

Legal Alert. August 2006. **Technology & Management Agreements.**

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Business Quote of the Month.

"Beware of little expenses; a small leak will sink a great ship." ? Benjamin Franklin.

Legal News.

There is now a new National Industrial Court Act, 2006. This new Law confers on the National Industrial Court the status of a superior Court of record with exclusive jurisdiction with respect to organised labour and industrial relations matters. Because of the significance of this Law to businesses, we shall very soon send to you a Legal Alert on how this Law affects you and your business.

There is also a new Advance Fee Fraud & Other Related Offences Act, 2006. This Law requires all internet service providers to keep record(s) of all internet users in their network. Users of cyber cafes are in turn now required to register with the cyber cafe owners as members; to the application form must be attached their passport photos, current home address, etc. All internet service providers are also required by this Law to register their businesses with the Economic & Financial Crimes Commission (EFCC). We would serve you with more information in this regard in the coming two months.

Legal Alert ? Registration of Technology & Management Agreements in Nigeria.

Prosperity from the discovery of oil and continuing increases in the prices of this product, in the international markets, from the 1970s, meant excess revenue for Nigeria and the need to industrialise the Nigerian economy. In addition to inviting foreign technology and investors,

where they are unavailable in Nigeria, and granting to the investors/licensors incentives to invest in Nigeria, additional incentives are granted to investors who bring to Nigeria their unique technological and or managerial capital for the further advancement of the Nigerian economy. To ensure that the quality of the technology or managerial skills brought to Nigeria by investors genuinely belong to the investors, and are relevant to the Nigerian economy, and the terms of the transfer are equitable, the National Office for Technology Acquisition & Promotion (NOTAP) was established by Law.

Objectives of NOTAP.

NOTAP was established in 1979 with the principal objective of promoting and monitoring, on a continuous basis, the quality and price of foreign technology and managerial skills, transferred to Nigeria and Nigerians.

Other responsibilities of NOTAP include the registration of all contracts or agreements in which foreign technology or managerial competences are transferred to Nigeria, the promotion among Nigerians of a more efficient process for the negotiation and adaptation of foreign technology in Nigeria, etc.

Effect of Registration or Non Registration.

Failure to register an Agreement or contract requiring registration under NOTAP Law carries with it the investors/licensors inability to repatriate, to outside Nigeria, revenues accruing from the Agreement or contract. The reverse is the case where the Agreement or contract is registered.

Contracts/Agreements Qualifying For NOTAP registration.

Not all technology or management capital qualify for registration, under NOTAP. Agreements or contracts which qualify include:

1. Use of foreign trade marks, patented inventions, etc.
2. Technical assistance of any description whatsoever.
3. Supply of plants and or machinery.
4. Provision of operating staff, managerial assistance and training of personnel.

For the above capital to qualify for NOTAP registration, the contracts/agreements must bear the following characteristics:-

? Have definite objective(s).

? Nigerian Recipient must acquire the right to use and exploit the technology for a defined period of time. Access to licensor's facilities during this period must not be hindered in any way.

? The products or process must be clearly defined.

? All components of products must also be evaluated by NOTAP.

? The employment, exposure and training of Nigerian staff with relevant background and

expertise must be provided for and guaranteed.

? There must not be the prohibition or restriction of the export of the process or product to other countries provided the intellectual property rights of the licensor are not infringed by the licensee.

? Arbitration, venue and applicable Law must be Nigerian.

A short checklist of the requirements for NOTAP Registration includes:

1. Certified Copy of Agreement or contract to be registered with NOTAP. Agreement should capture comprehensive training programme and management succession for Nigerians.
2. Certified True Copy of Memorandum and Articles of Association of Applicant company.
3. Copy of Applicant's Certificate of Incorporation.
4. Copy of Applicant's Audited Accounts for last three years prior to the making of the application. Where a new company, a letter from external Auditors that Audited Accounts not available and the reason for non availability would assist the application.
5. Two duly completed NOTAP Questionnaire.
6. Copy of Feasibility Study.
7. Actual and projected net sales and profits before tax for a period of 10years.
8. Details of any Intellectual Property registration, countries of registration, and copies of the registrations, where available.
9. Where applicable, copies of other instances where NOTAP registration was made.
10. Payment of application/processing fees, penalty fees if application is not submitted within 30 days of the commencement of the Agreement and registration fees. The latter is based on value of the technology and remuneration to the Licensor.

Conclusion.

The intendment of the NOTAP Law would continue to be lauded. However, more resources need to be provided to NOTAP in order for it to sufficiently discharge its statutory responsibilities.

Action Plan By You.

It is recommended that should you or your company currently have or is contemplating having an Agreement or contract with a foreign partner in which the foreign partner contributes technological or managerial capital to the Agreement or contract, NOTAP registration would be necessary for your company. Please contact your Solicitor now for guidance and necessary action.

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