

Capitalisation of Lumpsum Fee / Royalty / ECB – Liberalisation
A.P. (DIR Series) Circular No.34 (Nov 14, 2003)

Reserve Bank of India
Exchange Control Department
Central office
Mumbai - 400 001

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November 14, 2003

To
All Authorised Dealers in Foreign Exchange

Madam / Sirs,

Capitalisation of Lumpsum Fee / Royalty / ECB – Liberalisation

Attention of Authorised Dealers is invited to Regulation 5(1) of Notification No.FEMA.20/2000-RB dated May 3, 2000 and paragraph 8 of Schedule I thereto, in terms of which issue of shares or convertible debentures under Foreign Direct Investment Scheme by a company in India to a person resident outside India (other than a citizen of Bangladesh or Pakistan or Sri Lanka) is permitted only against inward remittance through normal banking channels or by debit to NRE/FCNR account of the person concerned maintained with an Authorised Dealer.

2. With a view to further liberalising the foreign investment policy, Government of India has issued Press Note No.3 (2003 Series) dated July 29, 2003 (copy enclosed), in terms of which issue of equity shares against Lump-sum fee, Royalty and External Commercial Borrowings (ECBs) in convertible foreign currency already due for payment/repayment has been permitted, subject to meeting all applicable tax liabilities and compliance with the procedures prescribed.

3. The issue of shares against lump-sum technical know-how fee, royalty and ECB due for payment/repayment, whether under automatic route or SIA/FIPB route, is subject to the pricing guidelines of Reserve Bank/SEBI.

4. It has been clarified by the Government that the words 'import payables' appearing in the Press Note refer only to payables towards import of technical know-how and other items mentioned under paragraph 2 above. Import dues by Indian companies, which are deemed as Trade (buyers'/suppliers') Credit or ECBs in terms of Reserve Bank guidelines, are not permitted for conversion into equity shares.

5. Authorised Dealers may bring the contents of this circular to the notice of their constituents concerned.

6. Necessary amendments to the relevant Notifications are being issued separately.

7. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Yours faithfully,

Grace Koshie

Chief General Manager

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

PRESS NOTE NO.3(2003 SERIES)

Subject : Capitalisation of import payables – liberalisation of policy

At present, issue of shares by a company in India to a person resident outside India is permitted only against inward remittance of convertible foreign exchange through normal banking channels or by debit to NRE / FCNR account of the person concerned maintained with an authorised foreign exchange dealer / bank.

2. As a part of the ongoing process of liberalisation, it has been decided to permit issue of equity shares against lumpsum fee, royalty and External Commercial Borrowings (ECBs) in convertible foreign currency already due for payment / repayment, subject to meeting all applicable tax liabilities and procedures.

(R.S.JULANIYA)
Director

F.No.5(4)/2003-FC dated 29th July 2003.