

Outline for Licensing in Bulgaria

Bulgaria increases purchases of technological process licenses; Civil Law and Government regulate

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Bulgaria has practiced the purchase and sale of technological processes through license contracts for quite some time now, and particular attention has been devoted to this kind of trade in recent years. This was marked by a sharp rise in the purchases of license rights on technological processes, mainly from the countries of Western Europe and from the U.S.A. A decree was published in 1973 by the Central Committee of the Bulgarian Communist Party and by the Council of Ministers on the accelerated introduction of the latest achievements of science and technology in the field of industry (Official Journal No. 73 of September 14th, 1973). According to this Decree, the equivalent of \$30 million was made available each year in 1974 and 1975 for the purchase of technological processes, the sums envisaged for each one of the following years being equivalent to more than \$50 million. For the time being, the purchases of license rights by Bulgaria are considerably in excess of the sales of licenses for the use of Bulgarian patents. However, there has been growing interest in some of the technological achievements made in Bulgaria, and some of them have already been sold in a number of Western countries.

No Special Law

There is no special law in Bulgaria dealing with the sale and purchase of license rights. The regulations pertinent to this are derived from the general provisions of civil law and from the special enactments published by the Government in this respect. Nevertheless, there exist certain permanent trends in Bulgarian license practice, particularly in the purchase of license rights by Bulgarian establishments, which are indicative of the line already adopted in this respect and which are therefore worth mentioning.

It should be borne in mind in the first place that Bulgaria is purchasing licenses regardless of whether they are protected by patent rights or not. Of course, the price paid for licenses covered by patent rights is considerably higher. The Bulgarian buyers of foreign technological processes are apt to show much greater confidence in foreign technological solutions for which patents have been issued in Bulgaria, or, at the very least, for which there are patent applications filed in the country. In the case of one or more proposals made by foreign firms, this

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fact may prove to be decisive in the choice of the particular partner. Patent law in Bulgaria provides for the issuing of patents to foreign inventions in accordance with the principles of the Paris Convention to which Bulgaria has acceded as early as 1921. The criteria adopted on patentability and the rights guaranteed to the patent holder are similar to those envisaged in the patent legislation of the Western countries. In accordance with Bulgarian law, applications for patents in Bulgaria are filed through the Patent Bureau of the Bulgarian Chamber of Commerce and Industry in Sofia, which operates in the capacity of a patent attorney.

Raw Material Problem

Another preliminary problem which frequently comes up when a Bulgarian buyer is faced by the choice of the most suitable partner for a particular manufacture is that of the availability of the raw materials involved. As a rule, Bulgaria buys licenses for industrial processes which could be realized with locally obtainable raw materials. Licenses involving the use of raw materials from abroad are bought only when such imports are inevitable and when they can be reduced to some 5 or 10 percent of the cost of the product manufactured. In order to avoid this obstacle, prospective sellers have frequently carried out preliminary studies of their own and have adapted the technological process offered to the use of raw materials available in Bulgaria.

Buyers of licenses in Bulgaria are the foreign-trade enterprises and, in the first place, a specialized organization called "Tehnika" which has its seat in Sofia. These establishments are not industrial enterprises, nor do they possess any industrial enterprises. They purchase the right to use a particular technological process so as to make it available to one or more industrial establishments in Bulgaria. That is why all license contracts signed by Bulgarian clients contain a clause by virtue of which the buyer has the right to turn over the use of the technological process envisaged in the license to third parties in the country without any additional consent being required from the seller. Of course, it is only the foreign-trade organization which remains responsible to the seller, and it is this organization which bears the responsibility for the implementation of all obligations contained in the contract, including the payment of the price agreed upon, the preservation of the industrial secrets, etc.

A feature typical of Bulgarian license practice, particularly in the purchase of licenses from abroad, is that the patent inviolability of the products manufactured on the basis of the license is the responsibility of the seller. Bulgarian establishments have always been extremely insistent on obtaining such guarantees. Another permanent

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Another important source is technical and trade publications. For example, for the chemical industry, among the leading publications are Chemical Week, Chemical Engineering News, Chemical Marketing News, Journal of Commerce, and Wall Street Journal.

Another source of information is personal contacts. Company personnel traveling on business and representatives of companies posted to other countries often obtain important information concerning new technology.

If the company is seriously interested, it may send its technical personnel to visit the particular firm having the technology to seek additional information. In the advanced stages of acquiring new technology, this procedure is perhaps the most effective means.

By the same token, visitors from another company may also be an important source of information.

Japan's trading firms are another important source concerning new technology and products. These firms have worldwide business networks and in the course of their daily operations they frequently come across new information and data.

Engineering firms also have considerable knowledge concerning available technology. Generally they will undertake, on a fee basis, search for the most suitable technology according to the needs of the seeking company. Engineering firms which conduct international operations are often excellent sources of information.

In some cases, companies develop a new technology which they themselves find impractical to utilize. In such cases the company could bring this information to the attention of potential users through various means.

One means is through the Licensing Executive Society. This is an international organization which includes among its members licensing managers, attorneys and other persons involved in licensing activity. The society is an excellent vehicle for technological exchange.

Another source is consultant firms specializing in the exchange of information covering new processes and products. A leading American firm in this field utilizes computers for mass exchange of information.

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and strict practice is to request firm guarantee on the part of the seller in relation to the quality of the product to be obtained on the basis of the license, as well as in relation to the industrial capacity agreed upon, to the maximum consumption of raw materials and energy, to the amount of labor required, etc. Sellers usually offer guarantees for the correctness and efficacy of the technological instructions that they are required to send and of the on-the-spot instructions to be given by their experts. When the implementation of the process envisaged in the license requires the use of certain special items of equipment, the delivery of this equipment also becomes the obligation of the seller — against additional payment, of course. This is the practice also when the seller himself is not the manufacturer of the equipment in question but must buy it from a third party.

When it is not possible for the buyer in Bulgaria to be entrusted with the manufacture of the entire product, and it therefore becomes necessary for the seller to supply certain parts or assemblies during the period of the contract,

the usual practice has been for these purchases to be paid, partially at least, by the export of those parts of the aggregate product which was manufactured in Bulgaria or by counter-export of the product itself. Favorable legal terms for crossed transactions of this kind have now been created after the enactment of a special Decree on Economic, Industrial and Technological Cooperation in 1974.

As regards the payment of the price for a particular license, Bulgarian practice has already shown a definite preference for the lump sum. The payment of royalties is practiced rarely, and this is mainly the case with contracts for long-term industrial cooperation. The sum due is usually paid in several installments, e.g. one at the signing of the contract, one at the delivery of the technological documents or equipment, one at the beginning of operation of the equipment involved and, finally, upon the attainment of the result agreed upon in the contract. This manner of payment ensures the collection of the entire price of the license by the seller even when the latter does not succeed in attaining the envisaged volume of output, provided he cannot be held responsible for that under the terms of the contract. The remuneration due is free from all taxes in Bulgaria.

Another characteristic feature of contracts signed by Bulgarian establishments purchasing licenses is that the buyer usually reserves the right to sell the products manufactured on the basis of the license granted to clients outside the territory of Bulgaria as well. This is particularly the case with clients in the socialist countries, while in the case of other countries some of them have been excluded when the seller has had certain important considerations to that end.

Finally, it should be pointed out that, according to Bulgarian legislation, each contract for the transfer of rights over a technological process is subject to approval by the state. This approval is secured by the Bulgarian organization which is party to the particular contract. Cases when such approval has been withheld are extremely rare.

Dana's International Strategy

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12-14% return on investment target.

During the late 1950's and early 1960's, we made a number of small offshore investments and found that by the late 1960's the return on these investments was well above 20%. It is our conclusion that the investment requires time to mature before a reasonable return can be expected. It may take the affiliate as long as three years to absorb the impact of the new proprietary products we might bring to him.

Therefore, if we consider the return on international investment with a three-year lag; that is, if we measure this year's return against total investment three years ago, our ROI from international operations moves up to the 25% area.

Of particular interest to this society might be the fact that nearly half of our cash return from offshore investments is in the form of royalties.

What's in store for the Dana Corporation international operations in the future? We will probably double our total offshore investment by the early 1980's. Currently we are firming our relationships with our affiliates and with the continuing recovery of the economy will implement some aggressive offshore programs.