific technology in question. The preparation and negotiation of a technology transfer contract, be it turnkey or otherwise, is often a complex process and parties are encouraged to seek experienced lawyers with expertise in technology transfer to advise them before venturing into a technology transfer transaction.

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