

Integrated Legal Consultants

# Newsletter

***Editor’s Note***

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Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to clients and equally affect their transactions. This is our 20th edition.

In the course of conducting businesses many companies enter into agreements with their foreign partners where they share technical know how, licence intellectual property and other information that aid the licencee to effectively conduct business.

These agreements are referred to as Technology Transfer Agreements (TTAs). The Ghana Investment Promotion Centre (GIPC) is the agency responsible for promoting and encouraging investments in Ghana.

According to the Ghana Investment Promotion Centre Act 2013 (Act 865) and the Technology Transfer Regulations 1992 (L.I. 1547), all TTAs must be registered and documented by the GIPC.

In this issue, we take a look at the Technology Transfer Agreements and the key provisions of Act 865 and L.I 1547 that regulate their registration by the GIPC in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

*Esohe Olajide*

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**REGISTRATION OF A TECHNOLOGY TRANSFER AGREEMENT IN GHANA**

**Introduction**

In Ghana, a Technology Transfer Agreement (TTA) is a formal agreement between a Ghanaian company (the transferee) and a foreign company (the transferor) for the transferor to provide specific services to the transferee for a period of at least eighteen (18) months. The transferee pays a fee for these services, and the terms and conditions are outlined in the TTA. The services covered by a TTA include the transfer of technology, industrial property services such as patents and trademarks, "know how," management services, and technical expertise. It is important to note that TTAs only apply to services, not goods. Additionally, this Agreement is relevant to all companies operating in Ghana, regardless of the sector.

**Regulation of TTAs in Ghana**

The Ghana Investment Promotion Centre (GIPC) is responsible for promoting and encouraging investments in Ghana. According to the Ghana Investment Promotion Centre Act, 2013 (Act 865) and the Technology Transfer Regulations 1992 (L.I. 1547), all TTAs must be registered and documented by the GIPC.

Section 37(1) and (2) of Act 865 provides as follows-

*“(1) An enterprise may enter into a technology transfer agreement that the enterprise considers appropriate for the enterprise.*

*(2) A technology transfer agreement entered into under subsection 1 shall be registered with the centre.”*

This in essence means that an enterprise can enter into a TTA that is suitable for the enterprise, but it must be registered with the GIPC.

Similarly, Regulation 1 of LI 1547 requires that all TTAs made under the Code or Regulations be registered with the Ghana Investments Centre.

**Role of the GIPC in Registering a TTA**

The Ghana Investment Promotion Centre (GIPC) is an essential regulatory body entrusted with pivotal responsibilities in the registration of TTAs. The GIPC's role encompasses the following key duties which are:

1. **Registration and Maintenance of TTA Records**: The GIPC is responsible for the registration and upkeep of records of TTAs in accordance with Section 4, 37 (2) & (3) of Act 865. This involves meticulously recording the details of all TTAs, ensuring transparency and accountability in the process.

2. **Monitoring for Compliance**: Following the registration of TTAs, the GIPC diligently monitors these Agreements to ensure compliance with the stipulated regulations, as outlined in Section 37 (4) (b). By undertaking this oversight role, the GIPC upholds the integrity of TTAs and safeguards the interests of all involved parties.

3. **TTA Registration Renewals**: The GIPC is mandated to oversee the renewal of TTA registrations, as specified in Section 37 (7) of Act 865. This renewal process ensures that TTAs remain valid and relevant, thereby promoting the continued efficacy of these Agreements.

4. **Pre-Registration Review of TTAs:** Prior to registration, the GIPC conducts comprehensive reviews of TTAs in line with Section 37 (4) (a). This critical assessment ensures that TTAs meet the necessary criteria and adhere to regulatory standards before formal registration.

In fulfilling these responsibilities, the GIPC plays a vital role in promoting a conducive environment for technology transfer and supporting the growth of businesses through effective TTA regulation.



**Categories of TTA**

The categorization of TTA in Act 865 encompasses four primary categories:

1. Agreements covering Industrial Property Rights: This category involves the assignment, sale, and licensing of various forms of industrial property, including trademarks, trade names, service marks, and patents.

2. Agreements for the provision of Technical Services/Assistance: This category pertains to the provision of technical expertise and advisory services, such as HR, audit, and legal support.

3. Agreements covering the transfer of "Know-How": This category encompasses the transfer of technological knowledge for the use of machinery, equipment, or raw materials.

4. Agreements for the provision of management services: This category relates to agreements concerning services related to the day-to-day management of a Ghanaian enterprise by a foreign enterprise, i.e., the transferee company.

**Key Requirements in Registering A Technology Transfer Agreement**

When seeking to register a TTA, there are essential factors that both the transferor and transferee must consider. These requirements are crucial for ensuring that the TTA is compliant with Act 865.

The requirements are as follows:

1. The proposed services must be comprehensively detailed and should encompass services not readily available in Ghana.
2. The transferor is required to furnish training to the transferee and its staff to ensure proficient utilization of the technology, with a training schedule annexed to the application delineating the local staff's training by the transferor.
3. The governing law stipulated must be Ghanaian law.
4. The initial duration of the agreement must exceed eighteen (18) months.
5. The TTA is to be established between a Ghanaian Company and a foreign Company.
6. Payment for the technology is to be remitted by the transferee through the banking system. The maximum duration for the initial registration is ten (10) years.
7. The TTA may be renewed for a period not exceeding five (5) years after the expiration of the initial TTA.



**Agreements That Do not qualify as a Technology Agreement**

There exist specific criteria under which certain Agreements do not qualify as a TTA. The following stipulations outline the circumstances that render Agreements ineligible for classification as a TTA:

1. **Agreements Solely for the Provision of Goods**: TTAs are strictly for the provision of services; therefore, any Agreement that solely centers around the provision of goods does not meet the necessary criteria.

2. **Duration of Agreements**: Agreements with a duration of less than eighteen (18) months, without any provisions for renewal or extension, do not align with the parameters of TTAs.

3. **Services Falling Outside the Scope of GIPC Legislation:** Agreements for services that fall outside the established scope of the GIPC legislation would not be considered within the realm of TTAs, as outlined by the regulatory guidelines.

It is imperative for all entities engaging in Technology Transfer Agreements to be cognizant of these exclusion criteria in order to ensure adherence to the relevant legal and regulatory frameworks. Understanding and adhering to these delineations will assist in the proper classification of Agreements and facilitate compliance with the applicable laws and statutes governing TTAs.

**Registration Procedure**

In order to initiate the registration process, the applicant is required to complete the TTA Registration form and furnish the requisite supporting documentation, which are as follows:

1. Certified True Copy (CTC) of the company's incorporation documents.
2. CTC of the TTA
3. CTC of the Company’s Constitution
4. Comprehensive training schedule
5. The GIPC Certificate
6. Tax Clearance Certificate
7. Certified recent audited financial statements for the last five (5) years of the Transferee Company
8. Yearly forecast of fees payable per annum to the transferor for the duration of the Agreement

Additionally, there is a non-refundable application fee. The initial application fee is in the sum of Eleven Thousand, Seven Hundred and Sixty Ghana Cedis (GHS 11,760.00) while the renewal application fee is in the sum of Seven Thousand, Six Hundred and Forty Ghana Cedis (GHS 7,640.00).

Upon submission of the completed application form and all the necessary supporting documentation, the processing time is estimated to be four (4) to six (6) weeks. In the event of an incomplete application, it will be returned to the applicant along with a detailed legal opinion and instructions on how to revise the application. The applicant will be given a two (2) month period to submit a revised application. Upon approval, the Applicant will be required to pay an approval fee based on the duration of the TTA and amount of fees to be transferred.

Following payment of the approval fee, a Certificate of Registration will be issued, and an Approval Letter will be forwarded to the Bank of Ghana (BOG) and Ghana Revenue Authority (GRA).

**Restrictions on fees Chargeable Under a TTA.**

Technology Transfer Agreements (TTAs) are subject to specific restrictions regarding the fees chargeable for services. L.I. 1547 regulations defining the permissible fees for services rendered to the transferee. These regulations, enshrined in L.I.1547 provide a comprehensive framework that sets precise limits based on the company's net sales.

The fee restrictions are classified into distinct categories, each with its own specified range: -

Royalties for Intellectual Property- 0% to 6% of net sales

Technical Services/Assistance- 0% to 3% of net sales

Know-How- 0% to 2% of net sales

Management Services- 0% to 2% of net sales

In instances where a service involves a fusion of management services, technical services, and patent know-how, the cumulative fee must not exceed 8% of net sales.

Importantly, it is crucial to note that any request for fees exceeding these prescribed thresholds necessitates formal approval from the GIPC. It is imperative for the transferor and transferee companies to have a comprehensive understanding of these constraints and ensure compliance with the specified parameters established by the GIPC.



**Benefits of Registration**

The Ghana Investment Promotion Centre (GIPC) Act outlines the significance of registration and the implications of non-registration of TTAs in Ghana. It is essential for companies operating in Ghana to adhere to the registration requirements to ensure compliance with the law. Registration facilitates the transferability of funds, allowing for seamless financial transactions within and outside the country. This enables companies to efficiently manage their financial resources for operational and investment purposes.

Furthermore, annual transfer payments made under a registered TTA are recognized as legitimate business expenses by the transferee company. This acknowledgement allows for the deduction of transfer payments from the company's profits before tax, providing a beneficial financial incentive for registered agreements. In addition to financial considerations, registered TTAs also enable the legal transfer of fees and charges outside of Ghana, as well as the transfer of profits, capital, and dividends. This promotes transparency and facilitates international business operations in accordance with Ghanaian law.

**Effects of Non-Registration**

Failure to register a TTA is a breach of Act 865, and defaulters are liable to summary conviction. The transferee may also be faced with challenges of transfer of fees because transfer of funds under an unregistered TTA is not permitted. The Ghana Revenue Authority (G.R.A) may deduct the relevant taxes while the Bank of Ghana (B.O.G) may still disallow the transfer of funds due to non-registration.

Furthermore, non-registered TTAs are considered unlawful under Act 865, leading to the potential suspension of incentives granted to the company by the GIPC. Any unregistered TTA is unenforceable in the event of disputes, posing significant legal challenges for the parties involved. An unregistered TTA is also deemed as an illegal document.

**Conclusion**

In conclusion, registration under the Ghana Investment Promotion Centre Act is imperative for companies engaging in technology transfer agreements. Compliance with registration requirements not only ensures legal adherence but also unlocks various financial benefits and legal protections for the parties involved. By understanding the implications of non-registration, companies can proactively uphold the integrity of their business operations and mitigate potential risks associated with unregistered technology transfer agreements**.**

***By Adeteju Ajimotokan***

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If you require further information or assistance with respect to registering a technology transfer agreement, kindly send an email to ilc[@integratedlegalconsultants.com](mailto:ilc@integratedlegalconsultants.com)