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New finds this week

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New finds this week

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INTELLECTUAL PROPERTY RIGHTS IN TECHNOLOGY TRANSFER AND THE SAFEGUARDING OF INNOVATION IN VIETNAM

Overview

In today's knowledge-based economy, innovation and the protection of intangible assets have become key drivers of sustainable growth. Resolution No. 68-NQ/TW of the Politburo underscores the importance of "institutionalizing innovation and protecting intangible assets" as a foundation of Vietnam's development strategy. For enterprises, this creates a dual obligation: to conduct research and invest in technology development, while at the same time adopting comprehensive legal strategies to manage and safeguard their intellectual property rights throughout the process of technology transfer and commercialization.

Technology transfer enables enterprises to access advanced technologies, accelerate production, and strengthen competitiveness. Yet, this process also carries inherent risks, particularly concerning the loss, misappropriation, or unlawful exploitation of intellectual property. Although Vietnam's Law on Technology Transfer 2017 and the Intellectual Property Law (2005, as amended in 2022) provide the legal basis for regulating such activities, in practice many contracts fail to clearly define intellectual property ownership and obligations. As a result, disputes arise, commercialization is hindered, and enterprises are left vulnerable. Strengthening the legal framework for IP rights is therefore critical to ensure that technology transfer becomes an effective engine for national innovation and enterprise development.

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The Importance of IP in Technology Transfer

Intellectual property (IP) encompasses the creations of the human mind, including patents, copyrights, trademarks, industrial designs, and trade secrets. These rights grant exclusive control to their holders for a defined period, allowing them to benefit from their creations and prevent unauthorized use. In practice, most technology transfer agreements involve the transfer or licensing of IP rights linked to specific processes, designs, or know-how.

The close relationship between IP protection and technology transfer is essential for bridging the gap between research and market application. Effective IP frameworks ensure that inventions made in universities, research institutes, or private laboratories are lawfully commercialized, while providing recognition and economic incentives to inventors. For enterprises, acquiring technologies through lawful transfer means access to knowledge and expertise that might otherwise be beyond their reach. For society, it means the diffusion of advanced solutions in areas such as healthcare, renewable energy, and digital transformation.

However, there is an ongoing policy debate. While strict IP protection safeguards rights holders, it can sometimes limit access to essential technologies, especially in developing countries or in sectors of public interest. Policymakers must therefore strike a balance between the need for strong protection and the principle of fair accessibility. At the global level, the TRIPS Agreement (1994) sets minimum IP protection standards, directly influencing the terms of technology transfer between countries. The World Intellectual Property Organization (WIPO) further promotes international harmonization of IP and the commercialization of patents, trademarks, and trade secrets.

At the national level, Vietnam's legal system provides a relatively comprehensive framework through the Law on Technology Transfer 2017 and the Intellectual Property Law. Additional legislation, such as the Law on Science and Technology 2013 and the Law on Investment 2020, plays an important role in encouraging innovation, attracting investment, and shaping the environment for technology transfer. Collectively, these laws provide enterprises with legal assurances when applying technologies in practice. Yet, they have not fully kept pace with the digital age and the Fourth Industrial Revolution, which are characterized by fast-changing technologies and new forms of IP such as data, algorithms, and artificial intelligence.

Limitations in the Current Legal Framework

Despite significant progress, Vietnam's current legal system still contains gaps that weaken the protection of intellectual property in technology transfer.

First, the existing provisions remain primarily focused on traditional forms of technology, particularly physical machinery and patented processes. Emerging fields such as digital platforms, AI, cloud computing, and big data are not sufficiently regulated. This creates uncertainty for enterprises seeking to transfer or license rights in new areas of technological development.

Second, incentive policies remain ineffective. Financial and institutional support for the transfer of strategic technologies, especially high-tech, green, and digital technologies, is limited. Without stronger incentives, both transferors and transferees face reduced motivation to engage in transactions that could modernize production and improve competitiveness.

Third, cross-border technology transfer is insufficiently regulated. The absence of clear legal provisions hampers Vietnam's ability to attract high-value foreign investment while also limiting its capacity to export indigenous technologies abroad. Without clear rules, risks of outdated or environmentally harmful technologies entering the country remain high.

Fourth, state management and oversight of technology transfer are weak. While agencies have coordination mechanisms, overlaps and gaps in regulation allow outdated technologies to slip through. For foreign-invested projects, insufficient scrutiny during licensing procedures has at times resulted in the transfer of obsolete technologies that carry environmental risks.

Finally, the commercialization of state-funded research remains limited. Complex administrative procedures, unclear allocation of intellectual property ownership between the State, institutions, and researchers, and the lack of transparent valuation methods all discourage universities and research institutes from bringing their inventions to market.

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Strengthening IP Protection in Technology Transfer

To ensure technology transfer contributes effectively to Vietnam's innovation-driven development, intellectual property rights must be placed at the center of reform.

Contracts should clearly define ownership rights, the scope of usage and licensing, confidentiality obligations, monitoring mechanisms, dispute resolution, and remedies for breach. These provisions not only safeguard the interests of parties but also provide a legal foundation for enforcement should disputes arise.

Valuation mechanisms must be made transparent, particularly for intangible assets and non-physical technologies. Without clear valuation methods, technology transfer contracts are vulnerable to manipulation and transfer pricing practices, where outdated or depreciated assets are introduced into Vietnam at artificially inflated prices.

Cross-border transfers require specific standards that balance the need to attract advanced technologies with the necessity of protecting national interests and technological security. A clearer regulatory framework would also enhance investor confidence and improve Vietnam's integration into international technology markets.

At the same time, procedures for universities and research institutions must be simplified to encourage commercialization of state-funded research. Clearer allocation of IP ownership and benefit-sharing between the State, institutions, and inventors would give researchers greater incentives to bring their work into the market. Moreover, legal and institutional capacity must be improved. Courts, arbitration centers, and regulatory bodies require specialized knowledge in IP law and technology transfer to ensure effective oversight and enforcement.

International Experience and Lessons for Vietnam

Experiences from other jurisdictions illustrate the importance of IP in successful technology transfer.

South Korea's trajectory demonstrates how strengthening IP protection while investing in domestic capacity can transform a country from a technology imitator into an innovation leader. Taiwan has effectively combined IP safeguards with tax incentives and close collaboration between universities and enterprises to promote industrial development. The United Kingdom has established strong commercialization platforms that connect research with market needs, supported by transparent IP rules.

These examples show that strong IP laws, combined with supportive policies and institutions, are essential to maximizing the benefits of technology transfer. They also highlight the need for flexibility in regulating emerging technologies, including the use of data, artificial intelligence, and cross-border digital transfers

Conclusion

In conclusion, the future of technology transfer in Vietnam depends on how effectively intellectual property rights are integrated into both enterprise strategies and national policy. Enterprises must proactively secure registrations of their rights both domestically and abroad, ensuring that their assets are not unlawfully exploited. Contracts must be carefully drafted to safeguard ownership and define obligations with clarity. At the same time, the State must refine its legal framework, harmonize domestic laws with international standards, and ensure robust enforcement to prevent abuses such as transfer pricing and the import of outdated technologies.

By placing intellectual property at the center of its innovation strategy, Vietnam can not only protect intangible assets but also foster a business environment that encourages research, commercialization, and sustainable growth. This approach is fully aligned with Resolution No. 68-NQ/TW, affirming that safeguarding intangible assets is indispensable to building an innovation-driven economy.

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Please contact Daitin & Associates if you require any further information or guidance in the procedures of acquiring, protecting intellectual property rights in Vietnam | Cambodia | Laos | Myanmar | Thailand | Philippines | Brunei | Indonesia.

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