

FEMA Hotline

December 18, 2009

INDIA INC'S GIFT TO FOREIGN COLLABORATORS - ROYALTIES UNLIMITED

Over the last decade and a half, India has been witnessing a steady growth in foreign investments into the country. The Indian government has kept abreast with global trends by liberalizing policies (barring in a few sectors viewed as important and sensitive) which not only encourage investments but also adequately regularize them. In furtherance of the same, the Government of India on December 16, 2009 has issued Press Note No.8 (2009 Series) for the liberalization of remittances made for technology collaborations, thereby removing the earlier restrictions on outbound remittance for royalties and lumpsum fees paid towards transfer of technology, use of trademark and brand name. Indian companies will now have to directly approach their Authorised Dealer (banks) with necessary documentation, for payment to foreign technical collaborators.

Erstwhile Limitations

Under the earlier regulatory norms, remittances made by Indian residents to non-residents for transfer of technology was permissible without any prior regulatory approvals to the extent of a lumpsum fee of USD 2 million along with royalty payments of 5% on domestic sales and 8% on exports. Similarly, as per the erstwhile press notes royalty remittances for the use of trademarks was permissible up to 2% on exports and 1% on domestic sales (however under the rules of the Foreign Exchange Management Act, 1999, the same was considered as a current account transaction). Any payments in excess of the specified caps required prior Government approval.

Some of the remittance limits go back to 2001 and the same had not been revised since then. Thus, these limits may have deterred many a potential investor/owner from bringing their technology/ trademarks into India.

Who benefits?

The relaxation of these restrictions is welcome as such liberalization and relaxation of foreign exchange norms would provide considerable relief to several foreign investors and companies who can now expect a fair return on their intellectual property. This would also incentivize foreign companies to enter into Indian markets and undertake collaborations with Indian companies thereby making India an important manufacturing hub which in turn would result in a **win-win** situation for both - foreign investors and the Indian economy.

- Huzefa Tavawalla, Chittaranjan Datar & Kishore Joshi

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