



## Technology Transfer Contract: A Conceptual and Legal Perspective

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### **Abstract:**

*The technology transfer contract is a pivotal instrument in modern economic and industrial development, enabling the legal and practical exchange of technical knowledge, expertise, and innovation between parties. This study explores the conceptual and legal dimensions of technology transfer contracts, highlighting their significance in facilitating technological advancement, protecting intellectual property, and promoting international cooperation. The paper examines the types, mechanisms, and essential elements of these contracts, emphasizing both the substantive and formal requirements under national and international legal frameworks. Understanding these aspects is crucial for ensuring effective implementation, safeguarding the rights of all parties, and fostering sustainable technological progress.*

**Keywords:** Technology Transfer, Intellectual Property, Legal Framework, Contractual Obligations, International Cooperation

## **Contrat de transfert de technologie : perspective conceptuelle et juridique**

### **Résumé :**

*Le contrat de transfert de technologie est un instrument essentiel du développement économique et industriel moderne, qui permet l'échange juridique et pratique de connaissances techniques, d'expertise et d'innovations*

*entre les parties. Cette étude explore les dimensions conceptuelles et juridiques des contrats de transfert de technologie, en soulignant leur importance pour faciliter le progrès technologique, protéger la propriété intellectuelle et promouvoir la coopération internationale. Le document examine les types, les mécanismes et les éléments essentiels de ces contrats, en mettant l'accent sur les exigences substantielles et formelles prévues par les cadres juridiques nationaux et internationaux. La compréhension de ces aspects est cruciale pour garantir une mise en œuvre efficace, protéger les droits de toutes les parties et favoriser un progrès technologique durable.*

**Mots clés :** *Transfert de technologie, propriété intellectuelle, cadre juridique, obligations contractuelles, coopération internationale*



## Introduction

The world today is witnessing rapid scientific and technological development, which has made technology one of the most important economic and social resources, contributing to sustainable development and the civilizational advancement of countries. No modern economy can grow and compete internationally without benefiting from technology transfer processes, which allow the exchange of technical knowledge and expertise between countries and institutions. Hence arises the importance of the technology transfer contract as a legal tool aimed at organizing these processes and ensuring the achievement of their intended objectives, whether at the national or international level.

Globalization and rapid technological advancement have made technology transfer an essential necessity for countries and institutions seeking progress and prosperity. The technology transfer contract is considered the legal means facilitating this process, as it establishes a legal framework governing the exchange of technical knowledge and expertise between the various parties.

Moreover, the technology transfer contract serves as an important tool for organizing the relationship between the technology provider and the recipient, ensuring the protection of each party's rights and clearly defining their responsibilities. It does not only cover the transfer of equipment or software but also includes the transfer of technical knowledge and accompanying expertise, creating a

complex legal framework that integrates civil, commercial, and intellectual aspects.

Despite its importance, the complexity of technology and the difficulty in assessing its legal value necessitate clear legal rules and regulations that ensure justice and protect parties from potential disputes. Therefore, understanding the nature of the technology transfer contract, the regulations governing it, and the mechanisms organizing its implementation is crucial for facilitating transfer operations and achieving the desired benefits.

### ***Importance of the Study:***

The importance of this research is manifested in both its theoretical and practical aspects. Theoretically, the technology transfer contract is highly significant as it addresses one of the most prominent modern contracts in international commercial law, intersecting with several legal branches. Studying it in depth provides an accurate understanding of the legal mechanisms governing the transfer of technical knowledge, enriching the scientific and academic knowledge in this vital field.

Practically, studying the legal and regulatory framework of technology transfer contracts is of great practical importance by highlighting ways to organize the contractual relationship between the supplier and the recipient, ensuring the protection of both parties' rights and minimizing potential disputes. This also enhances trust among economic actors, encourages investment in research and development, and supports economic and technological development, especially in countries seeking to absorb and localize advanced technology.

**Research Problem:**

The central research question revolves around: *What are the specific characteristics of the technology transfer contract and its legal system?*

**Methodology:**

To answer the research problem and examine various aspects of the subject, we adopted a descriptive and analytical approach through the analysis of legal texts. The study is divided into two main sections.

**Axis One: Conceptual Perspective of the Technology Transfer Contract**

In recent decades, the world has witnessed significant transformations due to technological advancement, which has become a key driver of economic and social development and an effective tool for enhancing competitiveness at both national and international levels. This rapid technological development has compelled developing countries, including Algeria, to benefit from modern technology through transfer rather than attempting to develop it from scratch, creating the need to organize specific contractual relations known as technology transfer contracts.

The technology transfer contract is one of the most prominent legal tools regulating the transfer of industrial, technical, and scientific knowledge from the technology provider (usually foreign) to the beneficiary party, under mutually agreed terms, rights, and obligations. Technology is not merely a tangible product that can be easily traded; it is often technical knowledge protected by intellectual

property rights, which makes its transfer subject to strict regulations both in form and substance.

A technology transfer contract is not an ordinary contract. Its importance extends beyond international trade, affecting various stages of production, services, IT, and scientific and technical discovery, and even impacting other sectors considered pillars of state sovereignty.

This contract is the primary and most common tool for executing international trade operations because it reflects the contractual will of the parties, even if relative, due to sometimes conflicting interests or dominance of one party in a specific field, where personal considerations play a key role.

This embodies the principle of *freedom of contract*, granting the contract binding force against both its parties and third parties. Within the sphere of technology transfer, the contract has become the main legal instrument for conducting technological exchanges between developed and developing countries. The contract also has a distinctive pre-contractual stage called the negotiation phase, where all legal and economic regulations, effects, and guarantees of the contract are determined.

In this context, the Algerian legislator established a legal framework to regulate these operations through special contracts that respect the principle of protecting the national economy and ensuring knowledge transfer in a manner that guarantees sustainable development.

### **Section One: Concept of the Technology Transfer Contract**

The contract derives its authority from the principle "*contract is the law of the parties*", making it the primary reference for resolving potential disputes. It contributes to



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regulating the legal relationship and clarifying the conditions and mechanisms for executing the transfer. Its importance lies in ensuring continued cooperation between the parties and precisely specifying what knowledge, equipment, or services are transferred.

It also clarifies the use of transferred technology, the legal responsibilities of each party, and intellectual property and confidentiality rights—sensitive aspects in technology contracts. A comprehensive and detailed contract provides confidence and clarity, enabling dispute resolution through negotiation or arbitration before resorting to litigation.

Thus, the contract is an effective tool for balancing interests and achieving technology transfer goals efficiently and legally. It is one of the main legal mechanisms enabling developing countries to benefit from advanced scientific and technical achievements without local development, saving time and costs. The contract emerged as a response to an urgent economic need, especially amid globalization and the widening technological gap between the Global North and South, where multinational companies are the primary sources of advanced technology.

The concept presented in this chapter attempts to understand the legal nature of the contract, its origins, and precise definitions in legal doctrine and comparative legal texts. Clarifying this helps determine its scope and distinguish it from similar contracts, such as supply or technical service agreements.

This section seeks to understand the meaning of the technology transfer contract (Subsection One), forms of technology transfer contracts (Subsection Two), historical backgrounds, legal developments surrounding technology

transfer contracts, and the theoretical framework in light of different legal systems.

### **Subsection One: Emergence of the Technology Transfer Contract Concept**

Given the modern use of the term “technology,” it is necessary to first define the concept of a technology transfer contract accurately, as ambiguity could lead to confusion with related concepts. The legal concept is deeper as it intersects with intellectual property, technical rights, and usage and exploitation rights.

This subsection addresses the emergence of this concept in the international legal environment, its precise definition linguistically, terminologically, and legally, and its recognition in comparative legal systems.

#### **1. Origin of the Technology Transfer Contract**

The need for technology transfer arose after the Industrial Revolution when industrial countries began developing advanced techniques in various fields, widening the technological gap with developing countries. International trade and foreign direct investment facilitated the means to transfer such technical knowledge, whether through multinational companies or cooperation agreements between countries.

- **Early 20th Century:**

Legal features of technological relations began to form, particularly in the U.S. and Europe, through the regulation of intellectual property and patents. As technology gained importance in economic development, the need emerged for



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legal contracts regulating the transfer of technical knowledge to ensure both parties' rights.

- **Post-World War II:**

The concept evolved significantly with accelerated innovation and increased focus on technology transfer in international cooperation programs. Some international organizations, like the UN Industrial Development Organization (UNIDO), prepared models for technology transfer contracts to assist developing countries. The World Trade Organization (WTO) also addressed certain aspects of technology transfer through TRIPS agreements, aiming to protect intellectual property rights.

- **Post-Economic Opening:**

Interest in technology transfer contracts in Algeria emerged, necessitating regulation of technological relations with foreign companies. The importance of technology transfer was emphasized in investment laws, particularly the amended and supplemented 2001 Investment Law.

Thus, the origin of the technology transfer contract lies in the interaction between economic and legislative developments, establishing a legal framework for transferring technical knowledge between parties. This contract serves as a tool for industrial and economic development, enabling local institutions to access advanced technologies legally and safely. The contract may be simple, transferring a patent, or complex, involving training, technical support, and development.

The emergence of the technology transfer contract was influenced by factors such as the development of

international trade, increased focus on scientific innovation, and R&D. Comparative legislation contributed to precise definitions within investment or industrial property laws. The contract is therefore a product of gradual development necessitated by the modern need for knowledge and its legal regulation.

## **2. Definition of the Technology Transfer Contract**

A technology transfer contract is an agreement whereby one party, called the "technology provider," transfers technical or technological knowledge to another party, called the "recipient" or "beneficiary," for use in a specific field, whether industrial, commercial, agricultural, etc., in exchange for monetary or in-kind compensation.

This knowledge comprises technical and practical information not publicly available, necessary for producing a specific product or performing a service. It usually takes the form of patents, industrial models, technical knowledge, trade secrets, or protected software.

- **Linguistic Meaning of Technology:**

The term "technology" ("Technologie") is of non-Arabic origin, Arabized as "تقنية" (*Taqniyah*). The word comes from Greek, combining "Techn" (skill) and "logos" (theoretical and applied study). The Arabic Language Academy in Damascus proposed an equivalent, adopted by the Arab League. The Quran also refers to mastery (تقن), highlighting excellence in creation: *"The work of Allah, who perfected everything."* Technology refers to applied scientific knowledge, encompassing industrial arts, crafts, and methods, while technology transfer implies the enabling of others to benefit from such knowledge. Technology may be



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tangible (models, plans, devices) or intangible (training, information, consulting).

- **Terminological Definition:**

The technology transfer contract is a contemporary legal concept attracting national and international legislative attention due to its complex economic, technical, and legal implications. There is no uniform definition due to the diversity of transfer forms and overlap with licensing, franchising, intellectual property, and technical support. Terminologically, it refers to an agreement whereby the “provider” transfers technical or technological knowledge – protected or unprotected – to a “recipient” under defined legal and financial conditions for exploitation in production, development, or operation. Knowledge includes technical information, software, designs, patents, industrial methods, and trade secrets.

The contract may take the form of a license, technical support, or strategic alliances, making it a composite contract exceeding traditional contract characteristics. Its specificity lies in transferring intangible, sometimes confidential or intellectual property-protected information, requiring precise legal regulation to protect both parties' rights and ensure safe knowledge transfer.

Using the term "technology transfer contract" implies the existence of a special and integrated legal framework, though this may not always be the case, especially in jurisdictions like Algeria, where the contract is subject to civil law, general commercial contracts, investment law, and industrial and intellectual property legislation. Accurate definition and analysis of its dimensions are therefore

essential to understanding its legal nature and distinguishing it from other contracts.

In conclusion, a technology transfer contract is a legal agreement through which technical, technological, or scientific knowledge not publicly available is transferred from a natural or legal person (the provider) to another party (the recipient), enabling the latter to exploit or apply the technology in a specific field such as industry, agriculture, services, or other economic activities. It usually includes confidential technical information, engineering data, software, production methods, operational systems, or practical technical training.

### **3. Definition of Technology Transfer Contracts in Comparative Legal Systems**

Most scholars agree there is no single legal formula for a technology transfer contract. What exists in practice is a set of diverse contracts, each with its own nature and legal system, which, in one way or another, result in the transfer of technology. Some scholars define it as: *“A contract whereby protected or unprotected technical knowledge is transferred from a person who owns it to another who does not, to enable the latter to use and exploit it in producing or developing a product or service.”*

- **In French Law:**

We do not find a legal text that defines a technology transfer contract precisely; rather, it is treated as a contract of an unspecified nature. However, both jurisprudence and legal scholarship agree that it is a special contract falling within the category of licensing, supply, or service contracts, depending on the nature of the subject matter being transferred. It is often included under licensing contracts



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involving the use of industrial property rights or the provision of technical services. French jurisprudence and scholarship have helped clarify its features, considering the transfer of technical knowledge or industrial secrets through a written agreement as the essence of this contract.

The Algerian legislator has given particular importance to technology transfer contracts, especially following developments in the industrial and scientific research sectors. It explicitly defined them in the Law on the Protection of Neighboring Rights issued in 2003, making it one of the few legislations to provide a clear statutory definition of a technology transfer contract, and it dedicated a full chapter to regulating its conditions and effects.

### **Second - In Egyptian law:**

The Egyptian legislator has also shown interest in this contract, as no definition existed for technology transfer contracts in Egyptian law except in the new Egyptian Commercial Law No. 99-17, which included a specific definition in Article 73 of the Egyptian Commercial Law: "A technology transfer contract is an agreement by which the technology provider undertakes, in exchange for compensation, to transfer technical information to the technology importer and for it to be used in a specific technical manner for the production of a certain product or its development, or for the assembly or operation of machines or devices, or for the provision of services."

### **Third - In U.S. law:**

Contracts for technology transfer receive wide attention under federal legislation, particularly given the significant

role of multinational companies and research institutions. Such contracts are subject to multiple regulations, including contract law, patent law, and antitrust law. In drafting these contracts, care is taken to ensure they do not result in illegal restrictions on competition or technological monopolization.

#### **Fourth - Algerian law:**

Algerian law does not contain a direct definition of a technology transfer contract, and the legislative framework for such contracts is largely absent. This is likely due to a shortage of scholars, researchers, and brain drain, which limits contributions to international invention. However, some legal texts implicitly refer to it, particularly in investment law, which allows for technology transfer within partnerships with foreign entities.

The legislator has defined “transfer” more generally in Article 36 of the Commercial Law as: “A transfer contract is an agreement under which the transferor undertakes, in exchange for compensation, to personally transfer a person or object to a specific location.” Despite the absence of an explicit concept of technology transfer contracts in Algerian legislation, Algeria has signed several agreements in this field with international organizations specializing in economic cooperation, particularly in the technical and scientific domains, such as agreements between Algeria and Greece.

It is clear that there is no comprehensive and definitive definition of technology transfer contracts, which has led legislations to avoid defining them due to the lack of international consensus, while others define them to protect their contractual interests according to national strategies. Therefore, legal systems vary in the extent to which they



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organize and define technology transfer contracts, ranging from precise and explicit regulation to inclusion within traditional contract frameworks. This reflects the specificity and complexity of this type of contract and calls for further legal development to accommodate it.

## **Second Section: Specific Characteristics of the Technology Transfer Contract**

A technology transfer contract has numerous characteristics distinguishing it from other contracts and similar concepts. It represents one of the deepest phenomena in contemporary life, as its importance is not limited to international trade; its effects extend to various stages of production, services, information technology, scientific and technical discoveries, and other sectors considered pillars of state and sovereignty.

This embodies the principle of freedom of contract, granting the contract binding force both between the parties and toward third parties. Within the sphere of technology transfer, the contract has become the primary and most widely used legal instrument for conducting technological exchanges between developed and developing countries. It has a distinct phase preceding the contracting stage called negotiation, where all legal and economic regulations governing the contract's effects and guarantees are determined. In this regard, some characteristics of technology transfer contracts include:

### **First - A contract based on personal criteria:**

The contracting parties, particularly the recipient of the technology, are influenced by the personal consideration of

the state they are contracting with. Either the state or the party transferring the technology shows a serious willingness to transfer the technology and to acquire technological insight regarding the choice of contracting partner. The contracting party must be capable of transferring the technology, capable of innovation in the relevant fields, and independent from the exporting state, giving this contract a personal dimension. Both the transferor and the recipient's personal considerations are central.

### **Second – Long-term and evolving nature:**

The duration of the contract varies according to the subject matter. Generally, the duration should be sufficient to achieve the contract's objectives and results. Developing countries often aim through these contracts to achieve effective technological empowerment, establishing specific legal frameworks for them, considering their extended timeframes, and accommodating changing conditions and multiple roles throughout the contract period to ensure a balance between the contracting parties' interests.

### **Third – Influenced by policy:**

Technology transfer contracts are affected by public policy, as the developing country continuously evaluates the transferred technology's feasibility and suitability for its developmental needs. Political orientations influence technology selection, making decisions subject to intertwined political and economic considerations. The success of such contracts heavily depends on the political stability of the recipient country.

**Fourth – Economic and technical nature:**

These contracts involve economic and technical aspects, including precise identification of the technology, whether modern, advanced, or applied, and its applicability and economic exploitation, particularly in industrial and commercial sectors. This dual nature makes the contract both commercial and technical, often concluded between major economic institutions capable of assessing the transferred technology's economic feasibility.

**Fifth – International nature:**

Technology transfer contracts are inherently international due to the multiple nationalities of the parties and the diversity of legal systems involved. They are typically concluded between companies or entities subject to different national authorities, granting them a clear international character. This necessitates the application of private international law, especially regarding conflicts of law and jurisdiction, distinguishing them from local contracts.

Thus, the forms and characteristics of these contracts help in drafting them precisely, safeguarding the parties' rights and minimizing potential legal disputes.

A technology transfer contract is a vital legal instrument representing the organized transfer of technical or technological knowledge from an owner to a party seeking to exploit it. It balances the transferor's rights with the recipient's right to use and develop the technology. The transfer encompasses not just raw information but a complete system of data, expertise, and technical procedures that support innovation and production.

This contract differs from traditional contracts as it transfers not only tangible assets but also intellectual and knowledge value, which, although intangible, is influential and effective in industrial and economic development. Therefore, it combines commercial, scientific, and technical dimensions, requiring a flexible, integrated legal approach that considers technology's specificity, rapid evolution, and diverse forms.

In summary, a technology transfer contract allows an individual or company to use the technology or knowledge of another party to manufacture a product or improve a service under specified conditions.

## **Section Two: Forms and Types of Technology Transfer Contracts**

Technology transfer contracts vary according to the nature of the technology, purpose of the transfer, and relationship between the parties, resulting in multiple legal forms. Not all transfers are identical; they may involve transferring only a patent, delivering complete technical knowledge with training, or licensing the use of protected software.

### **First - Forms of Technology Transfer Contracts:**

Technology transfer contracts take various forms depending on the means of transferring knowledge and technical expertise, reflecting the parties' technical and economic needs. Each form addresses the investor's (provider's) or recipient's needs, often the developing country, and varies according to the technology type, its application, and the transfer method. The main forms include:



### **1. Sale of technology:**

Ownership of technical or technological knowledge is transferred from the provider to the recipient, usually for a specified monetary amount. This is one of the rarest forms due to the provider relinquishing all rights to the transferred technology. For example, a German company sells a water treatment patent to an Algerian company, transferring all intellectual property and technical documents. Another example: the Sovital Group purchasing specialized equipment for ultra-pure water production (Ifcon) from an Austrian company, with all intellectual property and technical documentation permanently transferred.

### **2. Licensing and exploitation:**

This is the most common form, where the technology owner grants the other party a license to use the technology for a specific period and within a defined scope without transferring ownership. The license may be exclusive or non-exclusive, subject to precise conditions regarding use, performance, and duration. Example: an American software company licenses an Algerian company to use warehouse management software, prohibiting resale or modification. Another example: Company A owns a patent for a new battery technology and licenses Company B, a car manufacturer, to use it in production in exchange for royalties based on production volume.

### **3. Supply (technical or support) contracts:**

The provider undertakes to provide technical services (installation, maintenance, training), often complementary to licensing or sale contracts, ensuring effective utilization of

the transferred technology. Example: A Chinese company supplies a new production line to an Algerian textile factory, sending engineers for installation and training.

#### **4. Franchise contracts:**

A “franchisor” enables a “franchisee” to use their technical knowledge and brand, providing technical assistance and necessary goods in exchange for payment, maintaining confidentiality, and avoiding competition during and after the contract. Example: A foreign fast-food company grants an Algerian entrepreneur the right to open branches under its brand, transferring recipes, operational procedures, and brand identity in exchange for monthly fees or profit shares.

#### **5. Contract for transfer of scientific research results:**

Universities or research centers enter contracts with industrial institutions to transfer applied research results. This is common in innovation and technological development. Example: An Algerian university develops a solar cell efficiency technology and contracts with an industrial manufacturer to produce solar panels based on the research, similar to Oxford University transferring its COVID-19 vaccine technology to an international company for production and distribution.

### **Second - Types of Technology Transfer Contracts and Their Features:**

Previously, we mentioned the forms of technology transfer contracts. These types are determined by the nature of the technology, objectives, and whether it relates to industrial or service sectors. Key types include:



### **1. Patent licensing contracts:**

This common type allows the transferor, holding a patent or technical innovation, to license the recipient to use it without transferring ownership. It is also called a “license agreement,” including technical and commercial exploitation rights and obligations regarding use, scope, and duration. Licenses can be exclusive or non-exclusive. Example: Pfizer licensing a local Algerian company to manufacture a drug under specific technical conditions without transferring patent ownership.

### **2. Deposit contracts in technology transfer:**

Ownership is not transferred; only limited use of some components or results is permitted, often concerning services or simple products. These hybrid contracts include technical, professional, and other contractual obligations. Example: Samsung deposits technical documentation for maintaining electronics with a local Algerian distributor, strictly regulating use.

### **3. Supply and technical support contracts:**

In this type, the provider undertakes to supply technical support services such as installation, maintenance, training, or consulting. These contracts often complement licensing or sale agreements and play a crucial role in ensuring the effective utilization of transferred technology. For example, a Chinese company may supply a new production line to an Algerian factory, sending engineers to install equipment, train workers, and provide operational support to guarantee safe and efficient use. Another example is a textile company contracting with a machinery manufacturer to provide

specific machines along with training and a time-bound warranty to ensure proper implementation.

These various forms and types of technology transfer contracts determine the structure, obligations, and legal arrangements of the agreements. They reflect the complex and specialized nature of technology transfer, which combines intellectual, technical, and economic dimensions, requiring careful legal drafting to protect the rights and responsibilities of all parties involved.

#### **Fourth - Turnkey Contracts:**

These refer to contracts in which the transferring party undertakes the establishment of an industrial unit or an integrated project with all its components - from design, construction, and equipment - and then delivers it ready to the state or the receiving party, so that the latter is not responsible for any breach except in the event of a legal or contractual impediment. Developing countries resort to these contracts in major infrastructure projects, such as airports and ports, due to the technical integration and high specialized expertise required. An example is the Iron and Steel Plant project in Bellara (Jijel) established by the Korean company "Hyundai Engineering" for Algeria, which was delivered as a ready-to-operate project.

#### **Axis Two: Scope and Elements of Technology Transfer Contracts**

The technology transfer contract is considered a relatively recent development in the Algerian legal system. It has not received specific and direct codification but is implicitly regulated through references to general rules in civil law



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and other laws such as the Investment Law and Intellectual Property Laws.

This contract acquires great importance in the economic environment, especially in light of the pursuit of industrial modernization and the development of technological performance of national enterprises through benefiting from foreign knowledge and expertise. Therefore, defining the scope of this contract and its limits within Algerian legislation is essential to understanding the legal framework governing its conditions and effects.

### **First Section: Scope of the Technology Transfer Contract and Its Types**

The technology transfer contract aims to enable the receiving party to benefit from the technical and technological knowledge owned by the transferring party. It is often concluded between an institution or developed country on one side, and a party wishing to acquire that technology on the other side, such as developing countries or local companies. This contract concerns intangible elements such as technical expertise, patents, production methods, or industrial organization systems and is not limited to the mere sale of machinery or equipment.

This contract is also characterized by its complex nature, combining legal, commercial, and technical aspects. It requires precise specification of rights and obligations and is connected to multiple legal regulations such as intellectual property protection, confidentiality conditions, and usage restrictions.

### **Subsection One: Scope of Technology Transfer**

In Algerian legislation, the scope of the technology transfer contract is primarily governed by general laws related to intellectual property, as well as the Investment Law, which encourages attracting foreign investments and enhancing technology transfer to the national economy. Despite the absence of explicit texts fully regulating this contract, the Algerian legislator has adopted many legal mechanisms that enable organizing these contracts in a way that safeguards the rights of the parties and serves the public interest.

The Intellectual Property Law is considered one of the most prominent laws regulating the field of technology transfer contracts, as it protects patents, industrial designs, and copyright, and forms an essential part of the legal rules that help define the scope of technology transferred through contracts that include these rights.

Therefore, technology transfer contracts are organized through adherence to the protection of these rights in accordance with international agreements ratified by Algeria, such as the TRIPS Agreement on intellectual property rights.

On the other hand, the Investment Law enhances the field of technology transfer by encouraging foreign companies to establish partnerships with local institutions. Foreign direct investments are considered the most important means of technology transfer because the process of technology transfer has become a necessity to upgrade national products.

This law provides that the state offers tax facilities and incentives to companies contributing to technology transfer to Algeria. It has become necessary for technology transfer contracts to include criteria related to investment, ensuring



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that economic and regulatory conditions determine how technology is obtained and transferred in accordance with the national economic system.

Regarding practical procedures, technology transfer contracts in Algeria require certain legal steps, such as registration with competent authorities, like the National Agency for Investment Promotion or the Algerian Intellectual Property Office, to ensure transparency and legality of the process. These procedures include submitting a report on the type of technology transferred and ensuring the continuity of rights related to it over the contract period.

When concluding a technology transfer contract in Algeria, competition laws and protection of the local market must also be considered, as technology transfer should not lead to monopolization or reduce competition in the Algerian market. Hence, it is important to impose restrictions on transferring technologies that could harm the national economy or negatively affect the environment.

## **Subsection Two: Types and Classifications of Technology Transfer**

Types of technology transfer are fundamental to understanding how knowledge and techniques move between parties and vary according to the nature of the relationship and the means used. They include:

### **First - Types of Technology Transfer:**

Technology is non-tangible for possession, partly due to industrial secrecy and property rights. Accordingly, there are two distinct types of technology transfer:

1. **Vertical Technology Transfer (Domestic Level):** It refers to using the results of scientific research and applying them in the place of use. Vertical technology transfer is the development of a new idea or knowledge into a tangible reality within a single economic sector in one country.
2. **Horizontal Technology Transfer (International Level):** It refers to the transfer of technology from the economy of one country to the economy of another.

### **Second – Classifications of Technology Transfer:**

Technology is classified by its nature into three main categories:

1. **Public Technology:** Technology that is fully available in books, research papers, journals, and publications, and is transferred through missions, meetings, and scientific conferences.
2. **Commercial Technology:** Technology whose movement, transfer, and use are subject to specific conditions and is often legally protected through registration in specialized offices. Unauthorized parties cannot handle it without prior permission and payment of fees, such as patents, franchise rights, and consulting services.
3. **Strategic Technology:** This technology is neither published in books or journals nor registered in specialized offices. Most of it is confidential and monopolized within private institutions and organizations. It includes the latest discoveries and innovations in highly important scientific and technological revolutions, such as space research,



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nuclear energy, military technology, and information technology.

Certain specialized institutions undertake research and development tasks in collaboration with states and other institutions, reflecting the integration of the state apparatus with capital interests.

## **Section Two: Elements of the Technology Transfer Contract**

The objective and formal elements are fundamental to determining the validity and effectiveness of a technology transfer contract under Algerian legislation. Besides the necessity of mutual consent between contracting parties, this requirement clarifies the essential elements that must be present in the contract for it to be based on sound legal foundations.

The objective elements form the foundations of the contract in terms of the subject matter (the technology transferred), the financial consideration, and the mutual obligations between the parties (Branch One).

The formal elements consist of the procedures necessary to give the contract official status, such as writing, authentication, and registration with competent authorities (Branch Two). The Algerian legislator emphasizes that the contract must comply with national and international laws related to intellectual property and investment protection, thereby safeguarding the rights of the parties and obliging them to adhere to legal requirements. These elements aim to organize the technology transfer process legally and safely, both domestically and internationally.

## **Subsection One: Objective Elements**

When discussing the objective elements of a technology transfer contract, we refer to the essential components forming the core of the contract, which must be present for the contract to be valid and binding on both parties. In Algerian legislation, despite the absence of precise regulation for technology transfer contracts, general principles of contract law can be used to define the objective elements of this contract, as follows:

### **First - Subject Matter Element:**

#### **1. Definition of Subject Matter:**

The subject matter in a technology transfer contract is the technology itself to be transferred from one party to another. It includes technical knowledge, patents, industrial secrets, computer programs, industrial techniques, or any other type of technical know-how. This element must be precisely defined in the contract so that each party knows exactly what is being transferred and the rights and obligations associated with the transferred technology. The Algerian legislator requires that the transferred technology be protected under intellectual property rights, and the scope of technology use must be specified in the contract.

#### **2. Conditions of Subject Matter:**

The conditions of the subject matter in this type of contract can be summarized as follows:

- 1. Possibility:** The subject matter must be transferable, meaning the technology exists and can be practically transferred.
- 2. Legality:** The subject matter must not conflict with public order or public morals in Algeria.



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3. **Determination:** The subject matter must be precisely specified in the contract or at least determinable upon execution.
4. **Transferability:** The transferring party must have the right to transfer the technology or possess a license to do so.
5. **Legally Permissible:** Some types of technology may be subject to export or transfer restrictions due to their sensitive nature.

### **Second – Consideration:**

**One of the essential elements of a technology transfer contract is the financial consideration or compensation received by the transferring party.** This consideration may be a lump sum or a percentage of the profits resulting from the use of the technology. It is considered a fundamental element without which the contract cannot be conceived. The compensation must be clearly specified in the contract, along with the mechanism for its payment, whether in installments or a single payment. In some cases, the contract may include a clause concerning arbitration in the event of a dispute over the financial consideration.

### **Third – Obligations of the Parties:**

Among the essential elements that must be included in the contract is the determination of the obligations of both parties. For the supplier (transferring party), these obligations include guaranteeing the transfer of technology according to the agreed specifications and providing technical support and training if necessary. The receiving party (beneficiary) is obliged to use the technology solely

within the framework of the contract and not exploit it for other purposes or transfer it to third parties. These obligations must be clearly defined to ensure proper implementation of the contract and avoid any future legal conflicts.

#### **Fourth - Contract Duration:**

It is necessary for the technology transfer contract to include a specified duration for the use of the transferred technology. While the technology may require continuous updates or an extension of the contractual relationship, contracts must ensure a defined period covering all aspects of the use of the transferred technology, including maintenance and training. This period may be renewable upon the agreement of the parties.

#### **Fifth - Intellectual Property Rights and Obligations:**

Any contract related to technology transfer must specify the rights associated with intellectual property, including patents, trademarks, copyrights, or industrial property rights, among others. It is important that the contract ensures the protection of these rights and that they are registered with competent authorities such as the National Intellectual Property Agency, especially if the contract involves legally protected technology. The contract should also address how intellectual property rights will be managed during the contract period, including the renewal of patents or rights.

#### **Sixth - Confidentiality and Information Protection:**

The confidentiality clause is a fundamental aspect of a technology transfer contract. The receiving party must



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commit not to disclose information related to the transferred technology, especially if such information constitutes trade secrets. The contract should specify the procedures to maintain confidentiality, including penalties for violating this obligation.

### **Seventh - Other Conditions:**

The contract may include additional conditions related to guarantees concerning the functionality of the technology or specific terms of use. It may also include obligations regarding technology updates or training technical personnel to facilitate its use in the factory or relevant system.

Based on the aforementioned objective elements, it can be stated that a technology transfer contract in Algeria requires precision in defining these elements to ensure the proper execution of the contract while protecting the rights of the parties involved and the intellectual property associated with the transferred technology.

### **Subsection Two - Formal Elements:**

The formal elements of a technology transfer contract are essential for ensuring the validity of the contract under Algerian legislation. This type of contract requires specific formal specifications to guarantee its legality and effectiveness. Although Algerian legislation does not explicitly stipulate a specific formality for technology transfer contracts, certain formal procedures must be considered to ensure that the contract complies with laws related to intellectual property, criminal law, and investment requirements in Algeria.

### **First - Writing:**

One of the essential formal elements is that the contract must be in writing. A written contract is a fundamental condition for the validity of contracts, as it is required that the parties agree on the technology transfer in writing to ensure the contract's validity. Writing allows all obligations and rights to be clearly and accurately documented, helping to prevent disputes between the parties regarding the content of the contract. The contract must include specific details about the transferred technology, financial consideration, and the rights and obligations of each party.

### **Second - Authentication and Registration:**

It is important that the technology transfer contract be registered with the competent official authorities in Algeria. This procedure aims to ensure the protection of intellectual property rights related to the transferred technology and serves as a legal means to document the contract and guarantee its transparency in the local and international markets, reducing the risk of legal disputes or manipulation of the technology.

### **Third - Licensing and Approval:**

Some types of technology may require special licensing from the relevant authority, particularly if they involve equipment or programs of economic or security importance. For example, if the technology includes tools related to the environment or national security, obtaining approval from the relevant authorities is necessary. Obtaining such licensing or approval is part of the formal procedures that must be completed before executing the contract. In some cases, the consent of competent authorities is required if the



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technology includes software that may affect national sovereignty.

#### **Fourth – Declaration of the Parties:**

In addition to formal procedures and documentation, the parties must explicitly declare their contractual intentions. This may involve exchanging official letters or providing formal notifications confirming the agreement.

#### **Fifth – Presence of Witnesses or Third Parties:**

Sometimes, the contract may require the presence of legal witnesses or third parties to ensure its validity and transparency. In international contracts involving parties from different countries, it is preferable to have the contract certified by embassies or consulates to ensure legal enforceability in the respective countries. In some cases, the contract may be signed in the presence of an arbitration body or commercial intermediaries to docu

#### **Sixth – Compliance with Local and International Laws:**

The technology transfer contract must comply with local and international laws related to technology, intellectual property rights, and investment. The TRIPS Agreement on intellectual property rights is part of the legal framework governing such contracts, meaning these agreements must be considered when drafting the contract.

Overall, defining the proper formalities of a technology transfer contract is crucial under Algerian legislation to ensure that the contract complies with local and international laws and protects the rights of all involved parties. The requirements may vary depending on the type

of technology and the relevant field, necessitating careful attention by the contracting parties in completing the formal procedures.

### **Conclusion:**

It has been demonstrated that the technology transfer contract represents a pivotal legal tool for organizing the exchange of technical knowledge between different parties. This reflects the importance of technology as a key element in modern economic and social development. Contracts serve as the legal link that defines rights and obligations, provides a legal environment protecting the interests of the parties, safeguards intellectual property, and ensures proper execution.

- It is recommended to update and develop the legal frameworks regulating technology transfer contracts to align with technological advancements, through clear legislation protecting intellectual property rights and explicitly defining the responsibilities of the parties.
- It is suggested to enhance specialized mediation and arbitration mechanisms for technical disputes to avoid resorting to conventional courts, which may lack technical expertise.
- Raising legal and technical awareness among the concerned parties is essential to ensure a comprehensive understanding of contracts and their legal effects.

The future outlook for this field emphasizes the importance of adopting flexible laws that can adapt to rapid



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technological developments, especially with the emergence of new technologies such as artificial intelligence and biotechnology. International cooperation in technology transfer will become increasingly important, necessitating the establishment of international agreements to facilitate these processes while ensuring mutual rights protection.

On the other hand, there will be a need to integrate modern technologies into legal procedures, such as using smart contracts based on blockchain technology, to facilitate transfer processes and ensure automatic and transparent execution of contracts.

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