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CAPITALISATION OF ROYALTY PAYMENTS AND ECBS

The advent of liberalization of the Indian economy resulted in relaxations of some of the stringent exchange control regulations and opening up of the automatic route for foreign direct investments in most of the sectors barring some exceptional cases like defence, housing and real estate, print media, etc. However, this automatic route is available only against inward remittance of convertible foreign exchange through normal banking channels. Further, share swap or transfer of existing shares between an Indian resident and a non-resident still requires prior approval of the Foreign Investment Promotion Board.

The Government of India has yet again demonstrated that it is committed to the liberalization process. The Press Note no. 3 dated July 29, 2003, is another step towards the same. As per this press note, subject to compliance with the applicable tax provisions and regulatory procedures, Indian companies can now issue equity shares to the foreign entity in lieu of:

- payment of lumpsum fee / royalty; and
- repayment of External Commercial Borrowings ("ECBs") taken in convertible foreign currency.

Source: F.No. 5(4)/2003-FC dated 29th July 2003 issued by Ministry of Commerce & Industry, Government of India

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