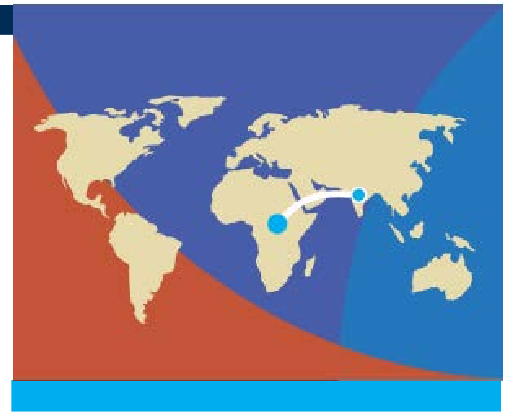
Expanding the business into Africa through "Licensing"



Many a times, it may not be the best idea to expand the business in a new geography by setting up own operations in the form of wholly owned subsidiary or a new firm. This route to expand to Africa would require a considerable amount of capital investment and a medium to long term lag period when the business starts getting returns from Africa operations.

The enterprises that have a unique technological solution to address a problem and have Intellectual Property rights for the product which is widespread can use Licensing as a mode to expand its presence in other geographies like Africa. Through licensing of copyrighted technology, small firms can earn significant income from markets that they could not enter on their own, and large firms can have foreign affiliates without high financial and legal risks.

This document provides an initial checklist of assessing if an enterprise is ready to scale and things to consider while opting for "Licensing".

UNDERSTANDING "LICENSING"

Licensing can be explained as an Agreement whereby an owner of a technological intellectual property (the licensor) allows another party (the licensee) to use, modify, and/or resell that property in exchange for compensation. The compensation may take the form of a (1) lump sum royalty, (2) royalty based on volume of production (called running royalty), or (3) right to use licensee's technology (called cross licensing). Licensing in Africa can help an inclusive business wanting to expand in Africa by lending their technology to a local player who has good insight on the market dynamics and gaining a competitive advantage over its competitors in Africa. When granting a license, copyright owner inclusive business would be able to strengthen its financial standing by adding a revenue source as it would be receiving royalties for each product or technology sold.

WHEN IS LICENSING BEST MODE OF BUSINESS TRANSFER TO AFRICA?

There may be several, business model, organizational and macro environment level dependencies which make it imperative for a business to opt for "Licensing" the technology to an African partner, in order to succeed in African market. Some of these dependencies have been explained below:

- *When the organization holds an IP: When an organization holds IP rights of a product or service, it can sell the license of same to an African counterpart for a price. The African partner can then sell the product in the market after legally gaining the rights to sell the product*
- *When the product or has high brand equity: When the product has high brand equity, that it can capture the foreign market in*
- *When organization has knowledge or processes that can be licensed: If the organization has a some unique knowledge or process say a business model , that they own the rights of , it can be licensed to an African Partner, who can then adopt the model for running his business*

- *When the government regulations regarding tariff, quotas etc. are unfavorable: In a highly restrictive market with very high tariff rates and stringent quotas, the situation might not be favorable for entry via the exports route. Similarly, firms intending to initiate operations in socialist countries may have to rule out certain entry strategies like production abroad, alliances etc., and only licensing might function as the best route. Therefore, it is essential that the compatibility between the political nature of the firms' working and the environment in the destination countries be taken into account while deciding on the entry strategies*

- *When organization has unique technology or product that can be licensed: A unique technology or product developed by an inclusive business can be licensed to an African counterpart for a fee who can then use it further*

FACTORS TO CONSIDER WHEN INTENDING TO "LICENSE":

- *Foreign patent, trademark, and copyright laws; and antitrust and tax laws:*
  It is imperative that a firm contemplating expansion conduct proper research on the market that is planned for entry, as international licensing agreements can sometimes unlawfully restrain trade in violation of foreign antitrust laws. Therefore, a market-based research needs to be conducted on the availability of competing goods or technology; barriers to entry; business justifications for and the duration of contractual restraints; and valid patents, trademarks and copyrights.
  Foreign countries sometimes have strict antitrust laws that affect business licensing. Some of the regulations include block exemption (a regulation that debars organizations in the industry from some business activities in order to create competition), governing patent and know-how licensing agreements as well as ancillary provisions relating to other intellectual property rights. These regulations should be carefully considered by businesses intending to license their product/service to local firms. When the organization holds an IP: When an organization holds IP rights of a product or service, it can sell the license of same to an African counterpart for a price. The African partner can then sell the product in the market after legally gaining the rights to sell the product
- *Need for an export license:*
  The existence of a tax treaty or bilateral investment treaty between the India and the destination countries functions as an important indicator of the overall commercial relationship between both countries. Prospective Indian businesses that operate in either product/service and are contemplating licensing, should consider whether they would need to obtain an export license from appropriate regulating agencies
- *Exchange controls:*
  Some governments, such as the ones in Nigeria, Sudan and Namibia impose controls on the purchase/sale of foreign currencies by residents or on the purchase/sale of local currency by nonresidents. These controls are generally imposed to break the link between domestic market rates and exchange rates, allowing governments to lower their interest rates and having their currency valued at a higher level than in the absence of exchange controls. This might have an effect on the licensor's expected value of income from the act of licensing
- *Legal advice:*
  In addition, firms intending to license to a business in any particular destination country, should seek legal advice in home country before entering into an agreement. The firm would also do good to hire legal services in the destination country to obtain advice on local laws that pertain to the business in question, and also to secure approval from the local government for licensing purposes. These actions will minimize the risk of licensing and maximize assurance of success say a business model, which they own the rights of , it can be licensed to an African Partner, who can then adopt the model for running his business

- *Intellectual property theft:*
  To avoid copyright infringement/theft, efforts need to be directed at ensuring all products/services bear the mark of the copyright holder. Also, it is imperative that the firm equips itself with the knowledge of appropriate copyright bodies and the procedures to initiate infringement cases in order for a speedy result in the case of one

RISKS/DISADVANTAGES ASSOCIATED WITH A "LICENSING" MODE OF TRANSFER:

- *Loss of control: A licensing agreement can lead to a firm's loss of control over the manufacturing and marketing of goods/services in other countries*
- *Quantum of profit: If licensing is chosen as a mode of entry for international expansion, it may prove to be less profitable than other choices such as a wholly owned subsidiary model. This is due to the profit-sharing agreement between two parties*
- *Choice of partner: Selecting a partner can pose a certain risk and the firm has to invest considerable time in evaluating the history of individuals/businesses to arrive at the choice of whether to license or not to a particular entity*
- *Licensee performance: Though the potential for the business may be huge in the market, the licensee may opt to just achieve the minimum performance as agreed in the contract to fulfill only the contractual obligations*
- *Loss of complete control over technology: As the format involves sharing information and rights with the licensee, this might lead to a situation wherein the licensee might turn into a future competitor*
- *General risks/uncertainties in doing business with an international partner: Cultural, language, political and social risks, and currency fluctuations*