Guidelines for Collaborating in India

Foreign collaboration is most important source of technology in India; Guidelines, explanations given

BY TARA S. GANGULI*

POLICY ON COLLABORATION

Technology is an important component in the process of Indian industrial development. The most important channel for import of technology is through foreign collaboration, technical and/or financial. The other channels are through import of drawings and designs, foreign consultancy services, technical development fund and training of personnel.

The fast technological changes taking place around the world necessitates updating the existing technologies in the shortest possible time. Thus, the Indian Government policy permits continued flow of required technology and know-how into the country in a number of industries except those in which foreign technology is not considered to be necessary. An illustrative list of industries in which no foreign collaboration—technical or financial—is considered necessary is shown in the Annex.

This list is not exhaustive and is subject to revision from time to time. Import of technology may be considered even in these fields mentioned if the technology is too closely held and is not available for use by entrepreneurs on competitive terms. Also, if a technology is required for updating existing technology to meet higher domestic requirements, or to be competitive in export markets or to manufacture items with substantial exports backed by buy-back guarantees.

Foreign investment has been viewed by the Government of India as a vehicle for transfer of technology not indigenously available or to promote export-oriented production. Foreign investment as a source of capital is not allowed without accompanying foreign technology except in the investment from Oil Exporting Developing (OED) Countries. Also, nonresidents of Indian origin are allowed to invest in Indian industrial units under certain schemes and conditions even if there is no transfer of technology along with the investment.

Promotion of Investment From Oil Exporting Developing (OED) Countries

While OED countries have substantial surplus financial resources, they may not have the type of technology which India needs. It is, therefore, decided by the Government of India, that foreign investment proposals from these countries need not be associated with transfer of technology from the equity holder and that such investments may be of a portfolio nature.

The idea is that many priority areas like fertilizers, cement, petrochemicals, paper and pulp, etc. involve large financial outlays and growth of these sectors could reduce import dependence. In some ventures, there could be scope for export-oriented production catering either to the OED countries or to other countries in Europe and America. The scope of raising foreign currency loans as a result of such a cooperation has also been taken into account by the government.

Within the framework of the investment policy, it has been decided by the Government of India to provide the following facilities:

a) Investment from OED countries may be permitted in new companies even if it is in the nature of portfolio investment.
b) Such investments should not exceed 40% in equity.
c) The new companies should be export-oriented or should undertake manufacturing activities under Appendix 1 of the Industrial Policy of 1973.
d) Investment on the aforesaid pattern may be allowed in hotels.
e) Investment may also be allowed in new hospital projects and such hospitals should have adequate provision for outdoor and emergency medical service to the general public and also for a minimum percentage of occupancy by Indian public.
f) Loans should also be allowed to be raised abroad for such joint ventures provided the terms are reasonable.

FOREIGN EQUITY SHARE

Normally, foreign equity participation is limited to 40% of the total equity capital on a selective basis. Proposals are considered on merits having regard to factors such as the priority of the industry, the nature of the technology involved, whether it will enable or promote exports, which may not otherwise take place and the alternative terms available for securing the same or similar technological transfer.

However, for priority industries or sophisticated technology not available in the country or for export-oriented industry, foreign equity participation up to a limit of 74% can be considered by the government. Projects set up exclusively for exports are entitled for 100% foreign equity participation. It may be noted that foreign share capital should be contributed by way of cash without being linked to tied imports of machinery and equipment or toward payment for know-how, trademarks, brand names, etc.

*Technology Management Corporation, Calcutta, India.

ROYALTY

The percentage of royalty depends on the nature of technology but should not ordinarily exceed 5%. Higher rates of royalty may be considered in exceptional cases or export-oriented ventures. Basis of calculating royalty is exfactory selling price of the product net of excise duties *minus* the cost of standard bought out components and landed cost of imported components. Royalty payments are subject to Indian taxes. Preference will be given by the government wherever appropriate of a fixed amount of royalty per unit of production.

LUMP-SUM PAYMENTS

Import of drawings, documentation and other forms of know-how payments may be made on lump-sum basis. Such payments again will be subject to applicable Indian taxes. The lump-sum payments should ordinarily be phased out as follows:

⅓ after the agreement has been taken on record,

⅓ to be paid on the transfer of documentation, etc, and

⅓ to be paid at the commencement of production or after 48 months of the signing of the foreign collaboration agreements, whichever is earlier.

REMITTANCES

Remittances of royalties, dividends, etc., is freely allowed once the foreign collaboration is approved by the government. Repatriation of capital invested by foreigners including capital appreciation, if any, is also allowed. Remittances are subject to payment of Indian taxes. It is worth noting that India did not place any restriction on such remittances even during the worst exchange crisis.

EMPLOYMENT OF FOREIGN EXPERTS

The Reserve Bank of India under the provisions of the Foreign Exchange Regulation Act (FERA) authorizes employment of foreign experts to render technical and managerial advice. The duration and terms of employment of such experts will be governed by collaboration agreements approved by the government.

ARBITRATION

In India, settlement of disputes by arbitration is governed by the Indian Arbitration Act 1940. A binding agreement must be in writing and indicate the parties' agreement to submit to arbitration in the event of a dispute. If such agreement does not specify the name or designation of the arbitrator, the act empowers the court to appoint an arbitrator. Rules of arbitration followed by the International Chamber of Commerce or commercial organizations in other countries can also be incorporated in an agreement, but such rules should not conflict with the general rules set forth in the Arbitration Act.

India is a contracting state of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The Foreign Awards (Recognition and Enforcement) Act of 1961 gives effect to India's participations in that convention. The application of the act is on the basis of reciprocity.

RENEWAL OF COLLABORATION AGREEMENT

Applications for extension of collaboration agreements are scrutinized carefully and extensions are agreed to only in those cases where the government is satisfied that there is need for them in the following circumstances:

a) If the item of manufacture is sophisticated and it is necessary that the period of collaboration should be extended for a short period to enable the Indian party to fully absorb the know-how;
b) If the collaboration agreement involves the manufacture of a large number of items and the Indian party could start manufacturing some of the items only at a later stage. In such cases extension is granted only in respect of those few items the manufacture of which started later;
c) If it is felt that such extension would be in the interest of exports of the manufactured product.

Even when extensions are considered and granted, every effort is made to reduce the rate of royalty payable, with regard to the nature of the product and the period of extension.

NATIONALIZATION

India does not normally resort to nationalization of foreign investments. However, if under very special circumstances nationalization is considered necessary in the overall interests of the economy, fair and equitable compensation is invariably paid and in this respect there is no discrimination between investments made by Indian nationals and foreigners.

CERTAIN STANDARD TERMS

The following are the guidelines which the collaborators are required to take note of in negotiating proposals for foreign collaboration so as to ensure that such proposals conform to the policies of the Government of India:

i) They should, to the fullest extent possible, explore alternative sources of technology, evaluate them from a techno-economic point of view and furnish the reasons for preferring the particular technology and the source of imports;
ii) The Indian party should be free to sublicense the technical know-how/product design/engineering design under the agreement to another Indian party on terms to be mutually agreed to by all the parties concerned including the foreign collaborator, and subject to the approval of the government;
iii) The royalty wherever allowed will be calculated on the basis of the net ex-factory sale price on the product exclusive of excise duties, minus the cost of standard bought out components and the landed cost of the imported components, irrespective of the source of procurement including ocean

freight, insurance, custom duties, etc. The payment of royalty at the rate mentioned above will be restricted to annual licensed/registered capacity plus 25% in excess thereof. In case of production in excess of this quantum, prior approval of government would have to be obtained regarding the terms of payment of royalty in respect of such excess production;

iv) There should be no requirement for the payment of a minimum guaranteed royalty regardless of the quantum and value of production;

v) Arrangement or clauses which in any manner bind the Indian party with regard to the procurement of capital goods, components, spares, raw materials, pricing policy, selling arrangements, etc., should be avoided;

vi) To the fullest extent possible, there should be no restrictions on free export to all countries;

vii) The use of foreign brand names will not be permitted for internal sales;

viii) Government do not favor requests for extension to the duration of collaboration agreement. All efforts, should, therefore, be made by Indian party to assimilate the technology within the initial duration of the agreement;

ix) Suitable provision should be made for the training of Indians in the fields of production and management. There should also be adequate arrangements for research and development, engineering design, training of technological personnel and other measures for the absorption, adaptation and development of the imported technology. Such measures can be undertaken through in-house facilities of the Indian entrepreneur or in collaboration with recognized engineering design, consultancy, R&D organization in the public or private sectors and recognized scientific and educational institutions, where the necessary facilities exist;

x) Consultancy services required to execute the project should be obtained from Indian consultancy firms. If foreign consultancy is also considered necessary, an Indian consultancy firm should be the prime consultant;

xi) If the proposed item of manufacture is covered by a patent in India, it should be ensured that the payment of royalty/lump-sum payment for the duration of the agreement would also constitute compensation for the use of patent rights till the expiring of the life of the patent and that the Indian party would have the freedom to produce the item, even after the expiry of the collaboration agreement without additional payments;

xii) Collaboration agreement will be subject to Indian Laws.

PROCEDURE FOR APPROVAL OF FOREIGN COLLABORATIONS

All proposals for foreign collaborations, whether technical or technical-cum-financial, have to be approved by the Secretariat for Industrial Approvals (Foreign Collaboration Unit), Department of Industrial Development, Government of India, New Delhi. Decisions on the foreign collaboration applications are expected to be taken within 60 days.

ANNEX

1. Metallurgical Industries:

Ferrous: Ordinary castings, bright bars, structurals, welded CI steel pipes and tubes.

Non-ferrous: Antimony, sodium metal, electrical resistance heating (nickel free alloy), aluminum litho plates.

2. Electrical Equipment: Electric fans, common domestic appliances, common types of winding wires and strips, iron-clad switches, ac motors, cables and distribution transformers.

3. Electronic components and equipment: General purpose transistors and diodes, paper, mica and variable capacitors, TV receivers, tape recorders, teleprinters, p.a. systems, record players/changers.

4. Scientific and industrial instruments: Nonspecialized types of valves, meters, weighing machinery, and mathematical, surveying and drawing instruments.

5. Transportation: Railway wagons, bicycles.

6. Industrial machinery: Building and constructional machinery, oil mill machinery, conventional rice mill machinery, sugar machinery, tea processing machinery, general purpose machinery.

7. Machine Tools: Forged hand tools, general purpose machine tools.

8. Agricultural Machinery: Tractor-drawn implements, power tillers, food-grain dryers, agricultural implements.

9. Miscellaneous Mechanical Engineering Industries.

10. Commercial, office and household equipment of common use.

11. Medical and surgical appliances.

12. Fertilizers: Single superphosphate, granulated fertilizers.

13. Chemicals (other than fertilizers): Acetic acid; acetanilide; ethyl chloride; viscose filament yarn/staple fiber; melation technical; sulphate of alumina; potassium chlorate; fatty acids and glycerine butyl titanate; warfarin; silica gel; lindane; endosulfan; phanthoate; nitrofen; ethyl ether; plastipeel.

14. Dyestuffs: Benzidine; o-toludine; carbozole dioxazine violet pigment; cadmium sulphide orange.

15. Drugs and pharmaceuticals: Caffeine (natural); phenyl butazone; tolbutamide; paracetamol; phanacetin; senna extract; diasogenin; colofibrate; 4-hydroxy cumarin; xenthopotoxin; calcium gluconate; choline chloride; glyceryl gualacolate; phenylethyl biguanide hydrochloride; scopolamine hydro-bromide; niacinamide; ortholelyl biguanide; colchicine; diazepam; sorbitol from dextrose monohydrate; berberine hydrochloride; belladonna; acriflavine; calcium hypophosphite; chlordiazepoxide.

16. Paper and pulp including paper products.

17. Consumer goods.

18. Vegetable oils and vanaspati.

19. Rubber industries: Viscose tire yarn; metal-bonded rubber; latex foam; rubberized fabrics; bicycle tires and tubes.

20. Leather, leather goods and pickers: Belting-leather; cotton and hair finishing leather; pickers; picking bands; vegetable tanning extracts; fat liquors other than synthetic.

21. Glass and ceramics.

22. Cement and Gypsum Products.

NOTE: List is illustrative and not exhaustive.