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Technology Transfer in Myanmar: Science, Technology and Innovation Law 2018

After more than three years of deliberation and consultation with multiple stakeholders and industry experts, Myanmar's new Science, Technology and Innovation Law (No. 22/2018) (the Law) was finally enacted into law on June 25, 2018. The Law, which repealed the old Science and Technology Development Law (No. 5/1994), is set to introduce substantial changes to collaborative innovation practices in the country.

The Law is administered by the Department of Research and Innovation (DRI). The DRI, once known as the Myanmar Scientific and Technological Research Department pursuant to the reorganization under the Science and Technology Development Law (No. 5/1994), was first established as the Central Research Organization under the Union of Myanmar Applied Research Institute Act 1985. Following the absorption of the Ministry of Science and Technology into the Ministry of Education in April 2016, the DRI now functions as a department within the Ministry of Education.

The Law defines "technology transfer" as the partial or complete transfer of expertise and services which are beneficial to production processes and which are a combination of skill and know-how, for purposes of ownership or use by an individual or organization. The new definition is an improvement from the old law, which explicitly excluded the sale, purchase, and hiring of goods from the meaning of technology or technology transfer. Furthermore, it is now clear under the new Law that technology transfer covers both licenses and assignment of rights—an important feature that lacked clarity under the 1994 law. Section 20 of the Law provides that technology transfer can be carried out by the following methods:

1. by allowing others to use the technology for free;
2. by allowing others to use the technology for a fee, for a specified contract period;
3. by sale of the technology, domestically or abroad;
4. by inbound or outbound transfer via any other methods; and
5. by payment of royalties based on profits.

Under the Law, all agreements on technology transfers must be made in writing in the form of a mutually agreed contract, and be in compliance with the terms laid down by the National Council for Science, Technology and Innovation Development (NCSTID). All such contracts must be registered with the designated registrar, and unregistered contracts are deemed unenforceable. This is similar to the position initially envisioned under the old law, although not enforced by the National Council for Science and Technology Development, the predecessor

of the NCSTID. It is understood that the DRI is currently drafting the subsidiary regulations under the Law, and that discussions on the establishment of the new NCSTID are still underway.

At present, it is still unknown if the new NCSTID will prescribe a template contract to be used by parties wishing to enter into technology transfer agreements. It is very important to note that there will not be a "one size fits all" template for technology transfer agreements. This is because technology transfer agreements can generally exist in many forms, including (but not limited to) the license of a patented technology, assignment of existing intellectual property rights, acquisition of bespoke manufacturing equipment, technical advisory or consultancy services, joint ventures, and even through franchising. Nonetheless, as long as the use of government templates is not mandatory, including them will be a welcome move, as such templates can be a helpful starting point for independent inventors or small businesses which may not otherwise have access to professional legal assistance.

Under the Law, the Registrar will scrutinize applications for registration of technology transfer agreements, and will issue a Certificate of Registration to successful applicants upon payment of the prescribed registration fees. If the Registrar issues a rejection, an applicant is allowed to file an appeal within 60 days.

An important observation is that the old Section 16 under the 1994 law, which explicitly excludes patented inventions and registered designs from the scope of technology transfer under the law, has not been carried over to the new Law. It would be interesting to see how the Ministry of Education would administer the new Law in parallel with the recently enacted suite of IP laws, given that the records of IP licenses (such as trademark and patent rights) with the new IP office will also be made mandatory under the new IP regime.

Another point to note is that the Law states that the approval of the relevant inventors, or persons instrumental to the development of the technology, must be obtained when transferring such technology to any individual or organization. While the requirement of consent is a welcome move, it is important to highlight that, unless further clarified via subsidiary legislation, this provision may potentially be problematic. Inventors or developers of any particular invention or technology are not always the legal proprietor, such as in the case of a commissioned work or an invention developed in the course of one's employment. In cases like this, it would be the party commissioning the work or the employer who would typically have the right to commercialize the inventions or technologies in question. Therefore, this legal provision would appear to impose an additional burden upon the rightful owners—particularly if such approval must be provided in a fixed format or via a government form provided by the DRI.

With the promulgation of this new Law, and in the context of Myanmar's increasing attractiveness as a frontier market for many businesses, all local and foreign investors involved in any form of technology transfer arrangements in Myanmar would be well-advised to take note of these statutory requirements. Full compliance with the Law, and its subsidiary implementing regulations as they emerge, will be necessary to ensure the enforceability of one's rights in the event of a breach of agreement, which is an ever-present concern in a market where the regulatory framework, however robust, is still a new development. 🍷