International licence agreements

Ulrich Herfurth, lawyer in Hanover and Brussels

August 2025

For many companies, entering the international market in 2025 will still involve considerable investment, legal uncertainties and organisational challenges. Having their own production facilities or sales offices abroad requires not only capital, but also detailed knowledge of local markets, regulatory requirements and cultural particularities.
Medium-sized companies in particular quickly reach their financial and personnel limits. Against this background, cooperation models with foreign partners remain a central instrument of internationalisation.

In addition to joint ventures, sales cooperations and contract manufacturing, licence models continue to play a prominent role. By licensing technologies, brands or other intangible property rights, companies can expand their market position internationally without assuming operational responsibility in the target country.

At the same time, licences give local partners access to tried and tested products, processes and brands. However, these advantages are accompanied by special requirements in terms of contract design, protection of intellectual property and risk management.

Tension between cooperation and dependency

Licence agreements enable flexible cooperation, but always harbour the risk of structural dependencies. While the licensee benefits greatly from the technology or brand provided, the licensor loses some control over the utilisation of its know-how. This tension characterises the structure of modern licence agreements.

In practice, licences are often combined with other forms of cooperation, such as supply contracts, technical services or exclusive distribution rights. Although such hybrid models increase the economic commitment, they can be problematic under antitrust law, particularly if they create barriers to market entry for competitors or excessively bind the licensee. A clear distinction between permissible protection and unauthorised market foreclosure therefore remains a key design objective.

Legal framework conditions in 2025

Licence agreements are still subject to freedom of contract, but this is limited by mandatory national law, EU law and international agreements. The object of the licence is usually either de facto exclusive know-how or a formal property right such as a patent, utility model, design, trademark or company name. The prerequisite for any international licence is that these

rights exist effectively in the target country and are legally enforceable.

Within the European Union, contract design is largely characterised by competition law. The current Technology Transfer Block Exemption Regulation (TTBER), which is valid until 2034, defines in detail which exclusive obligations, non-compete obligations or non-challenge clauses are permissible. These requirements must always be observed if a licence agreement has an impact on the internal market, even if the licensee is based outside the EU.

The legal situation in third countries remains heterogeneous. Although many countries have modernised their intellectual property protection systems, there are still considerable differences in enforcement practice. In individual markets, product piracy, parallel IP applications or de facto technology transfer remain real risks despite contractual prohibitions. Licence agreements must take these framework conditions into account and be flanked by suitable protection mechanisms.

International agreements and regulatory developments

International agreements will continue to form the minimum standard for cross-border licence transactions in 2025. The TRIPS Agreement obliges WTO member states to comply with basic protection standards for patents, trademarks, copyrights and trade secrets and explicitly allows their commercial exploitation through licensing. Most-favoured-nation treatment remains a fundamental principle.

The GATS agreement continues to gain in importance as licence models are increasingly linked to services such as software updates, cloud services, maintenance or training. In addition, there are new regulatory requirements in connection with digitalisation, data export, artificial intelligence and cyber security. National export controls, investment audits and sanctions regimes have a stronger influence on licence transactions today than they did just a few years ago.

Content and structure of modern licence agreements

The scope of the licence depends on the planned commercial use. In practice, production, distribution and trade mark use are often combined. Licensees regularly seek exclusive rights, at least for certain territories or periods of time. Such exclusivities are permissible provided they are justified under antitrust law and limited in time.

Particular caution is required when granting sub-licence rights. Although these can accelerate market expansion, they largely deprive the licensor of control over the utilisation of its know-how. Clear reservations of consent, quality requirements and control rights should therefore be provided for in the contract.

Technology transfer, training, quality control

Technology transfer remains a core component of many licence agreements. Today, this regularly includes digital documentation, software, production data, process descriptions and quality standards. Training is increasingly taking place in hybrid or completely digital form, which raises new questions about documentation, liability and verifiability.

Licensors regularly demand comprehensive quality control rights. These include instruction rights, audits, regular reporting, product inspections and training and qualification measures. These control instruments serve not only to protect the brand, but also to safeguard the brand image and product safety.

Further developments, innovations, data rights

Modern licence relationships are rarely limited to a static transfer of knowledge. Instead, long-term technical co-operation is often expected. Licensees regularly expect to receive access to further developments, updates or new product generations. Conversely, the licensee may need to make adjustments or improvements that may be commercially relevant.

Contracts must therefore clearly regulate which further developments are covered by the scope of the licence, who is entitled to the rights to improvements and how joint inventions may be used. In 2025, there

will also be an increasing question of the utilisation of operating and usage data as well as AI-supported development results. Without clear regulations, there is a risk of significant conflicts over ownership, utilisation and remuneration.

Liability, warranty and force majeure

The licensor owes a careful transfer of know-how according to the state of the art. Incorrect or incomplete documents may give rise to claims for damages. However, guarantees of success for market opportunities or commercial success are still regularly excluded. Liability is typically limited to services that the licensor himself can control.
In practice, liability for defects of title in the transfer of property rights is often limited to the fact that the licensor is not aware of any conflicting third-party rights. In view of geopolitical uncertainties, force majeure clauses are becoming increasingly important. In addition to classic cases such as war or natural disasters, sanctions, export bans, supply chain disruptions and government intervention are now also expressly covered.

Confidentiality and limits under competition law

Close cooperation within the framework of licence agreements requires comprehensive confidentiality regulations. These generally also apply beyond the end of the contract, but are only permissible as long as the expertise has not become generally known. Non-competition clauses, comprehensive exclusivity obligations or non-challenge clauses are subject to strict antitrust limits and are often not permitted within the EU.
If licensed property rights are infringed by third parties, legal action is usually in the interest of the licensee. In order to protect the licensor from incalculable costs, it is advisable to include a provision whereby the licensee is authorised to enforce the rights or at least bears the costs.

Licence fees and other forms of remuneration

The amount of the licence fees must be negotiated by the parties on the basis of their economic interests. As a rule, the benchmark will be the amount of own development costs saved by the licensee and the benefit he can derive from the acquired knowledge through production and distribution. In this respect, the licence fee is also a kind of profit share for the licensor, which is intended to compensate for the loss of own sales opportunities in this area. The type and composition of the licence fees depend on the individual circumstances. A licence fee based on the current turnover of the replica products is most likely to be in the interest of the licensee. The manufactured or distributed items or quantities can also be used as a benchmark, irrespective of the revenue generated. In this way, the licensor also participates in the above-average success of the licensee, but runs the risk of only achieving low income in the event of poor results. If the licensor wants to avoid this risk, it is better to agree a fixed payment that is paid either at the beginning or at annual intervals and is based on the realistically achievable sales figures. A combination of both methods is also conceivable, so that initially a base of ongoing minimum fees is agreed, which can increase in line with sales. In particular, such an arrangement ensures that the licensee does not leave the acquired knowledge lying idle, but actually utilises it commercially for the benefit of both parties.
In order to cover the costs associated with the initial technology transfer, it is generally advisable to agree initial payments. For the licensor's security, these should be made prior to the transfer work if possible; this does not preclude offsetting against subsequent ongoing licence fees.

Export controls for software

The licensing and transfer of software abroad can be subject to export controls under the Foreign Trade and Payments Act as an export of goods or as an export of technologists. For example, the export of software for military use requires authorisation, while the intended use must be carefully examined when exporting dual-use goods.

Taxes on licence fees

If licences are agreed between affiliated companies in different countries, the licence fees must comply with the *arm's-length* principle according to international tax regulations, i.e. they must be calculated as between unrelated third parties. Excessive royalties, for example to skim off the profits of foreign subsidiaries, are not recognised by the licensee's country of domicile, but instead increase the taxable profit. Some countries have even set a maximum limit for licence fees.
When calculating licence fees, it is also necessary to check whether withholding taxes are levied on licence fees abroad in addition to the income and trade taxes payable on licence income in Germany. To ensure a clear distinction, the parties involved should stipulate that such taxes are to be borne economically by the licence holder.

Conclusion

Licences will remain a key instrument for international business development in 2025. They enable market access, growth and risk sharing, but require careful legal, tax and strategic planning. The protection of intellectual property, the observance of competition law limits and the consideration of digital and geopolitical developments are decisive for the long-term success of international licence models.

+++

The Alliuris Group

The Alliuris Group consists of 20 law firms and 400 business lawyers within Europe, Asia and America.

Contact	Ulrich Herfurth
	Alliuris Communication
Web	www.alliuris.law
Mail	info@alliuris.org
Fon	+49-511-307 56-20
Fax	+49-511-307 56-21

IMPRINT

EDITORS: ALLIURIS A.S.B.L. ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS | BRUSSELS

MANAGEMENT: Luisenstr. 5, D-30159 Hannover
Fon +49-511-307 56-20, Fax +49-511-307 56-21

BRUSSELS · PARIS · LONDON · AMERSFOORT · UTRECHT · KNOKKE · LUXEMBURG · LYON · MADRID · BARCELONA · LISBON · MILAN · COPENHAGEN · HANOVER · ZUG · VIENNA · SALZBURG · MOSCOW MINSK · SOFIA · ATHENS · ISTANBUL · BEIJING · SHANGHAI · GUANGZHOU NEW DELHI · MUMBAY · NEW YORK · MEXICO CITY SAO PAULO · RIO DE JANEIRO · BRASILIA · BUENOS AIRES · LIMA

EDITORIAL DEPARTMENT
Ulrich Herfurth, Rechtsanwalt