

France: Role of Banks in Licensing

Banks can aid, provide financial support, grant guarantees, and offer other services

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The grant of a license associated with the sale of a turnkey plant (with or without technical assistance) or the grant of license separately are dealt by the banks in about the same way.

First, let us recall a general rule: the money lent by a bank is borrowed from someone else. This is important and we shall see that conditions to which the bank can borrow money much depends on the sales conditions of your contract, since certain sources of financing are not available if your contract does not include certain guarantee provisions.

The banks can help you in two ways: morally and financially. Morally means that an internationally well-known credit corporation can in itself constitute a guarantee toward the buyer who has full confidence in your technology but some doubts about your financial means. For instance if a licensor has to give long-term performance guarantees on a process, the bank can offer his own credit at the request of the licensee.

Financial support is given either before execution of the agreement and the supply of services, or after. Before execution, the bank can help you in two ways:

a). in financing your market survey with a view to finding licensees in foreign countries in conjunction, as the case may be, with a COFACE guarantee specially granted for this purpose (distinct from "insurance-offer" and "insurance-fair").

b). when the client is found, the bank can help you to a certain extent in giving guarantees. An example is where the agreement provides for a performance guarantee together with a penalty if the expected performance is not reached and the licensee would be entitled to deduct said penalty from his payment in an amount which you do not know at the start. You can eliminate such a risk by requesting your banker to warrant the payment of the penalty so that no deduction is made on the expected payments of your licensee. The payments will be net and the licensee will be assured the penalty is to be paid by someone without risk of litigation.

On the other hand, the licensee may agree to make an advance payment but require a guarantee of reimbursement under certain circumstances; the bank can easily grant such a guarantee and this enables the licensor to obtain larger advance payments.

Concerning the down payment upon execution of the

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contract, the bank can assist you in case your licensee cannot make this payment on the date of signing, which creates a problem with COFACE to obtain its guarantee. If your bank can lend the amount of the payment to the foreign licensee's own bank, the problem is solved.

The banks can grant performance guarantees, provided

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their amount is precisely known as well as the date limits of payments. However, an arbitration clause should also be provided in the agreement.

Let me mention a rather new arrangement. It may happen in conjunction with the supply of a plant together with the grant of a substantial license that the foreign buyer wishes the French vendee to be jointly associated with him in his production operations. It asks him to invest in the building of the plant. If the vendee agrees, he will have to transfer funds abroad in addition to the technology transfer. The bank can help with such financing in the form of "credits for foreign industrial development" or "credit in foreign currency" or any appropriate form of credit. In any case, it is recommended to contact the banker before negotiating the agreement in order to check whether the assistance he can give will enable you to make the deal and whether the financial provisions of the contract are correctly worded.

Now, after execution of the contract by both parties with guarantee provisions satisfactory to the buyer and settlement by him of the down payment, you are due to supply your know-how. If the cost of adapting and translating the technical documents represents a heavy burden exceeding your usual possibilities, the bank may grant you the necessary credit to cover these expenses, pending expected payments by the buyer. The bank can "pre-finance" the corresponding overdraft as long as it exists. This "pre-financing" is unusual in the case of plain licenses, but when it is incorporated with the supply of plant and equipment, the expenses being much larger, the resulting overdraft would not be covered by the down payment and this situation can last until the final building of the plant. Several pre-financing arrangements are possible. In the case of very important and long-lasting contracts, and when you need to know the rate of the credit granted to you, it is possible to provide for "pre-financing with stabilized rate", which under certain conditions enables you to make your computation without running the risk of a bad surprise during the period of construction of the plant. It is also possible to be granted financing in foreign currency if you have to acquire a complementary process developed there.

If the contract, in consideration for your supplies, provides for a cash payment, either by credit against shipping documents or direct remittance, it is advisable to consult

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at all. We have some interesting things going on with other companies, and we have new products which we believe will help us additionally in the agricultural field. We believe in the broad-form approach.

Ours is not a large company, but we do like to think in large terms. We're not well known in the foreign markets, but we expect to be tomorrow. And we do believe that there are many, many avenues for licensing and developing a product or series of products. We've tried to use them all, and it has worked so far. We believe it will work even better.

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installment of at least 20% before delivery.

Lastly, in the case of a royalty to be paid on the products manufactured, it is considered that the payment of the credit is due and hence subject to guarantee only from the time when it has a due date and when the amount thereof is known. Originally, only agreements stipulating a minimum could be guaranteed. Since then the policy has evolved and the guarantee can be granted on the royalties as a whole, within the limits of an original estimate. In that case, the guarantee takes effect in a revolving manner. The guarantee of the risks of nonpayment can take effect only from the time when the credits are effectively incurred. It is quite evident that if products giving rise to the payment of a license right are stopped, the guarantee cannot have effect.

In this regard, it is important to remember the consideration which should be given to the wording of the license agreement. It is essential to correctly safeguard the rights of the licensor. It should provide that, in case of an event terminating the agreement, the accounts can be made and certified by an independent third party in a manner that these accounts can be presented to the licensee. It is also important to pay the greatest attention to the appointing of the arbitrator of the agreement. In fact, the rule is as follows: you are not allowed to exercise a right toward COFACE which you are not in a position to claim toward your licensee. In other words, the best guarantee is not the insurance policy but your own license agreement. The COFACE policy couples your contract and enforces proper compliance by your customer. But if the contract is bad and if one of its provisions proves to be detrimental to the licensor, the credit insurance guarantee cannot be of any help.

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your banker as to the best means for avoiding any delay of such payment.

However, of more importance for the bank is the provision of the contract whereby you grant the buyer (under coverage of a COFACE insurance policy) terms of payment of two, six, 12, 18 months (short term); two, five or more years (middle and long term). In such instances, it is essential that you actually have in your hands irrevocable and unquestionable titles of credit corresponding to the price of your supplies. These could be in the form of bills well established, accepted and, if necessary, warranted by foreign banks. These bills are transferred to your bank for

discount by the procedure of short-, middle- or long-term credit "mobilization". In case of long-term credit (over 18 months), the bank transfers the bills to Banque Francaise du Commerce Extérieur for rediscount, which in turn has to find the money in applying, either to a common pool of bankers or to Banque de France or directly to the Treasury. This procedure is called "credit-supplier". Another more recently developed procedure, called "credit-buyer", may be used. French banks for middle-term credits and Banque Francaise du Commerce Extérieur for long-term credits (i.e. for seven years and over) can grant credits to the buyer under similar conditions to those obtained under credit-supplier. The banks will put at the disposal of the buyer the necessary financial means to enable him to pay the supplier.

In particular instances for rather short-term credits you may apply for advance payments in foreign currency. It happens in circumstances when French financing is not possible.

In short, your problem is not to try and find money, but to know whether you can find money at a low price under stable conditions and in sufficient amounts. Remember also that if you want to obtain credit under privileged conditions and at competitive rates, your firm's contracts and credits should meet certain conditions.

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possible only on the basis of a detailed analysis of the project, but must rely on a mutual confidence of the companies involved, which would fully accept the unwritten ethical norms of international trade.

This is all the more impossible otherwise, as one of the parties concerned would have to transfer his entire knowledge on the given invention, disclosing sincerely all of its advantages and drawbacks, while the other party would undertake investing money to promote the development of the invention with the hope of a subsequent return.

Until the partner engaged in development — let us assume for the time being that a foreign partner of NOVEX — is working on the industrialization of the invention, it is most equitable that NOVEX should restrict herself on the market of the other partner or, in the case of a relevant agreement, on any market from any supplier activity whatsoever, until the developing partner is in the position to express a final intention of acquisition. A very "convenient" contracted legal form of such a cooperation is the option agreement for a predetermined period of time, for which the partner entitled to optional decision is granted a market protection. Depending on the actual stage of the invention's realization, the length of the period of option, the participation of the partner granting such an option in the further development of the invention, etc., the agreement on such an option may or may not involve certain financial considerations.

If the option period is successfully completed, that is, the foreign partner decides to purchase the license (after he has been convinced during the period of the option on the technical and economic advantages of the invention), — a final contract of commercialization will be concluded.

This solution will minimize the buyer's risk, if he wants to purchase an invention that has not been industrially realized, as yet, but seems to be promising.