

LICENSE AGREEMENT

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Abstract: *Our Obligations Act uses the term “license agreement” while Foreign Trade Law speaks of “the law of industrial property and knowledge and experience (know-how).” License Agreement is the most common form of technology transfer and the contract on assignment or the use of techniques, inventions or protected rights. The license is the term used for a variety of economic legal relations, the experience and knowledge that the licensor has.*

Keywords: *contract, license, law.*

INTRODUCTION

License Agreement falls within the obligatory contracts called double - binding and freight contracts, commutative contracts, contracts with lasting benefits distributed, contracts are concluded intuitu personae, formal contracts. The written form of these contracts is a very important characteristic; further, Foreign Trade Law introduced a special form, the so-called solemn form of this contract, which consists in the registration of the contract with the competent administrative authority. Basic economic and legal significance of such a contract is that it provides the possibility of another person is really someone else's use of the intangible asset. Economic importance of the license agreement reflected in the possibility: that the owner of the rights that the subject of the license agreement, may derive material benefit from his rights, allowing the use of the right to pay a license fee to the owner of the rights, as a licensee, transfers to the licensee the right , exploiting the subject of the license agreement, and to the limits and in the manner prescribed in the contract, the owner rights remains the subject of protection, although the law itself benefit the other person that the licensee can really exploit the intangible good of others for commercial purposes with payment license fees to license the licensee exploiting good develops and improves its manufacturing resources to the licensee based on the assignment of property may enhance their own research process. The decision to purchase a license derives from the overall business policy and strategy for domestic companies and is based on the comprehensive considera-

tion of many issues related to the job. When taking a license, buyer must assess current life stage of technology. A comparative analysis should establish advantages of this technology compared to other technical - technological solutions. And it is precisely this area that has the largest hazard - whether the buyer chose the most adequate technology that will allow him competitiveness in the market. Buyer must pay a fee for the license he uses. The fee is calculated in several ways:

- as a fixed amount
- based on realized production,
- as combination of the two payments.

Just buying a license without a long-term consideration of all factors arising from it usually does not give the expected results. Therefore, it is useful to first provide a market for the product that will be produced by the acquired technology.

1. MONOPOLY PRACTICE IN LICENCE AGREEMENTS

The wider meaning of licensing means the transfer of elements of technology and product negotiation and contracting. This sense refers to the right to use the contracted protected and unprotected elements of technology / product within a certain time period for a specific technology. By licensing, both the licensor and the recipient increase the value of the company by increasing capital, the technological level of knowledge, reputation and stature. In addition, licensing provides the creation of new business relationships and opportunities [Stakic B., M. Unković, 2011 386].. The advantage of the license includes:

- winning new markets in which the company is not active,
- examine the possibility of setting up a new branch,
- investigating the possibility of a higher degree of cooperation,
- the establishment of a new market with less investment using domestic sales network of the company,
- reducing the risk of failure in the placement of a new product in a new market for export of other products,
- obtaining the funds needed to complete the financing of research or investment started,
- possibility to obtain another product / technology in return [R. Djurovic, Stakic B., 1991: 281].

2. TYPES OF LICENSE

There are several types of licensing: license of patent, industrial design, trademark, copyright, contracts on know-how, franchising. From the perspective of the recipient there are three types of licensing. License type depends on:

- quality of essential products: patents license contract on know-how;
- formal quality of the product, license of industrial design;
- marketable quality of the products; trademark license.

Negotiating and drafting license agreements is a complex, highly professional task that requires expertise. First of all it is necessary to obtain the latest information on licensing on

the Internet, or to contact the relevant organization. It is also advisable to use the technical, commercial and legal advisors to determine, prior to concluding an agreement of confidentiality all aspects of licensing, professional and for the mutual benefit of the parties. The owner of intellectual property rights on the basis of the license agreement, as the licensor gives approval for the exploitation of their rights, a person who receives a permit is required to pay a fee. The main obligation of the licensee is to grant a license to the right that he owns. A relevant provision of the contract must determine the nature of the license: exclusive, non-exclusive license or a solo license. In any case, the right remains the property of the licensor [Marković M., 2007: 12].

3. LICENCE AGREEMENT

In international economic cooperation the need to develop technological improvements and knowledge was largely initiated by the participation and contribution of science in all aspects of the production factors underlying the economic prosperity of a system. The creation of new and improvement of previous knowledge and accomplishments achieved multiple results in terms of global competition. In order to reach more complete results, competitive and achieve success in the market led to a need for international economic relations enrich another specific type of cooperation related specifically to technological developments and their exchange. This is confirmed by the license agreement or the law of the economic exploitation of shared industrial property rights [Law on Obligations, čl.686]. Such a license is a form of cooperation between business entities, based on the assignment and transfer of industrial property rights in order to encourage the modernization and success in production and business. License to transmit knowledge, the internationalization of modern production methods and operations and solve numerous technical and technological problems which are burdened by economic entities. Cooperation which provides such a relationship is based on a specific type of contract that bears the name of the License Agreement. This is such a legal transaction in which one contractual party, or a person who is a licensor assigns the right of economic exploitation of industrial property rights, know-how, equipment and additional content related to the ease of implementation of such a form of economic exploitation, while the licensee to pay for a fee. This agreement represents a contract of commercial law which, as in other agreements establishing a specific relationship and she has a certain content. Licensor shall be burdened by guarantee of safety of contracts and by guarantee of the existence of law on his side to give up the rights of economic exploitation to the licensee achieved success and business improvement for which it was entered in one of these kinds of relationships. Licensee uses the licensed agreed on a way to protect the provider from all forms of an unauthorized use of its industrial property rights. Payment of compensation to assign, technology, assign, charge for technical support and services is achieved and the determination of prices by the licensee to pay his Zuzana provider [Nikčević I., 2010: 220]. Through the transfer costs and the assignment of the right of economic exploitation of the licensor becomes motivated to accede to the conclusion of such contracts to the user to provide certain benefits and success in business. It is the licensor that affirms the right to economic exploitation of technology, technological know-how and other industrial property rights used in most spheres of production, where the licensee uses the technological know-how in the production of products created and as an attractive

brands on the market. Licensee produce and markets of his brands on the market, with the permission of the licensor; he is obliged to continuously and without exception to maintain unalterable and agreed standards of product quality provided to all products manufactured through one the same treatment had the same quality and maintaining the reputation of having on the market. Further, the obligation of the licensee to put the label on the products of licensing is strictly enforced. According to the criterion of how to use existing sales and manufacturing license, i.e. license that transfers technological and business know-how in the field of sales and in the sphere of production. On the basis of the legal criteria there can be statutory and contractual license. Statutory license is somewhat less common in commercial law relationships and can appear in two forms, which are: mandatory and official license [Nikčević I., 2010: 221]. A compulsory license is referred to in cases where the patent owner does not exploit or assign the right to use the patent within legal limits and thus prevents its use and the purpose for which it was created, while on the official talk of licenses in those situations where the right to use certain patent is entrusted to other participants of commercial legal relations too, not only to its holder, and all this for general needs and interests.

The contracting parties to the license agreement may – through a special clause on sub-license – provide for a contract that stipulates various of sub-licenses; this way, the licensee is authorized to reside in agreement with the licensor conclude a contract with third parties, which still gives the law privrdenog exploitation of industrial property rights. License agreement can be presented in different ways depending on the conditions that are on this issue provided by the contract. The contract may be terminated by cancellation, but must respect the notice period and the circumstances must not be such as to constitute a major disadvantage for the contracting parties. Termination of existence of the licensor - regardless of whether it is a legal or natural person - also does not lead to termination of the contract, but the contracting parties can regulated this contractual clause otherwise [Nikčević I., 2010: 222]. In our law, the Law on Obligations provides that a license agreement must be concluded in writing and Foreign Trade Law stipulates that the acquisition and transfer of industrial property rights and know-how and experience between the companies and other legal entities with foreign persons must be carried out on the basis of contract concluded in writing. It is believed that for these types of contracts, in addition to the written form, a special so-called solemn form is required, which consists of the registration of the contract with the competent authority of the federal administration [M. Vasiljević 1991: 535].

4. TERMINATION OF CONTRACT

License agreement concluded for a definite period shall cease by mere lapse of time for which it was concluded, and it is not necessary to cancel it [Law on Obligations, čl.708.] If - after the period for which the license agreement was concluded - licensee extends his exploitation of the the subject of the license, and the licensor does not oppose, it is considered that a new agreement is concluded the license of indefinite duration, under the same conditions as the previous one. However, with the license agreement the duration of which is not specified, it stops by dismissal of either party, provided there is a certain notice period. If the notice period is not determined by the contract, it shall be six months, provided that the licensor may terminate the contract during the first year of its validity. In case of death of the licencor, the license continues with his heirs, unless otherwise agreed. In case of death

of the licensee, the license continues with his heirs who continue his activities. In the event of bankruptcy or liquidation of the licensee, the licensor may terminate the contract [Law on Obligations, čl.711.].

5. CONCLUSION

Sellers of technologies have great use of licenses. Through licenses they sell their technology where export of goods is not possible or is not economically justified. Customers of technologies also benefit from licenses, and through licenses they come into possession of new techniques and technologies. This enables further technical and economic development, increases employment and labor productivity, reduces production costs, allows for faster catching up with or faster following of the world trends of industrialization and specialization.

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