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Balancing Contracts: The Crucial Role of Pre-contractual Disclosure in Technical Assistance Agreements

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Abstract

This study rigorously delineates the imperative of pre-contractual disclosure in technical assistance contracts, spotlighting the legal necessity for suppliers to provide indispensable technical information vital for efficient recipient resource utilization. Emphasizing informed consent and mutual satisfaction, this pre-contractual mandate, rooted in the principle of good faith, addresses negotiation power imbalances. It clarifies that meeting this obligation differs from mere due diligence, demanding a specific outcome prior to contract formation. It asserts that debtors must be apprised of negotiated data unbeknownst to the creditor, justifiably. The ramifications are dual: rectifying power differentials and ensuring parity in knowledge among contracting parties. The study aims to enrich legislative frameworks for party protection, utilizing qualitative methods for definition and analysis. Results shed light on the nuanced aspects of pre-contractual disclosure, impacting contractual rebalancing and knowledge equality. This research advocates global attention to legislative actions promoting transparency and fairness in technical assistance agreements.

Highlights :

- Clarifies the Legal Imperative: The study meticulously defines the legal obligation for suppliers to disclose crucial technical information in technical assistance contracts, ensuring informed consent.
- Addresses Power Imbalances: Emphasizes the role of the principle of good faith in rectifying negotiation power imbalances, contributing to more equitable contractual relationships.
- Global Advocacy for Legislative Measures: Calls for international attention to legislative actions fostering transparency and fairness in technical assistance agreements.

Keywords : Pre-contractual Disclosure, Technical Assistance Contracts, Informed Consent, Good Faith, Legislative Regulation

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Introduction

Technology transfer and technical aid contracts advance civilizations. Thus, emerging nations must overcome a major economic, scientific, and technological challenge by closing the technological gap with wealthy nations and breaking free from technological reliance.

The phenomenon has hurt industrial and productive capacity. This goal requires genuine and efficient technology transfer from rich to underdeveloped nations. The transfer has also created a knowledge-centric asymmetry between the nodal association's suppliers and recipients. French and general jurisprudence have explored contractual inequality. The principle of power of will has been used to restore cognitive balance between contractual parties. Scholars also accept the media's inherent obligation to convey technology to poor nations. Contract law requires disclosure, especially pre-contractually. The judiciary established and used this responsibility in contracts where a professional contractor with superior technical knowledge and capacities contributes to a specified industry. Lack of contractor communication inhibits the flow of important information needed for complete, well-informed satisfaction and a mutually profitable relationship. Technical aid contracts are important in international trade due to their requirements. The supplier provides professional and skilled technical help to the recipient under this contract. The supplier's expertise helps the recipient, who lacks contract-specific knowledge. Specific trade laws have provisions that can support pre-contract information requirements. Article 76 of the recently established Egyptian Trade Act No. 17 of 1999 requires technology providers to give particular information to importers during contract talks or inside the contract. This topic covers technology hazards, particularly environmental and public health risks. This study examines pre-contractual information disclosure and its effects on contract formation and consumer satisfaction.

The study does not examine nodal information but admits its close relationship to the contract. This requirement demands each party to submit all relevant contract facts and data, demonstrating good faith in the negotiation process. This problem was chosen to underline the importance of this duty and the need for legislation. This decade's impact on several aspects of development and its role in facilitating entry into the information economy make it unsuitable to neglect legislative bodies' oversight of its regulation. The Iraqi legislature requires disclosure in non-international trade agreement articles. This addition follows the consent defects theory and the hidden flaws guarantee theory. The technical help contract does not safeguard the recipient. The party receiving the information before entering into a contract may benefit from the duty to disclose information if they can prove that the party providing the information deliberately withheld crucial details and knew about them.

Method

This study utilises a mixed-methods methodology to examine the effects of pre-contractual information disclosure on technology transfer, as well as its consequences for contract formation and consumer satisfaction. This study employs a combination of qualitative and quantitative data to offer a thorough and comprehensive analysis.

This paper aims to assess the efficacy of current legal frameworks in effectively addressing disparities in contracts and guaranteeing equitable technology transfer.

This study aims to analyse the merits and drawbacks associated with ideas such as the power of will in reinstating cognitive equilibrium and the influence of jurisprudence in determining obligations related to disclosure.

Result and Discussion

1 . The concept of the obligation of pre-contract information in a technical assistance contract

1 .1. Definition of the obligation of pre-contract information in a technical assistance contract

The concept of pre-contractual information obligation can be defined as the responsibility of one party to provide all essential facts and information to aid the other party in the formulation or implementation of the contract, while also ensuring that any potential risks or concerns are duly communicated and brought to their attention, if necessary[1].

It is important to acknowledge that this definition emphasises the fundamental attributes of the duty to provide pre-contractual information, which applies as a universal obligation including not only specific contracts but all contracts in general. The significance of this can be readily observed in the technical help contract. This definition also elucidates the location of the responsibility to supply information, specifically, the indispensable data and information linked to the location of the technical assistance agreement, namely, the service or product under consideration. Nevertheless, the aforementioned definition can be seen as an instance of employing the

terminology of warning and notice), thus indicating a distinct conflation between the requirement to provide information before entering into a contract and the obligation to issue a warning.

The term "obligation" has been employed by certain individuals to describe the responsibility of one party in a contractual agreement to inform the other party about the potential dangers and advantages associated with entering into the contract. This information is intended to be included in the overall contractual context, enabling the informed party to make a fully knowledgeable decision to engage in the contract, given their commitment to it[2].

It is important to acknowledge that the definition has emphasised two key attributes of this obligation. Firstly, it encompasses a broad scope, applying to all types of contracts, thus exhibiting generality. Secondly, it serves as a preventive obligation, aiming to restore equilibrium in situations where there is an asymmetry of knowledge between the parties involved in the technical assistance contract. Furthermore, the definition does not explicitly outline a specific method for fulfilling the obligation prior to the contractual agreement. Instead, it establishes an unconditional requirement that varies depending on the type of contract formed. In instances such as a technical assistance contract, one party is obligated to provide the other party with a good or service. However, the aforementioned definition has been subject to criticism due to its lack of comprehensiveness, primarily stemming from the misunderstanding around the distinction between the need to provide pre-contract information and the obligation to offer advice.

Another trend was to define this obligation as a pre-contracting obligation, to be replaced by providing the other contractor with the data necessary to find sound, complete, and informed satisfaction with all the details of this contract, due to certain circumstances and considerations that may be due to the nature of this contract, one of the parties, its place, or any other consideration[3].

This definition includes everything that the obligation to provide information before signing a technical assistance contract doesn't include: a legal obligation to sign a contract before it's made in which one of the parties promises to give important information about the contract in a timely, clear, and honest way. This presentation shows that the definition of the obligation to pre-contract information is difficult to define and varies by contract, so some argue that its designation depends on the contract type.

Some Iraqi jurisprudence defines it as the obligation originating from contract talks to give each party information about the contract's location to the other party. The technical assistance contract's role in industrial development is important as a technology contract, but developing countries have not paid enough attention to contract regulation and pre-contract obligations, including the obligation to pre-contract information. As a result, the contract remains among the unnamed contracts for which legislative regulation has not been provided[4].

Given the variety of information, the technical assistance contract's pre-contract information requirement definitions were not exhaustive. However, most doctrine definitions in this area were insufficient to define the obligation precisely and comprehensively. However, the obligation to pre-contract information in the technical assistance contract is a pre-contract legal obligation that requires the supplier to provide essential technical information and data to the receiving party, who can only take note of them through the supplier, to ensure free and informed contract satisfaction.

1.2. Scope of the obligation to pre-contract information in the technical assistance contract

1.2.1 .Jurisdiction *ratione materiae* of the obligation to provide pre-contract information

The extent of the duty to disclose pre-contractual information pertaining to the subject matter is to provide the contracting party, acting as the supplier, with all relevant information and data at its disposal regarding the ongoing negotiation of the contract by the recipient party. This disparity in contractual power arises when one party possesses a greater level of knowledge or expertise regarding the subject matter of the contract, or when the nature or status of one party places it in a position of advantage, such as being the sole provider of a particular technology. As a result, the contract may be entered into without the other party having the opportunity to negotiate or engage in meaningful discussion. The supplier party involved in the technical assistance contract has a responsibility to furnish the recipient engaged in negotiations with accurate information and data pertaining to the specific attributes of the technical knowledge encompassed by the contract. This includes details on the intended utilisation of the contract and the necessary precautions that the recipient must undertake in order to achieve optimal outcomes. In the pursuit of establishing a firm dedication to pre-contractual disclosure in the context of a technical assistance agreement serving as a technology transfer contract, the Egyptian legislature imposes a duty upon the provider of technical assistance to inform the recipient party, during the pre-contractual phase, about the potential risks associated with the relevant technology. These risks primarily encompass adverse effects on the environment, public health, and the safety of individuals, as well as the measures available for their prevention. Additionally, the supplier is also required to disclose any potential legal disputes and other impediments that may hinder the exercise of technology-related rights[5].

1.2.2. Personal jurisdiction of pre-contract information obligation

The extent of the duty to provide pre-contractual information to individuals is determined by the supplier's responsibility to offer technical support and guidance during the pre-contractual phase. The supplier's main objective is to effectively communicate with the recipient with the relevant data and information required to appropriately assess their information needs regarding the professional service offered by the supplier[6]. This will enable the recipient to make an informed decision regarding the contract.

The requirement for pre-contractual information is not an exclusive necessity of technical assistance contracts, but rather a longstanding and diverse creation of the judiciary across other domains. The proposed approach involves the integration of a professional contractor and a technically proficient contractor. The former possesses knowledge that the latter lacks, but is essential for achieving a comprehensive and satisfactory understanding of the contract's details and suitability for the intended purpose. The obligation of pre-contract information entails that the party offering technical assistance must adopt two stances: firstly, a negative stance of refraining from making false statements, and secondly, a positive stance of providing accurate information[7].

2. The distinction between obligation to pre-contract information and other obligations

2.1 . The distinction between pre-contract information and warning obligations

The doctrine provides a definition for the term "warning" as a duty that occurs prior to the formation of a contract. This obligation involves one of the parties or a third party undertaking the responsibility to inform the other party or parties when a warning is issued by external sources.

Both the duty to provide pre-contract information and the duty to provide timely warnings share a commonality in that they both pertain to the negotiation phase of the technical assistance agreement[8].

There two distinctions between the aforementioned entities:

The first involves informing the other contractor of its risks. In the responsibility to give information, the provider must supply all necessary contract location information. Additionally, it addresses all dangers and their mitigation. There's a general obligation regardless of risk.

Second, material neutrality limits information to opinion and information only. The caution extends to the need to influence, confirm, and insist on the other contractor's positive, overlapping conviction[9].

If there is agreement that the time when the obligation to inform arises before the contract is at the pre-contract stage, then the obligation to warn does not have an agreement on the time when it arises. Two trends have emerged in this regard. One is that the obligation to warn occurs at the pre-contract stage. Evidence of this is that knowledge of the risks of the object and how it is used is an element of consent. The obligation to warn is aimed at creating free and informed consent on the part of the other party. The existence of such a valid consent must be prior to the conclusion of the contract[10].

Second, he argued that the obligation to warn was not independent of the contract but a follow-up obligation to other contractual obligations, namely the obligation to deliver and the obligation to ensure safety.

Since knowledge of such risks is considered in the contractor's consent at the time of contract conclusion, the debtor's obligation to warn the creditor of the object's nature and basic characteristics is limited to that. Thus, the obligation to warn of such risks is a pre-contract obligation and is included in the pre-contract information obligation to protect future consent to the contract and the possibility of influencing its conviction and willingness to contract.

2.2 The distinction between the obligation to provide pre-contract information and the obligation to provide advice

The responsibility of providing advice entails guiding the creditor towards making informed decisions and encouraging them to either pursue or abstain from a specific course of action[11].

The aforementioned definition elucidates that the fundamental objective of the duty to advise is to safeguard consent by providing one party with the counsel of the other regarding necessary actions to be taken, as well as to offer guidance and direction pertaining to the contract. This enables the party to ascertain the suitability of the contract to be entered into, thereby facilitating the realisation of their financial and economic interests. The aforementioned requirement is delineated in numerous French legal precedents. One notable case is the ruling made by the Rowan Court pertaining to the responsibility of an auto repair business owner to furnish the automobile owner with appropriate guidance, specifying the expenses associated with the necessary repairs, which significantly surpass the cost of acquiring a comparable vehicle from the market. The expert in question has committed an error by failing to inform the client that the contract for car repairs is not aligned with his economic interests.

The duty to provide advice aligns with the duty to disclose before entering into a contract, as they both pertain to a singular aspect, specifically, the provision of data or information to the creditor to aid them in making a specific decision. The responsibility for providing information often lies with the professional, although there are instances where the burden may shift to the consumer based on the specific terms of the contract and the required data and information. The consideration of the debtor's personality in the contract is not as significant as it is in a technical help contract.

The individual who owes a debt typically possesses a high level of expertise within a specific domain. Therefore, the acquisition of civic experience serves as the underlying rationale for engaging in contractual agreements within the aforementioned domain. Certain scholars argue that the duty to offer advice is a subset of the duty to furnish information, as it constitutes an essential component and carries a significant level of importance. Instead, it is a stringent duty to provide information[12].

The perspective does not propose that the party's contractual obligations to the debtor are triggered by a breach of the duty to advise, but a breach of pre-contractual information would result in the debtor's default liability.

3. Conditions of obligation and legal effects of pre-contract information

3.1. Conditions of obligation for pre-contract information in a technical assistance contract

3.1.1. Knowledge by the debtor of the data and information that is the subject of the obligation

The logical basis for this obligation lies in the presumption that the debtor is obligated to provide statements or information that they may not possess knowledge of. The debtor's awareness of such data must be established at the time when they are required to make these statements, specifically during the negotiation phase and prior to the contract's finalisation. The quantity and significance of information differ based on the debtor's nature of the obligation. The debtor's fulfilment of this responsibility necessitates a significant level of expertise, as the debtor is expected to possess comprehensive knowledge regarding the location and products specified in the contract. The responsibility of demonstrating the debtor's awareness of the relevant information rests with the creditor, who is legally obligated to fulfil this burden. The creditor has the ability to provide evidence that demonstrates the debtor's awareness of this responsibility through several kinds of proof[13].

3.1.2. The recipient's ignorance of contracted technical assistance data

The individual or organisation receiving technology cannot claim ignorance as a means to shift the responsibility of providing comprehensive contractual information regarding technical assistance onto the technology supplier, as this information is an essential component of both explicit and implicit commercial agreements. The recipient is expected to conduct a diligent investigation of technical assistance data and information prior to or subsequent to the contractual agreement. In the event that the recipient does not fulfil this commitment, their failure can be considered negligent, thereby increasing their individual accountability. Adhering to the norms of good faith is prohibited[14].

The French Court of Cassation acknowledged this fact in a case, whereby it dismissed the request to invalidate a contract due to fraudulent information and upheld the contractor's responsibility to independently investigate the necessary facts.

The responsibility in question has been supported by certain individuals by invoking the concept of unintentional error. This is because the contractor, upon entering into the contract, lacks the authority to thoroughly examine and confirm the crucial information required for the formation of their consent to the contract.

According to certain perspectives, the acceptance of the recipient may be based on a reasonable or justifiable lack of knowledge on their part. The level of understanding possessed by the recipient of information can be influenced by external factors such as the legal position of the subject matter in the contract, its material significance, or the manner in which it is utilized[15].

4. Legal effect of the obligation to pre-contract information in a technical assistance contract

4.1. The Obligation Achieving the economic balance of the contract parties

The absence of adequate experience on the part of the recipient, coupled with an insufficient equilibrium of scientific expertise and practical knowledge between the supplier and recipient during the negotiations leading to the finalisation of the technical assistance agreement, will result in a distinct and significant disparity between the negotiating parties in terms of the technology they will be dealing with. This is due to the supplier holding a position of greater power in the contract and possessing the requisite knowledge and information necessary for the

conclusion of the agreement. The beneficiary of the contract is considered the party in a position of relative disadvantage, since they may lack knowledge regarding the technology being transferred, its inherent qualities, and the necessary measures to mitigate or address associated risks[16].

Undoubtedly, the initial safeguard to be afforded to the party in a position of vulnerability is during the pre-contractual phase, specifically throughout the negotiations, in order to prevent the opposing party from exploiting the heightened pressure exerted on the vulnerable party's volition to enter into the contract without possessing a comprehensive understanding of all the intricacies encompassed within the contractual terms. In order to safeguard the vulnerable party and establish equilibrium and fairness between the parties involved in a contractual agreement, it is imperative to enforce the strong contractor's adherence to all contractual details that contribute to the other party's contentment, thereby ensuring a legitimate and well-informed consent[17].

Chestin, a prominent French jurist, further highlighted the significance of good faith in contractual agreements. He argued that the principle of good faith serves to address the inherent imbalance in knowledge between the contracting parties. Specifically, it imposes an obligation to disclose relevant information, at the very least before entering into the contract, in situations where one party is unable to acquire knowledge of such circumstances without the assistance of the other party, who is already aware of them.

Therefore, the inclusion of information within the technical assistance contract is crucial for maintaining a fair and balanced relationship between the contracting parties (i.e., the supplier and the recipient). In situations where there is an imbalance of information regarding the contractual elements, the principle of justice is compromised. Consequently, the obligation to provide information in the contract serves as a mechanism to restore this lost equilibrium, ensuring that the party possessing the relevant information is obligated to share it with the party lacking such knowledge.

4.2 This obligation fulfils the principle of equal knowledge between parties

The lack of cognitive parity or the disparities in scientific knowledge among contractors are what motivate the requirement to generate nodal data and information. This discrepancy can be attributed to the rapid advancements in scientific development and technological progress, which have rendered it impractical for any contractor to possess comprehensive knowledge of all technical intricacies and contractual details.

As certain doctrines see, the equitable distribution of knowledge among contractors is deemed to be of similar significance as that of contract centres. The concept of satisfaction is subject to criticism due to the presence of imbalanced nodal positions and the exploitation of weaknesses by one contractor over the other. Furthermore, it is imperative to acknowledge the necessity of disparate levels of knowledge and understanding among contractors pertaining to the intricacies of the contractual agreement that is to be finalised. The significance of possessing knowledge regarding contract data during the pre-contract phase is evidently crucial in facilitating a thorough understanding of the contract's substance, hence ensuring the contractor's acceptance and complete awareness of its contractual obligations.

In this context, the inquiry arises as to which contractor assumes the role of the debtor and bears the responsibility of furnishing information during the pre-contractual phase. In the well-known (poussin) case, the Paris court determined the party responsible for the duty to disclose information during the pre-contractual phase. This case revolved around the sale of a school, which was believed to feature a replica of a renowned artist's original painting. The National Museum, fully aware that the painting in question was indeed the authentic original, made an offer and acquired it at a standard price. The educational institution acting as the seller initiated legal proceedings seeking the invalidation of the contract, and the court subsequently rendered a decision declaring it null and void. The ruling explicitly cited the concept of disparate knowledge across contractors due to the absence of a comparison between the museum's extensive expertise as the buyer and the school's technical expertise as the supplier. The aforementioned analysis indicates that the principle of equal knowledge among contractors entails a duty to disclose information to the party who lacks awareness, when one contractor possesses such knowledge. Consequently, there exists no hindrance for the responsibility of disclosure to be assumed by the buyer due to their proficiency and expertise, subsequently transforming them into the party obligated to inform the seller.

The above shows that the principle of equal knowledge among contractors requires the contractor who knows he or she will inform the unaware party to provide information, but the buyer, who has experience and expertise, can become the debtor by informing the seller.

The doctrine confirms that not all of the contractor's ignorance creates the obligation to provide information to the other contractor, so the other contractor's liability for breach of this obligation is not created unless such ignorance is legitimate and justified by legal considerations and justifications⁰.

Conclusion

1. Defining the obligation to provide pre-contract information in a precise manner poses challenges. This study has established a definition for this obligation within the context of a technical assistance contract. It refers

to the legal requirement for the supplier to furnish crucial information and data pertaining to the technical aspects of the services that are necessary for the recipient to effectively utilise the provided resources. This obligation aims to facilitate the construction of a contract that is based on the principles of informed consent and mutual satisfaction.

2. The requirement for pre-contract information in a technical assistance contract is separate from the contract itself and must be satisfied before the contract is formed. This responsibility is characterised by the need to achieve a specific outcome rather than just exercising due diligence.
3. The presence of a pre-contractual obligation to provide information necessitates that the debtor(s) are made aware of the data and information that will be produced during the negotiation phase, and that this information is not already known by the creditor(s) involved in the contract, as long as the creditor's lack of knowledge is justified.
4. The principle of good faith serves as the foundation for the obligation of providing information during the pre-contract negotiation phase of a technical assistance contract. This principle necessitates that the supplier party has a duty to disclose all essential information, data, and significant facts pertaining to the technology that is the subject of the contract to the receiving party.
5. The requirement to provide pre-contractual information carries two significant implications. Firstly, it serves to rectify the inherent power imbalance between the parties involved in pre-contract negotiations. Secondly, it ensures the realisation of the principle of equal knowledge among contracting parties.

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