

NOTICE TO AUTHORIZED DEALERS
AND AUTHORIZED AGENTS

EXCHANGE CONTROL REGULATIONS ACT 1952

This Notice is one in an administrative series issued by The Central Bank of The Bahamas to draw attention to the Regulations made under the Exchange Control Regulations Act, 1952 and the Exchange Control Regulations 1956, and to give certain exemptions, permissions, authorities and directions, and imposes certain obligations upon those concerned. This Notice also takes account of the fact that the Scheduled Territories include The Commonwealth of The Bahamas only.

DIRECT INVESTMENTS

This issue comes into effect 1st March, 1976 and supersedes those which were previously issued.

INTRODUCTION

1. This Notice describes the rules in relation to direct investments outside The Bahamas by residents of the Bahamas and direct investments in The Bahamas by residents of countries outside The Bahamas.
2. For the purposes of Exchange Control, direct investments in which the investor establishes, expands or consolidates an economic enterprise with the intention of participating in its management and operation and trade investments, where the investor establishes or maintains commercial links with other companies to further his existing business.
3. As direct investments outside The Bahamas normally involve the acquisition of assets against payment in one form or another to non-residents, permission under the Exchange Control Regulations 1956 are required.
4. Exchange Control permission is also necessary for inward investments in The Bahamas, which involve the issue or transfer of shares to non-residents or the acceptance of loan capital in foreign currency from non-residents, and for Bahamian dollar lending to companies which are partly or wholly owned by non-residents.

OUTWARD DIRECT INVESTMENTS

5. Applications for outward direct investments are considered in light of the probable impact the investment on the Bahamas balance of payments. Such benefits comprise foreign currency received in The Bahamas as a direct result of the investment in respect of one or more of the following:
 - (a) Exports to countries outside The Bahamas;
 - (b) Interests, dividends and profits;
 - (c) Royalties, license fees, management fees and other payments for technical know-how.
6. Outward investments in companies whose main activity is the purchase of securities are normally regarded as portfolio investments for Exchange Control purposes and fall outside the scope of this Notice.

FINANCING OUTWARD DIRECT INVESTMENTS

7. Direct investments outside The Bahamas are divided into two categories:
 - (a) Those in which The Central Bank are satisfied 'special-criterion' is met, i.e., investments which directly promote exports of Bahamas goods or services and promise additional benefits to the balance of payments,

being benefits which would not occur without the investment and which will at least equal the cost of the investment within two years and continue thereafter;

- (b) Those investments which do not merit 'special-criterion' but which nevertheless promise additional benefits to The Bahamas balance of payments.

'Special-Criterion' Projects

- 8. 'Special-Criterion' projects may, subject to the permission of The Central Bank being obtained, be financed with official exchange up to \$100,000 or 30% of the total cost of the investment, whichever is greater. Any balance should be financed in one or more of the ways described in paragraph 9.

Other Investments

- 9. In cases where investments do not qualify to be financed with official exchange under the terms of paragraph 8, such investments may, subject to the permission of The Central Bank being obtained, be financed in any combination of any of the following ways:
 - (a) By the use of foreign currency purchased in the Investment Currency Market;
 - (b) By the export, free of payment, of capital equipment and stock-in-trade of Bahamian manufacture forming an integral part of the investment;
 - (c) By use of borrowed foreign currency;
 - (d) By the issue or transfer of shares to non-residents on appropriate terms;
 - (e) By capitalization of an overseas subsidiary's current account indebtedness to The Bahamas parent company.

Foreign Currency Borrowing

The following general principles apply to foreign currency borrowing to finance outward direct investments:

- (a) In 'special-criterion' cases, repayment of approved borrowing with official exchange will normally be permitted to the extent that the full entitlement of official exchange was not taken up;
- (b) In other cases, repayment of approved borrowing with official exchange will be allowed to the extent that it can be demonstrated that the amount to be repaid has been matched by net benefits received in The Bahamas from the investment;

- (c) In cases outside the terms of (a) and (b) repayment of the approved borrowing will normally be permitted only with investment currency;
- (d) Payment of interest on borrowing at a reasonable rate may be permitted whenever due with official exchange (in the calculation of benefits to The Bahamas such amounts will be deducted).

Procedure

Applications in respect of outward direct investments should be made to The Central Bank of The Bahamas incorporating the following information:

- (a) Full name and address of investor and nature of his business;
- (b) The reason for and full details of the investment including the total amount of the investment, the country in which the investment is being made and the method of financing;
- (c) Full details of benefits expected from the proposed investment (e.g. by way of payments in respect of additional exports, interests, dividends, royalties, etc.) if 'special-criterion' treatment is requested, details of benefits to be received during each of the ensuing five years;
- (d) If the investment is being made in existing overseas company whose securities not quoted on a recognized security market, a copy of the most recent audited balance sheet and profit and loss account of that company and a certificate from an accounting firm stating that, in their opinion, the price to be paid for the securities is fair, must be submitted;
- (e) The name of any new company and the percentage equity interest to be acquired -- if not 100% details of any other resident shareholders should be given;
- (f) If a branch is to be formed, details of its proposed trading operations and accounting procedures;
- (g) If it is considered that further finance will be required for this investment within the foreseeable future, state when and the amount and the intended method of finance;
- (h) The name and address of the vendor, if appropriate.

12. Any permission given for an outward direct investment will normally be valid for three months after which application, if necessary, must be made to the Bank for renewal.

Sales and Liquidations

13. Exchange Control permission is required for residents to dispose of interests, whether controlling or not, in direct investments outside The Bahamas. Permission for sale will normally be given if the Bank is satisfied that, in all the circumstances, the terms of the transaction are fair.

14. The foreign currency proceeds of sales and liquidation by Bahamian residents of direct investments outside The Bahamas, whenever made, must be offered for sale to an Authorized Dealer at current market rate unless the special permission of The Central Bank has been obtained for them to be disposed of in some other manner.

INWARD DIRECT INVESTMENTS

15. The general policy of the Bahamas Government is to welcome direct investments in the Bahamas by non-residents provided that these investments are appropriately financed. Exchange Control permission is required for investments in The Bahamas by non-residents.

Procedure

16. Applications in respect of inward direct investments should be made to The Central Bank of The Bahamas incorporating the following information:
 - (a) The name and address of the investor and the country in which normally resident;
 - (b) The nature of the investors business;
 - (c) The name and address of the Bahamian company or business in which the investment is being made, the nature of its business and the location thereof;
 - (d) Details of any securities in the company concerned owned by non-residents whether directly or indirectly stating the percentage of such interest;
 - (e) The total percentage interest will be owned directly or indirectly by non-residents following the investment;
 - (f) Details of the method(s) of financing the consideration;
 - (g) Details of any other finance required.

Financing

17. Where non-residents have acquired an interest in a Bahamian company or business, financing for that country should be provided from non-resident sources at least in proportion to the non-resident interest in the equity of the company. Access to Bahamian dollar borrowing is dependent on many factors including the benefits expected to accrue to The Bahamas economy from the investment.

Remittance of Dividends and Profits

18. Specific application must be made to The Central Bank of The Bahamas in respect of the payment and remittance of profits and dividends to non-residents. Such application must be accompanied by a certified copy of the directors' resolution declaring the dividend and confirmation from the company's auditors that funds are available for payment of dividends or profits.

Repatriation of Capital

19. All capital directly invested by non-residents may normally be repatriated at any time provided the Bank gave permission initially and has evidence that the funds were invested. Capital repayments by non-residents must first be referred to the Bank, but consent will be given provided that adequate provision has been made for Bahamian liabilities.