Royalty payments on radar. How will the brands collaborate?

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Safir Anand and Shubhi Ameriya share their views on royalty payments: "Per media reports, the Department of Industrial Policy and Promotion (DIPP) is working on a cabinet note to revive limits on royalty payments after a gap of good eight years. Before 2009, royalty payments were regulated by the Government and capped at 8 per cent of exports and 5 per cent domestic sales in the case of technology transfer collaborations and were fixed at 2 per cent of exports and 1 per cent of domestic sales for use of trademark or brand name. The proposed regime for 'Payment of Royalty for Technology Collaboration and Professional/Consultation Fee for Technical Services/Management' suggests that in case of technology transfer or technology collaboration, royalty payments to foreign collaborator either directly or indirectly through any entity will be capped at: for the first four years at 4 per cent of domestic sales and 7 per cent of exports; for the next three years, at 3 per cent of domestic sales and 6 per cent of exports; for the next three years at 2 per cent of domestic sales and 4 per cent of exports; and thereafter at 1 per cent of domestic sales and 2 per cent of exports. Existing regulations permit all companies, irrespective of the extent of foreign equity in the shareholding, to pay a royalty of up to 5 per cent on domestic sales and 8 per cent on exports without any restriction on the duration of payment. This is applicable to technical collaborations with technology transfer. There is no need to take approval from the Government. However, all payments will be subjected to FEMA (Foreign Exchange Management Act) Regulations. It is suggested that the proposed regime does not prescribe any change in conditions related to a royalty payment on use of trademarks and brand name of the foreign collaborator without technology transfer. It will remain at up to 2 per cent of exports and 1 per cent for domestic sales on use of trademarks and brand name of the foreign collaborator without technology transfer. However, in case of design, royalty payments are intended to be 'capped at 1 per cent of domestic sales and 2 per cent of exports and shall be payable for a period of 10 years only.' It may seem like a pattern that first, a SEBI (Security & Exchange Board of India) panel recommended payments made by entities to related parties for usage of brand and royalty need approval from a majority of non-promoter shareholders and then quickly DIPP followed the league. The intent of the former was to safeguard the interest of the shareholders. But as far as the latter is concerned, it seems RBI (Reserve bank of India) is all set for its FERA (Foreign Exchange & Regulation Act) years when forex was kept in safe closets. Though the rules are yet to be notified, there sure is a possibility of interesting developments ahead. Let's keep our fingers crossed." To read more, please visit the Economic Times at: https://economictimes.indiatimes.com/news/economy/policy/revival-of-royalty-payment-caps-in-the-works/articleshow/67247895.cms

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