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NEGARIT GAZETA OF THE TRANSITIONAL GOVERNMENT OF ETHIOPIA

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COUNCIL OF MINISTERS REGULATIONS No. 121/1993

COUNCIL OF MINISTERS REGULATIONS TO REGULATE THE TRANSFER OF TECHNOLOGY

These Regulations are issued by the Council of Ministers pursuant to Article 4(2) of the Definition of Powers and Duties of the Prime Minister and Council of Ministers Proclamation No. 2/1991 and Article 23(4) of the Encouragement, Expansion and Coordination of Investment Proclamation No. 15/1992.

PART I GENERAL

1. Short Title

These Regulations may be cited as the "Transfer of Technology Council of Ministers Regulations No. 121/1993".

2. Definitions

For the purpose of these Regulations, the following concepts and words, shall have the meaning provided hereunder:-

1. "agreement" means technology transfer agreement;
2. "party" means a person participating in a technology transfer agreement either as supplying party or as receiving party;

3. "person" means natural or juridical person;
4. "receiving party" or "recipient" means the party which acquires technology through license, purchase or other lawful means;
5. "supplying party" or "supplier" means the party which supplies technology through sale, licencing, assignment or other lawful means;
6. "transfer of technology" means the transfer of systematic knowledge for the manufacture of a product, for the application or improvement of a process or for the rendering of a service, including management and marketing technologies, but shall not extend to transactions involving the mere sale or lease of goods;
7. "industrial property" means a legally enforceable right such as patents, trademarks, industrial designs and other industrial property rights granted by virtue of Ethiopian law or treaty to which Ethiopia is a party.
8. "Office" means the Investment Office of Ethiopia;
9. "foreign owned enterprise" means any form of business organization established or existing under the laws of Ethiopia, the majority share capital of which is owned by non-Ethiopians.

3. Scope of Application

1. These Regulations shall apply to transfer of technology agreements between:
 - a) natural persons at least one of which is resident, domiciled in or is national of Ethiopia;
 - b) a domestic private or public enterprise and a foreign enterprise;
 - c) a foreign owned enterprise and a domestic private or public enterprise;
2. The provisions of these Regulations shall, subject to detailed directives of the Office, also be applicable to transfer of technology agreements entered into between a parent company abroad and its branch or subsidiary in Ethiopia.

4. Applicable Law

Without prejudice to Article 5 of these Regulations, the validity, performance and interpretation of transfer of technology agreements shall be governed in accordance with the laws of Ethiopia.

5. *Dispute Settlement*

Parties may agree to settle disputes arising in connection with technology transfer agreement by direct negotiations or in accordance with rules and procedures of conciliation and arbitration.

6. *Form and Language of Agreements*

1. A technology transfer agreement shall be made in writing.
2. The language of the agreement shall be English.

PART II

CHOICE OF TECHNOLOGY AND ADVISORY SERVICE

7. *Choice of Technology*

1. The choice of technology or of specific technological services shall be made by the receiving party.
2. Notwithstanding the provisions of sub-article (1) of this Article, the choice of technology shall be made by giving due consideration to the need, suitability and non-obsolence of the technology. In particular, attention shall be given whether the technology:
 - a) contributes to the promotion of the country's economic policy and development strategies;
 - b) answers immediate needs, taking into account the gap between the requirements of investment and national technological capability, or
 - c) contributes to the development of national technical or scientific knowhow.

8. *Advisory Service*

The Office shall upon request, advise the receiving party on the choice of technology, assist in the negotiations, and the provision of information on alternative sources of technology and other related matters.

PART III

**EVALUATION, APPROVAL AND REGISTRATION OF
TRANSFER OF TECHNOLOGY AGREEMENT**

9. *Grounds for Evaluation*

Taking into account the fact that details of evaluation criteria vary depending on the type and nature of the technology under consideration, the office will evaluate technology transfer agreement in cooperation with concerned offices and on the basis of the following provisions and other relevant laws.

10. *Description and Itemization of Technology*

1. The agreement shall, to the extent practicable, contain detailed description of the technology that are correct and complete for the purpose of the agreement. In particular:

- a) the technological content and the principal features of the technology being acquired; the anticipated production to be acquired and the quality and specification of products must be defined in detail.
- b) particulars of the technical assistance and the service to be rendered by the supplier and the manner in which the technology and the technical services should be provided must be clearly identified.
- c) the relevant technical documents and other data required from the supplier to use the technology should be specified.

2. Where the agreement consists of different elements, it shall specify each of the elements involved and their values.

11. *Ownership and Validity of Industrial Property Rights and Third Party Claims*

1. the supplier shall ensure that it is the owner of industrial property rights transferred or is otherwise entitled to transfer.
2. the supplier shall guarantee for the duration of the contract that, to the best of its knowledge, third parties shall have no right in the industrial property right which would prevent or limit its exploitation by the receiving party.
3. the agreement shall expressly state that the supplier shall be liable for the infringement of industrial property rights of third parties.

12. *Suitability for Use*

The supplier shall guarantee that the technology, if used in accordance with his specific instructions given pursuant to the agreement, is suitable for manufacturing of goods or rendering of services as agreed upon by the parties and stipulated in the agreement.

13. *Confidentiality*

1. When there is an obligation of confidence that restricts free use or disclosure of technology in or emanating from the agreement, the duty of obligation shall terminate if:
 - a) the technological information has become part of the public domain independently of the recipient; or
 - b) the recipient was in possession of the technological information independently of the supplier, at the time of acquisition.
2. The restriction of use of technology shall also be terminated where the agreement is expired.

14. *Performance Guarantee*

The agreement shall provide that the supplier has undertaken to guarantee, that the technology to be transferred and the services to be provided will be comprehensive and sufficient for attaining the desired result. The agreement shall where appropriate specify the technical parameters and includes details of the manner of determining whether the performance has been met and the consequence of failure to meet that performance.

15. *Technical Services*

The parties shall, where appropriate, provide in their agreement specific details on the technical services to be provided in connection with the agreement.

16. *Training of Personnel*

1. the agreement shall provide that, upon request of the recipient, the supplier will provide adequate training in handling, operating, mastering and/or assimilating the technology transferred for the recipient's personnel designated by him.
2. In such a case, the qualifications of the personnel to be trained, the fields of training, the method, duration and place of training, timetable for carrying out the training programme, and other relevant details should be worked out.

17. *Provision of Accessories, Components and Spare Parts*

1. Where the supplying party is the major or sole supplier, he shall furnish the recipient for the period specified in the agreement, with accessories, spare parts and components that are necessary for using the technology to be transferred.
2. In such cases the agreement shall provide that the prices of the said articles should not be higher than the current international price levels.

18. *Quality Standards*

In cases where the agreement includes the use of the supplier's trademarks, trade names or similar identification of good will, the agreement shall provide with the duties of the parties to observe the agreed quality levels.

19. *Use of Local Resources and Local Personnel*

1. The agreement shall, to the extent reasonable, provide with the use of adequately trained or otherwise suitable local personnel to be designated and subsequently made available by the recipient including managerial personnel as well as for training of suitably skilled local personnel.

2. Where applicable, there shall be a provision on the use of locally available materials, technology, technical skills, consultancy and engineering services and other resources to be indicated and subsequently made available by the recipient.

20. *Payment Obligations*

1. technology may be paid on the basis of a lump-sum, royalties, or a combination of these two elements or on the basis of fees for technical services as the case may be.
2. the agreement shall specify the form and procedure of payment as well as the currency of payments and price indexation.
3. there shall be no fixed minimum royalty payments.
4. the agreement shall provide that payment obligations terminate when industrial property rights have expired or have been invalidated, when payment is based on the continued existence of these rights, and that parties renegotiate their payment obligations, where technology consists of a and know how and part of the technology transferred is no longer valid.

21. *Evaluation of Payment*

1. In evaluating payment obligations, the Office may consider:
 - a). whether the mutual obligations of the parties are in conformity with the normal practice between independent persons and the consideration is in proportion to the technology transferred, or
 - b) the type of production or sector of activity, the value of production and related matters to determine the reasonableness of lump-sum and the recurring royalty, if any, is an acceptable proportion of the value of production and commensurate with the technology to be acquired.
2. For the purpose of the provision of the sub-article (1) of this Article, the following criteria may be considered:
 - a) the degree of technological innovation, assessed on the basis of the length of time for what it has been known and used;
 - b) the degree of technological complexity by comparing it, whenever possible, with techniques and processes used for the same purpose whether by the same supplier or other suppliers;

- c) the quality standard of the product obtained in application of the technology, in the context of the market;
 - d) whether there is a steady follow up, supply of up-to-date technological information and data, especially in the case of a sector in which the technology is dynamic, in other words, one that is subject to continuous development and the innovations cannot be protected;
 - e) the reputation and importance of the supplier in the sector;
 - f) the supplier's research and development capability;
 - g) the type of product or sector of activity in terms of the degree of essentiality;
 - h) the length of time required for the complete transfer of the technology and for its full assimilation by the recipient.
3. Evaluation of payment shall be made in consultation with the appropriate authority.

22. *Approval and Registration of Agreements*

1. The office shall render its decision of approval or rejection for registration of the agreement within a period of 30 days from the date of receipt of the application.
2. The decision of the office rejecting the registration of the agreement shall state the reasons for such rejection in writing.
3. An agreement approved under these Regulations shall be registered forthwith by the office.
4. Upon registration of the agreement, the office shall immediately issue a certificate of registration to the applicant and notify the same to the National Bank of Ethiopia.

23. *Grounds for disapproval and refusal of registration*

1. The Office shall, depending on the nature and type of technology, refuse to approve and to register agreements, involving the transfer of technology in cases where:
 - a) restrictions are imposed on research and development adaption and modification of activities by the recipient in connection with the technology transferred;
 - b) the technology to be transferred is proved to be obsolete and/or unsuitable or available in Ethiopia;
 - c) where the agreement includes clauses that enable the technology supplier directly or indirectly to control or to intervene in the management of the recipient;
 - d) the agreement contains obligation to transfer or to use industrial property rights or improvements obtained by the technology recipient, with or without compensation, of information embodies an element of reciprocity or an advantage to the recipient;

- e) the agreement is fixed for unduly long duration;
- f) the agreement contains clauses prohibiting, or restrictives without valid grounds, the use of complementary technology;
- g) the recipient is required to obtain equipment, tools, spareparts or raw materials exclusively from a specified source, when alternative supply sources or facilities exist on the national or international market or to accept additional technologies, future inventions and improvements, goods and services not wanted by him;
- h) production volumes are limited or sale or resale prices are imposed on the recipients national production or exports;
- i) the recipient
by the technology supplier, for a definite or indefinite period of time, except in the absence of Ethiopia, technical personnel trained in the knowledge and operation of the technology to be transferred;
- j) the recipient is required to conclude exclusive sales or representation contracts with the technology supplier, except in the case of export, provided that the recipient accepts the requirement and the supplier has adequate machinery at his disposal or that he enjoys the necessary commercial reputation to carry out the marketing of the goods under better conditions than the recipient;
- k) the supplying party by means of quality control or prescription of standards seeks to impose unnecessary and onerous obligation on the recipient;
- l) the export of goods or services produced by the recipient is unreasonably prohibited or restricted;
- m) the agreement contains the obligation to sell the goods produced by the recipient to an exclusive client;
- n) the payment bears no relation to the technology acquired or constitutes an unjustified or excessive encumbrance for the national economy or for the receiving party.

2. Without prejudice to the provisions of sub-article (1) of this Article, if the Office considers that the terms of the agreement or the technology to be transferred is contrary to public order or the national interest, it shall expressly so state, and shall deny approval and registration.

3. Notwithstanding the above provision of sub-article (1) of this Article, in any case if the Office is satisfied that it would be in the national interest so to do, it may approve and register the agreement.

24. Effects of Registration

A technology transfer agreement which is not registered in accordance with these regulations has no legal effect.

25. Cancellation of Registration

1. Where the Office is satisfied that any agreement has, subsequent to the registration thereof, been amended or modified, in contravention of the provisions of these Regulations, it shall give notice in writing to the parties concerned of its intention to cancel the registration. Such notice shall be deemed as notice to reject an application for registration.
2. Where the parties fail to make the necessary amendment pursuant to the notice, the Office shall cancel the certificate of the parties concerned.

PART IV.

**MONITORING AND RENEWAL OF TECHNOLOGY
TRANSFER AGREEMENT**

26. Monitoring

1. The Office shall, in co-operation with appropriate authorities, monitor the implementations of the terms and conditions specified in a technology transfer agreement.
2. The Office may issue directives on the details of types and modes of monitoring.
3. The Office shall require progress reports, within a period specified depending on the type of the agreement.
4. The report that will be submitted to the Office as per the requirement of sub-article (3) of this Article hereinabove shall contain:
 - a) the benefits derived from the specific technology transferred including new developments and improvements derived there from;
 - b) the activities and services rendered by any advisory or technical foreign staff and the programme of training undertaken with the view of substituting such services by national staff;
 - c) the steps taken on the establishment and activities of research and development;
 - d) the measures undertaken on the absorption and adaptation of the transferred technology; and
 - e) any other relevant matter concerning the transferred technology and related issues.

27. Renewal of Agreement

The Office may, upon request of the recipient party and in consultation with the appropriate authority, consider and decide applications for renewal of technology agreements.

28. Effective Date

These Regulations shall come into force on the date of their Publication in the Negarit Gazeta.

Done at Addis Ababa, this 31st day of July 1993.

TAMRAT LAYNIE

PRIME MINISTER OF THE TRANSITIONAL

GOVERNMENT OF ETHIOPIA