

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 6102]
January 25, 1968]

Foreign Direct Investment Regulations
of U. S. Department of Commerce
Miscellaneous Amendments and General Authorization No. 1

To All Banks and Other Financial Institutions
in the Second Federal Reserve District:

The following statement was made public January 22 by the U. S. Department of Commerce:

Secretary of Commerce Alexander B. Trowbridge announced today certain amendments and a general authorization covering the treatment of foreign borrowing by U.S. companies in the new Foreign Direct Investment Program.

General Authorization No. 1 permits U.S. companies to make repayments on their foreign borrowings and to honor guarantees made for the benefit of their foreign affiliates in case of default. This treatment of foreign obligations of U.S. firms has already been permitted in practice in specific cases; the General Authorization formalizes this practice.

Repayments will be permitted on both existing and future loans and guarantees.

General Authorization No. 1 has two provisions designed to dampen the impact of any substantial net outflow of funds as a result of repayments on a foreign loan or on a guarantee. First, any company which uses U.S. funds to make these repayments will be required to deduct this amount from its allowable base in the future. Second, on new loans and guarantees, a certificate is required in order to screen out prospective borrowers who have no prospects of repaying from foreign source funds.

General Authorization No. 1 also contains provisions clarifying the status of international finance subsidiaries established for the purpose of borrowing in the Eurodollar market.

It is expected that the General Authorization will be utilized by companies with the capability of generating sufficient foreign earnings to repay their borrowing.

The amendments to the Regulations issued under Executive Order 11387 are principally technical in nature. Both the amendments and General Authorization No. 1 will be published in the Federal Register of Tuesday, January 23, 1968.

Additional general authorizations and amendments to the regulations can be expected in the future, with particular reference to accommodating the rules on repatriation of liquid foreign assets to the new provisions of General Authorization No. 1.

Printed on the following pages are excerpts from the *Federal Register* of January 23, containing the texts of the amendments and the general authorization referred to in the above statement.

Additional copies of this circular will be furnished upon request.

ALFRED HAYES,
President.

RULES AND REGULATIONS

Title 15—COMMERCE AND FOREIGN TRADE

Chapter X—Office of Foreign Direct Investments, Department of Commerce

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Miscellaneous Amendments

In order to clarify the scope of the Foreign Direct Investment regulations, certain amendments thereto are set out below. Both the regulations and these amendments implement Executive Order 11387, 33 F.R. 47. Since a foreign affairs function of the United States is involved, the requirements of 5 U.S.C. 553 are not applicable. In any event, because of the need for immediate clarification it is hereby found that notice and public procedures prior to the promulgation of these amendments to the regulations, and making the amendments subject to the effective date limitation of subsection (d) of that section, are impracticable and contrary to the public interest.

1. In § 1000.201, paragraph (a) (introductory text) is amended to read as follows:

(a) Except as specifically authorized by the Secretary of Commerce (hereinafter referred to as the Secretary) by means of regulations, rulings, instructions, authorizations, licenses, waivers, or exemptions or otherwise, all of the following transactions directly or indirectly by or on behalf of or for the benefit of a direct investor are prohibited on or after the effective date, if any such transaction involves a direct or indirect transfer of capital to or within any foreign country:

2. Section 1000.305 is revised to read as follows:

§ 1000.305 Affiliated foreign nationals.

The term "affiliated foreign national" means any foreign national in which a person within the United States is, or shall become as a result of a transfer of capital, a direct investor.

3. Section 1000.312 is revised to read as follows:

§ 1000.312 Transfer of capital.

The term "transfer of capital" shall mean a transfer of capital, directly or indirectly, by or on behalf of, or for the benefit of, a direct investor directly or indirectly to or on behalf of, or for the benefit of an affiliated foreign national or in connection with the acquisition of an interest in an affiliated foreign national (including any foreign national which shall become affiliated as a result of or in connection with such transfer or acquisition), including, but not by way of limitation:

(a) A net contribution to the capital of an affiliated foreign national;

(b) The acquisition of an interest in, or an increase in net interest in, an affiliated foreign national;

(c) The acquisition of an obligation of an affiliated foreign national, regardless of the maturity date of the obligation, to the extent the principal amount of all such obligations exceeds that of obligations of the direct investor acquired by such foreign national, except obligations acquired by a direct investor by subrogation in connection with transfers described in paragraphs (e) and (f) of this section;

(d) A net increase in loans or advances upon open account to an affiliated foreign national;

(e) A transfer to a foreign national in satisfaction of an obligation of a direct investor incurred as a result of (1) a guarantee of an obligation of an affiliated foreign national to a foreign national, or (2) the assumption of a liability of an affiliated foreign national to a foreign national;

(f) A transfer to any other person wherever located in satisfaction of an obligation of a direct investor incurred as a result of (1) a guarantee of an obligation of an affiliated foreign national to a person within the United States, or (2) the assumption of a liability of an affiliated foreign national to a person within the United States;

(g) A transfer of funds or other property to a foreign national in repayment or satisfaction of indebtedness incurred before or after the effective date to the extent the use of the proceeds of such indebtedness, whether occurring before or after the effective date constituted a transfer of capital.

4. Section 1000.315 is revised to read as follows:

§ 1000.315 General authorization and exemption.

The terms "general authorization" and "general exemption" mean those authorizations and exemptions, the terms of which are set forth in this part or published in the FEDERAL REGISTER.

§ 1000.504 [Amended]

5. In § 1000.504, paragraphs (a) and (b) are revised to read as follows:

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following provisions of this section shall apply to the whole of aggregate direct investment in any year if such aggregate investment is in excess of \$100,000.

(b) (1) In determining the existence, or the extent, of a transfer of capital during any year within the meaning of this section and in determining the extent to which a transfer of capital during any year is authorized by this section, both the amount of direct investment during the year or years and the average amount of direct investment during the years 1965 and 1966 inclusive shall be calculated by deducting such portion of net borrowings (whether incurred in such year or any previous year) by the direct investor from foreign nationals

other than affiliated foreign nationals as is or was expended in such direct investment (including for this purpose borrowings occurring after the date of such direct investment but as part of one transaction or a group of integrated transactions, provided the borrowing occurs within 90 days after such transfer of capital and during the same year): Provided, however, That amounts so borrowed with an original maturity of less than 12 months from the original date of borrowing shall not be so deducted unless, in the case of a borrowing after the effective date, there exists provision for renewal, extension or continuance of such borrowing for a total term of at least 12 months, and the direct investor certifies to the Secretary that it reasonably expects that such borrowing will not be repaid in less than 12 months from its original date or, in the case of a borrowing expended in direct investment during 1965 and 1966 inclusive, such borrowing was not in fact repaid in less than 12 months from the original date of such borrowing;

(2) In determining the existence, or extent, of a transfer of capital by or on behalf of, or for the benefit of, a person within the United States who is a direct investor directly or indirectly to or on behalf of, or for the benefit of, a foreign national which is an affiliated foreign national during any year within the meaning of this section, there shall be included any transfer of capital by which such person within the United States becomes a direct investor and all transfers to or on behalf of, or for the benefit of, such foreign national (which were not transfers of capital) by or on behalf of, or for the benefit of, such person within the United States within 12 months (whether or not during the same year) prior to the date of the transfer of capital by which it became a direct investor.

§ 1000.505 [Amended]

7. Section 1000.505 is amended by inserting "(a)" before the first paragraph thereof, by redesignating paragraphs (a) and (b) as subparagraphs (1) and (2), respectively, and by adding at the end thereof a new paragraph (b) reading as follows:

(b) Nothing contained in this section shall prohibit a direct investor, although such direct investor is also a foreign national, from transferring the proceeds of any borrowing from or other credit extended by a foreign national outside the United States (other than an affiliated foreign national) to a national or nationals of any country or countries listed in any Schedule or Schedules but such exemption shall not be deemed to exempt such direct investor from compliance with § 1000.504(a).

Dated: January 22, 1968.

A. B. TROWBRIDGE, Secretary of Commerce.

(F.R. Doc. 68-950; Filed, Jan. 22, 1968 3:11 p.m.)

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DEPARTMENT OF COMMERCE

Office of the Secretary

Office of Foreign Direct Investments

[General Authorization No. 1]

TRANSFERS OF CAPITAL

This is a General Authorization established to permit, subject to various conditions and exceptions, certain transfers of capital by direct investors in repayment of existing and future indebtedness of direct investors and of affiliated foreign nationals. This General Authorization includes authorization of transfers between a direct investor and its international finance subsidiary and delivery of stock on the exercise of conversion rights incident to the issuance of certain instruments of indebtedness and certain other matters relating to borrowings.

This General Authorization and the clarifying amendments to the Foreign Direct Investment regulations issued today constitute the first of a series of documents to be released and published by the Office of Foreign Direct Investments dealing, by way of authorization, interpretation, amendment, or otherwise, with matters within the scope of Executive Order 11387. Nothing contained herein should be construed as expressing the position of the Office on any but the matters covered hereby.

This General Authorization is issued to implement further Executive Order 11387, 33 F.R. 47, and the Foreign Direct Investment regulations, 33 F.R. 49, as amended in this issue of the FEDERAL REGISTER, supra (hereinafter called the "regulations").

SECTION 1. *Definitions.* For purposes of this General Authorization:

(a) "Bank" means any domestic bank as described in section 1000.317 of the regulations, any foreign branch or subpart thereof within a foreign country, and any bank, trust company, private bank, or merchant bank organized or incorporated under the laws of any foreign country.

(b) "Indebtedness" means an obligation to pay money to creditors in respect of bills, notes, bonds, debentures (including notes, bonds, and debentures convertible into stock), lines of credit, overdrafts, letters of credit, and short term commercial paper, or installments or portions of any of the above.

(c) "Guarantee" or "guarantees" mean (1) a written acknowledgement of secondary responsibility (whether or not legally enforceable) to a bank for the indebtedness, or with respect to the financial condition of another, and (2) a written guarantee, endorsement, surety

agreement, application for letter of credit, standby agreement, or contingent contractual commitment involved in so-called "through put" agreements, "take or pay" contracts, "keep well" agreements, and other similar agreements.

(d) "International finance subsidiary" means a corporation organized under the laws of the United States or of any State, territory, possession, District of Columbia, or the Commonwealth of Puerto Rico, all of the stock (except directors' qualifying shares) of which is owned directly or indirectly by a direct investor and the principal business of which is to borrow funds from foreign nationals, other than affiliated foreign nationals, or to hold debt or equity securities of affiliated foreign nationals, or both.

SEC. 2. *Authorized Transfers of Capital.* (a) Transfers of capital in connection with indebtedness of a direct investor or an affiliated foreign national (whether incurred before or after the effective date of the regulations) are authorized as follows:

(1) If such transfer is made, pursuant to a guarantee, in payment of, or to enable the affiliated foreign national to pay, indebtedness of such affiliated foreign national (including an international finance subsidiary) when and as due and payable (not including payment pursuant to a call or like provision resting control of the time of payment in the direct investor or such affiliated foreign national): *Provided*, That, in the case of a guarantee, made after the effective date, of such indebtedness, the direct investor prior to the making of such guarantee on or before March 1, 1968 (whichever is later), shall have delivered to the Secretary a certificate executed by a duly authorized representative of the direct investor stating the amount of indebtedness covered by the guarantee and certifying that the direct investor has no reason to believe, under existing circumstances, that the affiliated foreign national will be unable to pay or otherwise satisfy such indebtedness without resort to performance under the guarantee (except, if applicable, transfers of capital referred to in paragraph (d) of this section 2).

(2) If such transfer is made in payment of, or to enable the affiliated foreign national to pay, indebtedness incurred prior to the effective date, of an affiliated foreign national (including an international finance subsidiary) to a bank, when and as due and payable (not including payment pursuant to a call or like provision resting control of the time of payment in the direct investor or such affiliated foreign national): *Provided*, That, the direct investor has determined in good faith that the affiliated foreign national has not sufficient funds available to it to pay such indebtedness.

(b) Transfers of capital in repayment of indebtedness of a direct investor (other than transfers described in paragraph (a) of this section 2), when and as due and payable (not including repayment pursuant to a call or like provision

resting control of the time of payment in the direct investor), are authorized: *Provided*, That, a transfer of capital in repayment of such indebtedness shall have the effect described in section 3 of this General Authorization to the extent that (1) the use of the proceeds resulting therefrom constitutes a transfer of capital after the effective date which is not authorized or exempted pursuant to any provision of the regulations or which would have constituted such a transfer of capital prior to the effective date within the meaning of § 1000.312 of the regulations had they been in effect when such indebtedness was incurred, or (2) the indebtedness was deducted from direct investment during 1968 or any subsequent year under § 1000.504(b) of the regulations: *And further provided*, That, with respect to indebtedness incurred after the effective date, the direct investor prior to incurring such indebtedness or on or before March 1, 1968 (whichever is later) shall have delivered to the Secretary a certificate executed by a duly authorized representative of the direct investor stating the amount of the indebtedness and to the effect that the direct investor has reason to believe that, under existing circumstances, the borrowing will ultimately be repaid or satisfied from sources outside the United States.

(c) For purposes of this General Authorization, any indebtedness which is incurred under a fixed loan commitment or line of credit established prior to the effective date shall be deemed indebtedness incurred prior to the effective date, whether or not such loan commitment or line of credit or obligation is subsequently renewed or otherwise extended: *Provided*, That, (1) any indebtedness incurred pursuant to a material increase, after the effective date, in the maximum limit of such loan commitment or line of credit shall be deemed, pro tanto, to be indebtedness incurred after the effective date, and (2) any transfer of capital in repayment of indebtedness, whenever incurred, shall be deemed a transfer of capital in repayment of indebtedness incurred after the effective date to the extent such repayment is made without resort to the option in the debtor, if any, to renew or extend such indebtedness (except repayments involved in the refunding of such indebtedness with the same or another lender).

(d) Transfers of capital consisting of delivery of equity securities pursuant to conversion or similar rights to holders of instruments of indebtedness issued by a direct investor or its affiliated foreign national (including an international finance subsidiary), which instruments were or are sold through underwriters in accordance with agreements limiting such sales (other than sales to underwriters and dealers) to persons other than residents or nationals of the United States, are authorized. Such transfers of capital shall have the effect described in section 3 of this General Authorization, the amount of the transfer in each year

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to be equal to the aggregate principal amount of indebtedness surrendered in such year by the holders thereof in exchange for such equity securities.) Any acquisition by the direct investor of such instruments of indebtedness or the cancellation thereof or the transfer of such equity securities to the affiliated foreign national which originally issued the instruments of indebtedness, in connection with the exercise of such conversion or similar rights, will not constitute a transfer of capital.

(e) Any person other than an affiliated foreign national who has extended credit or shall contemplate the extension of credit in connection with or in anticipation of transfers of capital authorized by this General Authorization upon the filing of any certificate with the Secretary required by this General Authorization, or who otherwise has or shall have reason to rely on the existence of such certificate, may rely on such certificate as filed with the Secretary by the direct investor or an authorized representative thereof attesting to the facts which would make such authorization available.

Sec. 3. Effect of certain transfers. (a) Each transfer of capital authorized pursuant to paragraph (a) of section 2 or made subject to this section by the provisions of paragraph (b) or (c) of section 2 shall result in an equal reduction of the amount of direct investment authorized by § 1000.504(a) of the regulations; *provided that*, such reduction shall not be made to the extent that such transfer of capital is offset by funds transferred after the effective date to an account owned by such direct investor denominated in U.S. dollars at a domestic bank if such funds, whether transferred before or after the date of such transfer of capital, are from such of the direct investor's resources as are derived from (1) payments to it by affiliated foreign nationals outside the United States in excess of amounts representing earnings required to be repatriated by § 1000.202 of the regulations, or (2) the proceeds of sale to foreign nationals outside the

United States (other than affiliated foreign nationals) of any portion of the direct investor's interest in an affiliated foreign national, or the obligations thereof, or portfolio securities of a non-affiliated foreign national, not otherwise deducted in determining the amount of transfers of capital.

(b) Such reduction shall first be applied to the amount of direct investment remaining authorized under § 1000.504 (a) of the regulations for the current year at the date of such transfer of capital, and then to the total amount of direct investment authorized thereunder in each succeeding year, until aggregate reductions equal to such transfer of capital shall have been made. In computing the amount of such reductions, (1) the transfer of capital shall be allocated among Schedule A, B, and C countries in the same proportions as the proceeds of the indebtedness satisfied by such transfer were originally employed (without regard to interim or intermediate investment), and (2) in the case of the payment of indebtedness only part of which constitutes a transfer of capital subject to this section 3, such payment shall be proportionately allocated to such transfer, all subject to the right in each case in the Secretary to reallocate such amounts, after notice to the direct investor, in a reasonable manner consistent with the sense of the regulations.

(c) In calculating reductions of direct investment under paragraphs (a) and (b) of this section 3, any such reduction with respect to paragraphs (1) and (2) of § 1000.504(a) of the regulations shall be applied both to transfers of capital authorized by such subparagraphs and, to the extent necessary, in calculating the amount of total earnings of affiliated foreign nationals required to be repatriated pursuant to paragraphs (a) and (b), respectively, of § 1000.202 of the regulations; any such reduction made with respect to paragraph (3) of § 1000.504(a) of the regulations shall result in an equal increase in the amount of total earnings required to be repa-

triated pursuant to paragraph (c) (2) of § 1000.202 of the regulations. Any increase in repatriation of earnings thus required by this paragraph (c) shall be applied to earnings of the current year and of each succeeding year until aggregate increases equal to such transfer of capital shall have been made.

Sec. 4. International finance subsidiaries. Unless in a specific case the Director shall give notice to the contrary to the direct investor, transfers of capital between a direct investor and its international finance subsidiary or subsidiaries are authorized.

Sec. 5. Effect upon banks. A bank is authorized to transfer funds to a foreign national or nationals by or upon the instructions of any direct investor or affiliated foreign national, to make loans and other extensions of credit, transfer the proceeds thereof, and to receive payments with respect thereto, all without responsibility as to whether the same may be in contravention of the regulations or the conditions of any authorization issued pursuant thereto, except for requiring production of a copy of the certificate required by the regulations or by general or specific authorizations to be filed with the Secretary if such certificate is required for the repayment of the obligation to the bank: *Provided*, That nothing in this section 5 shall relieve any direct investor from compliance with the regulations or the provisions of any ruling, instruction, authorization, license, waiver or exemption issued pursuant thereto.

Sec. 6. Effective date. This General Authorization shall be effective as of the effective date of the regulations.

Dated: January 22, 1968.

A. B. TROWBRIDGE,
Secretary of Commerce.

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3:11 p.m.)