



**FARES LEGAL**

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# **Technology Transfer in Algeria**



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## **I. Legal Framework for Technology Transfer in Algeria**

Algeria's legal framework for technology transfer is based on several laws and regulations designed to promote innovation, boost industrial competitiveness, and integrate modern technologies into the national economy. This framework is marked by a set of laws, regulations, and international conventions governing the acquisition, adaptation, and dissemination of technologies in the country. Here are the main components of the legal framework:

### **(i). Industrial property law**

Law no. 03-07 of July 19, 2003 on patents for invention and Executive Decree no. 05-275 of August 2, 2005 setting out the procedures for filing and issuing patents for invention.

The main aim of these regulations is to protect trademarks and govern intellectual property in Algeria. A key area for technology transfer. The law aims to protect inventions, utility models, and trademarks, thus facilitating the integration of foreign technologies while protecting the rights of local inventors. It also encourages innovation by offering guarantees to companies wishing to invest.

### **(ii). The Investment Code**

Algeria's Investment Code, revised in 2016 (Ordinance No. 01-03 of August 20, 2001 and Ordinance No. 16-09 of August 03, 2016), encourages foreign companies to invest in Algeria, particularly in sectors requiring technology transfer. This legislative framework offers various tax and customs advantages and encourages the acquisition of new technologies through partnerships between local and foreign companies.

### **(iii). Registration of medical and pharmaceutical products**

Executive Decree no. 20-324 of November 22, 2020 on the approval procedures for medical devices, this decree defines the conditions and procedures for approving medical devices in Algeria. It aims to guarantee the quality, safety, and efficacy of

medical devices before they are placed on the market. Manufacturers must submit their products to strict controls to obtain approval, ensuring their compliance with international standards.

Executive Decree no. 20-325 of November 22, 2020 on the registration of pharmaceutical products, this decree aims to provide a framework for the registration process for pharmaceutical products, defining the requirements to be met before they can be marketed in Algeria. It specifies the documents, clinical studies, and compliance tests required to ensure that medicines are safe and effective. The aim is to reinforce regulation and safety in the pharmaceutical field.

These laws and decrees aim to improve regulation of the healthcare sector and guarantee high standards of medical safety in Algeria.

**(iv). Accession to international conventions**

Algeria is a member of several international conventions governing technology transfer, such as :

- The Paris Convention for the Protection of Industrial Property
- The World Trade Organization (WTO) These agreements enable Algeria to integrate into the global system for protecting intellectual property rights, thus facilitating the international transfer of technology while respecting global standards.

**(v). Technology promotion and innovation agencies**

Algeria has set up several institutions to promote technology transfer, including :

- Agence Nationale de Promotion et de Développement des Parcs Technologiques (ANPT): plays a key role in disseminating new technologies in the industrial sector.
- The Centre National de Recherche en Technologies Avancées (CRTI) and other research centers encourage partnerships between universities, companies, and foreign institutions to foster technological innovation.

## **II. Definition and nature of the contract**

To define the nature of a technology transfer contract and what it entails, we need to understand the meaning of the term "technology" first, then the concept of "transferring that technology" and finally the types of technology involved in the pharmaceutical sector.

### **1- With regard to technology:**

This represents all the tools, techniques, and know-how that a pharmaceutical company develops to manufacture and market a product or medicine, and can also refer to the production, management, sales, or design techniques for a pharmaceutical product.

In Algeria, the legislation does not provide a precise, formal definition of technology in a specific text relating to the pharmaceutical sector. However, the field of pharmaceutical technology refers to the sciences and techniques applied to the manufacture, design, distribution, and control of medicines within the framework of the laws governing pharmaceutical and medical products.

The laws and regulations that cover pharmaceutical technology in Algeria are generally included in texts relating to public health, the regulation of pharmaceutical products and good manufacturing practices .

### **2- Concerning technology transfer:**

This is the process by which a company transfers its technology, know-how, and tools to a business partner.

In particular, a company can transfer its technology to a foreign business partner so that the latter can produce and sell the product concerned on its territory.

In Algeria, technology transfer is encouraged and governed by legislation designed to modernize the pharmaceutical sector, boost local drug production capacity, and promote innovation.

Although it is not specifically defined by a law unique to the pharmaceutical sector, it is addressed within the framework of the laws relating to investment (which provides tax incentives and benefits) and to the pharmaceutical industry which encourages foreign companies to share their technologies with local companies. The Algerian authorities also impose strict standards to ensure that transferred technologies comply with international standards.

In addition, Algerian legislation refers to the transmission of know-how, technical processes, and technologies from a foreign entity to a national entity.

It is seen as an essential lever for industrial development and the modernization of local infrastructures and is often implemented via partnerships that end in contracts

with foreign companies to improve local production, management, and innovation capabilities.

What does a technology transfer contract involve?

In Algeria, a technology transfer contract involves an agreement between two parties, usually a foreign company and a national entity, in which the former undertakes to transfer knowledge, technologies, skills, or technical processes to the latter.

A technology transfer contract in the pharmaceutical sector in Algeria involves several key elements, the most important of which are listed below:

### 3- Essential Clauses :

- a- **Technology description:** Precise identification of transferred technologies, including patents and know-how.
- b- **Transfer conditions:** Terms and conditions for implementing the transfer, including :
  - ✓ Training: an essential part of technology transfer is the training of local employees. This can include specific training programs, hands-on learning, or internships abroad so that Algerian employees can operate and maintain the technology autonomously over time.
  - ✓ Technical support: the contract may provide ongoing support, such as equipment maintenance, software updates, or consulting services to ensure that the technology works properly in the local context.
  - ✓ Support for research and development,
- c- **Royalties and Payments:** Determination of payments due for technology transfer, which may include sales-based royalties or lump-sum payments.
- d- **Contract duration:** Specify the duration for which the transfer will be effective and the associated rights.
  - **Protection of Intellectual Property:** The parties must ensure that intellectual property rights are respected and protected, particularly concerning patents and trade secrets to avoid unfair competition.
  - **Dispute Resolution:** Inclusion of a dispute resolution clause, often through arbitration or mediation, to resolve any disputes that may arise.
  - **Parties obligations:** Each party has specific obligations, such as providing technology, training employees, complying with quality and safety standards, and producing locally.

- **Compliance with Regulatory Standards:** The contract must comply with the requirements of the Algerian pharmaceutical regulatory authorities, including the standards of the Agence Nationale des Médicaments.

It is advisable to consult a lawyer specialized in business law or intellectual property law in Algeria to ensure that the contract complies with all applicable regulations and protects the interests of the parties involved.

### III. Intellectual Property and Patents

Intellectual property in Algeria is managed by the Institut National Algérien de la Propriété Industrielle (INAPI), which is the competent authority for the registration and protection of industrial property rights, including patents and trademarks.

Registration of a patent in Algeria follows a standard procedure that ensures the protection of an invention for 20 years from the date of filing.

**1- Before filing a patent application, a prior art search must be carried out,** for a fee of two thousand four hundred dinars (2,400.00 DA) per search object, via the INAPI website.

**2- Filing the application with INAPI:** The patent application must include a clear and complete description of the invention, the claims, explanatory drawings, and a summary.

**3- Examination of admissibility:** INAPI carries out a formal evaluation to check the conformity of the application.

**4- Publication:** Once accepted, the patent must be published in the Bulletin Officiel de la Propriété Industrielle.

**5- Issuing:** After examination and approval, the patent can be issued.

The inventor or the company holding the patent then benefits from the exclusive right to exploit the invention in Algeria, preventing any exploitation, sale, or reproduction of the invention without their authorization.

However, patents in the pharmaceutical sector raise several challenges:

- **Exclusions from patentability:** In Algeria, as in many other countries, certain types of innovation in the pharmaceutical field may not be patentable. For example, methods of medical treatment or certain forms of scientific discovery may not be patentable.

- **Period of protection:** Patents are generally valid for 20 years, but protection may not cover all stages of pharmaceutical development, particularly if the product requires a long phase of clinical testing before being brought to market.

To protect themselves, pharmaceutical companies can use a combination of measures:

- **Patenting new molecules or processes:** It's crucial to file patents as early as possible to ensure protection against competitors.

- **Trade secrets:** Some companies choose to protect their formulas or processes through trade secrets rather than patenting, particularly when the disclosure of information during patenting could harm their competitive advantage.

- **Licensing strategies:** Once a patent has been registered, the company can license other entities to manufacture and market its products, generating additional revenue while retaining control over innovation.

- **Monitoring and enforcement:** It is essential to monitor the market to ensure that no other entity is infringing patent rights. In the event of infringement or unauthorized exploitation, legal action must be taken to enforce these rights.

In short, the protection of intellectual property rights and patents in Algeria is essential for companies wishing to preserve their innovations, particularly in the pharmaceutical field. By ensuring rapid filing and using strategies such as licensing or industrial secrecy, companies can optimize the profitability of their innovations while ensuring legal protection against unfair competition.

#### **IV. Confidentiality and non-disclosure**

The confidentiality and non-disclosure clause in a technology transfer contract, particularly in Algeria's pharmaceutical sector, is essential to protect sensitive information, trade secrets, and technological innovations.

The confidentiality clause must :

- Clearly define what is considered "confidential information", including technical data, formulas, research results, and financial documents.

- Contain information that will not be considered confidential, for example, information that is already public, known before the contract is signed, or legally obtained from a third party.

- The parties undertake not to disclose confidential information to third parties without the prior written consent of the other party.

- Restrict the use of confidential information for purposes related to the technology transfer contract.

- Specify the period during which information must remain confidential, which can often extend beyond the term of the contract.

**Exceptions to non-disclosure :**

- **Legal obligations:** Specify that information may be disclosed if required by law or by a competent authority, provided that the disclosing party informs the other party.
- **Pre-existing agreements:** Mention whether disclosures are permitted under prior agreements.

#### **Consequences of breach of clause:**

- **Penalties:** Define the consequences of breaching the clause, including the possibility of seeking damages or injunctive relief.

#### **6. Additional provisions**

- **Return of information:** At the end of the contract, all confidential information must be returned or destroyed.
- **Applicable law and dispute resolution:** Indicate that the contract is governed by Algerian law and provides for dispute resolution mechanisms, such as mediation or arbitration.

#### **Legal framework in Algeria**

In Algeria, provisions relating to confidentiality and the protection of commercial information are generally backed by the Intellectual Property Code and the Civil Code. It is therefore advisable to consult a specialized legal advisor to ensure that the clause complies with current legislation and is adapted to the specificities of the pharmaceutical sector.

The inclusion of a confidentiality and non-disclosure clause in a technology transfer agreement is crucial to protect the interests of both parties. It is advisable to work with legal advisors to draft clear and legally sound clauses.

## **V. Financial Terms and royalties :**

As part of a technology transfer contract in the pharmaceutical sector in Algeria, the financial conditions and royalty payment terms must be established according to precise rules to guarantee transparency and compliance with local legislation. Here is an overview of these terms and conditions:

### **1. Initial costs :**

Upfront fees are generally one-off payments made at the beginning of the contract to cover the initial costs of the technology transfer, such as :

- License fee: amount paid to obtain the rights to use the technology.
- Technical assistance costs: cover training, technical support, and the provision of know-how.

- Implementation costs: related to setting up the infrastructure needed to operate the technology.  
These upfront fees can be defined in the contract and are payable at the time of signing or a stage agreed upon by the parties.

## 2. Royalties:

Royalties can be calculated in several ways:

- **Percentage of gross or net sales:** in most cases, a percentage is applied to the sales generated by the local company for products developed using the transferred technology.
- **Fixed royalties:** pre-established fixed amounts can be agreed in the contract, regardless of sales achieved.
- **Degressive tariff:** the percentage or amount of royalties may decrease over time, depending on the duration of the contract or the product's economic performance.

Royalties are generally paid periodically (monthly, quarterly, or annually) according to the terms defined in the contract. Payment may include :

- Detailed financial reports from the licensee (the company receiving the technology) detailing sales made and on which royalties are calculated.
- Periodic checks: the agreement may provide for audits to ensure the accuracy of royalty calculations.

## 3. Mechanisms for calculating payments :

The contract must specify how the amounts due are to be calculated, including :

- Exchange rates to be used (in the case of international agreements).
- Reductions or exemptions in the event of special circumstances (targets not met, market trends, etc.).
- Penalties for late payment.

## Payment terms under Algerian law :

Algerian legislation imposes certain specific rules concerning royalty payments and other compensation in technology transfer contracts, including:

**4. Direct debit requirement:** all technology transfer contracts involving international payments must be domiciled with a licensed Algerian bank. The bank acts as an intermediary to ensure that financial transactions comply with national foreign exchange and currency transfer regulations.

- Approval from the relevant authorities: certain contracts, particularly those involving sensitive technologies, may require prior approval from the Algerian authorities (Ministry of Health, Ministry of the Pharmaceutical Industry, etc.).
- Currency transfer: the transfer of foreign currency is strictly regulated by the Bank of Algeria. Royalties and other payments linked to technology transfer must be made in compliance with the rules in force.

#### **5. Tax implications :**

- **Taxation of royalties:** royalties paid to a foreign entity are generally subject to a withholding tax in Algeria, the rate of which may vary depending on the bilateral tax treaties signed between Algeria and the foreign entity's country of origin.
- **VAT and other taxes:** payments for technical services or assistance provided as part of a technology transfer may also be subject to VAT or other local taxes.

In short, the financial conditions and royalties for a pharmaceutical technology transfer contract in Algeria must be precisely defined and comply with local legislation, including payment mechanisms adapted to the Algerian legal and financial context.

## **VI. Obligations of the parties**

It is essential to have well-drafted agreements and contracts that describe the terms and conditions of the technology transfer, and this includes any obligations or responsibilities of the parties involved, who jointly undertake to cooperate to ensure the effective implementation of the contract and to respect their contractual commitments and act in good faith throughout the duration of the contract.

- It goes without saying that the "**Transferor**" party is the one who transfers the technology and know-how to the :
  - Transfer the technology and all technical documentation relating to the technology, products, and tools that it owns and that correspond to the object of the contract entered into with the "Licensor".
  - Undertake to train the "Licensor's" technical and managerial staff in the planned facilities until all personnel concerned are familiar with the technology and know-how transferred.

- Undertakes to provide after-sales support to the "Licensor".
  - Guarantee that the technology transferred does not infringe the intellectual property rights of a third party.
- On the other hand, the "Licensor" is the party who receives the transfer of technology and know-how and is obliged to :
- Comply with applicable standards and regulations.
  - Pay royalties and other payments stipulated in the contract on time.
  - Use of technology only for purposes specified in the contract and within the framework of the Algerian market.
  - Provide regular reports on technology use, production, and sales if mentioned in the contract.

**What are the problems encountered when executing a technology transfer contract, and what solutions can be found to overcome these obstacles?**

Executing a technology transfer contract in the pharmaceutical sector in Algeria can face a number of challenges. These obstacles may be legal, regulatory, economic, or technical.

Indeed, Algeria's regulatory framework can be complex, particularly when it comes to technology transfers, imports of goods and services, and the protection of intellectual property. The process of obtaining the necessary authorizations can be long and cumbersome, involving multiple government agencies.

The legal framework for intellectual property in Algeria may not offer sufficient protection for transferred technologies, which may deter some companies from sharing their know-how.

Local infrastructures, such as laboratories, production equipment, or distribution systems, may not be sufficiently developed to effectively integrate imported technology.

Technology transfer can involve high costs, particularly in foreign currency. Access to these currencies may be limited by the strict controls imposed by the Bank of Algeria.

Technology transfer can be hampered by a lack of qualified personnel to absorb and apply new technologies, particularly in a technical sector such as pharmaceuticals.

Cultural and organizational differences between the foreign company transferring the technology and the Algerian party may generate misunderstandings or resistance to change.

**In these cases, we recommend :**

- optimize administrative procedures, working closely with legal advisors and regulatory experts to fully understand administrative steps and ensure timely submission of all necessary documents.

- work with local authorities to anticipate and resolve administrative delays, and ensure that the technology transfer contract complies with local legislation from the outset.
- Include clauses to protect intellectual property rights in the contract: Include specific clauses to protect patents, trademarks, and industrial secrets in the technology transfer agreement.
- Ensure that all patents, licenses, and other intellectual property rights relating to the technology are properly registered in Algeria.
- Include in the contract provisions for upgrading existing facilities or building new infrastructure adapted to the needs of the technology transfer project.
- Provide ongoing training and technical assistance for local staff to ensure optimum use of the transferred technology.
- Set up comprehensive training programs to train local teams in the use and maintenance of new technologies.
- Collaborate with Algerian universities and research institutes to strengthen technical skills in the pharmaceutical field.
- Negotiate favorable financing terms with international or local banks, or consider financing via foreign partners.
- Explore Algerian government incentive programs or subsidies aimed at promoting technological development in the pharmaceutical sector.
- Foster constant dialogue between both parties to ensure that the objectives of technology transfer are clearly understood and accepted.
- Adopt a change management approach to facilitate the integration of new technologies and work methods within the Algerian organization.

## **VII. Liability and warranty**

In technology transfer contracts, particularly in the pharmaceutical sector, the definition of responsibilities between the parties is crucial to ensure appropriate use of the technology.

Internationally, it is essential that the licensor guarantees the validity of its intellectual property rights, and ensures that the technology transferred complies with current local and international standards. For example, in the European Union and the United States, validation of patents and compliance with health regulations are essential to avoid litigation or sanctions.

In Algeria, industrial property regulations set precise standards for the protection of intellectual property rights. This means that the licensor must ensure that the technology transferred is protected by patents, trademarks, or other intellectual property rights recognized by Algerian law.

The guarantee of conformity also implies due diligence on the part of the licensor to verify that the technology does not infringe on the rights of third parties and complies with the safety standards required by Algerian product safety regulations.

Many jurisdictions, including Algeria, include clauses in contracts stipulating that the licensor must inform the licensee of any potential disputes relating to the technology.

Algerian law also requires the licensor to provide initial training to the licensee to ensure that he or she fully understands the technical specifications and appropriate uses of the technology.

It is also common to include a disclaimer, allowing the licensor to be exempt from certain liabilities, except in the case of design or inherent defect.

Although this type of clause may be contested, it is intended to protect the licensor against claims that might arise from misuse or misinterpretation of the technology by the licensee. Under current regulations, the licensor is liable for damages caused by defects in the transferred technology, unless there is proof of fault on the part of the licensee.

In addition, it is essential to provide regular follow-up mechanisms to ensure the quality and compliance of the transferred technology. This can include periodic audits, technology updates, and ongoing training sessions for the licensee's staff. This proactive approach helps establish a relationship of trust between the parties and minimizes legal risks.

## VIII. Dispute resolution

In Algeria, dispute resolution mechanisms mainly include mediation, arbitration, and conventional legal proceedings. These approaches enable disputes to be settled amicably or in a legally binding manner, depending on the situation. Algerian legislation provides a framework for these mechanisms to ensure transparency, efficiency, and fairness in the handling of disputes.

- **Mediation:** Mediation is an alternative dispute resolution mechanism designed to encourage negotiation between parties through the intervention of a neutral mediator. The aim is to find an amicable solution, without recourse to the courts.

In this process, the parties voluntarily agree to use a mediator to find an amicable solution.

- **Arbitration:** Arbitration is a more formal procedure, in which the parties entrust the resolution of their dispute to one or more arbitrators. The arbitrators render a binding award that can be enforced like a court judgment.

Arbitration is generally faster than court proceedings and takes place behind closed doors. Arbitrators are often experts in the field in dispute, enabling them to decide complex technical or commercial issues, and once the award is made, the parties must abide by it.

Once an arbitration award has been made, if one party refuses to enforce it, the other can apply to the Algerian courts to have the decision enforced. This procedure is generally swift, except in the case of appeals based on limited grounds (e.g. lack of jurisdiction on the part of the arbitrator, violation of public policy).

- **Legal proceedings in the event of disagreement:** When attempts at amicable resolution (mediation) fail, or if the parties do not wish to resort to these mechanisms, they may initiate legal proceedings by referring the matter to the courts of first instance with territorial jurisdiction.

For certain disputes, such as those relating to administrative contracts or between the State and private entities, the administrative courts have jurisdiction.

After examining the evidence, the court issues its ruling, which can be contested before the Court of Appeal and the Court of Cassation.

Once the judgment is final, it is enforceable. If a party refuses to comply, enforcement proceedings can be initiated.

## **IX. Contract duration and termination**

The duration of technology transfer contracts in the pharmaceutical sector needs to be carefully planned, as it has a direct impact on the success of the agreement.

Internationally, the duration can vary considerably depending on the complexity of the technology and the time required for its effective implementation, typically between five and ten years. This time frame enables the licensee to develop the skills needed for optimal exploitation while ensuring a return on investment for the licensor.

This approach is also followed in countries such as China and India, where performance-based renewal clauses are often incorporated.

In Algeria, Law 03-07 stipulates that the duration of license contracts must not exceed 20 years, thus offering a degree of flexibility while respecting local standards.

Clearly defining the effective date of the contract is also crucial, as it may differ from the signature date depending on the fulfillment of the conditions precedent. For example, obtaining regulatory approvals may condition the actual start-up of the agreement.

This is particularly relevant in the pharmaceutical sector, where regulatory requirements can be stringent and vary from country to country. It is therefore vital to include realistic timescales for these requirements in the contract to ensure effective implementation.

Renewal clauses must be flexible and conditional on the satisfaction of performance criteria, in order to protect the interests of the licensor while offering flexibility to the licensee. In many legal systems, including Algeria, it is common practice to set up periodic evaluations to assess the licensee's performance before deciding on a renewal.

Algerian regulations also allow the parties to insert review clauses based on the performance achieved.

Early termination must be clearly defined in the contract to avoid misunderstandings. A breach of contractual obligations, such as non-compliance with confidentiality clauses, may justify termination.

In Algeria, article 119 of the Civil Code stipulates that any party may terminate the contract in the event of non-compliance with essential obligations, provided it notifies the other party in writing. Reasonable notice allows the defaulting party to rectify its shortcomings, a principle also applied in many international jurisdictions.

Finally, it is essential to plan for the orderly management of consequences in the event of termination, including provisions for the return of confidential information and the cessation of technology use. Under Algerian law, confidentiality obligations continue even after the termination of the contract, thus reinforcing the protection of sensitive information.

## **X. Export and Import Regulation**

International regulations governing the import and export of technology, particularly in the pharmaceutical sector, are rigorous and complex. Companies must comply with regulatory frameworks established by organizations such as the World Trade Organization (WTO), which imposes strict rules on transactions involving sensitive technologies. These rules aim to protect consumers while facilitating international trade. It is therefore essential for companies to keep abreast of the latest regulatory changes and compliance requirements, including those relating to intellectual property, product safety, and public health protection.

In the import context, sensitive technologies, such as those related to biotechnology or pharmaceuticals, are often subject to stricter controls. This means that companies must ensure that all imported technologies meet specific safety and quality standards.

In Algeria, law no. 18-11 on public health imposes strict requirements on the import of pharmaceutical products. This generally involves obtaining certifications or validations from competent authorities, such as the Agence Nationale des Produits Pharmaceutiques (ANPP), which can prolong the import process. Compliance with

local regulations is essential to avoid administrative sanctions, such as fines or refusal to import.

When it comes to exporting, companies must also respect not only national laws but also international commitments. This includes the need to ensure that exported technologies do not infringe on the intellectual property rights of other countries. International sanctions can also influence transactions involving technologies, particularly for embargoed countries. In this context, due diligence is required to ensure that all exports comply with applicable regulations.

In Algeria, the Customs Code regulates exports and imposes specific procedures to ensure compliance with international standards.

For companies operating in Algeria, it is imperative to ensure that all transactions comply with both national regulations and international commitments. Knowledge of import and export regulations and practices is essential to effectively navigate the legal framework.

Companies must also be prepared to face audits and inspections, which require rigorous documentation and compliance with quality standards set by the Algerian authorities. Non-compliance can lead to serious consequences, including product confiscation and prosecution, making a proactive and informed approach to export and import regulation essential.

## **General conclusion**

Algeria has a solid legal framework for technology transfer, particularly in the pharmaceutical sector, offering guarantees for the protection of intellectual property rights and incentives to attract foreign investment. However, the success of these transfers depends on a thorough understanding of local regulations, proactive risk management, and fluid communication between partners. By adopting a structured approach and drawing on local expertise, companies can not only overcome obstacles but also take advantage of the many opportunities the Algerian market offers for innovation and industrial development.