

the manufacture of certain products for a certain amount of fee/royalty.

- (v) **Patent and Trademark Agreement -**  
An agreement between two or more parties where one party gives the right to the other to use its patents and trademarks for the manufacture of certain products for a certain amount of fee.
- (vi) **Sales Commission Agreement -**  
An agreement between two or more parties where one party will provide marketing assistance services to the other for a certain amount of sales commission fee.
- (vii) **Turnkey Contract -**  
A contract between two or more parties where the contract is awarded to one of the parties to perform all stages from initial to final stages inclusive of consultancy, managerial, technical services and others until the contractual project is ready for immediate commercial production or final use.
- (viii) **Management Agreement -**  
An agreement between two or more parties where one party will provide the management services to the other in return for payment of management fee. This normally exists in the management of international class hotels and to some extent in manufacturing.

### 3. Guidelines on transfer of technology

Agreements on transfer of technology must define in detail the following:-

- (i) technological content and principal features of technology or process.
- (ii) anticipated production.
- (iii) quality and specification of products.
- (iv) particulars of technical assistance, services and manner in which they are to be provided.

The transfer of technology must be effected through the following:-

- (a) **Access to improvements**  
The technology to be supplied should incorporate:-
  - (i) the latest development known to the supplier
  - (ii) access to innovations/breakthrough in technology, including new patents applied for or registered.
- (b) **Remuneration for technology**  
Payment for technology can be in the form of a 'fixed lump sum fee' or 'a running royalty' or a combination of lump sum fee and running royalty for a specified period of time. Lump sum payments are usually allowed in cases where the know-how can be fully and completely transferred and absorbed within a specified period of time. The method of payment that is preferable is the running royalty based on net sales. Initial lump sum payments in addition to royalties are not encouraged by the Ministry. Where such payments are requested it should be only for the recovery of **actual** expenses incurred by the Licensor for preliminary services provided to the Licensee.
- (c) **Method of payment**
  - (i) Royalty is imputed in relation to the level of technology and principal elements of transfer. Depending upon the merits of each case, a rate of 1% to 5% of net

sales can be considered. Where technology transferred is not highly sophisticated, the rate allowed by the Ministry is usually around 2% of net sales.

[net sales is defined as gross sales less sales discounts or returns, transport costs (including freight), insurance, duties, taxes and other charges, and where applicable, cost of raw materials, parts and components imported from the foreign Licensor concerned or its subsidiaries].

- (ii) Practice of itemisation of service under separate agreements are discouraged.
- (iii) Capitalisation of know-how fees/royalty is not encouraged.
- (iv) For the motor vehicle assembly, heavy machinery, construction machinery and related industries where basically assembly operations are involved, royalty payment is not allowed.

#### (d) Duration and renewal

- (i) Duration of agreement should be adequate for full absorption of technology. The life of any patent relating to the technology is also taken into consideration.
- (ii) An initial period of five years is normally approved and any renewal is subject to prior approval of the Ministry.

#### (e) Training

A provision for adequate training for the local company's personnel in the technology supplier's plant facilities as well as in-plant training in the local company's plant should be incorporated and clearly specified. In the case of the former, the number of personnel to be trained, the areas of training and its duration, together with arrangements and the facilities to be made available for the training should also be defined.

The costs of training should be borne by the technology supplier but all expenses related to salaries, wages, living and travelling allowances should be borne by the local company.

#### (f) Patents and Trade Marks

Patents and trade marks may come as one of the components of the whole technology transfer package. In the case of patents, it is of utmost importance that those patents involved in any process know-how be explicitly defined in the agreements and the local company is granted the user rights over all such patents. Where the life of the patent extends beyond the duration of the agreement concerned, an arrangement should be made for continued use of the patent after the expiry of the agreement.

#### (g) Confidentiality/Secrecy

Confidentiality of information should be confined to the duration of the agreement only.

#### (h) Guarantee/Warranty

The agreement should define guarantee with respect to the production capacity, product quality and specifications and other features of the manufacturing process.

#### (i) Taxes

A withholding tax of 15% is levied on payments made to foreign suppliers of technology and this tax has to be borne by the foreign recipient. Exemption under Double