

D 2.2 Modern Drivers for Enterprise Licensing

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List of Acronyms

ESG	Environmental, Social, and Governance
IA	Intellectual Assets
IP	Intellectual Property
IPR	Intellectual Property Rights
LMIC	Lower and Middle Income Countries
R&D	Research and Development
SME	Small and Medium sized Enterprise
TRL	Technology Readiness level
SPV	Special Purpose Vehicle



Keywords list

- Intellectual Property
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Table of Contents

Deliverable Information Sheet2
History of changes3
List of Acronyms3
Keywords list4
Disclaimer4
1. Executive Summary
2. Introduction7
2.1 Traditional driver for enterprise licensing7
2.2 Modern Drivers for Licensing in SMEs7
3. Methodology for the study9
4. Case Studies
4.1. Extending the Lifetime of R&D Tax Credits through Licensing
4.2. Green Energy and ESG – Embedding ESG in Supply Chain Licensing Deals to Improve Company Valuation and Investment Opportunities
4.3. Medical Licensing for Societal Benefit in LMIC (Lower and Middle Income Countries)14
4.4. 4.4. Green Ferries and Ethical Licensing – Embedding Ethical Licensing Terms into Government-Funded Agreements15
5. Summary
6. Possible actions for SMEs and SME Support Agencies:18
Annex 1: Key differences between Corporate Social Responsibility (CSR) and ESG





1. Executive Summary

Traditionally, licensing has allowed SMEs (Small and Medium Enterprises) to leverage external technologies, expand their market reach, generate additional revenue streams, and enhance their brand reputation.

In the modern business landscape, SMEs are increasingly turning to licensing not only as a strategic tool for growth and innovation but also as a means to meet various regulatory and environmental standards. Key modern drivers for licensing among SMEs include tax incentives, investment opportunities, regulatory compliance, and adherence to Environmental, Social, and Governance (ESG) criteria.

This report explores these drivers in detail. Additionally, it clarifies the differences between CSR and ESG, providing a comprehensive understanding of their respective roles and impacts.



2. Introduction

2.1 Traditional driver for enterprise licensing

Traditionally, SMEs have engaged in licensing activities for a number of reasons. These have included:

- 1. Access to technology and innovation: Licensing allows SMEs to access proprietary technologies and innovations without the need for heavy investment in R&D; this can be particularly beneficial for SMEs that may not have the resources to develop these technologies themselves.
- 2. **Expansion into new markets:** Through licensing agreements, SMEs can enter new geographical markets with less risk and investment. Licensing can offer a pathway to international markets by leveraging the licensee's established distribution channels and local market knowledge.
- 3. **Revenue generation:** Licensing provides an additional revenue stream. By licensing their intellectual property (IP) to others, SMEs can generate income from royalties, which can be crucial for their financial sustainability.
- 4. **Cost efficiency:** Licensing out can help SMEs reduce costs associated with manufacturing and marketing, while licensing in can avoid the costs of developing a technology from scratch. This is particularly advantageous for SMEs operating with limited budgets.
- 5. **Risk reduction:** Engaging in licensing agreements can spread and reduce the risk associated with market entry and technology development. By partnering through licensing, SMEs can mitigate the financial and operational risks that come with expanding product lines or entering new markets.
- 6. **Speed to market:** Licensing can accelerate the time it takes for products to reach the market. Utilizing existing technologies or brands through licensing agreements can streamline product development cycles and marketing efforts.
- 7. **Collaborative innovation** (Co-Creation): In a co-creation scenario, licensing can facilitate collaboration between entities to innovate or improve products and services. This collaborative approach can lead to shared development costs and combined expertise, resulting in better outcomes than could be achieved independently.
- 8. **Brand and reputation leverage:** For SMEs, licensing agreements with wellestablished companies can enhance their brand perception and credibility in the market. This is particularly valuable in competitive sectors where brand recognition can influence consumer preference and trust.
- 9. **Regulatory compliance**: Licensing can provide SMEs with the necessary tools or processes to comply with regulations, especially in industries like pharmaceuticals, where compliance is critical and difficult to achieve independently.
- 10. **Strategic alliances and networking:** Licensing often leads to strategic alliances that can provide SMEs with critical market insights, trends, and networking opportunities. These relationships can be pivotal for long-term success and growth.

2.2 Modern Drivers for Licensing in SMEs

1. Tax credits: Governments worldwide offer tax incentives to encourage R&D (research and development) and innovation within SMEs. These incentives can significantly reduce the cost of acquiring new technologies or intellectual property





through licensing. Tax credits can also be applied to R&D activities, providing SMEs with financial relief that supports growth and competitiveness.

- 2. Investment opportunities: Licensing can attract investments by demonstrating the value and potential of an SME's intellectual property (IP). Investors are more likely to fund businesses with robust IP portfolios that include licensed technologies, as these can provide a competitive edge and higher returns on investment. Licensing agreements can also lead to strategic partnerships and additional funding opportunities and when combined with ESG action, can help to attract different investors (See 4. ESG below).
- **3. Regulatory requirements**: Compliance with industry regulations is a critical concern for SMEs, particularly in highly regulated sectors such as pharmaceuticals, finance, and technology. Licensing can help SMEs meet these requirements by providing access to proven technologies and processes that comply with regulatory standards. This reduces the risk of non-compliance and associated penalties, enabling smoother market entry and operation.
- 4. Environmental, Social, and Governance (ESG) Criteria¹: ESG considerations are increasingly important for SMEs as stakeholders demand greater transparency and accountability. Licensing technologies that improve environmental performance, enhance social responsibility, and ensure robust governance can help SMEs meet ESG criteria. This not only improves their market standing but also attracts ethical investors and customers.

¹ ESG has largely replace CRS (Corporate Social Responsibility) as a modern measure of ethical business practice. For a more detailed comparison, see note at the end.





3. Methodology for the study

IMPA3CT IP Project Partner (PP) ARICC identified a range of companies to carry out this workpackage task. These companies met key criteria: they had IP (Intellectual Property) and IA (Intellectual Asset) portfolios and they had been engaging in licensing for non-traditional reasons.

Case studies were developed for each enterprise selected and additional data and insights were gathered through interviews.

The report that follows uses the case studies to illustrate each of the modern drivers outlined above. Case studies have been anonymised at the request of the enterprises involved and some financial details have been omitted.





4. Case Studies

4.1. Extending the Lifetime of R&D Tax Credits through Licensing

Driver: Tax Credits.

Sector: Automotive but applicable to any sector involved in R&D.

Company Overview: Company A is a large multinational corporation based in Germany operating in the automotive sector. However, this driver and case study is applicable to various types and sizes of enterprises in countries that offer R&D tax credit schemes.

Technology and TRL (Technology Readiness Level): The technology in question was not fully developed and required additional R&D to reach TRL 9 and achieve commercialization.

Types of IPR: Patents but applicable to other types of intellectual property rights and assets).

Situation Overview: Germany, like many other developed economies, has an R&D tax credit scheme that allows companies to claim back money spent on R&D against their taxes, provided it is reinvested in further R&D. Under the German Act on Tax Incentives for Research and Development ("Forschungszulagengesetz - FZulG") enacted in January 2020, companies can extend the duration of their R&D tax credits by having the results of their R&D developed by others through licensing or R&D agreements.

Action taken: Company A embedded the R&D aspect into the licensing agreement and R&D agreement with legal entities within the same corporate group. By doing this it was able to extend the lifetime of the R&D tax credits it was able to claim back as the technology was developed by the licensor and R&D partner.

Outcome: By utilizing this mechanism, the company recorded a 3.6% increase in their R&D investment, facilitated by the extension of R&D tax credits through strategic licensing.

Main Takeaways for the Technology Community:

1. **Applicability**: This approach can be utilized by any commercial entity not performing all R&D activities in-house and seeking to increase the TRL through licensing or R&D agreements where the R&D tax credit scheme permits.

While this might appear as 'double counting' since the entity performing the development can also claim R&D tax credits, the incentive encourages continuous reinvestment in R&D. Large companies leverage this legislation by licensing technology to other legal entities within the same corporate group. In its most structured form, this involves transferring all patent rights from R&D into a separate legal entity, such as a Special Purpose Vehicle (SPV), which then licenses these patents to other parts of the parent organization.

This strategy is also applicable to licensing technology development with unrelated entities, such as those in the manufacturing supply chain or entities with internal resources to further develop and commercialize the technology.



2. **Opportunity for non-commercial entities including Universities**: Although universities and similar entities are not usually eligible for R&D tax credits, they can benefit if their IPR portfolio is held by a separate legal entity e.g., a Limited Liability Company or Special Purpose Vehicle (SPV). This allows them to reinvest the tax credit back into R&D, which is particularly advantageous as much of higher education institution research requires further development before market readiness. Many licensing deals for low TRL technology include a research and development plan, aligning with this approach.

3. Requirement for further R&D: It is essential that licensing results in further R&D rather than mere usage. The entity claiming the tax credits for R&D performed elsewhere must demonstrate ongoing R&D activities. This should be explicitly stated in the licensing agreement or, in some jurisdictions, be part of a legally binding R&D agreement. A minimum level of proof is required by auditors to assess the applicability of R&D tax credits.





4.2. Green Energy and ESG – Embedding ESG in Supply Chain Licensing Deals to Improve Company Valuation and Investment Opportunities

Driver: ESG ETHICAL and Investment

Sector: Green Energy

Company Overview: Company B 'Green-Tech' is a cutting-edge tech company specializing in advanced coating technology aimed at revolutionizing electrode performance for green hydrogen production and industrial decarbonization. As a significant spin-off from a leading research institute in catalysis, Green Tech has positioned itself at the forefront of technological advancements in this sector.

Technology: a coating technology that significantly enhances electrode performance, making them more durable, energy-efficient, and cost-effective, thus playing a crucial role in advancing green hydrogen production.

Types of IP: Patents, know-how, and CE marks.

Situation Overview: Green Tech operates a state-of-the-art electrode manufacturing facility. This semi-automated plant produces 60,000 square meters of electrodes annually. With plans to establish fully automated plants by 2024/25, the company aims to scale production to 400,000 square meters per year, demonstrating a strong commitment to meeting growing market demands efficiently.

Green Tech aims to expand its focus beyond electrode coatings to become a comprehensive material sciences company. This will require significant investment.

Action taken: To secure ongoing and future investments from some potential 'green' investors, Green Tech needed to meet specific ESG practices and targets. Failure to introduce these practices and meet targets could have resulted in the withdrawal of investor support.

The company put in place a robust business plan to raise \$50 million and achieve growth through ESG investment over 5 years. This included implementing robust ESG practices to meet investor requirements, including sustainable manufacturing, social responsibility, and strong governance and ensuring compliance with ESG goals.

Outcome: By embedding ESG principles in its operations and licensing agreements, Green Tech successfully secured substantial investments, highlighting the financial benefits of prioritizing ESG in business strategies.

Their robust action plan is designed to ensure long-term growth and sustainability while adhering to high environmental and social standards.

However, making these changes required the company to make hard decisions about where and how it operates. For example, a recent challenge in one USA state to introducing ESG worker practices led to the company taking the difficult decision to withdrawal from that state due to the potential loss of investment.

Main Takeaways and Lessons Learned:

1. Significant finance raised through ESG integration: Embedding ESG principles within the licensing terms and conditions enabled Green Tech to secure substantial



investment, highlighting the financial benefits of prioritizing ESG in business strategies.

2. Challenges in different territories: Implementing ESG clauses faced resistance in some regions, such as the USA, where there was opposition to including worker rights in sub-licensing agreements. This underscores the need for a tailored approach when applying ESG standards in diverse regulatory and cultural environments.





4.3. Medical Licensing for Societal Benefit in LMIC (Lower and Middle Income Countries)

Driver: ESG SOCIAL

Sector: Med-tech

Company Overview: Company C - "MedTech Innovations" - an SME based in Spain, has been operational for eight years. The company has established distribution and manufacturing partnerships with firms in the USA, Japan, and Brazil. Their primary product is a medical device designed to treat brain tumours in children. This device is produced under license using a family of IP rights, including patents and trademarks, and is used in developed countries worldwide.

Types of IP: Patent and trademarks as well as know-how.

Situation Over-view: MedTech Innovations wanted to make this life-saving device available in LMICs, particularly focusing on Africa, either free or at cost. The primary motivation was the 'Social' aspect of ESG, driven by the founders' desire to address the significant medical needs in these regions.

Action Taken: The company secured grants from the Catalonian Government, which are specifically aimed at supporting technology transfer to Africa. The founder personally invested time and effort by engaging with stakeholders across multiple African countries. This involved discussions with the Red Cross and local hospitals to ensure that the necessary skills and experience were available to effectively use the technology. Regulatory and standards compliance was also a key focus.

Outcome: MedTech Innovations successfully licensed their device to hospitals in several African countries, facilitating access to advanced medical treatments for children suffering from brain tumours.

Main Takeaways and Lessons Learned:

- 1. Challenges: Identifying hospitals with surgeons who have the right skills and qualifications to use the technology effectively was a significant challenge.
- 2. Intermediary Engagement: Establishing contact and formal agreements with intermediaries, such as the Red Cross, was crucial. These relationships were formalized through legal contracts to ensure clarity and commitment.
- 3. Formalized Agreements: All agreements and relationships were legally formalized to ensure smooth implementation and adherence to the licensing terms.
- 4. Introduction of specific Licensing Terms: The licensing agreements for hospitals in Africa included unique terms compared to those for hospitals in developed countries. These terms were adapted to address local needs and capabilities, ensuring the technology could be effectively utilized. Key terms included provisions for training local surgeons, maintenance support, and compliance with local medical regulations.
- 5. Timeline for Activities: The initiative spanned over several years, with initial groundwork and stakeholder engagement taking considerable time. Securing grants, establishing contacts, and negotiating agreements were essential steps in the timeline before the actual deployment of the technology.



4.4. Green Ferries and Ethical Licensing – Embedding Ethical Licensing Terms into Government-Funded Agreements

Driver: Regulations and ESG ETHICAL

Sector: Transport

Technology: Water Ferries

Types of IP: Patents, Trademarks, Design Rights

Company overview: A company in the green transport sector, "Eco Marine Solutions" (EMS)", supplies eco-friendly ferries to local ferry operators via a government procurement and subsidy program in Canada.

Situation Over-view

Local Canadian government has started to publish procurement calls designed to introduce more ethical practices to the supply chain where they fund the action. In this case, the call stipulated that the successful ferry supplier must insert certain terms and conditions from the procurement call, into the clauses of the licensing agreement with government. Further, that these conditions must apply to all sub-licensees, e.g. those who operate the ferry services on behalf of the government. This arrangement gives local government significant control over the terms and conditions (T&Cs) of the final licensing agreements with ferry operators and helps to introduce more ethical practices to the supply chain.

To align with the new government procurement requirements EMS had to implement significant changes to its business model and its ferries, focusing on ethical design and licensing practices. These changes ensured compliance with the specific terms and conditions mandated by the government in the procurement agreement.

The process for licensing agreements acquired by procurement is set down in law and includes unique terms compared to those to be dealt with by contract. These terms were agreed by a negotiated procedure and were developed to ensure the needs of the licensee could be met including a price to quality ratio measurement. This approach ensures that the licensor has met all the regulatory requirements of procurement law in that jurisdiction.

The following key procurement conditions were required for the ferries, and it was mandated that they must also be reflected in the associated sub-licensing agreements with ferry operators. This required a number of changes to the existing business model of EMS and the ferry operators.

1. Accessibility:

Requirement: The ferries had to be accessible at all docking points along the route and capable of accommodating passengers with disabilities.

Business Model Change: EMS redesigned their ferries to meet accessibility standards, which involved additional design and engineering efforts to ensure compliance with disability access regulations. This also required collaboration with disability advocacy groups to validate the design changes.

2. Employment and Jobs:





Requirement: The licensing agreement mandated a minimum age for employees and specified that a certain percentage of workers on the ferries must be local residents. Business Model Change: The ferry operators had to develop and implement a hiring strategy that prioritized local employment and met age requirements, which involved coordinating with local job agencies and training programs to ensure a qualified local workforce.

3. Safety and Environmental Standards:

Requirement: Operators were required to adhere to a written minimum level of care regarding safety and environmental issues, including handling spills.

Business Model Change: EMS and the ferry operators incorporated stringent safety and environmental protocols into the operational practices and licensing agreements. This included regular safety drills, environmental impact assessments, and developing comprehensive spill response plans.

Outcome: The final licensing agreements with local Government and the sub-licenses with local ferry operators included several non-standard clauses directly derived from the government's procurement requirements. These clauses ensured that ethical and environmental standards were upheld, thereby fostering trust and compliance within the community and among stakeholders.

Main takeaways for the enterprise community:

1. **Compliance with Ethical and Environmental Norms**: Companies must anticipate and integrate ethical and environmental standards early in the technology development process. This foresight is especially crucial when the business model involves government procurement and subsidy.

2. **Use of Procurement Checklists**: Utilizing procurement checklists during the technology development cycles and when approaching licensing deals can help ensure all government requirements are met. These checklists can include typical conditions seen in government procurement processes, aiding in the alignment of business practices with regulatory expectations.





5. Summary

The case studies presented in this report demonstrate that SMEs can significantly benefit from leveraging licensing as a modern strategic tool for growth, innovation, and compliance with new business standards. The integration of ESG criteria into licensing agreements not only enhances the attractiveness of these agreements to investors and partners but also ensures long-term sustainability and regulatory compliance.

Key Findings from Case Studies:

- 1. **Extending R&D Tax Credits through Licensing**: Strategic licensing can extend the benefits of R&D tax credits. By transferring patent rights to separate legal entities and licensing these patents within the corporate group or to unrelated entities, companies can significantly increase their R&D investments.
- Green Energy and ESG Integration: Embedding ESG principles in licensing agreements can attract substantial investments. By ensuring that their licensing deals align with ESG criteria, companies can secure significant funding and enhance their market reputation, demonstrating the financial benefits of prioritizing ESG.
- Medical Licensing for Societal Benefit: Adapting licensing terms to local needs, combined with philanthropic motivations, can lead to significant societal benefits and open new markets. Licensing life-saving medical devices to hospitals in low- and middle-income countries (LMICs) underscores this potential.
- 4. **Ethical Licensing in Government-Funded Agreements**: Embedding ethical licensing terms in government procurement contracts illustrates the necessity of aligning business models with ethical and environmental standards. This approach ensures compliance with government requirements and fosters trust and community support.





6. Possible actions for SMEs and SME Support Agencies:

- 1. Early Integration of ESG Considerations: SMEs should integrate ESG considerations early in the technology development process. This proactive approach will enhance the attractiveness of their licensing agreements and ensure compliance with regulatory standards.
- 2. Utilize Procurement Checklists: Develop and use procurement checklists during the technology development and licensing negotiation stages to ensure all government and regulatory requirements are met. This will facilitate smoother transactions and compliance.
- 3. Focus on Long-term Sustainability: Ensure that licensing agreements are designed to support long-term sustainability. This involves not only environmental considerations but also social and governance factors that will appeal to ethical investors and partners.
- 4. Engage with Stakeholders: Actively engage with stakeholders, including intermediaries such as TTOs, government bodies, and NGOs, to build strong, legally formalized relationships that support licensing initiatives.
- 5. Invest in Training and Capacity Building: For licensing agreements in LMICs or regions with specific needs, invest in training and capacity building to ensure that local partners can effectively utilize the licensed technology. This will enhance the success and impact of the licensing agreement.
- 6. Monitor and Evaluate ESG Impact: Implement mechanisms to monitor and evaluate the impact of ESG factors on licensing agreements. This will help to improve practices and demonstrate the value of ESG integration to stakeholders.
- 7. Develop Tools which help SMEs to consider the purpose and develop the expertise in each of the stages of modern licensing
 - Motivation
 - Market Fit
 - Clearance
 - Waivers
 - Royalties
 - Restrictions
 - Field of use
 - Liabilities
 - Improvements
 - Derivative works
 - Reporting requirements

By following these actions, SMEs can leverage licensing as a powerful tool to drive innovation, attract investment, and ensure long-term success in a rapidly evolving business environment. The integration of ESG principles into licensing strategies not only aligns with modern business standards but also provides a competitive advantage in the marketplace.





Annex 1: Key differences between Corporate Social Responsibility (CSR) and ESG

While CSR and ESG both focus on ethical business practices, they differ in scope and implementation:

• Corporate Social Responsibility (CSR): CSR refers to voluntary business practices aimed at improving society and the environment. It encompasses initiatives such as community engagement, philanthropy, and sustainable practices. CSR activities are often discretionary and reflect a company's values and commitment to positive social impact.

• Environmental, Social, and Governance (ESG): ESG, on the other hand, involves measurable criteria that assess a company's performance in environmental conservation, social responsibility, and governance. ESG metrics are used by investors to evaluate the long-term sustainability and ethical impact of their investments. Unlike CSR, ESG factors are integral to financial analysis and decision-making processes, making them essential for securing investment and ensuring regulatory compliance.



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