

專利權及專門技術作為股本投資辦法

經濟部投資業務處編
中華民國七十五年

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中華民國五十七年五月九日行政院核定

中華民國五十七年六月三日經濟部公佈

第一條 凡依照華僑回國投資條例暨外國人投資條例第三條、第四條以專利權或專門技術作為股本投資者，依本辦法之規定。

第二條 本辦法所稱專利權，係指依法持有經我國政府核准之發明或新型或新式樣之專利實施權而言。

第三條 本辦法所稱專門技術，係指新技術，具有經濟價值，為投資事業所需，在國內尚未使用者而言。

第四條 專利權或專門技術，具有左列情形之一者，得作價充為依公司法組織之公司股本投資。

- 一、能生產或製造國內尚不能生產或製造之新產品者。
- 二、能改善國內現有產品品質或減低成本者。

第五條 以專利權或專門技術作價充為股本投資，應由出資人檢具該項專利權或專門技術之詳細證明，包括生產功能、經濟價值及其作價之計算根據、與合資人作價協議等有關資料及證件，呈報經濟部核定後，檢具核准證明文件，依公司法規定申請登記。專利權或專門技術如已在其他國家售讓或作為股本投資者，應說明作價方式及金額，並附有關證件，以供參考。

第六條 以專利權或專門技術作價充爲出資之股本，除係作爲無限責任股東者外，受左列之限制：

一、專利權不得超過各該投資事業實收資本總額百分之二十。

二、專門技術不得超過各該投資事業實收資本總額百分之十五。專門技術作價投資之投資人，並應同時另以等值以上之現金或實物作出資股本。

第七條 以專利權作價投資之股份，在專利權有效期限內不得轉讓，以專門技術作價投資之股份，在投資計劃完成之日起二年內不得轉讓，均應於申請投資時出具承諾書。前項以專利權或專門技術作爲股本投資所得之股份，以記名股爲限，並由公司於其持有股票上，記載有關不得轉讓之限制。

第八條 投資人對已作爲股本投資之專利權或專門技術，不得轉售或再投資於國內其他事業。

第九條 國內人民持有之專利權或專門技術之作價投資，得比照本辦法辦理。

第十條 本辦法自公佈日施行。

REGULATIONS GOVERNING THE USE OF PATENT RIGHTS AND TECHNICAL KNOW-HOW AS EQUITY INVESTMENT

Approved by the Executive Yuan on May 9, 1968

Promulgated by the Ministry of Economic Affairs on June 3, 1968

Article 1

Whenever patent right(s) or technical know-how is furnished as equity investment to be made in accordance with Articles 3 and 4 of the Statute for Investment by Overseas Chinese and the Statute for Investment by Foreign Nationals, the case shall be governed by these Regulations.

Article 2

The term "Patent Right" as referred to in these Regulations shall mean the right legally entitled by a party to put into practice of a patent related to a new invention or a new model or a new design which has been approved by the Government of the Republic of China.

Article 3

The term "Technical Know-How" as referred to in these Regulations shall mean a newly developed technology having economic value, required by the invested enterprise and not been previously adopted in this country.

Article 4

Patent rights or technical know-how in any of the following cases may be capitalized as equity investment in a company organized under the Company Law.

1. Which can be used for production or manufacture of new product(s) not presently producible or manufacturable in this country; or
2. Which can be used for improvement of the quality of existing products or for cost reduction.

Article 5

The investor who capitalizes his patent right or technical know-how as equity investment shall submit to the Ministry of Economic Affairs for examination and approval all supporting details of such patent right or technical know-how, including

productive functions, economic value and calculation bases for capitalization thereof, capitalization agreement entered into with co-investors and other relevant information and certificates. The investor shall subsequently submit the approval letter so granted along with an application for registration in accordance with the Company Law. For patent right or technical know-how sold or capitalized as investment in any other country, information regarding the manner and the amount of capitalization thereof supported with relevant certificates shall be provided for reference.

Article 6

Equity investment made by capitalizing patent right or technical know-how shall, except as the contributions of a shareholder of unlimited liabilities, be subject to the following restrictions:

1. The amount of capitalized patent right shall not be in excess of 20% of the paid-in capital stock of the invested enterprise;
2. The amount of capitalized technical know-how shall not be in excess of 15% of the paid-in capital stock of the invested enterprise. The investor who has capitalized such technical know-how shall, at the same time, make additional capital contribution in cash or in kind in an equal amount or more.

Article 7

Shares representing the capitalized patent right shall not be assigned to any other party within the effective period of such patent right, and shares representing the capitalized technical know-how shall not be assigned to any other party within two (2) years from the completion date of investment project. The investor concerned shall issue a letter of undertaking in this regard at the time of making investment application.

Share certificates representing the shares derived from capitalizing patent right or technical know-how as described in the preceding paragraph shall be limited to the form of registered share certificates whereon the restriction on assignment thereof shall be stated by the company.

Article 8

With regard to patent right or technical know-how which has been capitalized as equity investment, the investor thereof shall not have the same assigned to or re-invested in any other enterprises in this country.

Article 9

Capitalization of patent rights or technical know-how possessed by local nationals may be effected in accordance with these Regulations.

Article 10

These Regulations shall come into force from the date of promulgation.