

## 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

#### DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### Handbook on New Labour Codes

April 29, 2024

### Compendium of Research Papers

April 11, 2024

### Third-Party Funding for Dispute Resolution in India

April 02, 2024

## Research Articles

### Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

### Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

### Emerging Legal Issues with use of Generative AI

October 27, 2023

## Audio

### Third-Party Funding: India & the World

April 27, 2024

### IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

### The Midnight Clause

February 29, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### Q&A 2024 Protocol to the Mauritius India Tax Treaty

April 22, 2024

### Boost to India's Space Potential: India Liberalizes Foreign Direct

