

Technology import and export in the PRC

Basic principles

Technology import and export includes:

- assignment of patent rights;
- assignment of patent application rights;
- patent licences;
- transfer of know-how;
- technical services;
- know-how licenses;
- computer software licenses;
- license or assignment of trademarks involving licensed patents or know-how;
- technology consulting;
- technical services;
- cooperative design;
- cooperative research;
- cooperative development; and
- other forms of technology transfer

from outside the territory of the People's Republic of China ("PRC") into the territory of the PRC and vice versa.

Pursuant to the regulations on administration of technology import and export, technology is divided into three categories:

- technology which is free to be imported and exported;
- technology which is subject to import and export restrictions; and
- technology which is subject to import and export prohibitions.

Lists of types of technology, the import or export of which is subject to prohibition or restriction, are formulated and published by the Ministry of Commerce ("MOFCOM"). Import and export of technology which fall under the prohibited category, is banned. Import and export of technology which fall under the restricted category, is subject to approval. Import and export of other technology is subject to registration. The licence or the registration certificate issued by the authorities has to be submitted when handling formalities relating to foreign exchange, tax and customs procedures in connection with the import and export of technology.

MOFCOM is responsible for the national administration of the import and export of technology. The local Authority of Commerce ("COFTEC") in charge of the Chinese importer or exporter is, under the authorization of MOFCOM, responsible for the administration of technology import and export within its respective administrative region.

Applying for an import approval for restricted technology in China

A technology importer within the territory of the PRC has two options when applying for import approval for restricted technology.

Option 1

The technology importer completes an application for import of restricted technology and submits it to the competent COFTEC for approval. Upon receipt of the application, COFTEC will conduct a trade and a technology examination within ten working days. After approval, a letter of intent for technology import will be issued to the technology importer by COFTEC. Thereafter, the technology importer may sign the technology import contract with the foreign party and shall submit a duplicate copy of the contract and its relevant appendices, the letter of intent for technology import and the documentation concerning the legal status

of both parties to COFTEC for further approval. COFTEC will examine the authenticity of the contract and grant approval within 30 working days.

Option 2

The importing entity first signs a technology import contract with the foreign party and then submits an application for import of restricted technology, a duplicate copy of the contract and its relevant appendices, and the documentation concerning the legal status of both parties to COFTEC for approval. COFTEC will conduct a trade examination and a technology examination within 30 working days respectively. Then, COFTEC will further examine the authenticity of the contract and grant approval within 40 working days.



Applying for an export licence for restricted technology in China

An exporting entity within the territory of the PRC must first submit an application for export of restricted technology to COFTEC for approval. COFTEC shall examine the application and issue a letter of intent for technology export to the exporting entity within 30 working days. Upon approval, the exporting entity is entitled to substantially negotiate and sign a technology export contract with a foreign party.

Thereafter, the exporting entity must submit the letter of intent for technology export, a duplicate copy of the contract and its relevant appendices, a list of technical material for export and documentation concerning the legal status of both parties to COFTEC for further approval. COFTEC will examine the authenticity of the contract and grant approval within 15 working days.

Registering a technology import or export contract in China

In the case of import or export of non-restricted technology, the relevant technology import or export contract is subject to registration in the PRC. Registration is not a condition for validity of the contract. It is, however, required for handling foreign exchange, tax and customs procedures relating to the import and export of the technology.

In order to register a technology import or export contract with COFTEC, the following information and documents must be filed online and thereafter handed over to COFTEC as hardcopies:

- an application for registration of technology import or export contract;
- a duplicate copy of the technology import or export contract; and
- documentation concerning the legal status of both parties to the contract.

COFTEC will register the contract and issue a registration certificate within three working days.



Permitted content of a technology import contract

According to the relevant law, the following clauses cannot be included in a technology import contract:

- clauses requiring the transferee to accept additional conditions which are unnecessary for the import of technology, including purchasing unnecessary technology, raw materials, products, equipment or services;
- clauses requiring the transferee to pay royalties or to assume relevant obligations for patented technology the validity period of which has expired, or for patented technology which has been revoked;
- clauses imposing restrictions on the transferee to improve the technology provided by the transferor or to use such improvements;
- clauses where restrictions in the conditions for the exchange of the improved technology are not reciprocal;
- clauses imposing restrictions on the transferee from acquiring similar or competitive technology from other sources;
- clauses imposing unreasonable restrictions on the channels or sources by which the transferee purchases raw materials, spare parts, products or equipment;
- clauses imposing unreasonable restrictions on the output, variety and sales prices of the transferee's products;
- clauses imposing unreasonable restrictions on the export of the products which are manufactured by using the imported technology; and
- clauses prohibiting the transferee from raising objections against the validity of the intellectual property rights for the target technology, or clauses attaching additional conditions on raising such objections.

For further information and assistance, please contact

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