

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 6132]
March 5, 1968

Foreign Direct Investment Regulations
of U. S. Department of Commerce

General Authorizations Nos. 2, 3

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

The following statement was made public February 28 by the Office of Foreign Direct Investment, U. S. Department of Commerce:

The Office of Foreign Direct Investment, U. S. Department of Commerce, announced today that it will authorize payments of interest by U. S. companies to foreign affiliates in connection with borrowings by or for the parent company.

The interpretation was contained in one of two General Authorizations to the Foreign Direct Investment Regulations which will be published in the Federal Register tomorrow.

The other General Authorization provides that direct investors will not be required to repatriate earnings of their affiliated foreign companies in Schedule A and B countries to the extent they are authorized to make equivalent transfers of capital to those foreign companies in the same year. In general terms, Schedule A and B includes all nations outside the Western European Continent. In the absence of this ruling, some companies might be in the position of being required to return earnings to the United States while at the same time transferring the same amount of capital to the foreign affiliate.

The authorization on interest payments also relates to the sale of patents and trademarks by a parent company to its foreign affiliate.

The OFDI also announced that a substitute has been issued for Supplement 5 to the Base Period Report, FDI 101, making technical corrections. Supplement 5 is for use by companies involved in the extraction of gas, oil and other minerals in other countries.

Joseph W. Bartlett, Commerce Department general counsel and acting director of the Office of Foreign Direct Investment, said other interpretations of the regulations would be issued in the near future.

Printed on the reverse side is an excerpt from the *Federal Register* of February 29, containing the text of the general authorizations referred to in the above statement.

Additional copies of this circular will be furnished upon request.

ALFRED HAYES,
President.

(OVER)

DEPARTMENT OF COMMERCE

Office of Foreign Direct Investments
[General Authorizations Nos. 2, 3]

LIMITED AUTHORIZATION TO OMIT REPATRIATION; TRANSFERS OF CAPITAL

These General Authorizations constitute the second and third in 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.

These General Authorizations are issued to implement further Executive Order 11387, 33 F.R. 47, and the Foreign Direct Investment regulations, 33 F.R. 49, as amended, 33 F.R. 806 (hereinafter called the "Regulations").

General Authorization No. 2. Limited Authorization to Refrain from Repatriation. Notwithstanding the Provisions of paragraphs (a) (1) and (b) (1) of § 1000.202 of the regulations a direct investor is authorized in any year to refrain from transferring from Schedule A or B

countries to the United States amounts representing earnings of its affiliated foreign nationals in such countries to the extent transfers of capital of such amounts would be generally authorized as transfers of capital in that year to affiliated foreign nationals in the same respective Schedules pursuant to paragraphs (a) (1) or (b) (1) of § 1000.504.

General Authorization No. 3. Authorized Transfers of Capital. The following transfers of capital are generally authorized:

(1) Payments by a direct investor of interest currently due, prepayments of interest (provided that such prepayments are made in the course of customary lending practices or commercial transactions), and payments of commissions and fees in connection with borrowings by a direct investor.

(2) The sale, license, exchange, assignment, or other transfer of patents, trademarks, trade secrets, or proprietary information and processes to an affiliated foreign national or nationals. The foregoing shall also apply to the furnishing of services if solely incidental to any such transactions.

Example. Direct investor "A" holds rights to a secret process for making electrical equipment, which process is incorporated in a technical manual. It transfers the rights and the manual to an affiliated foreign national as a contribution to its capital and, in addition, provides without charge the services of an employee to the affiliated foreign national for a period of 6 months to assist in putting the process into operation. No account need be taken of the value of the employee's services for purposes of § 1000.312

of the regulations as long as the furnishing of such services is solely incidental to and not a substantial part of the transaction.

If a transfer is made pursuant to this subsection (2), the direct investor shall compute the earnings of the recipient affiliated foreign national, for purposes of determining amounts which must be repatriated pursuant to § 1000.202 of the regulations, without deducting amortization, or any like charge against earnings, with respect to the property so transferred.

(3) A transfer of capital by a person within the United States to acquire the stock or debt obligations of, or interest in, an affiliated foreign national to the extent the transfer is to another person within the United States acting for its own account. The provisions of this subparagraph (3) are considered to cover purchases and sales of interests in affiliated foreign nationals by and among two or more persons within the United States acting as principals and do not include other direct or indirect transfers of capital to affiliated foreign nationals as, for example, the satisfaction by a direct investor of the obligations of an affiliated foreign national to a bank or other creditor within the United States.

Effective date. These General Authorizations shall be effective as of the effective date of the Regulations.

Dated: February 27, 1968.

JOSEPH W. BARTLETT,
Acting Director, Office of
Foreign Direct Investments.

[F.R. Doc. 68-2553; Filed, Feb. 28, 1968,
8:51 a.m.]