

Introduction to regulations relating to
Import, Export and Current Account
Transactions, with special reference to
FEMA

Regulations relating to Import to and Export from India

A publication by The Chamber of
Tax Consultants

Authored by Ajit Shah



THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020.

Phone : 2200 1787 / 2209 0423

Email : office@ctconline.org Website : <http://www.ctconline.org>

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We invite suggestions and views from the readers for improvement in further such publications and also correction of an error, if any, found in this edition. Kindly send your suggestions on office@ctconline.org or at the Chamber's office address.

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About CTC

The CTC established in 1926, is one of the oldest voluntary non-profit making organisation formed with the object of educating and updating its members on the Direct Tax Laws and other Allied Laws. It has a robust membership strength exceeding 3,500 members comprising of Chartered Accountants, Advocates, Tax Practitioners, Corporate Members and Student Members.

- The CTC regularly organises Workshops, Seminars, Lecture Meetings, Study Circle Meetings, Study Group Meetings, Outstation Conferences, etc., for the benefit of members which keeps them up-to-date with the latest developments in Tax and Allied Laws.
- Its popular monthly journal 'The Chamber's Journal' consists of Special Issues covering in depth analysis on topics day to day of professional interest. These special issues have found a permanent place in libraries of leading tax professionals.
- CTC functions through various sub-committees comprising of above 250 core group members and maintains excellent rapport with the Tax Department and Government authorities.
- CTC is active in filing public interest litigation, for instance TDS, DIS, Service Tax, etc., presenting pre and post-budget memorandum and making representations on various Tax and Corporate Laws to the Government and regulatory authorities.
- CTC manages two libraries at prominent places at Aayakar Bhavan, New Marine Lines and Pratyakshakar Bhavan, Bandra, which are widely used by the professionals. These libraries have more than 4,000 titles, various leading law journals/magazines and books.
- The members of the CTC enjoy a unique bond of fellowship and brotherhood which is evident in all its activities and programmes. Its monthly newsletter, The CTC NEWS keeps members updated on various events.

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

President's Message

Dear Readers,

The Chamber of Tax Consultants is a great institution with a tradition of high integrity, independence and professionalism. The Chamber acts as power house of knowledge in the field of fiscal laws, contributes to the development of laws and profession through research, analysis and dissemination of knowledge. Chamber has entered its 90th year and our theme for 90th year is “Gyanam Param Balam” means “Knowledge is Supreme Power”. The Chamber is also spontaneous in making active representations before regulatory authorities. We are celebrating this year by way of spreading knowledge through various means, this publication being one of them.

I would like to thank Mr. Ajit Shah for his valuable contribution on authoring this book on “Introduction of the Import, Export and Current Account Transactions Regulations” and International tax committee and Research and Publication committee for bringing this publication.

What makes this book special is that the author has explained the problems and issues faced by business entities carrying on Import-Export activities in a layman language. The concepts are very well explained using practical examples in a lucid manner.

Entities carrying on Import-Export activities and its auditors are required to comply with the applicable laws framed by its regulators. This book will be helpful to these people for understanding basic concepts and making necessary compliances.

I am sure that this publication will be of immense help to the readers.

Hitesh R. Shah
President
The Chamber of Tax Consultants

About the Author

Mr. Ajit Shah is a Commerce Graduate from Sydenham College. He also holds a Law degree from University of Mumbai. He has spent more than 25 years in Export Import Trade as a consultant. He has travelled extensively overseas.



He is also a trainer and faculty in the field of Import and Export. He has been associated with several educational institutes, training colleges, banks, public sector organisations, Chambers of Commerce, Export Promotion Councils etc.

He has also served as an EXIM consultant to All India Stainless Steel Industries Association and Bombay Industries Association.

He was a co-editor of All India Export-Import Weekly Journal. He has addressed several seminars and training programs. His areas of expertise are Foreign Trade Policy, Customs, DGFT Matter, Export Incentives, and International Marketing.

Mr. Shah has already written five books on various subjects related to Export and Import. He is a preferred choice for In-house Company training program by the exporters and corporate houses. He has specialized training style and modules which suits to the beginners, Export Houses, Logistics Companies, Custom brokers, Importers, Service Providers etc.

Preface

It is a matter of pleasure to pen this book Introduction of the Import and Export Regulations, with special reference to FEMA. When the Chamber of Tax Consultants, Research and Publication committee informed me that they are planning a series of publications on topics of FEMA and they invited me to cover the topic of Import and Export, I was delighted to accept the invitation.

This publication, which is now in your hands, is designed to provide various provisions of Master Direction related to import and export. I have also covered various provisions related to general remittances.

To facilitate easy reading, I have given a situation where, the provision can be applied.

Deliberately, I have avoided detail references which are otherwise available in FEMA/Master Circulars.

I have also added some of the questions & answers which are relevant to the importer and exporter.

A list of various certificates required by an exporter/ importer from the Chartered Accountant is also incorporated in this book. It is always advisable to refer the latest notifications/circulars issued by RBI/ Government before the final decision is taken. You can also take the assistance from your bank, in case of any doubt or if there is an interpretation issue.

I trust that the members of Chamber of Tax Consultants, will be able to take advantage of this book in their day to day practice. They will be able to handle this subject more comfortably. The answers given in questions & answers section are not to be construed as the sole answer. They are given just for the guidance. There should be no binding or legal implication attached with answers given.

Every care is taken about accuracy of the information however the author and the Chamber will not be held responsible for any mistake/ omission/ error etc. This book aims to provide ready reference for the matter related to import and export.

Foreword

In today's times, Government keeps on increasing Regulations of all kinds. Different regulators want auditors to report whether the audited company has complied with the regulations. All regulations are becoming more complex and punishments are being harsher. In this Regulatory Raj, it is difficult for companies to comply with the law; and for Auditors to keep track with the law.

In this situation, The Chamber of Tax Consultants has served its members by coming out with this book on Introduction of the "Import & Export Regulations, and Current Account Transactions".

Author - Mr. Ajit Shah brings in more than 25 years' experience of legal practice and teaching law.

The book discusses FEMA provisions pertaining to import, export and Current Account Transactions. It also discusses relevant customs regulations. This is an easy to read book. It will help auditors to understand the provisions; and will also help companies to have a preliminary understanding of what they have to comply with.

Mr. Ajit Shah deserves compliments for the fine book. I recommend the book to all.

- *Rashmin Chandulal Sanghvi*

Abbreviations

RBI	Reserve Bank of India
Bank	The AD Category – I banks
DGFT	Directorate General of Foreign Trade
FTP	Foreign Trade Policy
EDF	Export Declaration Form

Export

1. *What is Export?*

The word “export” is well-known in business world. Export provides good amount of opportunities. Even among the youngsters, international trade is consider as, a good career option.

The Foreign Trade (Development and Regulation) Act 1992, defines export as “taking out of India any goods by land, sea or air.” Export is completed once the goods are cleared, loaded and have left the territorial water of India. Export means to send or to transport goods abroad for trade or sale. In order to qualify a transaction as a transaction of export following two criteria must be fulfilled:

- a. Goods must go out of India.
- b. Foreign exchange must come into India.

Export is very important for the country. The Government always encourages export. Foreign Trade is a specialized subject. You need training and education to understand various aspects of International Trade.

Export and Import trade is regulated by the Directorate General of Foreign Trade (DGFT) and its regional offices, functioning under the Ministry of Commerce and Industry. Policies and procedures are announced by the DGFT

2. *How to start Export?*

Like, any other business activities, you are required to take a decision about exports. You should find out relevant advantages and disadvantages of export business. You can do SWOT analysis before the final decision is taken. Export is different than the domestic business in many ways. Your abilities will be measured on global scale. Export generally refers to long term proposal on larger scale.

Export refers to sending of goods and services to overseas and thereby earning foreign exchange. Since it is beneficial to the country, government always encourages export. Export

also brings economic development and the overall growth. International Market is very wide and therefore it provides huge scope of business.

Most of the successful companies are in the International Trade. Export market is full of competition and has many challenges. Like any other business decision, to choose to go for export is also a business decision, which one needs to evaluate, before the final decision is taken.

You have to form a company/business organisation. It can be proprietary form, partnership or Joint Stock Company. Obtain the pan card and have a current account with the bank. You will require to obtain Importer Exporter Code No. from the regional authority of DGFT. They will also issue business identification number along with IEC.

Before the first import or export you will require to obtain EDI registration with the specific port.

3. Who can be an exporter?

The following persons can be an exporter:

- a. Proprietorship
- b. Partnership firm
- c. Government undertaking
- d. Public limited company
- e. Section 25 Company
- f. Registered society
- g. HUF
- h. LLP
- i. Private Limited Company
- j. Trust

4. What is the procedure for registration?

You will require a PAN card issued by the income tax department.

An application for the Importer Exporter Code Number is to be made to the regional office of Director General Foreign Trade. Your jurisdictional office will be based on your address.

With effect from 01.04.2016, this application for IEC is to be made online. You will be issued 10 digits IEC, if your application is in order.

You also will be issued 15 digits Alphanumeric Business Identification Number along with IEC. This BIN is based on PAN Card number.

You will also be required to obtain EDI registration with the port, prior to the first export or the first import.

To avail export incentives and also for a general guidance, registration with EPC/FIEO will be necessary.

5. Export order

As a result of your marketing efforts, you will receive an export order from the overseas buyer. Various terms and conditions are to be finalized between buyer and seller.

6. Currency of Exports

One of the overseas buyers from USA enquired with Vaibhav International, Mumbai, whether they can invoice in Indian Rupees?

All export contracts and invoices shall be realized in freely convertible currency. There is no restriction on invoicing of export contracts in Indian Rupees. However, export proceeds against specific exports may also be realized in rupees provided it is through a freely convertible Vostro account of a non-resident bank situated in any country, other than a member country of ACU or Nepal or Bhutan.

Indian Rupee is not a freely convertible currency, as on today.

7. Advance Payment

Rajesh enterprises received from the overseas buyer US \$ 25000/- as an advance against proposed export order. He wants to know what care he should take.

It is permitted to receive advance payment by the exporter. However, following guidelines are provided:

1. In terms of Regulation 16 of Notification No. FEMA 23/2000-RB dated May 3, 2000, where an exporter receives advance payment (with or without interest), from a buyer outside India, the exporter shall be under an obligation to ensure that the shipment of goods is made **within one year** from the date of receipt of advance payment; the rate of interest, if any, payable on the advance payment does not exceed London Inter-Bank Offered Rate (LIBOR) + 100 basis points; and the documents covering the shipment are routed through the bank **through whom the advance payment is received**.

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the said period of one year, without the **prior approval of the Reserve Bank**.

2. Banks can also allow exporters having a minimum of three years satisfactory track record to receive long term export advance up to a maximum tenor of 10 years to be utilized for execution of long term supply contracts for export of goods subject to the conditions as under:
 - i. Firm irrevocable supply orders and contracts should be in place. Product pricing should be in consonance with prevailing international prices.
 - ii. Company should have capacity, systems and processes in place to ensure that the orders over the duration of the said tenure can actually be executed

- iii. The facility is to be provided only to those entities, which have not come under the adverse notice of Enforcement Directorate or any such regulatory agency or have not been caution listed.
- iv. Such advances should be adjusted through future exports.
- v. The rate of interest payable, if any, should not exceed LIBOR plus 200 basis points.
- vi. The documents should be routed through one Authorized Dealer bank only.
- vii. Authorised Dealer bank should ensure compliance with AML / KYC guidelines
- viii. Such export advances shall not be permitted to be used to liquidate Rupee loans classified as NPA.
- ix. Double financing for working capital for execution of export orders should be avoided.
- x. Receipt of such advance of USD 100 million or more should be immediately reported to the Trade Division, Foreign Exchange Department, Reserve Bank of India, Central Office and Mumbai.
 - a. In case Authorized Dealer banks are required to issue bank guarantee (BG) / Stand by Letter of Credit (SBLC) for export performance, then the issuance should be rigorously evaluated as any other credit proposal keeping in view, among others, prudential requirements based on board approved policy.
 - b. BG / SBLC may be issued for a term not exceeding two years at a time and further rollover of not more than two years at a time may be allowed subject to satisfaction with relative export performance as per the contract.
 - c. BG / SBLC should cover only the advance on reducing balance basis.
 - d. BG / SBLC issued from India in favour of overseas buyer should not be discounted by the overseas branch / subsidiary of bank in India.
- xi. Banks may allow the purchase of foreign exchange from the market for refunding advance payment credited to EEFC account only after utilizing the

entire balances held in the exporter's EEFC accounts maintained at different branches/banks.

Note: Banks may also be guided by the Master Circular on Guarantees and Co-acceptances issued by DBOD.

3. Banks may allow exporters to receive advance payment for export of goods which would take more than one year to manufacture and ship and where the 'export agreement' provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment subject to the following conditions:-
 - i. The KYC and due diligence exercise has been done by the bank for the overseas buyer;
 - ii. Compliance with the Anti-Money Laundering standards has been ensured;
 - iii. Bank should ensure that export advance received by the exporter should be utilized to execute export and not for any other purpose i.e., the transaction is a bona-fide transaction;
 - iv. Progress payment, if any, should be received directly from the overseas buyer strictly in terms of the contract;
 - v. The rate of interest, if any, payable on the advance payment shall not exceed London Inter-Bank Offered Rate (LIBOR) + 100 basis points;
 - vi. There should be no instance of refund exceeding 10% of the advance payment received in the last three years;
 - vii. The documents covering the shipment should be routed through the same authorised dealer bank; and
 - viii. In the event of the exporter's inability to make the shipment, partly or fully, no remittance towards refund of unutilized portion of advance payment or towards payment of interest should be made without the prior approval of the Reserve Bank.'

Exporter will require to approach his bank and obtain FIRC. After the shipment, this FIRC must be submitted to the bank for necessary endorsement on the same.

8. Shipment of the goods

The exporter has to arrange for the manufacturing or a procurement of the goods. He will export the goods strictly as per the order. He has to prepare all the necessary documents like Invoice, Packing List, Export Declaration Form. He will also obtain Bills of Lading or Airway bill from the carrier. He will also obtain necessary inspection certificate from the inspection agency as per the requirement. Certificate of Origin will be provided as per the buyer's requirement.

EDF

The exporters shall, however, be liable to realize and repatriate export proceeds as per FEMA Regulations (9 Months AP circular no.37 Dated: 20.11.2014).

All the exporters have to give a declaration in the shipping bill reading: I/ we undertake to abide by Foreign Exchange Management Act 1999 as amendment from time to time including realization / repatriation of Foreign Exchange to / from India.

9. Submission of the export documents

After the shipment is over, exporter is required to collect all the relevant documents and submit the same to his bank within prescribed time limit (21 Days). Bank has an important role to play in the matter of export transactions. Banks will work within the framework of FTP and the guideline issued by RBI. Banks will also require to comply with the provisions of FEMA.

Delay in submission of shipping documents by exporters

In cases where exporters present documents pertaining to exports after the prescribed period of 21 days from date of export, banks may handle them without prior approval of the Reserve Bank, provided they are satisfied with the reasons for the delay.

10. Scrutiny by the bank

The documents submitted by the exporter to the bank are subject to scrutiny by the bank.

Banks may ensure:

- i. The number on the duplicate copy of the EDF form presented to them is the **same** as that of the original which is usually recorded on the Bill of Lading/Shipping Bill and the duplicate has been duly verified and **authenticated** by appropriate Customs authorities (Only for non EDI port).
- ii. The Bill of Lading should have the Shipping Bill No. as per document.
- iii. In the case of CIF, CFR, etc. contracts where the freight is sought to be paid at destination, that the deduction made is only to the extent of freight declared on shipping bill or the actual amount of freight indicated on the Bill of Lading/Airway Bill, whichever is less.
- iv. The documents submitted do not reveal any material inter se discrepancies in regard to description of goods exported; export value or country of destination.
- v. Where the marine insurance is taken by the exporters on buyer's account to verify, that the actual amount paid is received from the buyer through invoice.
- vi. To accept the Bill of Lading/ Airway Bill issued on 'freight prepaid' basis where the sale contract is on f.o.b., f.a.s. etc. basis provided the amount of freight has been included in the invoice.
- vii. To accept the variations in the value declared to the customs authorities and that is reflected on the export documents which stem from the terms of contract, on production of documentary evidence after verifying the arithmetical accuracy of the calculations and on conforming the terms of underlying contracts. Some such instances (where the values declared to the customs authorities and that shown on the documents may differ) are enumerated hereunder:
- viii. The export realizable value may be **more** than what was originally declared to/accepted by the Customs on the shipping bill in certain circumstances such as where in CIF or CFR contracts, part or whole of any freight increase taking place after the contract was concluded is agreed to be borne by buyers or where as a result of subsequent devaluation of the currency of the contract, buyers have agreed to an increase in price.

- ix. In certain lines of export trade, the final settlement of price may be dependent on the results of quality analysis of samples drawn at the time of shipment; but the results of such analysis will become available only after the shipment has been made. Sometimes, contracts may provide for payment of penalty for late shipment of goods in conformity with trade practice concerning the commodity. In these cases, while exporters declare to the Customs the full export value based on the contract price, invoices submitted along with shipping documents for negotiation/ collection may reflect a different value arrived at after taking into account the results of analysis of samples or late shipment penalty, as the case may be.
- x. To accept for negotiation or collection the bills for exports by sea or air which fall short of the value declared on shipping bill on account of trade, only if the discount has been declared by the exporter on relative shipping bill at the time of shipment and accepted by Customs.

11. Receipt of the payment.

Documents presented by the exporter to his bank are forwarded to the importer through the banking channel. Depend upon the payment terms, Indian exporter will receive the payment. The bank will issue necessary e-BRC as per the guideline of DGFT. Now, No physical e-BRC is issued. The exporter can check this e-BRC on DGFT website and can take printout for his reference. Export Incentives under FTP are available only if goods are exported and payments are realized.

12. Time limit for receipt of the payment.

It is obligatory on the part of the exporter to realize and repatriate the full value of goods or software to India within a stipulated period from the date of export, as under:

It has been decided, that with effect from 20.11.2014 the period of realization and repatriation of export proceeds shall be **9 months** from the date of export for all exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice.

The provisions in regard to period of realization and repatriation to India of the full exports made to warehouses established outside India remain unchanged i.e. 15 months. (AP 37 dated 20.11.2014)

13. Delay in realisation

Neeta International could not realise the payment within the prescribed time limit inspite of their best efforts. They are confident that the payment will come. It is only a matter of time.

- i. The Reserve Bank of India has permitted the banks **to extend** the period of realization of export proceeds beyond 9 months from the date of export, up to a period of 6 months, at a time, irrespective of the invoice value of the export subject to the following conditions:
 - a. The export transactions covered by the invoices are not under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies,
 - b. Bank is satisfied that the exporter has not been able to realize export proceeds for reasons beyond his control,
 - c. The exporter submits a declaration that the export proceeds will be realized during the extended period,
 - d. While considering extension beyond one Year from the date of export, the total outstanding of the exporter does not exceed USD one million or 10 per cent of the average export realizations during the preceding three financial years, whichever is higher.
 - e. In cases where the exporter has filed suits abroad against the buyer, extension may be granted irrespective of the amount involved / outstanding.

support of the exporter having made all efforts to realize the dues, and the case falls under any of the undernoted categories:

- a. The overseas buyer has been declared **insolvent** and a certificate from the official liquidator indicating that there is no possibility of recovery of export proceeds has been produced.
 - b. The overseas buyer is **not traceable** over a reasonably long period of time.
 - c. The goods exported have been auctioned or **destroyed** by the Port / Customs / Health authorities in the importing country.
 - d. The unrealized amount represents the balance due in a case settled through the **intervention** of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;
 - e. The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding and turned out to be **unrealizable** despite all efforts made by the exporter;
 - f. The cost of resorting **to legal action** would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control;
 - g. Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amounts have remained unrealized consequent on dishonor of the bills by the overseas buyer and there are no prospects of realization.
- iv. The exporter has **surrendered** proportionate export incentives. If any, availed of in respect of the relative shipments. The banks should obtain documents evidencing surrender of export incentives availed of before permitting the relevant bills to be written off.
- v. In case of self-write off, the exporter should submit to the concerned bank, a Chartered Accountant's certificate, indicating the export realization in the preceding calendar year and also the amount of write-off already availed of during the year, if any, the relevant EDF Nos. to be written off, Bill No., invoice value, commodity exported, country of export.

The CA certificate may also indicate that the export benefits, if any, availed of by the exporter have been surrendered.

- vi. However, the following would not qualify for the “write off” facility:
 - a. Exports made to countries with externalization problem i.e. where the overseas buyer has deposited the value of export in local currency but the amount has not been allowed to be repatriated by the central banking authorities of the country.
 - b. EDF forms which are under investigation by agencies like, Enforcement Directorate, Directorate of Revenue Intelligence, Central Bureau of Investigation, etc. as also the outstanding bills which are subject matter of civil / criminal suit.
- vii. Cases not covered by the above instructions / beyond the above limits, may be referred to the concerned Regional Office of Reserve Bank of India.

15. Discount

Ami International, USA received goods exported by Priyanka Enterprises, Mumbai. They have found some quality problem and have claimed the discount from the export invoice.

- i. If, after a bill has been negotiated or sent for collection, its amount is to be reduced for any reason, banks may approve such reduction, if satisfied about genuineness of the request, provided:
 - a. The reduction does not exceed 25% of invoice value:
 - b. It does not relate to export of commodities subject to floor price stipulations
The exporter is not on the exporters’ caution list of the Reserve Bank, and
 - c. The exporter is advised to surrender proportionate export incentives availed of, if any.
- ii. In the case of exporters who have been in the export business for more than three years, reduction in invoice value may be allowed, without any percentage ceiling, subject to the above conditions as also subject to their track record being satisfactory, i.e., the export outstanding do not exceed 5 per cent of the average annual export realization during the preceding three financial years.

- iii. For the purpose of reckoning the percentage of export bills outstanding to the average export realizations during the preceding three financial years, outstanding of exports made to countries facing externalization problems may be ignored provided the payments have been made by the buyers in the local currency.

16. Change of Buyer

Khushi International Limited shipped two containers of engineering goods to M/s. Smith International, UK on DP basis. After the cargo left from India, the exporter received intimation from the buyer stating that they are not interested in the goods.

Prior approval of the Reserve Bank is not required if, after goods have been shipped, they are to be transferred to a buyer other than the original buyer in the event of default by the latter, provided the reduction in value, if any, involved does not exceed 25 per cent of the invoice value and the realization of export proceeds is not delayed beyond the period of 12 months from the date of export.

An exporter shipped goods to a buyer in Spain. The buyer declined to take delivery. With the great difficulty, the exporter located another buyer, who has agreed to accept the goods at 15% discount. Please advise whether the exporter requires RBI's approval in this case.

If the goods are transferred to another buyer after having been shipped to the original buyer who defaulted to take the delivery, RBI's approval will not be required provided the reduction in the value does not exceed 25% of the invoice value and the realization of export proceeds is not delayed beyond the prescribed period.

17. Agency Commission

Falkan Enterprises, Japan has provided the services to Ram International as an agent. The exporter is required to pay 10% commission for all the orders received through Falkan Enterprises, which were shipped during the month of January 2016.

- i. Banks may allow payment of commission, either by remittance or by deduction from invoice value, on application submitted by the exporter. The remittance on agency commission may be allowed subject to conditions as under:
 - a. Amount of commission has been declared on EDF/SOFTEX form and accepted by the Customs Authorities or Ministry of Information Technology, Government of India / EPZ authorities as the case may be. In cases where the commission has not been declared on EDF/ SOFTEX form, remittance may be allowed after satisfying the reasons adduced by the exporter for not declaring commission on Export Declaration Form, provided a valid agreement/written understanding between the exporters and/or beneficiary for payment of commission exists.
 - b. The relative shipment has already been made.
- ii. Banks may allow payment of commission by Indian exporters, in respect of their exports covered under counter trade arrangement through Escrow Accounts designated in US Dollar, subject to the following conditions:
 - a. The payment of commission satisfies the conditions as at (a) and (b) stipulated in paragraph (i) above.
 - b. The commission is not payable to Escrow Account holders themselves.
 - c. The commission should not be allowed by deduction from the invoice value.
- iii. Payment of commission is prohibited on exports made by Indian Partners towards equity participation in an overseas joint venture / wholly owned subsidiary as also exports under Rupee Credit Route except commission up to 10 per cent of invoice value of exports of tea & tobacco.

18. Reference to RBI

Rekha overseas limited was asked by its bank to obtain an approval from the RBI, for the matter referred to its bank. The company wants to know how to do the same?

RBI is a banker's bank. Any individual company cannot have direct access to RBI. Any reference to the RBI should be through the exporter's bank. The exporter should make the application to RBI through his bank only.

19. Third party payment.

Bhavik International, Mumbai, exported chemicals to a buyer in Nairobi. The buyer is facing a financial problem for remitting the fund from his country. He has approached the Indian exporter and stated that the payment will be made from Hong Kong. What will be the impact? Generally, it is expected that the buyer to whom the goods are sold will make the payment. However, International Trade is complex and it may happen that the exporter receives the payment from third party on behalf of the buyer.

For many years, the exporters use to give some kind of confirmation from the sender of the money, that the said payment is made on behalf of the buyer. The bank use to consider it liberally, if the bank is satisfied about the transaction.

RBI issued a circular number 70 on 08.11.2013 and provided common guideline to all the banks and exporters.

Taking into account the evolving international trade practices, it has been decided to permit third party payments for export/import transactions subject to conditions as under:

- i. Firm irrevocable order backed by a tripartite agreement should be in place. However, it may not be insisted upon in cases where documentary evidence for circumstances leading to third party payments/name of the third party being mentioned in the irrevocable order/invoice has been produced subject to:
 - a. Bank should be satisfied with the bona-fides of the transaction and export document, such as, invoice/FIRC.
 - b. Bank should be satisfied while handling such transactions.
- ii. Third party payment should be routed through the banking channel only.
- iii. The exporter should declare the third party remittance in the shipping bill.

- iv. It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the shipping bill.
- v. At present several exporters are facing the problem in this regards. Mainly our exports to Africa are on third party payment basis. This was a trade practice for years together and the exporters where comfortable doing business, as they were getting their export proceeds into India.

The above circular and subsequent clarification has still not solved the problem of many exporters. Banks are not considering this payment as per RBI guidelines.

20. (A) Foreign Currency Account

An exporter is participating in an exhibition in Saudi Arabia. The exhibition permits local sale on the last day. The products are handicrafts. How to handle the amount received out of sale? Participants in international exhibition/trade fair have been granted general permission for opening a temporary foreign currency account abroad. Exporters may deposit the foreign exchange obtained by sale of goods at the international exhibition/trade fair and operate the account during their stay outside India provided that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair and full details are submitted to the bank.

Firms / Companies and other organizations participating in Trade Fair/Exhibition abroad can take/export goods for exhibition and sell outside India without the prior approval of the Reserve Bank.

Unsold exhibit items may be sold outside the exhibition/trade fair in the same country or in third country.

Such sales at discounted value are also permissible.

It would also be permissible to 'gift' unsold goods up to the value of USD 5000 per exporter, per exhibition/trade fair.

Banks may approve EDF Form of export items for display or display-cum-sale in trade fairs/exhibitions outside India:

The exporter shall produce relative Bill of Entry within 1 month of re-import into India of the unsold items.

The sale proceeds of the items sold are repatriated to India.

The exporter shall report to the banks the method of disposal of all items exported, as well as the repatriation of proceeds to India.

21. (B) Foreign Currency Account:

Foreign Currency accounts by a person resident in India regulations are amended in 2015. According to the regulations, a “Foreign Currency Account” means an account held or maintained in currency other than the currency of India or Nepal or Bhutan.

There are various forms of maintaining Foreign Currency Account.

- i. EEFC - see point no. 22
- ii. Resident Foreign Currency (RFC) Account out of **sources** of receipt of Foreign Exchange mentioned in sub-regulation (B) of the regulations. Resident individuals are allowed to open a Resident Foreign Currency (RFC) Account with a bank in India, out of foreign exchange **received as pension, superannuation benefits, conversion of assets referred** to in section 6(4) of the Act and other cases as laid down in regulation 4(B). The balances in the Non- Resident External (NRE) Account and Foreign Currency Non- Resident Bank [FCNR (B)] Account can be credited to the RFC account when the residential status of the non-resident Indian (NRI) changes of that of a resident.
- iii. Resident Foreign Currency (Domestic) [RFC (D)] Account with a bank in India out of sources of receipt of foreign exchange mentioned in sub-regulation (C) of the regulations viz
 - a. payment while on a visit abroad for services not arising from any business or anything done in India;

- b. honorarium or gift or for services rendered or in settlement of any lawful obligation from any person not resident in India and who is on a visit to India;
 - c. honorarium or gift while on a visit to any place outside India;
 - d. gift from a relative;
 - e. unspent foreign exchange acquired from an authorised person for travel abroad;
 - f. representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014;
 - g. by way of earnings received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority
- iv. Diamond Dollar Account (DDA) - firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of Government of India, subject to the terms and conditions of the DDA Scheme as per Schedule II to the regulations.
- v. A unit in a special economic Zone [Regulation 4(D)]
 A unit located in a special Economic Zone may open hold and maintain a Foreign Currency Account with an authorized dealer to credit all foreign exchange funds received by the unit.
 The account can be used for bona fide trade transactions between the unit and a person resident in / outside India.

22. EEFC Account.

Jitendra International is an exporter as well as an importer. How they can save the loss of exchange rate difference at the time of import V/s their realization at the time of export?

Jitendra International may open with their bank, an account in foreign currency called the Exchange Earners' Foreign Currency (EEFC) Account.

This account will be non-interest bearing current account.

No credit facilities, either fund-based or non-fund based, shall be permitted.

You are allowed to credit 100% of your foreign exchange earnings to your EEFC Account.

The sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments. Further, in case of requirements, EEFC account holders are permitted to access the forex market for purchasing foreign exchange.

The facility of EEFC scheme is intended to enable exchange earners to save on conversion/transaction costs while undertaking forex transactions. This facility is not intended to enable exchange earners to maintain assets in foreign currency, as India is still not fully convertible on Capital Account.

The eligible credits represent -

- a. inward remittance received through normal banking channel.
- b. Payments received in foreign exchange by a unit in Domestic Tariff Area (DTA) for supplying goods to a unit in Special Economic Zone out of its foreign currency account.

Banks may permit exporters to repay packing credit advances whether availed in Rupee or in foreign currency from balances in their EEFC account and / or Rupee resources to the extent exports have actually taken place.

23. Setting up of Offices Abroad and Acquisition of Immovable Property for Overseas Offices

Usha Engineering Private Limited wanted to open an office overseas for the purpose of promoting their exports.

- i. It is permitted.

- ii. At the time of setting up of the office, banks may allow remittances towards initial expenses up to 15% of the average annual sales/income or turnover during the last 2 financial years or up to 25% of the net worth, whichever is higher.
- iii. For recurring expenses, remittances up to 10% of the average annual sales/income or turnover during the last 2 financial years may be sent for the purpose of normal business operations of the office (trading / non-trading) / branch or representative office outside India:
- iv. The overseas branch/office should be set up or representative is posted overseas for conducting normal business activities of the Indian entity;
- v. The overseas branch/office/representative shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations made there under;
- vi. The overseas office (trading / non-trading) / branch / representative should not create any financial liabilities, contingent or otherwise, for the head office in India and also not invest surplus funds abroad without prior approval of the RBI.
- vii. Any funds rendered surplus should be repatriated to India.
- viii. Branch abroad can open Foreign Bank Account in the name of the Branch. The details of bank accounts opened in the overseas country should be promptly reported to your bank.

24. EDF/SDF approval for Export of Goods for re-imports

Prakash International wanted to export the printing press for repair overseas. How to do the same?

- i. Banks may consider request from exporters for granting EDF approval in cases where goods are being exported for re-import after repairs / maintenance / testing / calibration, etc earlier this was known as GR waiver.
- ii. The exporter shall produce relative Bill of Entry within 1 month of re-import of the exported item.

- iii. Where the goods being exported for testing are destroyed during testing, banks may obtain a certificate issued by the testing agency that the goods have been destroyed during testing, in lieu of Bill of Entry for import.

25. Consignment Exports

Vivek International, wanted to supply the goods to overseas on consignment basis, to avail the benefit of International market. How it can be done?

Generally goods are exported on outright basis.

- i. When goods have been exported on consignment basis, the bank, while forwarding shipping documents to his overseas branch/ correspondent should instruct the latter to deliver them only against **trust receipt**/undertaking to deliver sale proceeds by a specified date within the period prescribed for realization of proceeds of the export. This procedure should be followed even if, according to the practice in certain trades, a bill for part of the estimated value is drawn in advance against the exports.
- ii. The agents/consignees may deduct from sale proceeds of the goods expenses normally incurred towards receipt, storage and sale of the goods, such as landing charges, warehouse rent, handling charges, etc. and remit the net proceeds to the exporter.
- iii. The account sales received from the Agent/Consignee should be verified by the banks. Deductions in **Account Sales** should be supported by bills/receipts in original except in case of petty items like postage/cable charges, stamp duty, etc.
- iv. In case the goods are exported on consignment basis, freight and marine insurance **must** be arranged in India.
- v. Banks may allow the exporters to abandon the books, which remain unsold at the expiry of the period of the sale contract. Accordingly, the exporters may show the value of the unsold books as deduction from the export proceeds in the Account Sales.

26. Opening/Hiring of Ware houses abroad

Krishna Chemicals Pvt. Ltd., is finding it necessary to have a warehouse abroad as a part of their marketing strategy. What are the provisions prescribed by RBI?

Banks may consider the applications received from exporters and grant permission for opening / hiring warehouses abroad subject to the following conditions:

- i. Applicant's export outstanding does not exceed 5 per cent of exports made during the previous financial year.
- ii. Applicant has a minimum export turnover of USD 100,000/- during the last financial year.
- iii. Period of realisation should be as applicable.
- iv. All transactions should be routed through the designated branch of the Banks.
- v. The above permission may be granted to the exporters initially for a period of 1 year and renewal may be considered subject to the applicant satisfying the requirement above.

27. Direct dispatch of documents by the exporter.

Rupa Agro International, have received a request from the overseas buyer to send the export documents directly and not through the Bank. Is it allowed?

Many exporters receive this kind of request from the overseas buyers from time to time. The argument put forward by the overseas buyers is that, the bank charges are high and it also takes long time to receive the documents through the bank. Although there is a merit in the argument of the overseas buyers, the Government of India, has to consider the safety of the foreign exchange for the goods exported out of India.

Following are the present provisions:

1. Banks should **normally** dispatch shipping documents to their overseas branches/correspondents expeditiously. However, they may dispatch shipping

documents direct to the consignees or their agent's resident in the country of final destination of goods in cases where:

- i. Advance payment or an irrevocable letter of credit has been received for the full value of the export shipment and the underlying sale contract/letter of credit provides for dispatch of documents direct to the consignee or his agent resident in the country of final destination of goods.
 - ii. The banks may also consider the request of the exporter provided the exporter is a regular customer and the bank is satisfied, on the basis of standing and track record of the exporter and arrangements have been made for realisation of export proceeds.
2. Banks may also permit 'Status Holder Exporters' (as defined in the Foreign Trade Policy),
3. Bank may consider the request received from units in Special Economic Zones (SEZ) to dispatch the export documents to the consignees outside India subject to the terms and conditions that:
 - i. The export proceeds are repatriated through the banks named in the shipping bill.
 - ii. The duplicate copy of the shipping bill is submitted to the banks for monitoring purposes, by the exporters within 21 days from the date of shipment of export.
4. Banks may regularize cases of dispatch of shipping documents by the exporter direct to the consignee or his agent resident in the country of the final destination of goods, up to USD 1 million or its equivalent, per export shipment, subject to the following conditions:
 - i. The export proceeds have been realised in full.
 - ii. The exporter is a regular customer of the bank for a period of at least 6 months.
 - iii. The exporter's account with the bank is fully compliant with the Reserve Bank's extant KYC / AML guidelines.
 - iv. The bank is satisfied about the bona-fides of the transaction.

28. Invoicing of Software Exports

Laxmi Infotech Pvt. Ltd. wanted to export software through online. They want to know how the invoicing and SOFTEX to be made?

- i. For long duration contracts involving series of transmissions, the exporters should bill their overseas clients periodically, i.e., at least once a month or on reaching the 'milestone' as provided in the contract entered into with the overseas client and the last invoice / bill should be raised not later than 15 days from the date of completion of the contract.

It would be in order for the exporters to submit a combined SOFTEX form for all the invoices raised on a particular overseas client, including advance remittances received in a month.

- ii. Contracts involving only 'one-shot operation', the invoice/bill should be raised within 15 days from the date of transmission.
- iii. The exporter should submit declaration in Form SOFTEX in quadruplicate in respect of export of computer software and audio / video / television software to the designated official concerned of the Government of India at STPI / EPZ / FTZ / SEZ for valuation / certification not later than 30 days from the date of invoice / the date of last invoice raised in a month, as indicated above.

The designated officials may also certify the SOFTEX Forms.

- iv. The invoices raised on overseas clients as at (i) and (ii) above will be subject to valuation of export declared on SOFTEX form by the designated official concerned of the Government of India and consequent amendment made in the invoice value, if necessary.

Contact Information: STPI-Maharashtra

Software Technology Parks of India,

Plot No.P-1, Phase-1,

Rajiv Gandhi Infotech Park,

MIDC, Hinjewadi,

Pune-411 057.

Phone : +91-020-22934475 (Direct)

Fax: +91-020-22981010

E-mail :sanjay.gupta@stpi.in

Software Technology Parks of India,

4th floor, Samruddhi Venture Park, Gala No - 4,

MIDC Central Road,

MIDC Central Road, Andheri (East),

Mumbai - 400 093 India.

Tel: 28384907/28343742

29. Export of Services:

Indian Service providers are rendering many services to overseas. It is well recognized in Foreign Trade Policy. Services Export From India (SEIS) is covered under Chapter -3 of Foreign Trade Policy 2015-2020 & scrip of 3% to 5% value of Net Foreign Exchange earned are given against exports of notified services.

Service provider is required to submit FIRC as an evidence of Foreign Exchange earned. A certificate from chartered accountant certifying NFE will be the base for calculation. Professional services: like Accounting, auditing, legal services, taxation service, book keeping services, Engineering Services, landscape architectural services, medical services are some of the examples of services rendered by Indian service providers.

Service provider are facing difficulties regarding documentation with the bank and the office of DGFT. There is no customs document like shipping bill in export of services. The contract between the service provider and overseas party should be properly drafted. Other evidences regarding rendering of the services should be made available to the authorities.

30. Shut out

Metro shoes Pvt. Ltd. have sent 250 cartons to port for exporting to Sri Lanka. Examination at port have been taken place, documents passed, stuffed into container. Due to some reason the particular container could not be loaded on the proposed steamer, i.e. Georgia. What will be the effect of this shut out?

Where a shipment has been entirely shut out and there is delay in making arrangements to re-ship, the exporter will give notice in duplicate to the Customs in the form and manner prescribed, attaching thereto the unused duplicate copy of EDF and the shipping bill. The Customs will verify that the shipment was actually shut out, certify the copy of the notice as correct and forward it to the Reserve Bank together with unused duplicate copy of the EDF.

In this case, the original EDF received earlier from Customs will be cancelled. If the shipment is made subsequently, a fresh set of EDF should be completed.

31. Short Shipment

Associated Apparels wanted to export 200 cartons of shoes. They have taken the cartons to the port. While keeping the cartons into the container, only 195 cartons could accommodate in the container. What will be the effect of this short shipment?

When part of a shipment covered by shipping bill already filed with Customs is short-shipped, the exporter must give notice of short-shipment to the Customs in the form and manner prescribed.

In case of delay, in obtaining certified short-shipment notice from the Customs, the exporter should give an undertaking to the banks to the effect that he has filed the short-shipment notice with the Customs and that he will furnish it as soon as it is obtained.

32. Export of Goods on Lease, Hire, etc.

Batliboi & co. is into manufacturing of heavy machineries of high value. They wanted to export some machinery on Lease basis for a particular period and then re-import into India upon the expiry of the Lease period. What formalities are to be followed?

Prior approval of the Reserve Bank is required for export of machinery, equipment, etc., on lease, hire basis under agreement with the overseas lessee against collection of lease rentals/hire charges and ultimate re-import.

Exporters should apply for necessary permission, through a bank, to the Regional Office concerned of the Reserve Bank, giving full particulars of the goods to be exported.

33. Export of goods by Special Economic Zones (SEZs)

Amity Exports Pvt. Ltd. is a SEZ unit located in Kandla. They are manufacturing different types of metal earrings of assorted designs. However, the galvanizing/plating is to be done by a company in Singapore on Job work basis. After the job work of plating, goods will be exported to Japan directly from Singapore to the final buyer Itoh Trading Company, Tokyo, Japan.

What are the formalities?

- i. Units in SEZs are permitted to undertake job work abroad and export goods from that country itself subject to the conditions that:
 - a. Processing / manufacturing charges are suitably loaded in the export price and are borne by the ultimate buyer.
 - b. The exporter has made satisfactory arrangements for realisation of full export proceeds subject to the usual EDF procedure.

34. SEZ

Shweta Health Care Pvt. Ltd. has purchased certain goods from a unit in SEZ, for which they want to make payment in dollar to unit in SEZ. Is it possible?

A unit in SEZ is regarded as if the unit is in Hong Kong. SEZ is deemed to be a foreign territory and supplied to unit in SEZ is regarded as an export. Similarly, purchase from unit in SEZ is also regarded at par with import from overseas.

Banks may permit units in DTAs to purchase foreign exchange for making payment for goods supplied to them by units in SEZs.

Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realized from Foreign Currency Account of the SEZ unit (Policy (FTP policy para 4.21 (iii) and para 5.11) added in current [FTP 2015-20](#)).

35. Project Exports

L&T received a large order of a high value to construct a cricket stadium at Ghana. L&T is required to supply various engineering goods and other materials. They are also required to provide various services on turnkey basis. What are the provisions for this special order?

- i. Export of engineering goods on deferred payment terms and execution of turnkey projects and civil construction contracts abroad are collectively referred to as '**Project Exports**'.

Indian exporters offering deferred payment terms to overseas buyers and those participating in global tenders for undertaking turnkey/civil construction contracts abroad are required to obtain the approval of the banks/ Exim Bank at post-award stage before undertaking execution of such contracts.

Regulations relating to ' Project Exports' and 'Service Exports' are laid down in the revised Memorandum of Instructions on Project and Service Exports.

- ii. Accordingly, banks / Exim Bank may consider awarding post-award approvals without any monetary limit and permit subsequent changes in the terms of post award approval within the relevant FEMA guidelines / regulations.

Project and service exporters may approach banks / Exim Bank based on their commercial judgement. The respective bank / Exim Bank should monitor the projects for which post-award approval has been granted by them.

Export of goods or services on deferred payment terms or in execution of a turnkey project or a civil construction contract requires prior approval of the approving authority. This transaction of project export shall be considered in accordance with the guidelines issued by the RBI.

1. Broad Criteria that the Bank / Exim Bank may examine while consideration of proposals involving deferred payment / facilities from Indian banking system.

- i. Bank / Exim Bank will mainly examine, among others, the following aspects while considering grant of package approval for proposals for export of engineering goods on deferred payment terms or for undertaking turnkey/construction contracts abroad:
 - a. Period of deferred credit offered vis-a-vis foreign competition, moratorium, rate of interest, adequacy of advance and down payment provided for as well as requirement of foreign exchange for execution of contract (viz. imports from third countries, agency commission, freight, etc.) and overall economics of the proposal.
 - b. Nature of security obtainable from the foreign buyers against payments due and nature and extent of various bonds/guarantees required to be offered by the exporter (including those for procuring third country supplies).
 - c. Nature of escalation, force majeure and arbitration clauses provided in the contract and penalty/damages payment provisions.
 - d. Extent of fund-based and non-fund-based facilities required in India including pre-shipment and post-shipment credit and/or bridge finance requirement.
 - e. In case of turnkey contracts, economic and technical viability thereof as well as special features relating to erection, supervision and commissioning of the contract.

- ii. As regards civil construction contracts, turnkey engineering contracts, process and engineering consultancy services and project construction items (excluding steel and cement), the Bank / Exim Bank will consider proposals only from contractors who are on the approved list of Ministry of Commerce and Industry in order to ensure that only contractors having the necessary competence and capability undertake overseas construction contracts.

While considering proposals, Bank / Exim Bank will Endeavour to promote, wherever possible, the idea of high value construction contracts being undertaken on a consortium basis.

Bank / Exim Bank will also take into account the following aspects while considering grant of package approval for construction contracts abroad:

- a. Availability of infrastructural facilities in the importer country like transport, water, construction material, skilled/unskilled labour, etc. and nature of laws governing civil matters, labour usages, etc.
 - b. Estimated monthly/quarterly cash flows for the entire duration of the contract and arrangements between prime contractor and associate/sub-contractors for timely execution of the contract in case of consortium arrangement.
 - c. Whether the contract would need any bridge finance facility abroad to meet temporary cash flow deficits in working capital, if so, the manner of raising the bridge finance and its full repayment with interest.
- iii. In regard to service contracts, Bank / Exim Bank will, inter alia, take into account relevant factors like size of the contract, nature of services to be rendered, overall economic condition of the importer country, extent of international competition and potential and prospects for further export of services, goods or turnkey projects from India.
 - iv. Bank / Exim Bank may suitably relax the above criteria at its discretion. While considering proposals.

2. Procedure for Clearance of Proposals

- i. Applications should be submitted well in advance to the bank / Exim Bank to enable to it to consider the proposal and grant a package clearance to it.
- ii. Exporters desiring to submit bids for execution of projects abroad including service contracts will not be required to obtain clearance for submission of bids from Bank / Exim Bank.

3. Declaration of the Exports and Handling of EDF/SDF

- i. The regulations notified under Notification No.FEMA 23/2000-RB dated 3rd May 2000 and the directions issued vide A.P. (DIR Series) Circular No. 12 dated 9th September 2000 relating to declaration of export of goods and other matters apply mutatis mutandis, to project exports.

In order to facilitate maintenance of proper record of exports made on deferred payment terms, exporters should prominently superscribe both copies of relative EDF/SDF(shipping bill) with the name of export contract for which supplies are being made and the number and date of the approval granted by the approving authority noted on the EDF/SDF(SB). The duplicate copies of the forms should be retained by Bank duly certified after realisation of the last instalment together with interest from overseas buyers.

Similar procedure should be followed by sub-suppliers also while declaring their exports on EDF/SDF(SB).

- ii. In connection with execution of projects, exporters may sometime be required to export 'consumables' such as tools, tackles, machinery spares etc. for which separate payments will not be made by the overseas buyers. Such consumables will have also to be declared on EDF/SDF In such cases, Bank may, on application, permit exporters to raise invoices against their own site offices abroad, send the shipping documents direct to those offices and realise the value due thereon in convenient installments out of the progress payments for the contracts.

The application to Bank may be accompanied by a declaration by the exporter that the consumables are being exported for execution of the project export contract

which has been approved. .dealer / The number and the date of approval for the project may be indicated on EDF / SDF(SB).

4. Nature & period of Credit

Contracts for export of goods on deferred payment terms may be financed either under supplier's credit or buyer's credit. Under supplier's credit the exporter extends credit directly to the overseas buyer. Buyer's credits are credits extended to the foreign buyers by Bank or financial institutions in India and the exporters realize the export value in Indian rupees from the institution/s concerned straightaway. As repayments under deferred payment arrangements are spread over a long period of time, exporters extending supplier's credit as well as those desiring to undertake exports to be financed under buyer's credit may seek the advice of Exim Bank or ECGC in regard to various risks inherent in extension of such long-term credits and ways and means of protecting themselves against these risks.

The periods for which credit may be offered for export of goods, consumer durables, turnkey contracts and civil construction contracts will depend on merits of individual case and may be determined by the exporter and his banker in mutual consultation on the basis of commercial judgement.

However, consumer durables and miscellaneous engineering goods should ordinarily be exported on cash terms. Four major factors viz. anticipated life of the goods to be exported, extent of foreign competition, nature of the foreign market and the contract value constitute the criteria for determining the overall terms of credit.

5. Eligible Goods

An illustrative List (in two parts, A and B) of engineering goods in respect of which commercial export credit may be offered by exporters to prospective buyers abroad is given in Annexure I. The list is subject to revision from time to time. Inclusion of goods in the lists does not imply that their exports may be made only on deferred payment

terms. Exporters should always endeavour to secure the best possible terms from their buyers so that foreign exchange accrues to the country as early as possible.

6. Forms DPX-1

Enclosure to Form DPX 1

(Item XII(f)(ii) of Form DPX 1)

Projections of post-shipment credit requirements

	Quarter	Quarter	Quarter	Half year	Half year	Half year	Total
	1	2	3	4	5	6	7
1. Outstanding at the beginning							
2. Advances availed of during the period							
1. Total of 1 & 2							
2. Less instalments, if any, received from the importer							
3. Outstandings at the end of the period							

N.B. Quarterly figures to be given till the limit is expected to be fully drawn, thereafter, figures may be furnished quarterly/half-yearly/yearly depending upon the receipt of the deferred installments.

Annexure I to Form DPX 1

(Item 1 of Form DPX 1)

INFORMATION ON THE EXPORTER

(a) Name	(a)
(b) Registered/head Office	(b)
(c) Code No.	(c)
(d) Location of factory/ies, if any	(d)
(e) Year of establishment and commencement of operations	(e)
(f) Name/s of the proprietor/partners/Directors	(f)
(g) Main lines of activity (indicate whether manufacturing and/or trading)	(g)
(h) (i) Installed capacity	(h) (i)

(ii) Value & quantity of production (iii) Sales of main products (iv) Value of exports (i) Value of orders on hand (1) Export (2) Domestic	(ii) (iii) (iv) (i) (1) (2)
(j) Please furnish the following (1) Statement showing particulars of export contracts on deferred payment terms/turnkey projects/ overseas construction contracts executed and under execution (2) Statement showing particulars of outstanding tenders/offers relating to exports on deferred payment terms/turnkey projects/ overseas construction contracts (3) Copies of Annual reports and accounts for the last three years.	(j) (1) (2) (3)

Annexure II to Form DPX 1

(Notes to Items V(a) & (b) of Form DPX 1)

(To be completed where the Indian exporter is a sub-supplier to a foreign prime contractor or is a joint bidder)

1. Prime contractor/Joint Bidder (a) Name and address (b) Standing and reputation (c) Past dealings with the exporter, if any	(a) (b) (c)
2. Contract between prime contractor/joint bidders and overseas buyer (a) Value (b) Payment terms (c) Security	(a) (b) (c)

Annexure III to Form DPX 1

(Items VIII & XII(f)(i) of Form DPX 1)

ESTIMATES OF COST AND PROFITABILITY

(Amount in lakhs of Rupees)

	Domestic Costs	Foreign Exchange Costs	Local Currency Costs	Total
1. Raw materials & components (excluding duties)				
Indigenous				
Imported				
(a) into India	(a)			
(b) direct into the importing country	(b)			
2. Direct labour	2			
3. Depreciation	3			
4. Factory overheads	4			
5. Packing Charges	5			
6. Other administrative & selling expenses	6			
7. Taxes and duties -	7			
(i) Excise duties	(i)			
(ii) Import duties	(ii)			
(iii) Taxes (to be specified)	(iii)			
8. Royalty on the export sales	8			
9. Overseas agent's commission/fee	9			
10. Other commission and service charges	10			
11. Interest at the pre-shipment stage	11			
12. Interest at the post-shipment stage (net)*	12			
13. ECGC premium relating to	13			
(a) Policies	(a)			
(b) Counter-guarantees	(b)			
14. Miscellaneous (including cost of forward cover)	14.			
15. Contingencies	15.			
(i) Provision for cost escalation	(i)			
(ii) negotiating margin, if any	(ii)			
(iii) any other	(iii)			
16. Sub-total	16			
17. (i) Freight (outward)	17. (i)			
(ii) Insurance	(ii)			
18. Total cost	18.			
19. Sales value	19			
20. Net profit/loss (19 minus 18)	20			
21. Export Incentives	21			
(a) Duty draw-back	(a)			

(b) Others (to be specified) 22. Total profit (20 plus 21)	(b) 22
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Forms PEX -1

ANNEXURE I TO FORM PEX 1

[Note under 3(a) and 3(b) of PEX 1]

Details of Foreign Contractor

(where applicable)

To be completed where the Indian exporter is a sub-supplier to/joint bidder with a foreign prime contractor. (Please furnish the details on the foreign prime contractor, joint bidder/s or consortium members as applicable).

(a) Name and address	
(b) Nature of goods and services relating to each member	
(c) Approximate value of offer by each member	
(d) Whether payment terms are on back-to-back basis (Yes/No)	
(e) Mode of receipt of payment	
(f) Details of banking arrangement made for the offer	
(g) Past experience of foreign prime contractor/members/joint bidders	
(h) Whether banker's report furnished on each member (Yes/No)	
(i) Details of past dealings of exporter with each member/joint bidder	
(j) Details of inter se arrangement among consortium members	

ANNEXURE II to Form PEX 1

[Item No 11 of PEX 1]

Details of Main Sub-contractors for Services

Brief Description of Specification of Services	Contractor's Name	Approx. Value of Subcontract	Firm Offer (Yes/No)	Date till which valid	Details of Warranty/ Bank Guarantee (if any)
--	-------------------	------------------------------	---------------------	-----------------------	--

A. Indian Sub-Total (A)					
B. Local Sub-Total (B)					
C. Third Country Sub-Total (C)					

Appendix I to Form PEX 1

[Item No. 23(f)(I) of PEX 1]

Total value of machinery, construction equipment and materials required for the execution of the contract

(Amounts in lakhs of rupees)

Sr. No.	Value of item to be exported from India	Value of items to be purchased in the country where the contract is to be executed	Value of items to be purchased from third parties	Value of items to be transferred from other projects	Total Value
1.	Machinery required to be installed as part of the project@				
2.	Construction equipment*				
3.	Materials required for construction*				

@ The particulars of the major items included under this head may be furnished as under:

Description of the machinery

Value (in lakhs of rupees)

* The value shown against these heads should tally with that shown against item 10 of the application

Appendix II to Form PEX 1

[Item No.23(f)(ii) of PEX 1]

Estimates of cost of construction and profitability

	Domestic costs	Foreign exchange costs	Local currency costs	Total
1. Cost of goods (i) Raw materials and components (excluding duties) indigenous Imported: (a) into India (b) direct into importing country (ii) Machinery and equipment other than that required for use in contract (i.e. supplied for installation) 2. Direct labour 3. Depreciation on equipment used (purchase price minus estimated realisable value on completion) 4. Royalty on export sales 5. Overseas agent's commission 6. Other commission and service charges/ Interest on borrowings abroad 7. Interest at the pre-shipment stage Interest at Post-shipment stage 8. ECGC cover 9. Packing charges 10. Other administrative and selling expenses 11. Taxes and duties-(i) Excise duties (ii) Import duties (iii) Taxes (specify) 12. Overheads not covered by the above 13. Contingencies 14. Miscellaneous				
Sub Total				

Less cash incentives from Government

(i) Duty draw-back _____

(ii) Others (specify) _____

Add net profit/minus net loss

Sale price

7. Sub-Contractors

One who takes a portion of a contract from the principal contractor or from another sub contractor. When an individual or a company is involved in a large scale project, a contractor is often hired to see that the work is done. The contractor, however, rarely does all the work. The work that remains is performed by subcontractors, who are under contract to the contractor, who is usually designated the general or prime contractor. Construction is a common example of how the contractor-subcontractor relationship works.

Subcontractor has to play a very important role in executing the final project under the project export scheme.

Construction equipment from India & its return

Project contractors after completion of projects abroad, may import without an authorization, goods including capital goods used in the project, provided they have been used for at least one year. Foreign Trade Policy para 2.28.

8. Requirements on Completion of Projects

- i. Exporters executing turnkey/construction contracts abroad should take the following steps after completion of the contracts:
 - a. Close the foreign currency accounts and transfer the balances to India;
 - b. Wind up site and liaison offices opened abroad;
 - c. Ensure that the guarantees for performance of the contract and other guarantees issued are cancelled and returned to exporters;

- d. Liquidate fully overseas borrowings/overdrafts obtained, if any and cancel counter-guarantees;
 - e. Make suitable provision for payment of taxes, customs and other statutory obligations in the country of project;
 - f. Dispose of the equipment, machinery, vehicles, etc. purchased abroad and/or to arrange their import into India. [In case the machinery etc. is to be used for another overseas project, the market value (not less than book value) should be recovered from the project to which equipment/machinery has been transferred
 - g. recover funds, if any, transferred to other overseas project/s and repatriate them to India.
- ii. A report giving full account of the various steps taken should be sent by the exporter through his bankers to the concerned Bank / Exim Bank as the case may be depending upon the authority, which had granted post-award approval for the project contract within one month from the completion of the project. Such report should also invariably be sent to Exim Bank / ECGC where their participation in funded / non-funded facilities, risk sharing is involved. The following documents should also be forwarded along with such report:
- a. A completion or final handing over certificate
 - b. A certificate from the overseas bank regarding closure of the account held with it.
 - c. A statement of remittances made to India. Bank certificates about repatriation of funds to India should be enclosed.
 - d. Tax clearance certificate/No tax liability certificate about the overseas project.
 - e. Bills of Entry for re-import of machinery, etc.
 - f. Statements of income and expenditure and profit and loss account of the project
 - g. duly certified by a Chartered Accountant/Project Manager.

9. Export of Services requiring bank approval, pre-requisites & terms

Service Contracts Requiring Bank / Exim Bank's Approval

In some cases service contractors may be required to furnish a performance guarantee to the overseas employer in respect of the project as a whole especially for contracts in the field of erection/installation of plant and machinery as well as services like electrical or air-conditioning installations associated with civil construction work.

Such service contracts often involve high contract values and some are as complex in character as contracts for turnkey or civil construction projects. They also involve direct and indirect foreign exchange liabilities by way of execution of performance/advance payments guarantees, counter-guarantees for loans/overdrafts raised from banks abroad and even considerable expenditure in foreign exchange on purchase of instruments/equipment of third country origin, which necessitates recourse to fund-based and/or non-fund-based facilities from Indian commercial banks, Exim Bank and ECGC apart from a variety of foreign exchange approvals.

Such contracts are treated on par with turnkey/construction projects and therefore require clearance at post-award stage of Bank / Exim Bank. All Service contracts involving deferred payment (DP) terms also require post-award clearance of Bank/ Exim Bank.

Pre-requisites for Consideration of Proposals of Service Contracts Involving Cash Payment Terms

Before granting clearance to the exporters who have secured Service Contracts abroad, Bank / Exim Bank should ensure that the proposals satisfy, inter alia, the following broad guidelines/conditions:

- a. Contract should be technically feasible and economically viable.
- b. Ordinarily, exporters should secure mobilization advance to the extent of 15 per cent of the contract value. Exporters should not undertake any responsibility for

organizing supplies of machinery/equipment and/or materials going into the project.

In case, contracts involve purchase of materials/machinery/equipments from third countries, such purchases should be financed directly by employers.

- c. ECGC may be consulted in advance for its commercial and/or political risk cover/ guarantees etc., if required.
- d. Ratio of the currencies of payment for the contract should be appropriately stipulated in order to avoid a surplus being generated in a non-repatriable local currency.

Note : Condition at (b) above regarding mobilization advance may be relaxed by Bank / Exim Bank on merits of each case on the basis of their commercial judgment.

Pre-requisites for consideration of proposals of Service Contracts on DP terms

The periods for which credit may be offered in respect of a service contract will depend on merits of each individual case and may be determined by the exporter and his banker in mutual consultation on the basis of commercial judgment.

The moratorium will be available only for the principal amount and not interest and should not exceed one year. The Bank / Exim Bank will consider proposals for clearance of service contracts abroad on DP terms at post-award stage subject, inter alia, to the fulfillment of the following conditions in addition to those at paragraph C.3 (a), (c) & (d).

- a. The rate of interest on deferred receivables should cover fully the cost to the exporter of export credit to be availed of from the Indian banking system. Periodicity of repayment of principal and payment of interest should not exceed half-yearly intervals.
- b. Ordinarily, payment terms should provide for advance payment up to 25 per cent of the contract value. In exceptional cases, the advance payment may be reduced to 5 percent of the contract value. In any case advance/progress payment should cover

fully the foreign exchange outgo as well as wages and salaries of personnel employed on the project.

- c. Payment of installments should be secured by letters of credit and/or acceptable bank guarantees. In case the overseas employer is a Government department or a public sector undertaking, a guarantee from the Government and/or promissory notes from the Government or public sector undertaking concerned may be accepted. An undertaking from the Central Bank of the importer country indicating that necessary foreign exchange would be made available on due dates for payment of installments including interest should be obtained, where stipulated by the approving authority.
- d. If services of an agent are considered necessary for ensuring smooth execution of the contract every effort should be made to keep the rate of agency commission as low as possible.

Note : Bank / Exim Bank may relax conditions at (b) and (c) above, if necessary, based on their commercial judgment.

10. Big Bonds & guarantee

- i. Bank may consider and furnish, without prior permission of Reserve Bank, all types of guarantees required to be furnished in connection with execution of project/contract abroad, in cases where they have been authorized to approve proposals of exporters to undertake contracts abroad. Bank may also consider/furnish bid bonds/tender guarantees in connection with bids/offers being submitted by exporters for execution of contracts abroad.

Bank should satisfy themselves before furnishing the bond/ guarantee that the exporter is in a position to fulfill his contractual obligations and the bid/ contract satisfies the conditions stipulated in paragraph B.5/C.3/C.4. In other cases, Bank should issue the guarantees after package approval has been secured from Exim Bank .

- ii. Exporters desiring to submit bids for execution of projects abroad including service contract may furnish their own Corporate Guarantee in lieu of Bid Bond Guarantee, if they so desire, subject to the condition that the amount of such guarantee shall not exceed 5% of the contract value. Exporters, however, have to ensure that provisions contained in Memorandum PEM and other instructions issued by Reserve Bank from time to time for submission of bids are complied with.
- iii. In terms of Reserve Bank Notification No. FEMA 8/2000-RB dated 3rd May 2000, project/service exporters, have been granted general permission to furnish their own Corporate guarantees for performance of the contract or for availing of fund-based and/or non-fund based facilities from banks/financial institutions abroad for the purpose of execution of projects abroad subject to approval of approving authority at post award stage.

The details of guarantee/s issued as above should be reported by the project/service exporters to the concerned Regional Office of Reserve Bank (FED) as also to the concerned Bank /Exim Bank who had cleared the proposal, within 15 days from the issue of such guarantee/s

36. Consolidation of Air Cargo

Prabhat International handed over 5 boxes of imitation Jewellery to be shipped to a buyer in USA. Dolphin Air Cargo agency, a consolidator and an IATA agent issued House Airway Bill to Prabhat International. If the shipment is under letter of credit, will there be any problem at the time of negotiation?

- a. Where air cargo is shipped under consolidation, the airline company's Master Airway Bill will be issued to the Consolidating Cargo Agent. The Cargo agent in turn will issue his own House Airway Bills (HAWBs) to individual shippers.
- b. Banks may negotiate HAWBs only if the relative letter of credit **specifically** provides for negotiation of these documents in lieu of Airway Bills issued by the airline company.

37. Consolidation of Sea Cargo

Kavya Handicraft Corporation handed over 36 wooden cases to Jeena & company to consolidate the cargo and ship the same from Nhava Sheva to Singapore. Jeena & Company issued its own cargo receipt instead of bills of lading. Will Kavya handicraft Corporation face any problem in the documents when submitted to the bank?

- a. Banks may accept Forwarder's Cargo Receipts (FCR) issued by agent, in lieu of bills of lading, for negotiation / collection of shipping documents, in respect of export transactions backed by letters of credit, if the relative letter of credit specifically provides for negotiation of this document, in lieu of bill of lading even if the relative sale contract with the overseas buyer does not provide for acceptance of FCR as a shipping document, in lieu of bill of lading
- b. Further, banks may, at their **discretion**, also accept FCR issued by Shipping companies of repute/ approved agents (in lieu of bill of lading), for purchase/discount/collection of shipping documents even in cases, where export transactions are not backed by letters of credit, provided their 'relative sale contract' with overseas buyer provides for acceptance of FCR as a shipping document in lieu of bill of lading.

However, the acceptance of such FCR for purchase/discount would purely be the credit decision of the bank concerned who among others, should satisfy itself about the bona fides of the transaction and the track record of the overseas buyer and the Indian supplier since FCRs are **not** negotiable documents. It would be advisable for the exporters to ensure due diligence on the overseas buyer, in such cases.

38. Delay in submission of shipping documents by exporters

Snow White international exported the goods to overseas. After the shipment, they approached the bank for submission of the export documents after almost one month. Is it in order?

In cases where exporters present documents pertaining to exports after the prescribed period of 21 days from date of export, banks may handle them without prior approval of the Reserve Bank, provided they are satisfied with the reasons for the delay.

Exporter is under obligation to submit shipping documents within 21 days to his bank. The bank will process the same and do the needful as per nature of the transaction. It is observed that many exporters do not follow this guideline of RBI. The Bank will view the situation on case to case basis. Repeated failure of the exporter will not be encouraged.

39. Recognized Exporters

As per FTP 2015-2020.

Status Category	Export Performance in US \$ million FOB / FOR (as converted) Value during preceding 2/3 years + current year
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

40. Amount Difference

Rajashree International completed the exports and submitted documents to the bank, the Bank found that, the amount declared in different documents is not the same. What will be the impact?

- i. To accept the variations in the value declared to the customs authorities and that is reflected on the export documents. The bank will examine terms of contract. Bank will examine documentary evidence, verify the arithmetical accuracy of the calculations and confirm the terms of underlying contracts. Some such instances (where the values declared to the customs authorities and that shown on the documents may differ) are given below:
- ii. The export realizable value may be **more** than what was originally declared to/accepted by the Customs on the shipping bill in certain circumstances such as where in CIF or CFR contracts, part or whole of any freight increase taking place after the contract was concluded is agreed to be borne by buyers or where as a result of subsequent devaluation of the currency of the contract, buyers have agreed to an increase in price.
- iii. In certain lines of export trade, the final settlement of price may be dependent on the results of quality analysis of samples drawn at the time of shipment; but the results of such analysis will become available only after the shipment has been made.
Sometimes, contracts may provide for payment of penalty for late shipment of goods in conformity with trade practice concerning the commodity. In these cases, while exporters declare to the Customs the full export value based on the contract price, invoices submitted along with shipping documents for negotiation/ collection may reflect a different value arrived at after taking into account the results of analysis of samples or late shipment penalty, as the case may be. For e.g.: Iron Ore, metal scrap, speciality chemicals.
- iv. To accept for negotiation or collection the bills for exports by sea or air which fall short of the value declared on shipping bill on account of trade, only if the discount has been declared by the exporter on relative shipping bill at the time of shipment and accepted by Customs.

41. Handing Over Negotiable Copy of Bill of Lading to Master of Vessel/Trade Representative
Ravi Engineering Company received an order from Ethiopia. The buyer wanted a special favour of having negotiable copy of B/L directly. The buyer indicated that since

Ethiopia is a land lock country this is required for completing import formalities. How to handle this situation without violating RBI guidelines?

Banks may deliver one negotiable copy of the Bill of Lading to the Master of the carrying vessel or trade representative for exports to certain landlocked countries if the shipment is covered by an irrevocable letter of credit and the documents conform strictly to the terms of the Letter of Credit which, inter alia, provides for such delivery.

42. Time limit

Within what period the exporter is required to bring the foreign exchange.

As per RBI circular No. 37 Dated 20.11.2014. The time limit for all the exporters to realize the proceeds is 9 months from the date of export.

43. Extension of Time

Do Banks monitor the same? How?

- i. Banks should closely watch realization of bills and in cases where bills remain outstanding, beyond the due date for payment from the date of export; the matter should be promptly taken up with the concerned exporter.

If the exporter fails to arrange for delivery of the proceeds within the stipulated period or seek extension of time beyond the stipulated period, the matter should be reported to the Regional Office concerned of the Reserve Bank stating, where possible, the reason for the delay in realizing the proceeds.

- ii. The Exchange Control copies of shipping bill / SOFTEX Forms should, continue to be held by banks until the full proceeds are realized.
- iii. Banks should follow up export outstanding with exporters systematically and vigorously so that action against defaulting exporters does not get delayed.

Any laxity in the follow up of realization of export proceeds by banks will be viewed seriously by the Reserve Bank.

- iv. Half yearly XOS submission should be made online.

44. Reduction in Invoice Value on Account of Prepayment of Usance Bills

Jyoti Hardware enterprises exported the goods worth USD 25000/- to a buyer in Dubai. The Payment terms were 120 days. The buyer is now ready to pay the amount on 50th day. He is expecting the reduction/ cash discount since he is making the payment before the due date.

Occasionally, exporters may approach banks for reduction in invoice value on account of cash discount to overseas buyers for prepayment of the usance bills. Banks may allow cash discount to the extent of amount of proportionate interest on the unexpired period of usance, calculated at the rate of interest stipulated in the export contract or at the prime rate/LIBOR of the currency of invoice where rate of interest is not stipulated in the contract.

45. Export Claims

Raj exports have exported a Machine to Dubai. The machine is used by Dubai party for the production, but the performance of the machine is not at all satisfactory. Hence the buyer is claiming the refund of full price of the Machine from Raj exports. What are the provision for remitting the amount received by the exporter?

- i. Banks may remit export claims on application, provided the relative export proceeds have already been realized and repatriated to India.

Exporter should not be on the caution list of the Reserve Bank.

- ii. The exporter should be advised to return/ surrender proportionate export incentives, if any, received by him.

At the time of export, exporter may claim duty drawback, advance authorization, EPCG benefits, reward scheme, excise exemption etc. They are to be returned the concerned authority if, the corresponding foreign exchange are not earned by the exporter.

46. Payment of Claims by ECGC and private insurance companies.

Hathim enterprise exported readymade garments to a buyer in France on 90 days D.A bases. Upon the due date the buyer did not pay. The exporter was regularly following for the payment. Subsequently, the buyer was declared insolvent. The exporter was covered under ECGC scheme and was holding proper policy.

The exporter filled a claim with ECGC along with the necessary documents. ECGC examined the claim and admitted the same. The amount of the claim was received by the exporter from the ECGC through his bank. What will be impact on export transaction?

- i. Banks shall, on an application received from the exporter supported by documentary evidence from the ECGC and/ or private insurance companies regulated by IRDA confirming that the claim in respect of the outstanding bills has been settled by them, write off the relative export bills and delete them from the XOS statement.
- ii. Such write-off will not be restricted to the limit of 10 per cent of the invoice value
- iii. Surrender of incentives, if any, in such cases will be as provided in the Foreign Trade Policy.
- iv. The claims settled in rupees by ECGC and/ or private insurance companies regulated by IRDA should not be construed as export realization in foreign exchange.
However, payment through ECGC cover and through general / private insurance companies will be admissible of FTP benefits as per para 2.85 of 2015-20 HB.

47. Write-off - Relaxation

An Exporter shipped books to USA on DA basis. The buyer has cleared the goods but the payment for the same was not made. Buyer is declared insolvent. The exporter applied for Write-off permission. The same was granted. Can the exporter claim the Export Incentives for this shipment?

As announced in the Foreign Trade Policy (FTP), 2009-14 and Current FTP, with effect from August 27, 2009, realisation of export proceeds shall not be insisted upon under any of the Export Promotion Schemes under the said FTP, subject to the following conditions:

- a. The write off on the basis of merits is allowed by the Reserve Bank or by bank on behalf of the Reserve Bank,
- b. The exporter produces a certificate from the Foreign Mission of India concerned, about the fact of non-recovery of export proceeds from the buyer; and
- c. This would not be applicable in self write off cases.
- d. The banks are advised not to insist on the surrender of proportionate export incentives.

48. Shipments Lost in Transit

Rajesh traders have exported by sea. The cargo was properly covered under the insurance policy. There was a fire during the voyage and the export cargo was totally destroyed. The exporter is not going to receive the payment from the overseas buyer. The term of contract was CIF. Under the circumstances, what actions are to be taken by the exporter and his banks?

The exporter should immediately file the claim properly as prescribed in the Policy guidelines.

All the necessary documents are also to be submitted

- i. When shipments from India for which payment has not been received either by negotiation of bills under letters of credit or otherwise are lost in transit, the banks must ensure that insurance claim is made as soon as the loss is known.
- ii. In cases where the claim is payable abroad, the banks must arrange to collect the full amount of claim due on the lost shipment, through the medium of their overseas branch/correspondent and release the duplicate copy of EDF only after the amount has been collected.
- iii. A certificate for the amount of claim received should be furnished on the reverse of the duplicate copy.

- iv. Banks should ensure that amounts of claims on shipments lost in transit which are partially settled directly by shipping companies/airlines under carrier's liability abroad are also repatriated to India

49. Netting off

M. B global, a unit in SEZ, regularly exports the cut and polished diamonds to Simon International, Antwerp on credit basis. Incidentally M.B global also buys rough diamonds from Simon International occasionally. The chief accountant wanted to know whether they can adjust their receivables with their payable to Simon International and settle the accounts with the difference only?

Banks may allow requests received from exporters for 'netting off' of export receivables against import payments for units located in Special Economic Zones subject to the following:

- i. The 'netting off' of export receivables against import payments is in respect of the same Indian entity and the overseas buyer / supplier (bilateral netting) and the netting may be done as on the date of balance sheet of the unit in SEZ.
- ii. The details of export of goods are documented in EDF/ (O) forms / DTR as the case may be while details of import of goods / services are recorded through A1 / A2 form as the case may be.

The relative EDF/forms will be treated as complete by the designated banks only after the entire proceeds are adjusted / received.

- iii. The export / import transactions with ACU countries are kept outside the arrangement.
- iv. All the relevant documents are submitted to the concerned banks who should comply with all the regulatory requirements relating to the transactions.

Trade and industry were demanding that the facility of Netting-off should also be given to other than unit in SEZ.

RBI has considered the request and issue circular no. 47 dated 17.11.2011 whereby the facility of netting off is also extended to other exporter/ importer who are not unit in SEZ. This facility will be beneficial to many Indian Companies. This was a long time demand.

Banks may deal with the cases of set-off of export receivables against import payables, subject to following terms and conditions:

- i. The import is as per the Foreign Trade Policy in force.
- ii. Invoices/Bills of Lading/Airway Bills and Exchange Control copies of Bills of Entry for home consumption have been submitted by the importer to the bank.
- iii. Payment for the import is still outstanding in the books of the importer.
- iv. The relative EDF will be released by the bank only after the entire export proceeds are adjusted / received.
- v. The " set-off" of export receivables against import payments should be in respect of the **same** overseas buyer and supplier and that consent for "set-off" has been obtained from him.
- vi. The export / import transactions with ACU countries should be kept outside the arrangement.
- vii. All the relevant documents are submitted to the concerned bank who should comply with all the regulatory requirements relating to the transactions.

A1 form which was required to make the payment against import, is now discontinued.

50. Refund of Export Proceeds

Esjay International has exported writing Pen to a buyer in Sri Lanka. The buyer found that the quality is not as per the contract. The Sri lankan buyer wants his money back and will return the goods to Esjay International. What are the provisions for refund of export proceeds?

Banks, through whom the export proceeds were originally realised may consider requests for refund of export proceeds of goods exported from India and being re-imported into India on account of poor quality.

While permitting such transactions, Banks are required to :

- i. Exercise due diligence regarding the track record of the exporter
- ii. Verify the bona-fides of the transactions
- iii. Obtain from the exporter a certificate issued by DGFT / Custom authorities that no incentives have been availed by the exporter against the relevant export or the proportionate incentives availed, if any, for the relevant export have been surrendered
- iv. Obtain an undertaking from the exporter that the goods will be re-imported within three months from the date of remittance and
- v. Ensure that all procedures as applicable to normal imports are adhered to.

51. Exporters' Caution List

Atlas International is in export import activities for the last 10 years. Due to some of their transactions, the company was placed in caution list of the RBI. All their transactions in international trade were stopped.

They have been approached by a buyer from Korea to purchase some Indian goods. Can they do so?

- i. Whenever exporters are cautioned in terms of provisions contained in Regulation 17 of "Export Regulations". Bank may approve EDF/ Shipping Bill of exporters who have been placed on caution list, if the exporters concerned produce evidence of having received an advance payment or an irrevocable letter of credit in their favour covering the full value of the proposed exports.
- ii. Such approval may be given even in cases where usance bills are to be drawn for the shipment provided the relative letter of credit covers the full export value and also

permits such drawings and the usance bill mature within twelve months from the date of shipment.

- iii. Banks should obtain prior approval of the Reserve Bank for issuing guarantees for caution-listed exporters.

Import

52. How the bank will handle import transaction?

Rules and regulations to be followed by the banks from the foreign exchange angle while undertaking import payment transactions on behalf of their clients are set out in Master Direction on Import of Goods and Services published on 1st January every year.

Where specific regulations do not exist, banks may be governed by normal trade practices. Banks may particularly note to adhere to "Know Your Customer" (KYC) guidelines issued by Reserve Bank in all their dealings.

53. Import payment

We have imported goods from China. We wanted to make the payment to our supplier. How it is to be done?

- i. Applications by persons, firms and companies for making import payments, towards imports into India must be made to the bank. Form A-1 is now discontinued.
- ii. The banks need a simple letter from the applicant containing the basic information viz., the name and the address of the applicant, name and address of the beneficiary, amount to be remitted and the purpose of remittance.
- iii. The exchange should be purchased for a current account transaction (and is not included in the Schedules I and II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

54. Import Licences

Ram and company wants to Import Discharged cartridges of all bores and sizes. The same is classified under ITC HS 74040011. As per ITC HS this product is restricted item for import. Can bank allow the remittance for this import?

After the liberalization, most of the goods are allowed to be imported freely, without any restrictions. However, there is a negative list of import. It consists of a) Prohibited items. (59 Items) b) restricted items (155 items) c) Items allowed by State Trading Enterprises (15 items).

Except for goods included in the negative list which require licence under the Foreign Trade Policy in force, banks may freely open letters of credit and allow remittances for import.

While opening letters of credit, the 'Exchange Control purposes' copy of the licence should be called for and adherence to special conditions, if any, attached to such licences should be ensured.

After effecting remittances under the licence, banks may preserve the copies of utilised licence /s till they are verified by the internal auditors or inspectors.

55. Obligation of Purchaser of Foreign Exchange

Mr. Ravi acquired USD 15000 for the purpose of giving an advertisement in overseas magazine. However, he has used USD 3000 for the purpose of travel abroad. Whether Mr. Ravi has violated any provision of the FEMA?

No.

- i. Any person acquiring foreign exchange is permitted to use it either for the purpose mentioned in the declaration made by him to a bank or to use it for **any other** purpose for which acquisition of foreign exchange is permissible.
- ii. Where foreign exchange acquired has been utilised for import of goods into India, the bank should ensure that the importer furnishes evidence of import viz., Exchange Control Copy of the Bill of Entry, Postal Appraisal Form or Customs Assessment Certificate, etc., and satisfy himself that goods equivalent to the value of remittance have been imported.

56. Non-resident Account

Mr. Manoj, has imported furniture from Ms. Manju, USA. Ms. Manju is NRI and is having Non- Resident Account in India. Can Mr. Manoj makes the import payment by depositing the amount in Ms. Manju's NRI account in India?

In addition to the permitted methods of payment for imports, Mr. Manoj can also make the payment by way of credit to non-resident account of the overseas exporter maintained with a bank in India.

57. Time Limit for Settlement of Import Payments

Aisha Garments have imported gents shirts form Thailand on 30 days credit. However due to financial reasons the amount could not be remitted in time. What will be the time limit for Aisha Garments to make the remittance against import made by them?

- i. Remittances against imports should be completed not later than **six months** from the date of shipment, except in cases where amounts are withheld towards guarantee of performance.
- ii. Banks may permit settlement of import dues delayed for the reason of disputes, financial difficulties, etc.
- iii. Interest in respect of delayed payments, usance bills or overdue interest for a period of less than three years from the date of shipment may be permitted.

58. Trade with Iran:

Due to US and EU trade sanctions the export & import with Iran is in Indian Rupees. Specific banks are authorized to handle the documents. Exporter will get all export incentives as per Foreign Trade Policy.

59. Third Party Payment for Import Transactions

Niharika Industries has imported Chemical from Dawn Chemicals Manufacturing Company, Korea, one container having CIF Value of USD 37,500/- . The Supplier requested the Indian Importer to remit the amount to Dhwanishi International Singapore on their behalf. Niharika Industries wanted to know, is it allowed by RBI or not?

Banks are allowed to make payments to a third party for import of goods, subject to conditions as under:

- i. Firm irrevocable purchase order / tripartite agreement should be in place. However this requirement may not be insisted upon in case where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order / invoice has been produced.
- ii. Bank should be satisfied with the bonafides of the transactions and should consider the Financial Action Task Force (FATF) statement before handling the transactions;
- iii. The Invoice should contain a narration that the related payment has to be made to the (named) third party;
- iv. Bill of Entry should mention the name of the shipper as also the narration that the related payment has to be made to the (named) third party;
- v. Importer should comply with the instructions relating to imports including those on advance payment being made for import of goods.

60. Advance Remittance

Oshika International wants to import machinery form Germany. The payment term of import is Advance payment. Can Oshika International make advance payment? If yes, what are the conditions?

- i. Bank may allow advance remittance for import of goods **without** any ceiling subject to the following conditions:

- a. If the amount of advance remittance exceeds USD 2,00,000 or its equivalent, an unconditional, irrevocable standby Letter of Credit or a guarantee from an international bank of repute situated outside India or a guarantee of a bank in India, if such a guarantee is issued against the counter-guarantee of an international bank of repute situated outside India, is obtained.
 - b. In cases where the importer (other than a Public Sector Company or a Department/Undertaking of the Government of India/State Government/s) is unable to obtain bank guarantee from overseas suppliers and the bank is satisfied about the track record and bonafides of the importer, the requirement of the bank guarantee / standby Letter of Credit may not be insisted upon for advance remittances up to USD 5,000,000 (US Dollar five million). Banks may frame their own internal guidelines to deal with such cases as per a suitable policy framed by the bank's Board of Directors.
- ii. A Public Sector Company or a Department/Undertaking of the Government of India / State Government/s which is not in a position to obtain a guarantee from an international bank of repute against an advance payment, is required to obtain a specific waiver for the bank guarantee from the Ministry of Finance, Government of India before making advance remittance exceeding USD 100,000.
 - iii. All payments towards advance remittance for imports shall be subject to the specified conditions.

61. Advance Remittance for the Import of Services

Megha Engineering is a Service provider. They wanted to import engineering services from Germany. The overseas party demanded 50% advance payment against the service contract. What conditions will be applicable for this advance remittance for import of services?

Bank may allow advance remittance for import of services without any ceiling subject to the following conditions:

- i. Where the amount of advance exceeds USD 500,000 or its equivalent, a guarantee from a bank of international repute situated outside India, or a guarantee from an bank in India, if such a guarantee is issued against the counter-guarantee of a bank of international repute situated outside India, should be obtained from the overseas beneficiary.
- ii. In the case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments, approval from the Ministry of Finance, Government of India for advance remittance for import of services without bank guarantee for an amount exceeding USD 100,000 (USD One hundred thousand) or its equivalent would be required.
- iii. Banks should also follow-up to ensure that the beneficiary of the advance remittance fulfils his obligation under the contract or agreement with the remitter in India, failing which, the amount should be repatriated to India.

62. Interest on Import Bills

Sai Impex has to make the payment of Import bill. The original payment term was 90 days DA. Sai Impex decided to make the payment to overseas supplier on 60th day. What will be the implication?

- i. Bank may allow payment of interest on usance bills or overdue interest on delayed payments for a period of less than three years from the date of shipment at the rate prescribed for trade credit from time to time.
- ii. In case of pre-payment of usance import bills, remittances may be made only after reducing the proportionate interest for the unexpired portion of usance at the rate at which interest has been claimed or LIBOR of the currency in which the goods have been invoiced, whichever is applicable. Where interest is not separately claimed or expressly indicated, remittances may be allowed after deducting the proportionate interest for the unexpired portion of usance at the prevailing LIBOR of the currency of invoice.

63. Replacement Import of Restricted Goods

Ajit Enterprises has imported chemical, which is in the restricted list. They have obtained Specific Import License for 100 MT. During the transit, the goods have been partly damaged. The terms of payment were on L/C basis.

Where goods are short-supplied, damaged, short-landed or lost in transit and the Exchange Control Copy of the import licence has already been utilised to cover the opening of a letter of credit against the original goods which have been lost, the original endorsement to the extent of the value of the lost goods may be cancelled by the bank and fresh remittance for replacement imports may be permitted without reference to Reserve Bank, provided, the insurance claim relating to the lost goods has been settled in favour of the importer. It may be ensured that the consignment being replaced is shipped within the validity period of the license.

64. Guarantee for Replacement Import

Hari Industrial Pvt. Ltd., are importers of smart phones. They have agreement with the overseas party for replacement of defective phones. The defective phones are to be sent back for replacement after receiving the new phones from the overseas. However, the overseas party is demanding for bank guarantee for return of defective phones?

In case replacement goods for defective import are being sent by the overseas supplier before the defective goods imported earlier are reshipped out of India, banks may issue guarantees at the request of importer client for dispatch/return of the defective goods, according to their commercial judgment.

65. Receipt of Import Documents

Rishabh Pvt. Ltd. is dealing in fabrics. They are regular importers of fabrics. Their documents are routed through bank. However, having long time relation, the supplier wants to send documents directly to Rishabh Pvt. Ltd. instead of routing through bank. The same is agreed

by Rishabh Pvt. Ltd. What are the conditions for receiving documents directly instead of routing through bank?

Import bills and documents should be received from the banker of the supplier by the banker of the importer in India. Bank should not, therefore, make remittances where import bills have been received directly by the importers from the overseas supplier, except in the following cases:

- i. Where the value of import bill does not exceed USD 300,000.
- ii. Import bills received by wholly-owned Indian subsidiaries of foreign companies from their principals.
- iii. Import bills received by Status Holder Exporters as defined in the Foreign Trade Policy, 100% Export Oriented Units / Units in Special Economic Zones, Public Sector Undertakings and Limited Companies.
- iv. Import bills received by all limited companies viz. public limited, deemed public limited and private limited companies.

66. Receipt of Import documents by bank directly from overseas suppliers

Sanchit Pvt. Ltd. is importing goods from USA. The USA supplier, Krish International is a reputed exporter in USA. They wanted to send their export documents directly to HSBC bank (Banker of Sanchit Pvt. Ltd.) instead of routing through their bank, Citi Bank. What are the relevant provisions?

- i. At the request of importer clients, bank may receive bills directly from the overseas supplier, provided the bank is fully satisfied about the financial standing/status and track record of the importer customer.
- ii. Before extending the facility, the bank should obtain a report on each individual overseas supplier from the overseas banker or a reputed overseas credit agency.

However, such credit report on the overseas supplier need not be obtained in cases where the invoice value does not exceed USD 300,000 provided the bank is satisfied about the bonafides of the transaction and track record of the importer constituent.

67. Physical Imports

Kejriwal Brothers are importer of readymade garments. They have imported Gents Shirts for USD 2,00,000/-. What documents are to be submitted to bank as proof of import?

In case of all imports, where value of foreign exchange remitted / paid for import into India exceeds USD 100,000 or its equivalent, it is obligatory on the part of the bank through whom the relative remittance was made, to ensure that the importer submits :-

- i. The Exchange Control Copy of the Bill of Entry for home consumption, or
- ii. The Exchange Control Copy of the Bill of Entry for warehousing, in case of 100% Export Oriented Units, or
- iii. Customs Assessment Certificate or Postal Appraisal Form, as declared by the importer to the Customs Authorities, where import has been made by post, as evidence that the goods for which the payment was made have actually been imported into India.
- iv. The Exchange Control Copy of the Ex-Bond Bill of Entry or Bill of Entry issued by Customs Authorities by any other similar nomenclature for goods imported and stored in Free Trade warehousing Zone (FTWZ) or SEZ Unit warehouses or Customs bonded warehouses, etc.

In respect of imports on D/A basis, bank should insist on production of evidence of import at the time of effecting remittance of import bill. However, if importers fail to produce documentary evidence due to genuine reasons such as non- arrival of consignment, delay in delivery/ customs clearance of consignment, etc., bank may, if satisfied with the genuineness of request, allow reasonable time, not exceeding three months from the date of remittance, to the importer to submit the evidence of import.

Bank should acknowledge receipt of evidence of import e.g. Exchange Control Copy of the Bill of Entry, Postal Appraisal Form or Customs Assessment Certificate, etc., from importers by issuing acknowledgement slips containing all relevant particulars relating to the import transactions.

68. Evidence of Import in Lieu of Bill of Entry

The Indian importer M/s Janvi (India) Pvt. Ltd., has imported electronic goods from Japan. The Exchange Control copy of Bill of Entry was misplaced by the Custom Broker. What evidence M/s. Janvi (India) Pvt. Ltd., can give to their bankers for the import?

Bank may accept, in lieu of Exchange Control Copy of Bill of Entry for home consumption, a certificate from the Chief Executive Officer (CEO) or auditor of the company that the goods for which remittance was made have actually been imported into India provided :-

- i. The amount of foreign exchange remitted is less than USD 1,000,000 or its equivalent.
- ii. The importer is a company listed on a stock exchange in India and whose net worth is not less than Rs.100 crore as on the date of its last audited balance sheet, or, the importer is a public sector company or an undertaking of the Government of India or its departments.

The above facility may also be extended to autonomous bodies, including scientific bodies/academic institutions, such as Indian Institute of Science / Indian Institute of Technology, etc. whose accounts are audited by the Comptroller and Auditor General of India (CAG). Bank may insist on a declaration from the auditor/CEO of such institutions that their accounts are audited by CAG.

Bank should acknowledge receipt of evidence of import e.g. Exchange Control Copy of the Bill of Entry, Postal Appraisal Form or Customs Assessment Certificate, or any other document in Lieu of Exchange Control Copy of Bill of Entry etc., from importers by issuing acknowledgement slips containing all relevant particulars relating to the import transactions.

69. Non-physical Imports

Upasna Technologies Pvt. Ltd., has imported software through internet. What are the documents required for making payment to the overseas party?

Where imports are made in non-physical form, i.e., software or data through internet / datacom channels and drawings and designs through e-mail / fax, a certificate from a Chartered Accountant that the software / data / drawing/ design has been received by the importer, may be obtained.

Bank should advise importers to keep Customs Authorities informed of the imports made by them under this clause.

70. Follow-up for Import Evidence

Ms. Prushni Joshi of Bank of Baroda wants to understand the responsibility of the bank in the matter of evidence of import.

- i. In case an importer does not furnish any documentary evidence of import, as required within 3 months from the date of remittance involving foreign exchange exceeding USD 100,000, the bank should **rigorously** follow-up for the next 3 months, including issuing registered letters to the importer.
- ii. Bank should forward a statement on half-yearly basis as at the end of June & December of every year, in form BEF furnishing details of import transactions, exceeding USD 100,000 in respect of which importers have defaulted in submission of appropriate document evidencing import within 6 months from the date of remittance, to the Regional Office of Reserve Bank under whose jurisdiction the bank is functioning, within 15 days from the close of the half-year to which the statement relates.
- iii. Bank need not follow up submission of evidence of import involving amount of USD 100,000 or less provided they are satisfied about the genuineness of the transaction and the bonafides of the remitter. A suitable policy may be framed by the bank's Board of Directors and bank may set their own internal guidelines to deal with such cases.

71. Issue of Bank Guarantee

The importer wants a bank guarantee from his banker IDBI bank. This bank guarantee is to be given to the overseas supplier against his import. Can IDBI bank issue the bank guarantee?

Banks are permitted to issue guarantee on behalf of their importer customers in terms of Notification No. FEMA 8/2000-RB dated May 3, 2000, as amended from time to time.

72. Merchanting Trade

Shivangi International trading company is doing Import Export business of various products. They buy several products from china and sell in the local market in India. An Australian buyer wants the same Chinese product from us. Since the cost of importing goods into India and exporting the same to Australia is expensive and time consuming. Hence, they have decided to buy the goods from China and supply directly to Australia without bringing goods into India. What is the procedure for the same?

Or

If we buy goods from Dubai and sell directly to Singapore without bringing them in India, is it allowed?

This is permissible. It is recognised as **Merchanting Trade**.

For a trade to be classified as Merchanting Trade following conditions should be satisfied:

- i. Goods acquired should not enter the Domestic Tariff Area and
- ii. The state of the goods should not undergo any transformation.

Bank may handle bona-fide Merchanting Trade Transactions and ensure that:

- a. Goods involved in the transactions are permitted for export / import under the prevailing Foreign Trade Policy (FTP) of India as on the date of shipment and all the rules, regulations and directions applicable to export (except Export Declaration Form) and import (except Bill of Entry) are complied with for the export leg and import leg, respectively,

- b. Both the legs of a Merchanting Trade Transaction are routed through the same bank. The bank should verify the documents like invoice, packing list, transport documents and insurance documents (if originals are not available, Non-negotiable copies duly authenticated by the bank handling documents may be taken) and satisfy itself about the **genuineness** of the trade.
- c. The entire Merchanting Trade Transactions should be completed within an overall period of **nine** months and there should not be any outlay of foreign exchange beyond four months.
- d. The commencement of Merchanting Trade would be the date of shipment / export leg receipt or import leg payment, whichever is first. The completion date would be the date of shipment / export leg receipt or import leg payment, whichever is the last;
- e. Short-term credit either by way of suppliers' credit or buyers' credit will be available for Merchanting Trade Transactions, to the extent not backed by advance remittance for the export leg, including the discounting of export leg LC by an bank, as in the case of import transactions ;
- f. In case advance against the export leg is received by the Merchanting Trader, bank should ensure that the same is earmarked for making payment for the respective import leg. However, bank may allow short-term deployment of such funds for the intervening period in an interest bearing account;
- g. Merchanting Traders may be allowed to make advance payment for the import leg on demand made by the overseas seller. In case where inward remittance from the overseas buyer is not received before the outward remittance to the overseas supplier, bank may handle such transactions by providing facility based on commercial judgement. It may, however, be ensured that any such advance payment for the import leg beyond USD 200,000/- per transaction, the same should be paid against Bank Guarantee / LC from an international bank of repute, except in cases and to the extent where payment for export leg has been received in advance;
- h. Letter of Credit to the supplier is permitted against confirmed export order keeping in view the outlay and completion of the transaction within nine months;

- i. Payment for import leg may also be allowed to be made out of the balances in Exchange Earners Foreign Currency Account (EEFC) of the Merchant Trader.
- j. Bank should ensure one-to-one matching in case of each Merchanting Trade transaction and report defaults in any leg by the traders to the concerned Regional Office of RBI, on half yearly basis.
- k. The names of defaulting Merchanting Traders, where outstanding reaches 5% of their annual export earnings, would be Caution-listed.
- l. The KYC and AML guidelines should be observed by the bank while handling such transactions.

Merchanting Traders have to be genuine traders of goods and not mere financial intermediaries. Confirmed orders have to be received by them from the overseas buyers. Banks should satisfy themselves about the capabilities of the Merchanting Trader to perform the obligations under the order. The overall Merchanting Trade should result in reasonable profits to the Merchanting Trader.

What about Nepal?

In terms of the revised Merchanting Trade guidelines stipulated therein, for a trade to be classified as Merchanting Trade, goods acquired should not enter the Domestic Tariff Area and the state of the goods should not undergo any transformation.

As Nepal and Bhutan are landlocked countries, there is a facility of transit trade whereby goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries. In consultation with Government of India, it is clarified herein that goods consigned to the importers of Nepal and Bhutan from third countries under Merchanting Trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively.

73. Purposes

What are the purposes for which foreign exchange can be drawn other than import export of goods and services?

Banks are authorised to release / remit foreign exchange for the following non-trade current account transactions:

- (a) Private visits,
- (b) Remittance by tour operators / travel agents to overseas agents / principals / hotels,
- (c) Business travel,
- (d) Fee for participation in global conferences and specialized training,
- (e) Remittance for participation in international events / competitions (towards training, sponsorship and prize money),
- (f) Film shooting,
- (g) Medical treatment abroad,
- (h) Disbursement of crew wages
- (i) Overseas education,
- (j) Remittance under educational tie up arrangements with universities abroad,
- (k) Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL, etc.
- (l) Employment and processing, assessment fees for overseas job applications,
- (m) Emigration and emigration consultancy fees,
- (n) Skills / credential assessment fees for intending migrants,
- (o) Visa fees,
- (p) Processing fees for registration of documents as required by the Portuguese / other Governments,
- (q) Registration / subscription / membership fees to International Organisations.

74. Payment to Nepal

Everest International, India has imported woolen sweater from Nepal. Can Everest International make the payment in USD by purchasing foreign exchange from his bank?

No. Release of foreign exchange is not admissible for travel to and transaction with residents of Nepal and Bhutan.

Transactions for Individuals

75. Remittance facilities for resident individuals

Remittances for current account transactions (viz. private visit; gift/ donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals under Para 1 of schedule III to Foreign Exchange management (current account transactions) amendment rules, 2015 dated May 26, 2015 are subsumed under the liberalized remittance scheme (LRS) of USD 2,50,000 per financial year (FY) with effect from May 26, 2015 (instructions on LRS are available in master direction on liberalized remittance scheme dated January 1, 2016). Release of foreign exchange USD 2,50,000, requires prior permission from the reserve bank of India.

76. Sale of Exchange

Out of the overall foreign exchange being sold to a traveler, exchange in the form of foreign currency notes and coins may be sold up to the limit indicated below:

- (i) Travelers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States - not exceeding USD 3000 per visit or its equivalent.
- i. (ii) Travelers proceeding to Iraq or Libya - not exceeding USD 5000 per visit or its equivalent
- ii. (iii) Travelers proceeding to Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States - full exchange may be released.
- iii. (iv) Travelers proceeding for Haj/Umrah pilgrimage - full amount of entitlement in cash or up to the cash limit as specified by the Haj Committee of India, may be released.
- iv. The form A2 relating to sale of foreign exchange should be retained for a period of one year by the Authorised Persons, together with the related documents, for the purpose of verification by their Internal Auditors.

- v. However, in respect of remittance applications for miscellaneous non-trade current account transactions of amount not exceeding USD 25,000, Authorised Dealers may obtain simplified Application-cum-Declaration form.
- vi. In cases where the remittances are allowed on the basis of self declaration, the onus of furnishing the correct details in the application will remain with the applicant who has certified the details relating to the purpose of such remittance.

77. Medical Treatment

Mr. Sanjay is having kidney problem. The Best treatment is available at USA. Mr. Sanjay has to make payment for the surgery in Advance and also further expenses during the medical treatment payable in USA. Can Mr. Sanjay purchase Foreign Exchange for making such payments?

Yes, now remittances for medical treatment abroad is covered under liberalized remittance scheme. The release a foreign exchange for current account transaction is allowed up to USD 2,50,000 per year.

For amount exceeding the above limit, Bank may release foreign exchange under general permission based on the estimate from the doctor in India or hospital / doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorized Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.

78. Studies abroad

Mr. Rajan Mehra, wanted to send his son to USA for further studies. He requires foreign exchange for his son during his studies abroad. How he can get it?

Yes, now remittances for studies abroad is covered under liberalized remittance scheme. The release a foreign exchange for current account transaction is allowed up to USD 2,50,000 per year.

However, bank may allow remittances exceeding USD 2,50,000 based on the estimate received from the institution abroad.

79. Private Visits

Mr. Nilesh Shah wanted to travel abroad to meet his sister. Can Mr. Nilesh purchase foreign exchange for such private visit?

Foreign exchange for private visit can be released under liberalized remittance scheme.

80. Business Visits

Liza enterprises had participated in a expo for plastics and related products. In the expo they had many inquires for their products. Therefore the director has to visit abroad for business trip. Is he allowed to purchase foreign exchange for his subsequent business visit?

Foreign exchange may be released for undertaking business travel or attending a conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check up abroad or for accompanying as attendant to a patient going abroad for medical treatment / check up to the limits specified in LRS.

81. Period of surrender of foreign exchange

The director of Liza enterprise purchased USD 20,000/- for travel abroad. He is having USD 3200/- balance which is not spent. What is the time period within which, he has to surrender the balance amount?

In case the foreign exchange purchased for a specific purpose is not utilized for that purpose, it could be utilized for any other eligible purpose for which drawal of foreign exchange is permitted under the relevant Rules / Regulation.

General permission is available to any resident individual to surrender received / realised / unspent / unused foreign exchange to an Authorised Person within a period of 180 days from

the date of receipt / realisation / purchase / acquisition / date of return of the traveler, as the case may be.

The liberalized uniform time limit of 180 days is applicable only to resident individuals and in areas other than export of goods and services.

Exchange so brought back can be utilized by the individual for his/her subsequent visit abroad.

However, a returning traveler is permitted to retain with him, foreign currency travelers cheques and currency notes up to an aggregate amount of USD 2000 and foreign coins without any ceiling beyond 180 days.

Where a person approaches an Authorised Person for surrender of unspent/ unutilized foreign exchange after the prescribed period of 180 days, Authorised Person should not refuse to purchase the foreign exchange merely on the ground that the prescribed period has expired

82. Remittance of salary

A person who is resident but not permanently resident in India and

- a. is a citizen of a foreign state other than Pakistan; or
- b. is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: for the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

83. Remittance facilities for others:

Gift/donation

General permission is available to persons other than individuals to remit towards donations up-to one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for

- a. creation of Chairs in reputed educational institutes,
- b. contribution to funds (not being an investment fund) promoted by educational institutes; and
- c. contribution to a technical institution or body or association in the field of activity of the donor Company.

Any additional remittance in excess of the same shall require prior approval of the RBI . Applications for remittances for purposes other than those specified above may be forwarded to the Chief General Manager, Reserve Bank of India, Central Office, Foreign Exchange Department, Foreign Investments Division (EPD), Central Office Building, Mumbai-400 001, together with

- a. details of their foreign exchange earnings during the last 3 years,
- b. brief background of the company's activities,
- c. purpose of the donation and
- d. likely benefits to the corporate

Commission to agents abroad for sale of residential flats or commercial plots in India

Remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if commission per transaction to agents abroad for sale of residential flats or commercial plots in India exceeds USD 25,000 or five percent of the inward remittance whichever is more.

Remittances towards consultancy services

Remittances by persons other than individuals shall require prior approval of the Reserve Bank of India if remittances exceed USD 10,000,000 per project for any consultancy services in

respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Remittances towards re-imburement of pre-incorporation expenses

Remittances by persons other than individuals shall require prior approval of the RBI for remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Payment of fees in foreign currency - Embassy affiliated educational institutions

Banks may sell foreign exchange towards payment of fees to schools/educational institutions under the administrative control of foreign embassies.

Remittance towards payments of collected subscription to overseas TV media company

Banks may allow cable operators or collection agents in India of overseas TV media companies, to remit subscription collected from subscribers in India/advertisement charges collected from the advertisers who are eligible to advertise on overseas TV channels without any prior permission from the RBI.

Bids in foreign currency for projects to be executed in India

Persons resident in India are permitted to incur liability in foreign exchange and to make or to receive payments in foreign exchange, in respect of global bids where the Central Government has authorised such projects to be executed in India. In such cases, banks may sell foreign exchange to the concerned resident Indian company which has been awarded the contract.

Sale of overseas telephone cards

Banks may allow agents in India of the overseas organisations issuing pre-paid telephone cards to remit the sale proceeds of such cards, net of their commission, to the issuers of the telephone cards.

Liberalization of foreign technical collaboration agreements

Banks may permit drawal of foreign exchange by persons for payment of royalty and lump-sum payment under technical collaboration agreements without the approval of Ministry of Commerce and Industry, Government of India.

Drawal of foreign exchange for remittance for purchase of trademark or franchise in India

Banks may permit drawal of foreign exchange by person for purchase of trademark or franchise in India without approval of the RBI.

84. Payment in Rupees

What is the Limit for buying Foreign exchange in cash?

Banks may accept payment in cash up to Rs. 50,000 (Rupees fifty thousand only) against sale of foreign exchange for travel abroad (for private visit or for any other purpose). Wherever the sale of foreign exchange exceeds the amount equivalent to Rs.50,000/-, the payment must be received only by:

- a. a crossed cheque drawn on the applicant's bank account, or
- b. crossed cheque drawn on the bank account of the firm/ company sponsoring the visit of the applicant, or
- c. Banker's Cheque- /- Pay Order- /- Demand Draft or
- d. Debit / credit / prepaid cards provided
 - i. KYC/AML guidelines are complied with
 - ii. Sale of foreign currency- /- issue of foreign currency TCs is within the limits (credit- /- prepaid cards) prescribed by the bank and
 - iii. The purchaser of foreign currency- /- foreign currency TCs and the credit/debit/prepaid card holder is one and the same person.

Where the rupee equivalent of foreign exchange drawn exceeds Rs 50,000 either for any single drawal or more than one drawal reckoned together for a single journey/visit, it should be paid by cheque or draft.

85. Issue of Guarantee – Import of services

What are the provisions regarding issuance of the bank guarantee for import of services?

Banks are permitted to issue guarantee for amount not exceeding USD 500,000 or its equivalent in favour of a non-resident service provider, on behalf of a resident customer who is a service importer, provided:

- a. The bank is satisfied about the bonafides of the transaction;
- b. The bank ensures submission of documentary evidence for import of services in the normal course; and
- c. The guarantee is to secure a direct contractual liability arising out of a contract between a resident and a non-resident.

In the case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments, approval from the Ministry of Finance, Government of India for issue of guarantee for an amount exceeding USD 100,000 (USD One hundred thousand) or its equivalent would be required.

Schedule I: Transactions which are Prohibited

Schedule II: Transactions which require prior approval of the Central Government

Schedule III: Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

86. E-commerce:

Goods falling in the category of handloom products, books / periodicals, leather footwear, toys and customized fashion garments, having FOB value up to Rs. 25,000/- per consignment

(finalized using e-commerce platform) shall be eligible for benefits under FTP. Such goods can be exported in manual mode through Foreign Post Offices at New Delhi, Mumbai and Chennai.

Regulations shall be allowed manually on pilot basis through Airports at Delhi, Mumbai and Chennai as per appropriate amendments in regulations to be made by Department of Revenue. Department of Revenue shall fast track the implementation of EDI mode at courier terminals. (Foreign Trade Policy para 3.05).

Banks have been allowed to offer the facility of repatriation of export related remittances by entering into standing arrangements with Online Payment Gateway Service Providers (OPGSPs) subject to the following conditions-

- a. Banks offering this facility shall carry out the due diligence of the OPGSP.
- b. This facility shall only be available for export of goods and services of value not exceeding USD 10,000 (US Dollar ten thousand).

Import transactions

- i. The facility shall only be available for import of goods and software (as permitted in the prevalent Foreign Trade Policy) of value not exceeding USD 2,000 (US Dollar Two Thousand) only.
- ii. The balances held in the Import Collection account shall be remitted to the respective overseas exporter's account immediately on receipt of funds from the importer and, in no case, later than two days from the date of credit to the collection account.

Frequently asked Questions along with Answers

1. *Please advice the requirement of documents for opening an account of a proprietary concern by a bank.*

As per the requirement laid down by RBI, the following documents can be submitted at the time of opening a bank account as proprietary concern:

- a. Proof of name, address and activity of the concern, like registration certificate (in the case of a registered concern.),
- b. Certificate/ licence issued by the municipal authorities under Shop and Establishment Act,
- c. Sales and Income Tax Returns,
- d. CST/ VAT certificate, certificate/ registration document issued by sales tax/ service tax/ professional tax authorities,
- e. Licence issued by the registering authority like Certificate of Practice issued by the Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Institute of Company Secretaries of India, Indian Medical Council, Food and Drug Control Authorities, IEC (Importer Exporter Code) issued by DGFT.

Any two of the above documents would suffice. These documents should be in the name of the proprietary concern.

2. *Please advice about interest subvention scheme announced by RBI.*

Interest subvention scheme was introduced to promote India's export. This scheme was originally introduced with an initial subvention of 2% on the interest which was subsequently increased to 3%. The scheme was operative for some time and thereafter, it was discontinued.

Thereafter, the scheme was reintroduced under the new name: Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit

1. This scheme is applicable to eligible exporters.
2. The scheme is effective from April 1, 2015.
3. The scheduled commercial banks will claim reimbursement:

4. From 1st April 2015 to 30th November 2015, banks identified the eligible exporters as per the Government of India scheme and credited their accounts with the eligible amount of interest equalization.
5. From the month of December 2015 onwards, banks reduced the interest rate charged to the eligible exporters as per provided by Government of India.
6. The interest equalization benefit will be available from the date of disbursement up to the date of repayment or up to the date beyond which the outstanding export credit becomes overdue. However, the interest equalization will be available to the eligible exporters only during the period the scheme is in force.
7. The scheme will be available to all exports of MSME and 416 tariff lines as listed in Annexure.
8. Merchant Exporter is not eligible to this scheme.
9. The duration of the scheme would be 5 years with effect from 1st April 2015.

3. Please indicate the duty free allowance for those who go abroad and return with few imported goods.

All passengers of and above 10 years of age and returning after stay abroad of more than three days can bring used personal effects, excluding jewellery and articles (other than firearms, cartridges of fire arms exceeding 50, cigarettes exceeding 100 or cigars exceeding 25 or tobacco exceeding 125 grams, alcoholic liquor or wines in excess of two liters, gold or silver, in any form, other than ornaments) up to a value of Rs.45,000 if these are carried on the person or in the accompanied baggage of the passenger.

4. An exporter has received payment for exports through an international credit card. Please advise whether this payment can be credited to the EEFC account.

The reply is in affirmative. Foreign exchange received through an international credit card for which reimbursement has been made in foreign exchange is regarded as remittance through normal banking channel and the same can be credited to the EEFC account.

5. What are the different types of exporters?

A company who is manufacturing the goods and exporting the same is known as manufacturer exporter. He is having many advantages being manufacturer of the goods.

A company which is buying goods from the manufacturer or procuring the goods from the market is known as merchant exporter. He is a marketer. He is a trader. He deals with many products.

A company which provides services to the overseas parties is known as Service Provider.

6. What documents are required for exports?

- i. Invoice
- ii. Packing List
- iii. Bill Of Lading or Air Way Bill
- iv. Certificate of Origin/ Generalized System of Preferences
- v. Export Value Declaration
- vi. Shipping Bill
- vii. Any other documents.

7. Export Import activities are governed by which laws/regulations?

- i. The Customs Act, 1962.
- ii. The Foreign Trade Policy & Handbook of Procedures.
- iii. The Foreign Trade (Development & Regulation) Act 1992.
- iv. The Foreign Exchange Management Act, 1999.
- v. Reserve Bank of India Guidelines and
- vi. Several other Miscellaneous Acts.

8. Any benefits are available to the exporter of services?

Yes. Service Export from India Scheme (SEIS) is available for the exporter of services. 3% to 5% of net foreign exchange earned from notified services will be considered for SEIS benefit (FTP 2015-2020).

9. Can you list Incoterms 2010?

- i. EXW- Ex Works
- ii. FCA- Free Carrier
- iii. FAS- Free Alongside Ship
- iv. FOB- Free On Board
- v. CFR- Cost and Freight
- vi. CPT- Carriage Paid To
- vii. CIF- Cost, Insurance and Freight
- viii. CIP- Carriage and Insurance Paid to
- ix. DAT- Delivered At Terminal
- x. DAP-Delivered At Place
- xi. DDP- Delivered Duty Paid

10. What are the different methods of payment in International Trade?

- i. Advance Payment
- ii. Documents against Payment
- iii. Documents against Acceptance
- iv. Letter of Credit

11. What are the export incentives?

- i. Duty Drawback (DBK)
- ii. Advance Authorisation (AA)
- iii. Duty Free Import Authorisation (DFIA)

- iv. Merchandise Export from India Scheme (MEIS)
- v. Service Export from India Scheme (SEIS)
- vi. Status Holder Certificate Scheme
- vii. Export Promotion Capital Goods Scheme (EPCG)
- viii. Marketing Development Assistance (MDA)
- ix. Refund of Service Tax
- x. Exemption/Rebate of excise
- xi. Exemption from Octroi.
- xii. Interest Equilisation Scheme.

12. Please inform about the latest Foreign Trade Policy.

Smt. Nirmala Sitharaman – Minister of Commerce and Industry released the New Foreign Trade Policy (2015-20) on 01st April 2015. This policy is for a period of 5 years. There are 9 chapters in the policy covering different topics.

Handbook of Procedures provides the operational detail of the various schemes. All forms, appendices and addresses.

13. What is the negative list of import /export?

All items are allowed for import / Export freely except negative list of import / Export.

This list consist of (a) Prohibited items (b) Restricted items (c) State Trading Enterprises

14. Please provide the details of C.A. certificate required as per New Foreign Trade Policy 2015-2020.

Requirement of CA Certificates as Per New FTP 2015-20

Sr. No.	FTP Scheme	FORM NO.
1	Certificate for offsetting of export proceeds(This certificate is to be submitted in lieu of the bank certificate	Appendix 21

	of exports and realisation)	
2	Register for accounting the consumption and stocks of duty free imported or domestically procured raw materials, components etc allowed under Advance Authorisation / DFIA	Appendix4h
3	Issue of EPCG Authorisation	Appendix -5B
4	Redemption of EPCG Authorization / issuance of post export EPCG duty credit scrip	Appendix- 5C
5	Reimbursement of central sales tax.	Appendix-6H
6	Certification of export performance of units in the pharmaceutical and biotechnology sectors	Appendix-8A
9	Certification of export performance of units in agro chemicals sectors	Appendix -8B
10	Application form for Service Exports from India Scheme(SEIS)	Enclosure to ANF -3 b
11	Grant of Status Certificate	Annexure to anf- 3C
12	E-commerce under Merchandise Exports From India Scheme (MEIS)	Enclosure (a) to anf 3D
13	Advance Authorisation/Advance Authorisation for annual requirement / invalidation letter / Advance Release Order (ARO)	For anf -4A Appendix 5B.
14	Fixation / modification / revision of Standard Input Output Norms (SION)	For anf- 4B sr. No. 10 Production and consumption data
15	Redemption / No bond certificate against Advance Authorisation	In case where cenvat credit facility on inputs have been availed for the exported goods
16	Application for Gem Rep Authorisation	Annexure to anf 4 h
17	Application for issue of Nominated Agency Certificate (NAC) / renewal of Nominated Agency Certificate	Annexure to anf 4I
18	Application form for issuance of EPCG /post export EPCG Authorization	For anf- 5A In Appendix 5B
19	Application form for redemption of EPCG Authorization /issuance of post export EPCG duty credit scrip	For anf- 5B In Appendix 5C And declaration/undertaking To be certified by ca
20	Application for DTA sale / advance DTA sale permission	Certificate as per anf-6C

21	Application for exit from EOU / EHTP / STP / BTP scheme	Declaration as per anf-6D
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Procedure to upload documents by Chartered Accountant / Company Secretary / Cost Accountant

- a. In order to move towards paperless processing of reward schemes, an electronic procedure is being developed to upload digitally signed documents by Chartered Accountant / Company Secretary / Cost Accountant. Such documents like Annexure attached To ANF 3 B, ANF 3C and ANF 3D, which are at present signed by these signatories, can be facilitated by this procedure.
- b. Till such time it is made mandatory to upload these annexure digitally, such annexures attached to ANF 3B, ANF3C, ANF3D would continue to be submitted in physical form to RA.
- c. Exporter shall link digitally uploaded annexure with his online applications after creation of such facility.

15. Explain about e-BRC.

Bank Realization Certificate is an important document for the exporter to claim the export incentive. This document confirms the amount of the foreign exchange realized by the exporter. This BRC was earlier issued physically.

At present, BRC is uploaded by the bank on DGFT website, immediately upon realization of the export proceeds. An exporter can take a printout of e-BRC from the website: www.dgft.gov.in

References

1. Notification No. FEMA 23 /2000-RB dated 3rd May 2000
2. Public Notice No. 76 dated the 27th of November, 2014 of DGFT
3. Regulation 12 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000
4. AP circular no.43 dated 13.09.2013,
5. A.P. (DIR Series) Circular No. 03 dated 22 July 2010.
6. FEMA 10/2000-RB dated May 3, 2000
7. CIRCULAR NO. 47 DATED 17.11.2011
8. Notification No.FEMA14/2000-RB dated 3rd May 2000,
9. Circular No. 95 Dated: 17.01.2014
10. Circular 115 Dated 28.03.2014
11. Notification No. FEMA 9/2000-RB dated May 3, 2000
12. Notification No. FEMA 11/2000-RB dated May 3, 2000)
13. Master Direction No. 16/2015-16 dated 1st January 2016- Export of goods and Services
14. Master Direction No. 17/2015-16 dated 1st January 2016- Import of goods and Services
15. Master Direction No. 8/2015-16 dated 1st January 2016- Other remittances facilities
16. Master Direction No. 7/2015-16 dated 1st January 2016- Liberalization Remittance Scheme
17. Section 14 of The Customs Act, 1962- for valuation
18. CBEC circular no. 5 / 2009 dated: 2.2.2009- for half yearly return to the customs for drawback
19. section 74 of The Customs Act, 1962- for drawback on return of the goods
20. Custom notification 95 / 2007 dated: 13.09.2007 - export valuation rules
21. AP circular 81 dated 30.6.2016. withdrawal of ACU (Euro) facility

- 22. The list of EDI enabled customs ports are available at www.cbec.gov.in
- 23. Notification No. 426 dtd 26.5.2015 (revision of current account regulations considering LRS)
- 24. RBI/FED/2015-16/3 FED Master Direction NO. 7/2015-16

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of particular situation.

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