

# **E-Book**

## **FEMA With Reference to Export and Import**



**The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)

**Southern India Regional Council**

**Chennai**

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## **FEMA With Reference to Export and Import**

This e-book has been authored by

**Mr. Ajit Shah**



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
**Southern India Regional Council**  
**Chennai**

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Email: [sirc@icai.in](mailto:sirc@icai.in)

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Post Box No. 3314, Nungambakkam,  
Chennai - 600034

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)  
**Southern India Regional Council**



**FOREWORD**

The Central Government of India formulated an Act to encourage external payments and across the border trades in India known as the Foreign Exchange Management Act (FEMA). FEMA was introduced in the year 1999 to replace an earlier Act FERA (Foreign Exchange Regulation Act).

FEMA is an Act that provides guidelines for the free flow of foreign exchange in India.

SIRC is pleased to present an e-book on FEMA to provide in-depth knowledge on the topic of FEMA with reference to Export and Import of goods and services. It helps the reader not only to understand the basics of what is export, how to start the same and the registration requirements for an export order but also to complicated issues like foreign currency account, Export Declaration Form approvals, Export claims, write off of unrealized export bills, etc.

This e-book also contains insights on Softtex forms, consignment exports, import licenses, Approval from Reserve Bank of India, Foreign Inward Remittance Certificate and much more related to the subject matter. The author has provided detailed compilation of all the relevant aspects which are required by professionals to understand the topic and execute the same in an efficient manner.

This e-book also contains relevant list of circulars which are applicable for both Exports and Imports along with Frequently Asked Questions of most important questions which companies might have for execution of the subject.

On behalf of SIRC and on my own behalf, I place on record our sincere thanks and appreciation to CA. Ajit Shah for sparing his precious time to share his insights and invaluable experience on the FEMA with reference to Export and Import amongst our members. I also take the privilege of expressing our grateful thanks to CA. Suresh Kumar for reviewing the basic draft of this e-book and for adding immense value to the substance of the e-book.

In a publication meant for professional accountants like this there is always a scope for improvement of contents, presentation and coverage. Accordingly comments and suggestions on the e-book are welcome at [sirc@icai.in](mailto:sirc@icai.in)

**CA.China Masthan Talakayala**  
Chairman, SIRC of ICAI

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## **1. WHAT IS EXPORT?**

The word “export” is very famous in business world and even among the youngsters as a carrier option. Export provides good amount of opportunities.

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 2 criteria’s must be fulfilled.

- A. Goods must go out of India.
- B. Foreign exchange must come into India.

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

You must find out what differences are there in domestic trade & international trade.

## **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.

1. Proprietorship	6. Registered society
2. Partnership firm	7. HUF
3. Government undertaking	8. LLP
4. Public limited company	9. Private Limited Company
5. Section 25 Company	10. Trust



Obtain the pan card and have a current account with the bank. You will require to obtain Importer Exporter Code No. from the DGFT. At present, your Pan Card No. will be your Importer Exporter Code Number (IEC). The procedure to obtain IEC is online and very simple.

An IEC holder has to ensure that details in its IEC are updated electronically every year, during April - June period. In cases where there are no changes in IEC details same also needs to be confirmed online.

An IEC shall be de-activated, if it is not updated within the prescribed time. An IEC so de-activated may be activated on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the FTP.

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

### **3. REGISTRATION**

To avail export incentives and also for general guidance, a registration with EPC/FIEO will be necessary. The registration with EPC/FIEO is for a period of 5 years. The payment of fees is annual. There are several benefits to be a member of this organization.

The Exporter/Importer is also required to register with GST authority. You have to follow the procedures prescribed under GST laws for all the commercial transactions.

### **4. 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.

### **5. CURRENCY OF EXPORTS**

One of the overseas buyer from Australia enquired with an Indian exporter, whether he can raise export 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.

#### **List of Freely Convertible Currency:-**

Australian - Dollar	Bahrain - Dinar	Canadian - Dollar	Danish Kroner - Euro
Hong-Kong - Dollar	Kenya - Shilling	Kuwait - Dinar	Newzeland - Dollar
Norwegian - Dollar	Pound - Sterling	Singapore - Dollar	South African - Rand

Saudi Arabian – Rial	Swedish – Kroner	UAE - Dirham	Swiss - France
U.S. - Dollar.			

**List of member of the Asian Clearing Union (ACU)**

Bangladesh	Pakistan	Sri Lanka
Myanmar	Republic of Maldives	India

**6. GENERAL FEMA PROVISIONS FOR EXPORTS**

A. Particulars of FEMA provisions for exports are covered under RBI/FED/2015- 16/11 - **FED Master Direction No. 16/2015-16** dated 1 January, 2016.

B. It is well known fact that law should be stable. However, it is important that law should not be stagnant. These Regulations are amended from time to time to incorporate the changes in the regulatory framework and published through amendment notifications on following dates:

12 <sup>th</sup> May ,2016	26 <sup>th</sup> May, 2016	15 <sup>th</sup> September, 2017
16 <sup>th</sup> November, 2017	12 <sup>th</sup> January, 2018	19 October,2020
8 <sup>th</sup> January, 2021		

C. Master Direction – Export of Goods and Services contains the provisions related to export of goods and services from India.

D. Read clause (a) of sub-section (1) and sub-section (3) of Section 7 of the Foreign Exchange Management Act 1999, read with Notification No. G.S.R. 381(E) dated May 3, 2000 viz. Foreign Exchange Management (Current Account Transactions) Rules, 2000, further read with FEMA Notification No. 23(R)/ 2015-RB dated January 12,2016.

E. Reserve Bank of India also issues directions to Authorized Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorized Persons with their customers/ constituents with a view to implementing the regulations framed.

F. Reporting instructions can be found in Master Direction No. 18 dated January 01, 2016.

G. Export trade is regulated by the Directorate General of Foreign Trade.

H. Any reference to the Reserve Bank should first be made to the Regional Office of the Foreign Exchange Department situated in the jurisdiction where the applicant person resides, or the firm / company functions, unless otherwise indicated.

I. April to March will be considered as “Financial Year” for all transactions pertaining to

trade related issues.

## **7. REALIZATION AND REPATRIATION OF PROCEEDS OF EXPORT OF GOODS / SOFTWARE / SERVICES**

1. It is obligatory on the part of the exporter to realize and repatriate the full value of goods / software / services to India within a stipulated period from the date of export.
2. The period of realization and repatriation of export proceeds shall be :

Units in Special Economic Zones (SEZs)	9 Months form the date of export
Status Holder Exporters	9 Months form the date of export
Export Oriented Units (EOUs)	9 Months form the date of export
Units in Electronic Hardware Technology Parks (EHTPs)	9 Months form the date of export
Software Technology Parks (STPs)	9 Months form the date of export
Bio-Technology Parks (BTPs)	9 Months form the date of export
All other Exporters	9 Months form the date of export

3. In view of the outbreak of pandemic COVID-19, it has been decided increase the period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported, from 9 months to 15 months from the date of export, for the exports made up to or on July 31, 2020.
4. For goods exported to a warehouse established outside India, the proceeds shall be realized within 15 months from the date of shipment of goods.

### **Extension of time**

- (i) The RBI has permitted the Banks to extend the period of realization of export proceeds beyond stipulated period (9 months) of realization 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 / CBI or other investigating agencies,
  - b) The 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 1 year from the date of export, the total outstanding of the exporter does not exceed USD 1 million or 10% of the average export realizations during the preceding 3 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.
- (ii) Cases which are not covered by the above instructions would require prior approval from the concerned Regional Office of the RBI.
- (iii) Reporting should be done in EDPMS.

## **8. MANNER OF RECEIPT AND PAYMENT**

1. The amount representing the full export value of the goods exported shall be received through Bank in the manner specified in the Foreign Exchange Management (Manner of Receipt & Payment) Regulations, 2016 notified vide Notification No. FEMA. 14(R) /2016-RB dated May 02, 2016.
2. There are 2 amendments dated 13/11/2019 and 4/3/2020.
3. This regulation is operative in exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999.
4. This regulation is dealing with Receipt from and Payment to a person Resident outside India.
5. This regulation is dealing with Transactions in Indian Rupees with Residents of Nepal and Bhutan.
6. **Definitions:**

i.	'Act'	The Foreign Exchange Management Act, 1999.
ii.	'Authorised Dealer'	A person authorized as an authorized dealer under subsection (1) of Section 10 of the Act.
iii.	'Authorised Bank'	A bank, other than an authorized dealer, authorized by the Reserve Bank to accept deposits from person's resident outside India
iv.	'FCNR / NRE account'	An FCNR or NRE account opened and maintained in accordance with the Foreign Exchange Management (Deposits) Regulations, 2016.
v.	'SNRR account'	A Special Non- Resident Rupee account referred to in sub. Regulation (4) of regulation 5 of Foreign Exchange Management (Deposit) Regulations, 2016.

The words and expressions used but not defined in these Regulations shall have the same meaning respectively assigned to them in the Act.

7. **Manner of Receipt in Foreign Exchange**

Every receipt in foreign exchange by an authorized dealer, whether by way of remittance from a foreign country or by way of reimbursement from his branch or correspondent outside India against payment for export from India, or against any other payment, shall be as mentioned below:

(A) 2Members of the Asian Clearing Union (ACU)

(i) Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives –

Receipt for export of eligible goods and services by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar account and / or ACU Euro Account and / or ACU Japanese Yen account of the authorized dealer maintained with the

correspondent bank in that member country;

a) Receipt may also be made in any freely convertible currency in all other cases.

b) In respect of exports from India to Myanmar, payment may be received in any freely convertible currency or through ACU mechanism from Myanmar.

i. Nepal and Bhutan –

a) Receipt may be in Rupees

b) Receipts for export of goods to Nepal may be made in free foreign exchange, provided the importer resident in Nepal has been permitted by the Nepal Rashtra Bank to make payment in free foreign exchange. However such receipts shall not be routed through the ACU mechanism

ii. Islamic Republic of Iran

a) Receipt for export of eligible goods and services, in any freely convertible currency and / or in accordance with the directions issued by the RBI to the authorized dealers from time to time.

b) Receipt in any freely convertible currency and / or in accordance with the directions issued by the RBI to the authorized dealers from time to time in all other cases.

In view of the difficulties being experienced by importers/exporters in payments to / receipts from Iran, it has been decided that with effect from 27/12/2010, all eligible current account transactions including trade transactions with Iran should be settled in any permitted currency outside the ACU mechanism, until further notice.

(A) All countries other than those mentioned in A above

(i) Receipt in rupees from the account of a bank situated in any country other than a member country of the Asian Clearing Union.

(ii) Receipt in any freely convertible currency.

1) (a) In respect of an export from India, receipt shall be made in a currency appropriate to the place of final destination as mentioned in the declaration form irrespective of the country of residence of the buyer.

(b) Any other mode of receipt of export proceeds for an export from India in accordance with the directions issued by the RBI to authorized dealers from time to time.

2) Authorised Dealers have been permitted to allow receipts for export of goods/ software to be received from a Third party (a party other than the buyer) as per the guidelines issued by the RBI.

## **8. Manner of Receipts in certain cases: -**

- (i) Receipt for export may also be made by the exporter as under, namely :
- i. in the form of a bank draft, cheque, pay order, foreign currency notes/ travelers cheque from a buyer during his visit to India, provided the foreign currency so received is surrendered within the specified period to the authorized dealer of which the exporter is a customer ;
  - ii. By debit to FCNR/ NRE/ SNRR account maintained by a person resident outside India (overseas buyer) with an Authorised Dealer or an Authorised Bank in India,
  - iii. In rupees from the credit card servicing bank in India against the charge slip signed by the buyer where such payment is made by the buyer through a credit card;
  - iv. from a rupee account held in the name of an Exchange House with an authorized dealer if the amount does not exceed fifteen lakh rupees per export transaction or an amount prescribed by RBI,
  - v. In accordance with the directions issued by the Reserve Bank to Authorised Dealers, where the export is covered by the arrangement between the Central Government and the Government of a foreign country or by the credit arrangement entered into by the Exim Bank with a financial institution in a foreign state.
  - vi. in the form of precious metals i.e. gold/ silver/ platinum equivalent to value of jewellery exported by Gem & Jewellery units in Special Economic Zones and Export Oriented Units on the condition that the sale contract provides for the same and the value is declared in the relevant EDF.
- (ii) Any person resident in India may also receive any payment for other than exports by means of postal order issued by a post office outside India or by a postal money order issued by such post office.
- (iii) Payment may also be received in rupees by a person resident in India from SNRR Account of person resident outside India.

## **9. PROCESSING OF EXPORT RELATED RECEIPTS THROUGH ONLINE PAYMENT GATEWAY SERVICE PROVIDERS (OPGSPS)**

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.
- c) Banks providing such facilities shall open a NOSTRO collection account for receipt of the export related payments facilitated through such arrangements. Where the exporters availing of this facility are required to open notional accounts with the OPGSP, it shall be ensured that no funds are allowed to be retained in such accounts and all receipts should be automatically swept and pooled into the NOSTRO

collection account opened by the bank.

- d) A separate NOSTRO collection account may be maintained for each OPGSP or the bank should be able to delineate the transactions in the NOSTRO account of each OPGSP.
- e) Under this arrangement, the permissible debits to the NOSTRO collection account are for repatriation of funds representing export proceeds to India for credit to the exporters' account, payment of fee/commission to the OPGSP as per the predetermined rates / frequency/ arrangement; and charge back to the importer where the exporter has failed in discharging his obligations under the sale contract.
- f) The balances held in the NOSTRO collection account shall be repatriated and credited to the respective exporter's account with a bank in India immediately on receipt of the confirmation from the importer and, in no case, later than seven days from the date of credit to the NOSTRO collection account.
- g) Banks shall satisfy themselves as to the bona-fides of the transactions and ensure that the purpose codes reported to the RBI in the online payment gateways are appropriate.
- h) Banks shall submit all the relevant information relating to any transaction under this arrangement to the RBI.
- i) Each NOSTRO collection account should be subject to reconciliation and audit on a quarterly basis.
- j) Resolution of all payment related complaints of exporters in India shall remain the responsibility of the OPGSP concerned.
- k) Banks desirous of entering into such an arrangement/s should report the details of each such arrangement to RBI, Mumbai.
- l) A start-up can realise the receivables of its overseas subsidiary and repatriate them through OPGSPs.

## **10. THIRD PARTY PAYMENTS FOR EXPORT / IMPORT TRANSACTIONS**

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:

- a) 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:
  - (i) Bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice / FIRC.
  - (ii) Bank should consider the FATF statements while handling such transaction.
- b) Third party payment should be routed through the banking channel only;
- c) The exporter should declare the third party remittance in the Export Declaration Form and it would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;

- d) It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;
- e) In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country.
- f) Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.
- g) The **Financial Action Task Force (FATF)** is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. The FATF also works to stop funding for weapons of mass destruction.

## **11. SETTLEMENT OF EXPORT TRANSACTIONS IN CURRENCIES NOT HAVING A DIRECT EXCHANGE RATE**

To further liberalize the procedure and facilitate settlement of export transactions where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, it has been decided that banks may permit settlement of such export transactions (excluding those put through the ACU mechanism), subject to conditions as under:

- A. Exporter shall be a customer of the Bank,
- B. Signed contract / invoice is in a freely convertible currency,
- C. The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/ contract, Letter of Credit as full and final settlement,
- D. Bank is satisfied with the bonafides of the transactions, and
- E. The counterparty to the exporter/ importer of the bank is not from a country or jurisdiction in the updated FATF.

## **12. FOREIGN CURRENCY ACCOUNT**

- 1) 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 banks concerned.
- 2) RBI may consider applications in Form EFC from exporters having good track record for opening a foreign currency account with banks in India and outside India subject to certain terms and conditions.



- 3) An Indian entity can also open, hold and maintain a foreign currency account with a bank outside India, in the name of its overseas office/branch, by making remittance for the purpose of normal business operations of the said office/branch or representative.
- 4) A unit located in a Special Economic Zone may open, hold and maintain a Foreign Currency Account with a bank in India.
- 5) A person resident in India being a project / service exporter may open, hold and maintain foreign currency account with a bank outside or in India, subject to the standard terms and conditions in the Memorandum PEM.
- 6) Under the scheme of Government of India, firms and companies dealing in purchase / sale of rough or cut and polished diamonds / precious metal jewellery plain, mina Kari and / or studded with / without diamond and / or other stones, with a track record of at least 2 years in import / export of diamonds / colored gemstones / diamond and colored gemstones studded jewellery / plain gold jewellery and having an average annual turnover of Rs. 3 crores or above during the preceding three licensing years are permitted to transact their business through Diamond Dollar Accounts.

### **13. EXCHANGE EARNERS' FOREIGN CURRENCY ACCOUNT (EEFC ACCOUNT)**

- 1) A person resident in India may open with, a bank in India, an account in foreign currency called the Exchange Earners' Foreign Currency (EEFC) Account.
- 2) This account shall be maintained only in the form of non-interest bearing current account.
- 3) No credit facilities, either fund-based or non-fund based, shall be permitted against the security of balances held in EEFC accounts by the banks.
- 4) All categories of foreign exchange earners are allowed to credit 100% of their foreign exchange earnings to their EEFC Accounts subject to the condition that-
  - a) 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.
  - b) 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.
- 5) The eligible credits represent –
  - a) Inward remittance received through normal banking channel, other than the remittance received pursuant to any undertaking given to the RBI or which represents foreign currency loan raised or investment received from outside India or those received for meeting specific obligations by the account holder.

- b) payments received in foreign exchange by a 100% Export Oriented Unit or a unit in Export Processing Zone, Software Technology Park or Electronic Hardware Technology Park for supply of goods to similar such unit or to a unit in Domestic Tariff Area and also payments received in foreign exchange by a unit in Domestic Tariff Area for supply of goods to a unit in Special Economic Zone.
- 6) Banks may permit their exporter trade related loans/ advances to overseas importers out of their EEFC balances without any ceiling.
  - 7) Banks may permit exporters to repay packing credit advance 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.
  - 8) Where a part of the export proceeds are credited to an EEFC account, the Export declaration (duplicate) from may be certified accordingly.

#### **14. EXPORT ON ELONGATED CREDIT TERMS**

Exporters intending to export goods on elongated credit terms may submit their proposals giving full particulars through their banks for consideration to the Regional Office concerned of the RBI.

#### **15. EXPORT OF GOODS THROUGH CUSTOMS PORTS**

- 1) Customs shall certify the value declared and give running serial number on the two copies of Export Declaration Form (EDF), submitted by exporter at Non- EDI port.
- 2) Customs shall retain the original EDF for transmission to the RBI and return the duplicate copy to the exporter.
- 3) At the time of shipment of goods, exporters shall submit the duplicate copy of the EDF to Customs.
- 4) After examining the goods, Customs shall certify the quantity in the form and return it to the exporter for submission to bank for negotiation or collection of export bills.
- 5) Within 21 days from the date of export, exporter shall lodge the duplicate copy together with relative shipping documents and an extra copy of the invoice to the bank named in the EDF.
- 6) After the documents have been negotiated / sent for collection, the bank shall report the transaction through Export Data Processing and Monitoring System (EDPMS) to the RBI and retain the documents at their end.
- 7) Where duplicate copy of EDF is misplaced or lost, bank may accept copy of duplicate EDF duly certified by Customs.

#### **16. EXPORT OF GOODS/ SOFTWARE DONE THROUGH EDI**

## **PORTS**

- 1) The shipping bill shall be submitted online to the authority concerned (e-Sancit/ ICEGATE portal).
- 2) The authority concerned will verify and authenticate the details of shipping bill. EC copy of shipping bill is now not printed in terms of CBEC's Circular No. 55/2016-Customs dated 23/11/2016.
- 3) Data of shipping bill is integrated with EDPMS.

## **17. SOFTEX FORMS**

- 1) All software exporters can now file single as well as bulk SOFTEX form in the form of a statement in excel format to the competent authority for certification.
- 2) Since the SOFTEX data from STPI/SEZ are being transmitted in electronic format to RBI, the exporters now have to submit the SOFTEX form in duplicate as per the revised procedure.
- 3) STPI/SEZ will retain one copy and handover duplicate copy to exporters after due certification.
- 4) As hitherto, the exporters have to provide information about all the invoices including the ones lesser than US\$25000, in the bulk statement in excel format.
- 5) A common "SOFTEX Form" has been devised to declare single as well as bulk software exports.
- 6) RBI has extended the facility for online generation of the EDF Form Number and the SOFTEX Form Number (Single as well as Bulk for use in off-site software exports).

## **18. INVOICING OF SOFTWARE EXPORTS**

- 1) 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.
- 2) The last invoice / bill should be raised not later than 15 days from the date of completion of the contract.
- 3) 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.
- 4) Contracts involving only 'one-shot operation', the invoice/bill should be raised within 15 days from the date of transmission.
- 5) 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.

- 6) The designated officials may also certify the SOFTEX Forms of EOUs, which are registered with them.
- 7) The invoices raised on overseas clients as above will be subject to valuation of export declared on SOFTEX form by the designated official concerned of the Government of India.
- 8) Citing of specific identification numbers: In all applications / correspondence with the RBI. The specific identification number as available on the EDF and SOFTEX forms should invariably be cited.

## **19. EXPORT OF SERVICES**

It is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

FEMA provisions are broadly covering:

- Goods or Merchandises
- Software Services
- Other Services

This Para, deals with transactions which are falling under “Other Services”. Management Services, Legal Services, Accounting Services etc. are some of the examples.

## **20. EXEMPTION FROM DECLARATION**

The requirement of declaration of export of goods and software in the prescribed form will not apply to the cases indicated in Regulation 4 of Foreign Exchange Management (Export of Goods and Services) Regulations dated 12/1/2016. The exporters shall, however, be liable to realize and repatriate export proceeds as per FEMA Regulations.

### **Exemptions:-**

a)	Trade samples of goods and publicity material supplied free of payment.
b)	Personal effects of travellers, whether accompanied or unaccompanied.
c)	Ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government, of the military, naval or air force authorities in India for military, naval or air force requirements.

d)	By way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value.
e)	Aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;
f)	Goods imported free of cost on re-export basis.
g)	The following goods which are permitted by the Development Commissioner of the Special Economic Zones, Electronic Hardware Technology Parks, Software Technology Parks or Free Trade Zones to be re-exported, namely: <ol style="list-style-type: none"> <li>1) imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators;</li> <li>2) goods imported from foreign suppliers/collaborators on loan basis;</li> <li>3) Goods imported from foreign suppliers/collaborators free of cost, found surplus after production operations.</li> </ol>
h)	Replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy.
i)	Goods sent outside India for testing subject to re-import into India.
j)	Defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from a bank in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.
k)	Exports permitted by the RBI, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.

## **21. GRANT OF EDF WAIVER**

Banks may consider requests for grant of EDF waiver from exporters as under:

Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

- a) Annual limit of 2% of average annual export realization during preceding 3 licensing years for all exporters (excluding the exporters of following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).
- b) Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower. (for exporters of the following sectors-
  - (i) Gems and Jewellery Sector,
  - (ii) Articles of Gold and precious metals sector).
- c) In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding 3 licensing years.

Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

Exports of goods not involving any foreign exchange transaction directly or indirectly

requires the waiver of EDF procedure from the RBI.

## **22. RECEIPT OF ADVANCE AGAINST EXPORTS**

- 1) 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.
- 2) 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.

The exporter's inability to make the shipment, partly or fully, within 1 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 one year, without the prior approval of the RBI.

EDPMS will capture the details of advance remittances received for exports in EDPMS. Henceforth, banks will have to report all the inward remittances including advance as well as old outstanding inward remittances received for export of goods/ software to EDPMS.

Banks need to report the electronic FIRC to EDPMS wherever such FIRCs are issued against inward remittances.

- 3) Banks can also allow exporters having a minimum of 3 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:

Firm irrevocable supply orders and contracts should be in place. The contract with the overseas party/ buyer should be vetted and the same shall clearly specify the nature, amount and delivery timelines of the products over the years and penalty in case of non-performance or contract cancellation. Product pricing should be in consonance with prevailing international prices.

- a) 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.
- b) 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.
- c) Such advances should be adjusted through future exports.
- d) The rate of interest payable, if any, should not exceed LIBOR plus 200 basis points.
- e) The documents should be routed through one bank only.
- f) Bank should ensure compliance with AML / KYC guidelines
- g) Such export advances shall not be permitted to be used to liquidate Rupee loans classified as NPA.
- h) Double financing for working capital for execution of export orders should be

avoided.

- i) Receipt of such advance of USD 100 million or more should be immediately reported to the Trade Division, Foreign Exchange Department, RBI, Central Office, Mumbai.
  - j) In case, Banks are required to issue bank guarantee/ Stand by Letter of Credit for export performance, then the issuance should be rigorously evaluated.
  - k) 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.
- 4) Banks may allow exporters to receive advance payment for export of goods which would take more than 1 year to manufacture and ship and where the 'export agreement' provides for shipment of goods extending beyond the period of 1 year from the date of receipt of advance payment subject to the following conditions:-

(i)	The KYC and due diligence has been done by the bank for the overseas buyer.
(ii)	Compliance with the Anti-Money Laundering standards has been ensured.
(iii)	The bank should ensure that export advance received by the exporter should be utilized to execute export order and not for any other purpose i.e., the transaction is a bonafide 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 LIBOR + 100 basis points.
(vi)	There should be no instance of refund exceeding 10% of the advance payment received in the last 3 years.
(vii)	The documents covering the shipment should be routed through the same bank.
(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 RBI.

### **23. EDF APPROVAL FOR TRADE FAIR/EXHIBITIONS ABROAD**

1. Firms / Companies and other organizations participating in Trade Fair/Exhibition abroad can take/export goods for exhibition and sale outside India without the prior approval of the RBI.
2. Unsold exhibit items may be sold outside the exhibition/trade fair in the same country or in a third country.
3. Such sales at discounted value are also permissible.

4. It would also be permissible to 'gift' unsold goods up to the value of USD 5000 per exporter, per exhibition/trade fair.
5. Banks may approve EDF of export items for display or display-cum-sale in trade fairs/exhibitions outside India subject to the following:
  - (i) The exporter shall produce relative Bill of Entry within 1 month of re-import into India of the unsold items.
  - (ii) The exporter shall report to the banks the method of disposal of all items exported, as well as the repatriation of proceeds to India.

## **24. EDF APPROVAL FOR EXPORT OF GOODS FOR RE-IMPORTS**

1. 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., subject to the condition that the exporter shall produce relative Bill of Entry within 1 month of re-import of the exported item from India.
2. 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. SETTING UP OF OFFICES ABROAD AND ACQUISITION OF IMMOVABLE PROPERTY FOR OVERSEAS OFFICES**

1. 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.
2. 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 subject to the following terms and conditions:
  - a) The overseas branch/office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;
  - b) The overseas branch/office/representative shall **not** enter into any contract or agreement in contravention of the Act, Rules or Regulations made there under;
  - c) The overseas office (trading / non-trading) / branch / representative should not create any financial liabilities, contingent or otherwise, for the head office in India.
  - d) The overseas office should not invest surplus funds abroad without prior approval of the RBI.
  - e) Any funds rendered surplus should be repatriated to India.
  - f) The details of bank accounts opened in the overseas country should be promptly reported to the Bank.



- g) Banks may also allow remittances by a company incorporated in India having overseas offices, within the above limits for initial and recurring expenses, to acquire immovable property outside India for its business and for residential purpose of its staff.
- h) The overseas office / branch of software exporter company/firm may repatriate to India 100 % of the contract value of each 'off-site' contract.
- i) In case of companies taking up 'on site' contracts, they should repatriate the profits of such 'on site' contracts after the completion of the said contracts.

## **26. DELAY IN SUBMISSION OF SHIPPING DOCUMENTS** **BY EXPORTERS**

1. An exporter is required to submit shipping documents to his bank within 21 days from the date of export. This is referred as Registration of Documents (ROD)
2. Submission of shipping documents to the bank after 21 days, is regarded as "stale" documents.
3. 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 RBI, provided they are satisfied with the reasons for the delay.
4. Bank will not entertain the exporter who has sent documents directly. Except, receipt of full payment in advance. Exporter is recognized status holder.

## **27. DIRECT DISPATCH OF DOCUMENTS BY THE** **EXPORTER**

1. Banks should normally dispatch shipping documents to their overseas branches/correspondents expeditiously.
2. 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:
  - a) 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.
  - b) The banks may considered 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 realization of export proceeds.
3. Banks may also permit 'Status Holder Exporters' and units in SEZ to dispatch the export documents to the consignees outside India subject to the terms and conditions that:
  - a) The export proceeds are repatriated through the banks named in the EDF.
  - b) The duplicate copy of the EDF 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, irrespective of the value of export shipment, subject to the following conditions:
  - a) The export proceeds have been realized in full except for the amount written off.
  - b) The exporter is a regular customer of bank for a period of at least 6 months.
  - c) The exporter's account with the bank is fully compliant with KYC / AML.
  - d) The bank is satisfied about the bonafides of the transaction

## **28. CONSIGNMENT EXPORTS**

1. 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.
2. 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.
3. 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.
4. In case the goods are exported on consignment basis, freight and marine insurance must be arranged in India.

## **29. OPENING / HIRING OF WAREHOUSES ABROAD**

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

- ❖ Applicant's export outstanding does not exceed 5% of exports made during the previous financial year.
- ❖ Applicant has a minimum export turnover of USD 1,00,000/- during the last financial year.
- ❖ Period of realization should be as applicable.
- ❖ All transactions should be routed through the designated branch of the banks.
- ❖ The above permission may be granted to the exporters initially for a period of 1 year.
- ❖ Renewal may be considered on merit.

## **30. REDUCTION IN INVOICE VALUE ON ACCOUNT OF PREPAYMENT OF USANCE BILLS**

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.

### **31. REDUCTION IN INVOICE VALUE IN OTHER CASES**

1. 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
  - c) The exporter is not on the caution list.
  - d) The exporter has to surrender proportionate export incentives.
2. Exporters who have been in the export business for more than 3 years, reduction in invoice value may be allowed, **without** any percentage ceiling, subject to the above conditions.
3. Their track record should be satisfactory.

### **32. CHANGE OF BUYER / CONSIGNEE**

Prior approval of the RBI 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% of the invoice value and the realization of export proceeds is not delayed beyond the period of 9 months from the date of export.

Where the reduction in value exceeds 25%, RBI approval is required.

### **33. EXPORT OF GOODS BY SEZ**

1. Units in SEZs are permitted to get job work done 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 realization of full export proceeds subject to the usual EDF procedure
2. Banks may permit units in DTAs to purchase foreign exchange for making payment for goods supplied to them by units in SEZs. Banks are permitted to sell foreign exchange to a unit in the DTA for making payment in foreign exchange to a unit in the SEZ for the services rendered by a unit in SEZ to a DTA unit.
3. It must be ensured that in the Letter of Approval (LoA) issued to the SEZ unit by the Development Commissioner(DC) of the SEZ, the provisions pertaining to the goods / services supplied by the SEZ unit to the DTA unit and for payment in foreign exchange. for the same should be mentioned

### **34. EXPORT CLAIMS**

1. Banks may remit export claims on application, provided the relative export proceeds have already been realized and repatriated to India and the exporter is not on the caution list.
2. In all such cases of remittances, the exporter should be advised to surrender proportionate export incentives.

### **35. “WRITE-OFF” OF UNREALIZED EXPORT BILLS**

An exporter who has not been able to realize the outstanding export dues despite best efforts, may either self-write off or approach the banks, who had handled the relevant shipping documents, with appropriate supporting documentary evidence. The limits prescribed for write-offs of unrealized export bills are as under:

<b>Particulars</b>	<b>Limit</b>	<b>Limit (%) in relation to</b>
Self-write-by an exporter off (other than the Status Holder than Exporter)	5%	Total export proceeds realized during the calendar year preceding the year in which the write-off is being done
Self-write-off by Status Holder Exporter	10%	
Write-off by bank	10%	

The above limits of self-write-off and write-off by the bank shall be reckoned cumulatively and shall be available subject to the following conditions:-

1. The relevant amount has remained outstanding for more than 1 year;
2. Satisfactory documentary evidence is furnished indicating that the exporter had made all efforts to realise the export proceeds correspondence (Emails) with the buyer, evidence of personal visit (Passport copy) etc. may be submitted.
3. The exporter is a regular customer of the bank for a period of at least 6 months.
4. He is fully compliant with KYC/AML.
5. Bank is satisfied about bonafides of the transaction.
6. The case falls under any of the undernoted categories:
  - i. 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. No limit of amount.

Banks may permit write-off of outstanding amount of export bills up to the specified ceilings indicated, where the documents have been directly dispatched by the exporter to the consignee or his agent resident in the country of final destination of goods.

- ii. 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. No limit of amount. Banks may permit write-off of outstanding amount of export bills up to the specified ceilings indicated, where the documents have been directly dispatched by the exporter to the consignee or his agent resident in the country of final destination of goods.

- iii. The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country. No limit of amount. Banks may permit write-off of outstanding amount of export bills up to the specified ceilings indicated, where the documents have been directly dispatched by the exporter to the consignee or his agent resident in the country of final destination of goods.
  - iv. The overseas buyer is not traceable over a reasonably long period.
  - v. 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;
  - vi. 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;
  - vii. 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.
7. The banks shall ensure that the exporter seeking write-off has submitted documentary evidence towards surrendering of proportionate export incentives.
  8. In case of self-write-off, the bank shall obtain from the exporter, a certificate from Chartered Accountant indicating the export realization in the preceding calendar year and details of the amount of write-off, if any, already availed of during the current calendar year along with the requisite details of the EDF/Export Bill under the write-off request. This certificate shall also indicate that the export benefits, if any, availed by the exporter have been surrendered.
  9. There is no fixed format of this certificate. CA can issue this certificate in free format covering all particulars. In case the bank is instating on specific format of CA certificate, then the draft format of the certificate may be obtained from the bank.
  10. The following cases, however, would not qualify for the “write-off” facility:
    - i. 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 Bank/ authorities of the country concerned.
    - ii. EDF/SOFTEX which are under investigation by agencies like, ED, DRI, CBI, etc. as also the outstanding bills which are subject matter of civil / criminal suit.
  11. Banks shall report write-off of export bills in EDPMS.
  12. Requests of write-off not covered under the above may be referred to the Regional Office

concerned of the RBI.

### **36. WRITE OFF IN CASES OF PAYMENT OF CLAIMS BY ECGC AND PRIVATE INSURANCE COMPANIES REGULATED BY IRDA**

1. Banks shall, on an application received from the exporter supported by documentary evidence from the ECGC and 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 in EDPMS.
2. Such write-off will not be restricted to the limit of 10% indicated above.
3. Surrender of incentives, if any, in such cases will be as provided in the Foreign Trade Policy:

As per the Foreign Trade Policy, 2015-20, realization 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 RBI or by bank on behalf of the RBI.
  - 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.
4. The claims settled in rupees by ECGC and private insurance companies regulated by IRDA should not be construed as export realization in foreign exchange.

### **37. SET-OFF OF EXPORT RECEIVABLES AGAINST IMPORT PAYABLES**

Banks may deal with the following requests received from their Exporter/Importer constituents for allowing set-off of outstanding export receivables against outstanding import payables:

- a) Set-off of outstanding export receivables against outstanding import payables from/to the **same** overseas buyer/supplier.
- b) Set-off of outstanding export receivables against outstanding import payables with their overseas group/associate companies either on net basis or gross basis, through an in- house or outsourced centralized settlement arrangement.

The set-off shall be subject to the following conditions:

1	The arrangement shall be operationalized/supervised through/by 1 bank only
2	Bank is satisfied with the bonafides of the transactions.
3	KYC/AML/CFT is complied with.
4	The invoices under the transaction are not under investigation by ED/CBI or any other investigative agency;
5	Import/export of goods/services has been undertaken as per the extant Foreign

	Trade policy
6	The export / import transactions with ACU countries are kept <b>outside</b> the arrangement;
7	Set-off of export receivables against goods shall not be allowed against import payables for services and vice versa.
8	Bank shall ensure that import payables/export receivables are outstanding at the time of allowing set-off. Further, set-off shall be allowed between the export and import legs taking place during the same calendar year.
9	In case of bilateral settlement, the set-off shall be in respect of same overseas buyer/supplier subject to it being supported by verifiable agreement/mutual consent.
10	In case of settlement within the group/associates companies, the arrangement shall be backed by a written, legally enforceable agreement/contract. bank shall ensure that the terms of agreement are strictly adhered to;
11	Set-off shall not result in tax evasion/avoidance by any of the entities involved in such arrangement.
12	Third party guidelines shall be adhered to by the concerned entities, wherever applicable;
13	Bank shall ensure compliance with all the regulatory requirement relating to the transactions;
14	Bank may seek Auditors/CA certificate wherever felt necessary.
15	Each of the export and import transaction shall be reported separately (gross basis) in FETERS/EDPMS/IDPMS, as applicable.
16	Bank to settle the transaction in EDPMS/IDPMS by utilizing the 'set-off indicator' and mentioning the details of shipping bills/bill of entry/invoice details being settled in the remark column (including details of entities involved).

### **38. NETTING-OFF OF EXPORT RECEIVABLES AGAINST IMPORT PAYMENTS – UNITS IN SEZ**

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:

- 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.
- 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 will be treated as complete by the designated banks only after the entire proceeds are adjusted / received.
- Both the transactions of sale and purchase in R- Returns under FETERS are reported separately.
- The export / import transactions with ACU countries are kept outside the arrangement.
- All the relevant documents are submitted to the concerned banks who should comply with all the regulatory requirements relating to the transactions.

### **39. EXPORTERS' CAUTION LIST**

1. An exporter would be caution-listed by the RBI based on the recommendations of the bank concerned, depending upon the exporters track record with the bank and investigative agencies.
2. The bank would make recommendations in this regard to the Regional Office concerned of the Foreign Exchange Department of the RBI in case the exporter has come to the adverse notice of the (ED) / (CBI)/ (DRI) /any such other law enforcement agency and/or the exporter is not traceable and/or is not making sincere efforts to realise the export proceeds.
3. The bank would also make recommendations to the Regional Office of the RBI for de-caution-listing an exporter as per the procedure.
4. Banks should follow the procedure mentioned below while handling shipping documents in respect of caution listed exporters:
  - a) They will intimate the exporters about their caution listing, giving the details of outstanding shipping bills. When caution listed exporters submit shipping documents for negotiation / purchase/ discount/ collection, etc. the bank may accept the documents subject to following conditions:-
    - i. The exporters concerned should produce evidence of having received advance payment or an irrevocable letter of credit in their favor covering the full value of the proposed exports;
    - ii. In case of usance bills, the relative letter of credit should cover full export value and also permit such drawings. Besides, the usance bills should also mature within prescribed realisation period reckoned from date of shipment.
    - iii. Except under the above mentioned conditions, banks should not handle the shipping documents of caution listed exporters.
    - iv. Banks should obtain prior approval of the RBI for issuing guarantees for caution-listed exporters.

#### **40. ISSUANCE OF ELECTRONIC BANK REALIZATION CERTIFICATE (E-BRC)**

1. A bank is required to issue bank realization certificate for the export proceeds realized by the exporter. This is an important document required by the exporter for claiming export incentives. Earlier, this certificate was issued in physical form.
2. Banks are required to update the EDPMS with data of export proceeds on “as and when realized basis” and, with effect from October 16, 2017, they are required to generate Electronic Bank Realisation Certificate (e-BRC) only from the data available in EDPMS, to ensure consistency of data in EDPMS and consolidated e-BRC.
3. The exporter has to give the instruction of disposal of the amount received from overseas against exports. Exporter has to give the details of shipping bill, invoice number, amount and any other relevant details.
4. The exporter has also to give the purpose code of receipt of the amount. The bank will do



the needful based on the details provided by the exporter.

5. Many exporters are facing problem as proper instructions are given to the bank upon realization of export proceeds.

#### **41. SPECIMEN OF E-BRC**

## Statement of Bank Realisation



e-BRC DIRECTORATE GENERAL OF FOREIGN TRADE

### STATEMENT OF BANK REALISATION

1	Firm's Name	
2	Address	
3	IEC	
4	Shipping Bill No	
5	Shipping Bill Date	
6	Shipping Bill Port	
7	Bank's Name	
8	Bank's File no and Upload Date	
9	Bill ID no	
10	Bank Realisation Certificate No	
11	Date of realisation of money by bank	
12	Realised Value in Foreign Currency	
13	Currency of realisation	
14	Date & time of printing	

#### About the statement

- This Statement is machine generated from the DGFT website. It reproduces the information (as available on the date and time of printing of this statement) received by DGFT from the bank in secured electronic mode. This information can be verified by accessing the DGFT website (<http://dgft.gov.in>).

#### Note on the realised value

- The Realised Value (Item 12 above) is denominated in Foreign Currency and may be in CIF, C & F or FOB terms as negotiated between exporter and buyer of the goods) and hence it may or may not include Commission, Freight or Insurance as the case may be. Such details may be obtained from exporters, if needed. Policy Circular No. 06 (RE - 2012) / 2009 - 14 Dated 10.10.2012 of DGFT explains this in detail.

DGFT website: <http://dgft.gov.in>

**42. CODES FOR REPORTING FOREX TRANSACTIONS**  
**RECEIPT PURPOSES**

<b>Group No.</b>	<b>Purpose Group Name</b>	<b>Purpose Code</b>	<b>Description</b>
00	Capital Account	P0001	Repatriation of Indian investment abroad in equity capital (shares)
		P0002	Repatriation of Indian investment abroad in debt securities.
		P0003	Repatriation of Indian investment abroad in branches
		P0004	Repatriation of Indian investment abroad in subsidiaries and associates
		P0005	Repatriation of Indian investment abroad in real estate
		P0006	Foreign direct investment in India in equity
		P0007	Foreign direct investment in India in debt securities
		P0008	Foreign direct investment in India in real estate
		P0009	Foreign portfolio investment in India in equity shares
		P0010	Foreign portfolio investment in India in debt securities including debt funds
		P0011	Repayment of loans extended to Non-Residents
		P0012	Loans from Non-Residents to India
		POOH	Receipts o/a Non-Resident deposits (FCNRB/NRERA etc.) ADs should report these even if funds are not "swapped" into Rupees.
		P0015	Loans & overdrafts taken by ADs on their own account. (Any amount of loan credited to the NOSTRO account which may not be swapped into Rupees should also be reported)
		P0016	Purchase of a foreign currency against another currency.
		PO017	Sale of intangible assets like patents, copyrights, trademarks etc. by Indian companies
		PO018	Other capital receipts not included elsewhere
01	Exports (of Goods)	P0101	Value of export bills negotiated / purchased / discounted etc. (covered under GR / PP / SOFTEX/EC copy of shipping bills etc.)

		P0102	Realisation of export bills (in respect of goods) sent on collection (full invoice value)
		P0103	Advance receipts against export contracts (export of goods only)
		P0104	Receipts against export of goods not covered by the GR / PP / SOFTEX / EC copy of shipping bill etc.
		P0105	Export bills (in respect of goods) sent on collection.
		P0106	Conversion of overdue export bills from NPD to collection mode
		P0107	Realisation of NPD export bills (full value of bill to be reported)
02	Transportation	P0201	Receipts of surplus freight/passenger fare by Indian shipping companies operating abroad
		P0202	Purchases, on account of operating expenses of Foreign shipping companies operating in India
		P0205	Purchases on account of operational leasing (with crew) – Shipping companies
		P0207	Receipts of surplus freight/passenger fare by Indian Airlines companies operating abroad.
		P0208	Receipt on account of operating expenses of Foreign Airlines companies operating in India
		P0211 *	Purchases on account of operational leasing (with crew) - Airlines companies
		P0213	Receipts on account of other transportation services (stevedoring, demurrage, port handling charges etc). '
03	Travel	P0301	Purchases towards travel (Includes purchases of foreign TCs, currency: notes etc over the counter, by hotels, hospitals, Emporiums, Educational institutions etc. as well as amount received by TT / SWIFT transfers or debit.
		P0308	FC surrendered by returning Indian tourists.
04	Communication Service	P0401	Postal services
		P0402	Courier services
		P0403	Telecommunication services
		P0404	Satellite services
05	Construction Service	-P0501	Receipts for cost of construction of services projects in India
06	Insurance Service	P0601	Receipts of life insurance premium
		P0602	Receipts of freight insurance - relating to

			import & export of goods
		P0603	Receipts on account of other general insurance premium
		P0604	Receipts of Reinsurance premium
		P0605	Receipts on account of Auxiliary services {commission on Insurance}
		P0606	Receipts on account of settlement of claims
07	Financial Services	P0701	Financial intermediation except investment banking - Bank charges, collection charges, LC charges, cancellation of forward contracts, commission on financial leasing etc.
		P0702	Investment banking - brokerage, underwriting commission etc.
		P0703	Auxiliary services - charges on operation & regulatory fees, custodial services, depository services etc.
08	Computer & Information Services	P0801	Hardware consultancy
		P0802	Software implementation/consultancy (other than those covered in SOFTEX form)
		P0803	Data base, data processing charges
		P0804	Repair and maintenance of computer and software
		P0805	Mews agency services
		P0806	Other information services- Subscription to newspapers, periodicals, etc.
09	Royalties & License Fees	P0901	Franchises services - patents, copy rights, trade marks, industrial processes, franchises etc.
		P0902	Receipts for use, through licensing arrangements, of produced originals or prototypes (such as manuscripts and films).
10	Other Business Services	P1001	Merchanting Services – net receipts (from sale and purchase of goods without crossing the border).
		P1002	Trade related services - Commission on Exports / imports.
		P1003	Operational leasing services (other than financial leasing and without operating crew) including charter hire
		P1004	Legal services
		P1005	Accounting, auditing, book keeping and tax consulting services
		P1006	Business and management consultancy and public relations services
		P1007	Advertising, trade fair, market research and public opinion polling services

		P1008	Research & Development services
		P1009	Architectural, engineering and other technical services
		P1010	Agricultural, mining and on -site processing services - protection against insects & disease, increasing of harvest yields, forestry services, mining services like analysis of ores etc.
		P1011	Inward remittance for maintenance of offices in India
		P1012	Distribution services
		P1013	Environmental services
		P1019	Other services not included elsewhere
11	Personal, Cultural & Recreational services.	P1101	Audio-visual and related services -services and associated fees related to production of motion pictures, rentals, fees received by actors, directors, producers and fees for distribution rights.
		P1102	Personal, cultural services such as those related to museums, libraries, archives and sporting activities and fees for correspondence courses of Indian Universities/Institutes
12	Government, not included elsewhere (G.n.i.e.)	P1201	Maintenance of foreign embassies in India
		P1203	Maintenance of international institutions such as offices of IMF mission, World Bank, UNICEF etc. in India.
13	Transfers	P1301	Inward remittance from Indian nonresidents towards family maintenance and savings
		P1302	Personal gifts and donations
		P1303	Donations to religious and charitable institutions in India
		P1304	Grants and donations to governments and charitable institutions established by the governments
		P1306	Receipts / Refund of taxes
14	Income	P1401	Compensation of employees
		P1403	Inward remittance towards interest on loans extended to non-residents (ST/MT/LT loans)
		P1404	Inward remittance of interest on debt securities debentures / bonds / FRNs etc,
		P1405	Inward remittance towards interest receipts of ADs on their own account (on investments.)
		P1406	Repatriation of profits to India
		P1407	Receipt of dividends by Indians
15	Others	P1501	Refunds / rebates on account of imports

		P1502	Reversal of wrong entries, refunds of amount remitted for non-imports
		P1503	Remittances (receipts) by residents under international bidding process.
		P1590	Receipts below \$10,000 (say Rs 5,00,000)

### **43. AGENCY COMMISSION ON EXPORTS**

1. Banks may allow payment of commission, either by remittance or by deduction from invoice value, on application submitted by the exporter.
2. The remittance on agency commission may be allowed subject to conditions as under:
  - a) Amount of commission has been declared on EDF/SOFTEX form
  - b) In cases where the commission has not been declared on EDF/SOFTEX form, remittance may be allowed after satisfying the reasons given 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.
3. The relative shipment has already been made.

### **44. REFUND OF EXPORT PROCEEDS**

1. Banks, through whom the export proceeds were originally realized 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 shall:
  - (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 export incentive has been availed by the exporter against the relevant export or the proportionate incentives availed, if any, have been surrendered;
  - (iv) Not insist on the requirement of re-import of goods, where exported goods have been auctioned or destroyed by the Port / Customs / Health authorities/ any other accredited agency in the importing country subject to submission of satisfactory documentary evidence.
2. In all other cases banks shall ensure that procedures as applicable to normal imports are adhered to and that an undertaking from the exporter, to re-import the goods within 3 months from the date of refund of export proceeds shall be obtained.

### **45. MASTER DIRECTION – IMPORT OF GOODS AND SERVICES**

1. Instructions issued on import of goods and services into India have been compiled in this Master Direction No. 17/2016-17 dated 1/1/2016.
2. Provisions for import of goods and services are covered under above FED Master Direction.

3. Till date there are 8 amendments. They are dated:

4 February, 2016	31 March, 2016	20 October, 2016	12 January, 2017
2 February, 2018	1 April, 2019	27 January 2020	28 October, 2020

4. Import of Goods and Services into India is being allowed in terms of Section 5 of the Foreign Exchange Management Act 1999.
5. Foreign Exchange Management (Current Account Transaction) Rules, 2000. Dated 3/3/2000 is the relevant.
6. Import trade is regulated by the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce & Industry, Department of Commerce, and Government of India.
7. Banks should ensure that the imports into India are in conformity with the Foreign Trade Policy.
8. Banks should follow normal banking procedures and adhere to the provisions of Uniform Customs and Practices for Documentary Credits (UCPDC), etc. while opening letters of credit for import into India on behalf of importers.
9. Banks may also advise importers to ensure compliance with the provisions of Income Tax Act.

## **46. REMITTANCES FOR IMPORT PAYMENTS**

- Where specific regulations do not exist, banks may be governed by normal trade practices.
- Banks should adhere to KYC guidelines issued by RBI.
- Banks may allow remittance for making payments for imports into India, after ensuring that all the requisite details are made available by the importer.
- The remittance is for bona fide trade transactions.

## **47. IMPORT LICENSES**

- At present, import of goods are governed as follow:

Prohibited Items	Not permitted to be imported into India. Banned Items.
Restricted Items	Imports allowed against specific import license and/or compliance of specific conditions.
State Trading Enterprises	Imports allowed only by State Trading Enterprises like MMTC/ FCI/ IOL/STC.
Freely Importable Items	Items not covered in above 3 categories.



2. Banks may open letters of credit and allow remittances for import of all items which are freely importable items.
3. While opening letters of credit, the 'For Exchange Control purposes' copy of the license should be called for and adherence to special conditions, if any, attached to such licenses should be ensured.

#### **48. OBLIGATION OF PURCHASER OF FOREIGN EXCHANGE**

1. In terms of Section 10(6) of the FEMA, 1999 any person acquiring foreign exchange is permitted to use it either for the purpose mentioned in the declaration made by him to a bank under Section 10(5) of the Act or **for any other purpose** for which acquisition of foreign exchange is permissible.
2. Where foreign exchange acquired has been utilized for import of goods into India, the bank should ensure that the importer furnishes evidence of import.
3. Bank should satisfy himself that goods equivalent to the value of remittance have been imported.
4. Bank should ensure that all import remittances are uploaded in IDPMS on real time basis.

#### **49. MANNER OF PAYMENT**

Notification No. FEMA 14(R)/2016- RB dated May 02, 2016, deals with the Manner of Payment in foreign Exchange.

1. A payment in foreign exchange by bank, whether by way of remittance from India or by way of reimbursement to his branch or correspondent outside India against payment for import into India, or against any other payment, shall be as mentioned below:

**(A) Members of the Asian Clearing Union (ACU)**

Bangladesh	Myanmar	Pakistan
Sri Lanka	Republic of Maldives	

- (a) Payment for import of eligible goods and services by credit to ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by debit to the ACU Dollar account and / or ACU Euro account and / or ACU Japanese Yen account of the authorized dealer maintained with the correspondent bank in that member country;
- (b) Payment may also be made in any freely convertible currency in all other cases.
- (c) In respect of imports into India from Myanmar, payment may be made in any freely convertible currency or through ACU mechanism from Myanmar.
  - (i) **Nepal and Bhutan –**  
Payment may be in Rupees

(ii) **Islamic Republic of Iran-**

- (a) Payment for import of eligible goods and services, in any freely convertible currency and / or in accordance with the directions issued by the RBI.
- (b) Payment in any freely convertible currency and / or in accordance with the directions issued by the RBI

(B) **All countries other than those mentioned in an above.**

- (i) Payment in rupees from the account of a bank situated in any country other than a member country of the Asian Clearing Union.
- (ii) Payment in any freely convertible currency.

2. In respect of import into India –

- a) Where the goods are shipped from a member country of the Asian Clearing Union (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU payment may be made in a manner specified for countries in Group B of Regulation 5;
- b) In all other cases, payment shall be made in a currency appropriate to the country of shipment of goods;
- c) Any other mode of payment in accordance with the directions issued by the RBI.

3. Banks have been permitted to allow payments for import of goods/ software to be made to a Third Party (a party other than the supplier) as per the guidelines issued by the RBI.

## **50. MANNER OF PAYMENT IN CERTAIN CASES**

1. Notwithstanding anything contained in Regulations above, a person resident in India may make payment for import of goods. In foreign exchange through an international card held by him/ in rupees from international credit card/ debit card through the credit/ debit card servicing bank in India against the charge slip signed by the importer/ as prescribed by RBI.

Provided that-

- a) The transaction for which the payment is so made is in conformity with the provisions of the Act, rules and regulations made thereunder; and
- b) The import is also in conformity with the provision of the Foreign Trade Policy in force.

## **51. TIME LIMIT FOR SETTLEMENT OF IMPORT PAYMENTS**

- 1. Remittances against imports should be completed no later than 6 months from the date of shipment,
- 2. Where the amounts are withheld towards guarantee of performance, etc., the period of 6 months will be relaxed.
- 3. Due to COVID- 19 pandemic, with effect from 22/5/2020, the time period for completion

of remittances against normal imports has been extended from 6 months to 12 months from the date of shipment for such imports made on or before 31/7/2020.

4. Banks may permit settlement of import dues delayed due to disputes, financial difficulties, etc.
5. However, interest if any, on such delayed payments, usance bills or overdue interest is payable only for a period of up to 3 years from the date of shipment.
6. Deferred payment arrangements (including suppliers' and buyers' credit) upto five years, are treated as trade credits for which the procedural guidelines as laid down in the Master Circular for External Commercial Borrowings and Trade Credits may be followed.

## **52. EXTENSION OF TIME**

1. Banks can consider granting extension of time for settlement of import dues up to a period of 6 months at a time.
2. This extension can be for (maximum up to the period of 3 years) irrespective of the invoice value for delays on account of:
  - Disputes about quantity
  - Disputes about quality
  - Non-fulfillment of terms of contract
  - Financial difficulties
  - Importer has filed suit against the seller
3. In cases where sector specific guidelines have been issued by RBI for extension of time (i.e. rough, cut and polished diamonds), the same will be applicable. While granting extension of time, banks must ensure that:
  - a) The import transactions covered by the invoices are not under investigation by ED/ CBI or other investigating agencies;
  - b) While considering extension beyond 1 year from the date of remittance, the total outstanding of the importer does not exceed USD 1million or 10% of the average import remittances during the preceding 2 financial years, whichever is lower; and
  - c) Where extension of time has been granted by banks, the date up to which extension has been granted may be indicated in the 'Remarks' column.
  - d) Cases not covered by the above instructions / beyond the above limits, may be referred to RBI.
4. The above shall be reported in IDPMS as per message "Bill of Entry Extension" and the date up to which extension is granted will be indicated in "Extension Date" column.

## **53. IMPORT OF FOREIGN EXCHANGE**

1. A person may **Send** into India, **without limit**, foreign exchange in any form other than currency notes, bank notes and travellers cheques;
2. A person may **bring** into India from any place outside India, **without limit**, foreign exchange subject to the condition that such person makes, on arrival in India, a

declaration to the Custom Authorities at the Airport in the Currency Declaration Form (CDF).

3. Provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any 1time does not exceed USD 10,000 or its equivalent and/or the aggregate value of foreign currency notes (cash portion) alone brought in by such person at any 1 time does not exceed USD 5,000 or its equivalent.

#### **54. IMPORT OF INDIAN CURRENCY AND CURRENCY NOTES**

1. Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and RBI notes up to an amount not exceeding Rs.25,000.
2. A person may bring into India from Nepal or Bhutan, currency notes of Government of India and RBI for any amount in denominations up to Rs.100/-.

#### **55. THIRD PARTY PAYMENT FOR IMPORT TRANSACTIONS**

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

- a. 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 3 party payments / name of the third party being mentioned in the irrevocable order / invoice has been produced.
- b. Bank should be satisfied with the bonafides of the transactions and should consider the Financial Action Task Force (FATF) Statement before handling the transactions;
- c. The Invoice should contain a narration that the related payment has to be made to the (named) third party;
- d. 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;
- e. Importer should comply with the related extant instructions relating to imports including those on advance payment being made for import of goods.

#### **56. ISSUE OF GUARANTEES BY AN AUTHORISED DEALER**

1. An authorized dealer may give a guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owned to a person resident outside India, as an importer, in respect of import on deferred payment terms in accordance with the approval by the RBI for import on such terms.
2. A bank may give guarantee, Letter of Undertaking of Letter of Comfort in respect of any

debt, obligation or other liability incurred by a person resident in India and owned to a person resident outside India (being an overseas supplier of goods, bank or a financial institution), for import of goods.

3. A bank may, in the ordinary course of his business, give a guarantee in favor of a non-resident service provider, on behalf of a resident customer who is a service importer.
4. **Provided** that no guarantee for an amount exceeding USD 500,000 or its equivalent shall be issued on behalf of a service importer other than a Public Sector Company or a Department / Undertaking of the Government of India /State Government.

## **57. ADVANCE REMITTANCE**

1. Bank may allow advance remittance for import of goods without any ceiling subject to the following:  
If the amount of advance remittance exceeds USD 200,000 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.
2. 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 bona fides of the importer, the requirement of the bank guarantee / standby Letter of Credit may not be insisted upon for advance remittances up to USD 50, 00,000.

## **58. IDPMS / ORM**

1. All payments towards advance remittance for imports shall require creating Outward Remittance Message (ORM) in IDPMS.
2. Based on the bank code declared by the importer, the banks shall download the Bill of Entry (BOE) issued by EDI ports from “BOE Master” in IDPMS.
3. For non-EDI ports, banks of the importer shall upload the BoE data in IDPMS as per message format “Manual BoE reports” on daily basis on receipt of BoE from the customer/Customs Office.
4. Banks will enter BOE details and mark off ORMs as per the message format “BOE Settlement”
5. In case of payment after receipt of BoE, the bank shall generate ORM for import payments made by the importer customer as per the message format “BOE Settlement”
6. Multiple ORMs can be settled against single BoE and also multiple BoEs can be settled against one ORM.

## **59. ADVANCE REMITTANCE FOR THE IMPORT OF SERVICES**

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

- a) 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 a 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.
- b) Banks should also follow-up to ensure that the beneficiary of the advance remittance fulfills his obligation under the contract or agreement with the remitter in India, failing which, the amount should be repatriated to India.
- c) Banks should ensure generation of ORMs and marking off in the IDPMS.

## **60. INTEREST ON IMPORT BILLS**

1. Bank may allow payment of interest on usance bills or overdue interest on delayed payments for a period of less than 3 years from the date of shipment at the rate prescribed for trade credit.
2. 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.
3. 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.

## **61. REMITTANCES AGAINST REPLACEMENT IMPORTS**

1. Where goods are:-
  - Short-supplied
  - Damaged
  - Short-landed
  - Cost in transit and
2. The Exchange Control Copy of the import license has already been utilized 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.
3. Fresh remittance for replacement imports may be permitted without reference to RBI, provided, the insurance claim relating to the lost goods has been settled in favor of the importer.
4. It may be ensured that the consignment being replaced is shipped within the validity period of the license.

5. Bank should ensure that proper remark/indicator is entered for ORM marks off/closure of Bills in IDPMS.
6. 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.

## **62. RECEIPT OF IMPORT BILLS / DOCUMENTS**

1. Concerned banks to ensure generation of ORMs, BoE entries and BoE settlement with the respective ORMs in compliance with IDPMS.
2. Import bills and documents should be received from the banker of the supplier by the banker of the importer in India.
3. 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 <ul style="list-style-type: none"> <li>• Status Holder Exporters as defined in the Foreign Trade Policy</li> <li>• 100% EOU</li> <li>• Units in SEZ</li> <li>• Public Sector Undertakings</li> <li>• Limited Companies</li> </ul>

## **63. RECEIPT OF IMPORT DOCUMENTS BY THE BANK DIRECTLY FROM OVERSEAS SUPPLIERS**

1. At the request of importer, 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.
2. 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.
3. However, such credit report on the overseas supplier need not be obtained in cases where the invoice value does not exceed USD 300,000.
4. The bank is satisfied about the bonafides of the transaction and track record of the importer.

## **64. EVIDENCE OF IMPORT: PHYSICAL IMPORTS**

1. In case of all imports, irrespective of the value of foreign exchange remitted / paid for import into India, it is obligatory on the part of the bank through which the relative remittance was made, to ensure that the importer submits:-
  - a) The importer shall submit Bill of Entry number, port code and date for marking evidence of import under IDPMS.
  - b) Customs Assessment Certificate or Postal Appraisal Form, as declared by the importer to the Customs Authorities, where import has been made by post, or Courier Bill of Entry as declared by the courier companies to the Customs Authorities in cases where goods have been imported through couriers, as evidence that the goods for which the payment was made have actually been imported into India.
2. For goods imported and stored in Free Trade Warehousing Zone or SEZ Unit warehouses or Customs bonded warehouses, etc., the Exchange Control Copy of the Ex-Bond Bill of Entry or Bill of Entry issued by Customs Authorities by any other similar nomenclature the importer shall submit applicable BoE number, port code and date for marking evidence of import under IDPMS.
3. In respect of imports on Delivery against acceptance basis, bank shall verify the evidence of import from IDPMS at the time of effecting remittance of import bill.
4. 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 3 months from the date of remittance, to the importer to submit the evidence of import.
5. Banks are required to create Outward Remittance Message(ORM) for all such outward remittances irrespective of value and shall perform the subsequent activity-
  - ❖ document submission
  - ❖ outward remittance data
  - ❖ matching with ORM
  - ❖ closing of transactions

## **65. EVIDENCE OF IMPORT IN LIEU OF BILL OF ENTRY**

1. 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 :-
  - a) The amount of foreign exchange remitted is less than USD 1,000,000 or its equivalent.
  - b) 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.

2. Outward Remittance Message has to be created & BoE has to be downloaded from “BoE Master “in IDPMS.
3. In case of Non-EDI ports duplicate copy/customs certified copy have to be submitted or BoE waiver obtained from RBI.

## **66. EVIDENCE OF IMPORT: NON-PHYSICAL IMPORTS**

1. Where imports are made in non-physical form:
  - software
  - data through internet
  - data through datacom channels
  - drawings
  - 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.

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

## **67. IDPMS- IMPORT DATA PROCESSING MANAGEMENT SCHEME**

1. Banks are required to create Outward Remittance Message (ORM) for all outward remittance/s for import payments on behalf importer for which the prescribed documents for evidence of import have not been submitted.
2. Based on the AD code declared by the importer, the banks shall download the Bill of Entry (BoE) issued by EDI ports from “BOE Master” in IDPMS.
3. For non- EDI ports, bank of the importer shall upload the BoE data in IDPMS as per message format “Manual BOE reporting” on daily basis on receipt of BoE from the customer/Customs office.
4. Submission of hardcopy of evidence of import documents i.e., BoE Exchange Control copy has been discontinued with effect from 1/12/2016 as the same is available in IDPMS.
5. The revised procedure is as under:
  - a) Banks shall enter BoE number, port code and date for ORM associated with the advance payments for import transactions as per the message format “BOE settlement”.
  - b) In case of payment after receipt of BoE, the bank shall generate ORM for import payments as per the message format “BOE settlement”.
  - c) Multiple ORMs can be settled against single BoE and also multiple BoE can be settled

against one ORM.

- d) On settlement of ORM with evidence of import bank shall in all cases issue an acknowledgement slip to the importer containing the following particulars:
- ❖ importer's full name and address with code number ;
  - ❖ number and date of BoE and the amount of import ; and
  - ❖ A recap advice on number and amount of BoE and ORM not settled for the importer.
- e) The importer needs to preserve the printed 'Importer copy' of BoE as evidence of import and acknowledgement slip for future use.
- f) IDPMS circular no. AP DIR 5 dated 6/10/16
- g) IDPMS started on 10/10/2016. It is reporting and monitoring system flow of data on daily basis. Bank to log in daily and process data.

## **68. EXTENSION AND WRITE-OFF**

1. Banks shall give extension for submission of BoE beyond the prescribed period in terms as per guidelines in the matter.
2. The same will be reported in IDPMS as per the message "Bill of Entry Extension" and the date up to which extension is granted will be indicated in "Extension Date" column.
3. Banks can consider closure of BoE/ORM in IDPMS that involves write off to the extent of 5% of invoice value in cases where the amount declared in BoE varies from the actual remittance due to operational reasons and bank is satisfied with the reasons submitted by the importer.
4. Banks may close the BoE for such import transactions where write off is on account of
  - Quality issues
  - Short shipment
  - Destruction of goods by the port / Customs / health authorities.
  - Importer has to submit satisfactory documents.
  - This will be irrespective of the amount involved.
  - Bank shall settle and close ORM/BoE with appropriate "Adjustment Indicator" in IDPMS.
5. The above operational guidelines for extension and write off are meant to facilitate closure of bills in IDPMS.
6. This will be subject to guidelines on the matter and not absolve the importer from remitting / receiving the amount in case of change in circumstances.
7. While allowing write off, banks must ensure that:
  - a) The case is not the subject matter of any pending civil or criminal suit;

- b) The importer has not come to the adverse notice of the ED or the CBI or any such other law enforcement agency.
8. Extension and write off cases not covered by the guidelines may be referred to the concerned Regional Office of RBI.
9. The extant instructions and guidelines for Evidence of Import in Lieu of Bill of Entry will apply mutatis mutandis.
10. The evidence of import in lieu of BoE in permitted/approved Conditions will be created and uploaded by bank of the importer in the form of BoE data as per message format “Manual BOE is reporting” in IDPMS.

## **69. FOLLOW-UP FOR IMPORT EVIDENCE**

1. In case an importer does not furnish any documentary evidence of import within 3 months from the date of remittance irrespective of value, the bank should rigorously follow-up.
2. In IDPMS, all outstanding import remittances, irrespective of the amount involved, should be reported by the banks.

## **70. IMPORT FACTORING**

1. Bank may enter into arrangements with international factoring companies of repute, preferably members of Factors Chain International, without the approval of RBI.
2. They will have to ensure compliance with the foreign exchange directions relating to imports, Foreign Trade Policy in force and any other guidelines/directives issued by RBI.

## **71. MERCHANTING TRADE**

- (A) Banks may handle the Merchanting Trade Transactions (MTT) subject to the following guidelines:
1. For a trade to be classified as merchanting trade, goods acquired shall not enter the Domestic Tariff Area.
  2. Considering that in some cases, the goods acquired may require certain specific processing/ value-addition, the state of goods so acquired may be allowed transformation subject to the bank being satisfied with the documentary evidence and bonafides of the transaction.
  3. The MTT shall be undertaken for the goods that are permitted for exports / imports under the prevailing Foreign Trade Policy of India as on the date of shipment.
  4. All rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry) shall be complied with for the export leg and import leg respectively.
  5. Bank shall satisfy itself with the bonafides of the transactions.
  6. KYC and AML guidelines shall be scrupulously adhered to by the bank while handling such transactions.

7. The entire merchanting trade is to be routed through the same bank.
8. The bank shall verify the documents like:-
  - invoice,
  - packing list,
  - transport documents
  - insurance documents
9. If original documents are not available, Non-negotiable copies duly authenticated by the bank handling documents may be taken.
10. Bank should satisfy itself about the genuineness of the trade.
11. The bank may rely on online verification of Bill of Lading/ Airway Bill on the website of International Maritime Bureau or Airline web check facilities.
12. The entire MTT shall be completed within an overall period of 9 months.
13. There shall not be any outlay of foreign exchange beyond 4 months.
14. The commencement date of merchanting trade shall be the date of shipment / export leg receipt or import leg payment, whichever is first.
15. The completion date shall be the date of shipment / export leg receipt or import leg payment, whichever is the last.
16. Short-term credit either by way of suppliers' credit or buyers' credit may be extended for MTT to the extent not backed by advance remittance for the export leg, including the discounting of export leg LC by the bank.
17. In the case of import transactions. However, Letter of Undertaking (LoU)/ Letter of Comfort (LoC) shall **not** be issued for supplier's/ buyer's credit.
18. Any receipts for the export leg, prior to the payment for import leg, may be parked either in EEFC account or in an interest- bearing INR account till the import leg liability arises.
19. It shall be strictly earmarked/ lien-marked for the payment of import leg and the liability of the import leg, as soon as it arises, shall be extinguished out of these funds without any delay.
20. If such receipts are kept in interest-bearing INR account, hedging thereof may be allowed by the bank at the request of its customer.
21. No fund/non-fund-based facilities shall be extended against these balances.
22. In case of discounting of export leg LC where payment for import leg is still to be made (even if partially), the proceeds shall be utilized in the manner prescribed above.
23. Payment for import leg may also be allowed to be made out of the balances in EEFC account of the merchant trader.
24. Merchanting traders may be allowed to make advance payment for the import leg on demand made by the overseas supplier.
25. 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 based on its commercial judgment.
26. It may, be ensured that any such advance payment for an import leg beyond USD 500,000/- per transaction, shall be made against Bank Guarantee / an unconditional, irrevocable standby Letter of Credit from an international bank of repute.
27. Overall prudential limits on allowing such advance payments by a customer may be fixed by the bank.
28. Letter of Credit to the supplier for the import leg is permitted against confirmed export order, keeping in view the foreign exchange outlay of 4 months and completion of the MTT within 9 months.

29. This should be in compliance with the instructions issued by Department of Banking Regulation on “Guarantees and Co- acceptances”.
  30. Bank shall ensure one-to-one matching in case of each MTT.
  31. Bank will report defaults in any leg by the traders to the concerned Regional Office of the RBI, on half yearly basis.
  32. Merchant traders with outstanding of 5% or more of their annual export earnings shall be liable for caution listing.
- (B) The merchanting traders shall be genuine traders of goods and not mere financial intermediaries.
- a) Confirmed orders must be received by them from the overseas buyers.
  - b) Banks shall satisfy themselves about the capabilities of the merchanting trader to perform the obligations under the order.
  - c) The merchanting trade shall result in profit which shall be determined by subtracting import payments and related expenses from export proceeds for the specific MTT.
- (C) Write-off of unrealized amount of export leg:
- (i) Bank may write-off the unrealized amount of export leg, without any ceiling, on the request made by the Merchanting trader, in the following circumstances:
    - a. The MTT buyer has been declared insolvent and a certificate from the official liquidator specifying that there is no possibility of recovery of export proceeds has been produced.
    - b. The goods exported have been auctioned or destroyed by the Port / Customs /Health authorities in the importing country and a certificate to that effect has been produced.
    - c. The unrealized amount of the export leg represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;
    - d. Provided, the MTT is in adherence to all other provisions except the delays in timelines (either for outlay or completion period of MTT or both) attributed to reasons mentioned above.
    - e. Bank shall satisfy itself with the bonafides of the transactions and ensure that there are no KYC/AML concerns.
    - f. The transaction shall not be under investigation under FEMA by any of the investigating agencies.
    - g. The counterparty to the merchant trader is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non-Co-operative Jurisdictions on which FATF has called for counter measures.
  - (ii) Third party payments for export and import legs of the MTT are **not** allowed.
  - (iii) Payment of Agency Commission:-
    - Agency commission is not allowed in MTTs.
    - However, banks may allow payment of agency commission up to a reasonable extent by way of outward remittance under exceptional circumstances, subject to the following conditions:

1.	MTT has been completed in all respects
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2.	The payment of agency commission shall not result in the MTT ending into a loss.
3.	The Merchanting trader shall make a specific request to the bank in this regard.

(D) Bank may approach Regional Office (RO) concerned of the RBI for regularization of the MTT for deviation. The MTT shall be closed only after receiving approval from the RBI.

(E) Reporting for merchanting trade transactions should be as follow

Trade	Purpose Code	Description
Export	P0108	Goods sold under merchanting /receipt against export leg of merchanting trade
Import	S0108	Goods acquired under merchanting /payment against import leg of merchanting trade

(F) Merchanting trade to Nepal and Bhutan:-

- (i) Nepal and Bhutan are landlocked countries.
- (ii) 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.
- (iii) Government of India is having Treaty of Transit with these two countries.
- (iv) 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.

## **72. PROCESSING OF IMPORT RELATED PAYMENTS THROUGH ONLINE PAYMENT GATEWAY SERVICE PROVIDERS (OPGSPS)**

1. Banks have been permitted to offer facility of payment for imports of goods and software of value not exceeding USD 2,000 by entering into standing arrangements with the OPGSPs subject to the following:-
  - a) 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 2 days from the date of credit to the collection account.
  - b) The bank will obtain a copy of invoice and airway bill from the OPGSP containing the name and address of the beneficiary as evidence of import.
  - c) The permitted credits in the OPGSP Import Collection account will be:
    - collection from Indian importers for online purchases from overseas

exporters electronically through credit card, debit card and net banking and

- Charge back from the overseas exporters.
- d) The permitted debits in the OPGSP Import Collection account will be:-
- payment to overseas exporters in permitted foreign currency;
  - payment to Indian importers for returns and refunds;
  - payment of commission at rates/frequencies as defined under the contract to the current account of the OPGSP; and
  - bank charges

### **73. SETTLEMENT OF IMPORT TRANSACTIONS IN CURRENCIES NOT HAVING A DIRECT EXCHANGE RATE**

1. To further liberalize the procedure and facilitate settlement of import transactions where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate.
2. It has been decided that banks may permit settlement of such import transactions (excluding those put through the ACU mechanism), subject to conditions as under:-
  - Importer shall be a customer of the bank,
  - Signed contract / invoice is in a freely convertible currency,
  - The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/ contract, Letter of Credit as full and final settlement,
  - bank is satisfied with the bona fides of the transactions, and
  - The counterparty to the importer of the bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures

### **74. GENERAL PROVISIONS OF FEMA**

- A. FEMA was enacted by the parliament on 29/12/99.
- B. The act came into effect from 1/6/2000.
- C. This act was constantly reviewed and amended from time to time.

## **75. STRUCTURE OF FEMA**

1. FEMA contains 7 chapters/49 sections out of which 12 sections are of Operational Laws and 37 sections are for the contraventions/Penalties/Adjudication appeals enforcement directorate.

Chapter	Particulars	Section
I.	Preliminary	1-2
II.	Regulations + Managements	3-9
III.	Authorised Person	10-12
IV.	Contravention/Penalties	13-15
V.	Adjudication/ Appeal	16-35
VI.	Enforcement Directorate	36-38
VII.	Miscellaneous	39-49

2. This act is **also** applicable to all branches, offices and agencies outside India owned or controlled by a person resident in India.
3. Current Account transactions- Less restricted
4. Capital Account transactions – Highly restricted
5. Section 8 obligation on Indian to realize and repatriate amount of Forex due/ accrue to him:-
- Selling of such Foreign Exchange to Authorised Person in India in exchange of INR.
  - Holding of realized amount in an account with Authorised Person (EEFC).
  - It includes use of realized amount for discharge of debt or liabilities denominated in Forex.
6. Repatriation can be done:
- Sell it to Authorised Person in India in exchange of rupees
  - Retain in EEFC.
  - Use to discharge debt or liabilities denominated in Foreign Exchange.
7. Section 7(1) (4) every exporter of goods and services is required to furnish a declaration to RBI/ authority full ascertainable export value.
8. There is **no** provision under the act for a penalty by way of imprisonment. The penalty is by way of fine and detention of the person, who failed to pay i.e. civil prison.
9. Section 13 Penalty by adjudicating authority for the contravention of any
- provision of FEMA
  - Rules
  - Regulations
  - Notification
  - Direction
  - Order
  - Any condition



10. These contraventions are compoundable.

## **76. REGULATORY BODIES**

RBI	Makes regulations. Overall controlling authority
Center Government	Makes rules
Enforcement Directorate	Enforcement
Authorized persons <ul style="list-style-type: none"><li>• Authorized Dealer</li><li>• Money changer</li><li>• Off- share banking unit</li><li>• other</li></ul>	Dealing in Forex transactions

Many breaches occurs which are technical in nature without malafide intent.

## **77. GENERAL NOTES**

1. In law, the difficulty is with language. The legal language is different than day to day language. Many times, two negatives are used to say one positive.
2. Sometimes, there is difficulty of interpretation.
3. In FEMA, payment and receipts are governed by separate regulations.
4. Late Submission Fees is applicable from the month of February 2019- not earlier.
5. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
6. RBI is empowered, to compound any contravention, as defined under section 13, for a specific sum, after offering and opportunity of Personal Hearing to the party.
7. Willful malafide and fraudulent transactions will not be allowed.
8. Entire FEMA is operated on the basis of declaration made by the person.
9. A service export in non- IT sector does not need any authorization/ validation of export valuation. Export of services that do not fall under IT and ITs category are exempted from filling the export declaration and value certification requirement thereof.
10. FEMA provisions are for
  - Goods
  - software services / IT enable services
  - Other services.
11. If there is no clarity then always take conservative approach.
12. Always take prior approval from RBI then post facto approval.
13. Automatic route is applicable only if “ALL” conditions are met with fully, otherwise you have to go to approval route.
14. In FEMA, something is required to be done in particular way, and then it is to be done **only** in that way, not any other way.
15. Well established Latin Maxim “Specific Rules override General Rules”.
16. In FEMA some provisions are similar but not identical.
17. INR is partly converted currency, only on account of current account but not on capital account.
18. It is not possible to write everything in black and white in any law.
19. The guiding principal is that the bank should be satisfied/ convince about bona fide of the transaction/parties. So, banks may ask any additional documents to satisfy itself.

20. Banks have power as well as responsibilities.
21. When transaction is non-standard the bank will behave differently based on its perception.

## **78. EDPMS-EXPORT DATA PROCESSING MANAGEMENT SCHEME**

1. When exporter wants to ship the goods, he has to file shipping bill.
2. Shipping bill is filed by custom broker online, on ICEGATE.
3. ICEGATE is custom portal.
4. ICEGATE is a transmitting gateway which sends Shipping bills outward to PGA.
5. EDPMS/IDPMS is a software/Platform of RBI who receives Shipping Bill data from the customs gateway ICEGATE.
6. RBI or bank can only receive the data on EDPMS platform/ software only.
7. The customs upload the details of shipping bill first on ICEGATE.
8. There is an agency /department Director General of System which has an access to both ICEGATE and transmission portals.
9. When any shipping bill is to be cancelled by the customs, it will be done through DG System. They will float . **Can file** outward to EDPMS system/ portal.
10. Then only it will get cancelled effectively.
11. Banks have an access to the portal to limited extent and that to few fields only i.e. related to shipping bill.
12. Whenever payments are received the exporter has to confirm the invoice shipping bill details to a bank to act. This is called disposal instructions by the exporter. Appropriate purpose code must be used.
13. Bank will login and open that shipping bill to give effect of disposal instructions.
14. Bank will also check swift message and or MT 103 for further details/ narration.
15. MT103 is a standardized SWIFT payment message used specifically for cross border/international wire transfers.
16. Monitoring is through IEC no.
17. Banks comfort is an important factor in resolving EDPMS issue.
18. SEZ is not on EDI. They are using NSDL portal agency managing SEZ online.
19. Pending ack= Exporter has not submitted documents to bank you.
20. If the transaction is such, where no foreign exchange is involved, then the Custom Broker should file the Shipping bill under scheme code 99. (No foreign exchange involved NFEI). In this case, the shipping bill will not get reflected in EDPMS.

## **79. REASONS FOR OUTSTANDING ENTRIES IN EDPMS**

1. Amount realised but bank has not knocked off even through E-BRC is issued.
2. Amount realised but exporter has not obtained E-BRC entry outstanding.
3. Export bill realised but less by small amount.
4. Export AD code of bank 'A' payment received in bank 'B'.
5. Goods exported which are returned back in India. Both entries are outstanding.
6. Export done without shipping bill but amount realized/ received i. e. courier shipment.
7. Amount received in advance no shipment has taken place.(ORM outstanding).
8. Shipping bill passed but goods are not exported. i. e. Back to town- shut down etc.
9. Payment of samples received.

10. Third party payment received.
11. Goods exported but payment received in India in INR.,( although not allowed).
12. Export to Iran/Cuba. Bank is not accepting documents.
13. Data are not synchronized.
14. ECGC settled claim in lieu of realization. It will be a manual entry by bank.
15. Any other reasons.

## **80. FIRC - FOREIGN INWARD REMITTANCE CERTIFICATE**

1. Banks have stopped issuing FIRC as it was done earlier.
2. E-FIRC can be issued in some cases. SOFTEX/ services export may be consider for issuance of FIRC.

## **81. OFAC / CAUTION LIST**

1. The exemption from caution listing restrictions will continue for exporter to OFAC countries like Iran, Syria Yemen etc. where the amount has been received in nostro account of the bank, but the matter is still pending. Banks are not ready to handle export documents.
2. Same way, exporters having outstanding entries in EDPMS an account of non-realisation of exports to countries where forex transactions are controlled (Zimbabwe, Nigeria) would also **not** treated as caution listed.
3. Caution listing is accessed by various regulatory and investigating agencies.
4. FEMA 1999 came into implementation in 2000. In this journey of 21 years, RBI has liberalized several provisions /restrictions in FEMA. RBI is now insisting more on “Compliance”.
5. Now bank and RBI are having visibility of data in real time.
6. For non-standard transaction, it is advisable to discuss with your bank beforehand.

## **82. COMPLIANCE**

1. Exporter should realize all proceeds in foreign exchange.
2. Importer must pay all the payment for import made.

Exports	IRM outstanding report	Advance amount received which are outstanding
Exports	EDPMS statement	Shipping bill outstanding which are not realized.
Import	ORM outstanding report	Advance amount made which are outstanding
Import	IDPMS statement	Bill of Entry outstanding, which are not paid.

### **83. APPROVAL FROM RBI**

1. When the transaction is not covered under the present provisions of FEMA, the bank will handle the transaction as per delegated power given by RBI to the bank.
2. If the transaction is beyond the delegated power or the bank does not wish to regularize the transaction, then it will be referred to the regional office of RBI.
3. RBI is banker's bank.
4. All the applications for seeking the approval are necessarily to be routed by exporter's/ importer's bank.
5. Following are the list of documents/information required by your bank to approach the Regional office of RBI.
  - a) A letter addressed to your bank to approach RBI seeking necessary approval for the transaction.
  - b) A letter addressed to the Regional office of RBI seeking necessary approval for the transaction. Kindly explain the full facts of your case.
  - c) Provide details about your line of business. Please mention number of the years you are in this business.
  - d) Give details of all relevant documents Invoice number, shipping bill number, Bill of Entry number, overseas parties details, amount of the transactions etc.
  - e) You should give maximum relevant details. Also provide the sequences of the events chronologically.
  - f) Please state that this is your 1<sup>st</sup> occasion to seek RBI permission, or otherwise.
  - g) How many time in last 3 years you have approached RBI for such or other requests (Through all banks).
  - h) You have to submit details of all ORM/IRM/SB and BoE in your name (across all AD banks), which are outstanding beyond prescribed timeliness along with reasons for such pendency and action plan for clearing the same.
  - i) The bank will cross-check and certify the details provided by the company.
  - j) Give a declaration that, import and export documents are not submitted in any other banks.
  - k) Give declaration-whether you are into any kind of investigation with any regulatory authority.
  - l) Provide HS code of the goods and confirm the import/ export of the goods are permitted as per Foreign Trade Policy.
  - m) All letters should be on your letter head. Put signature along with the stamp. Certify all Xeroxes as true copy.
  - n) Any other documents.
6. Your banker will forward your request along with their comments/ recommendations.
7. The matter will be close as per the approval given by the Regional office of RBI.

## **84. CODES FOR REPORTING FOREX TRANSACTIONS** **PAYMENT PURPOSES**

Group No.	Purpose Group Name	Purpose Code	Description
00	Capital Account	S0001	Indian investment abroad -in equity capital(shares)
		S0002	Indian investment" abroad -in debt securities
		S0003	Indian investment abroad - in branches
		S0004	Indian investment abroad – in subsidiaries and associates
		S0005	Indian investment abroad -in real estate
		S0006	Repatriation of Foreign Direct Investment in India- in equity shares
		S0007	Repatriation of Foreign Direct Investment in India- in debt securities
		S0008	Repatriation of Foreign Direct Investment in India- in real estate
		S0009	Repatriation of Foreign Portfolio Investment in India- in equity shares
		S0010	Repatriation of Foreign Portfolio Investment in India- in debt securities
		S0011	Loans extended to Non-Residents
		S0012	Repayment of loans received from Non Residents {Long & medium term loans}
		S0013	Repayment of short term loans received from Non-Residents
		S0014	Repatriation of Non-Resident Deposits (FCNRB / N.RERA etc)
		S0015	Repayment of loans & overdrafts taken by ADs on their own account.
		S0016	Sale of a foreign currency against another foreign currency
		S0017	Purchase of intangible assets like patents, copyrights, trademarks etc.
		S0018	Other capital payments not included Elsewhere
01	Imports	S0101	Advance payment against imports
		S0102	Payment towards imports- settlement of invoice
		S0103	Imports by diplomatic missions
		S0104	Intermediary trade
		S0190	Imports below Rs. 500.000- (For use by ECD offices

02	Transportation	S0201	Payments for surplus freight/passenger fare by foreign shipping companies operating in India.
		S0202	Payment for operating expenses of Indian shipping companies operating abroad.
		S0203	Freight on imports - Shipping companies
		S0204	Freight on exports - Shipping companies
		S0205	Operational leasing (with crew) -Shipping companies
		S0206	Booking of passages abroad -Shipping companies
		S0207	Payments for surplus freight/passenger fare by foreign Airlines companies operating in India,
		S0208	Operating expenses of Indian Airlines companies operating abroad
		S0209	Freight on imports-Airlines companies
		S0210	Freight on exports - Airlines companies
		S0211	Operational leasing (with crew) - Airlines companies
		S0212	Booking of passages abroad - Airlines companies
		S0213	Payments on account of stevedoring, demurrage, port handling charges etc.
03	Travel	S0301	Remittance towards Business travel.
		S0302	Travel under basic travel quota (BTQ)
		S0303	Travel for pilgrimage
		S0304	Travel for medical treatment
		S0305 -	Travel for education (including fees, hostel expenses etc.)
		S0306	Other travel (international credit cards)
04	Communica-tion Service	S0401	Postal services
		S0402	Courier services
		S0403	Telecommunication services
		S0404	Satellite services
05	Construction Service	S0501	Construction of projects abroad by Indiancompanies including import of goods at project site
		S0502	Payments for cost of construction etc. of projectsexecuted by foreign companies in India.

06	Insurance Service	S0601	Payments for Life insurance premium
		S0602	Freight insurance - relating to import & export of goods
		S0603	Other general insurance premium
		S0604	Reinsurance premium
		S0605	Auxiliary services (commission on insurance)
		S0606	Settlement of claims
07	Financial Services	S0701	Financial intermediation except investment banking-Bank charges, collection charges, LC charges, cancellation of forward contracts, commission on financial leasing etc.
		S0702	Investment banking - brokerage, underwriting commission etc.
		S0703	Auxiliary services - charges on operation & regulatory fees, custodial, services depository services etc.
08	Computer & Information Services	S0801	Hardware consultancy
		S0802	Software implementation/consultancy
		S0803	Data base, data processing charges
		S0804	Repair and maintenance of computer and software
		S0805	IT agency services
		S0806	Other information services- Subscription to newspapers, periodicals
09	Royalties & License Fees	S0901	Franchises services -patents, copyrights, trademarks, industrial processes, franchises etc.
		S0902	Payment for use, through licensing arrangements, of produced originals or prototypes (such as manuscripts and films)
10	Other Business Services	S1001	Merchandising services –net payments (from Sale & purchase of goods without crossing the border).
		S1002	Trade related services - commission on exports / imports
		S1003	Operational leasing services (other than financial leasing) without operating crew, including charter hire
		S1004	Legal services
		S1005	Accounting, auditing, book keeping and tax consulting services
		S1006	Business and management consultancy and public relations Services
		S1007	Advertising, trade fair, market research

			and public opinion polling Service
		S1008	Research & Development services
		S1009	Architectural, engineering and other technical services
		S1010	Agricultural, mining and on-site processing services - protection against insects & disease, increasing of harvest yields, forestry services, mining services like analysis of ores etc.
		S1011	Payments for maintenance of offices abroad
		S1012	Distribution services
		S1013	Environmental services
		S1019	Other services not included elsewhere
1	Personal, Cultural & Recreational services	S1101	Audio-visual and related services - services and associated fees related to production of motion pictures, rentals, fees received by actors, directors, producers and fees for distribution rights.
		S1102	Personal, cultural services such as those related to museums, libraries, archives and sporting activities; fees for correspondence courses abroad.
12	Government not included elsewhere (G.n.i.e.)	S1201	Maintenance of Indian embassies abroad
		S1202	Remittances by foreign embassies in India
13	Transfers	S1301	Remittance by non-residents towards family maintenance and savings
		S1302	Remittance towards personal gifts and donations
		S1303	Remittance towards donations to religious and charitable institutions abroad
		S1304	Remittance towards grants and donations to other governments and charitable institutions established by the governments.
		S1305	Contributions/donations by the Government to international institutions
		S1306	Remittance towards payment / refund of taxes.
14	Income	S1401	Compensation of employees
		S140.2	Remittance towards interest on Non-Resident deposits (FCNRB/NRERA/NRNRD/NRSR etc.)
		S1403	Remittance towards interest on loans from Non-Residents (ST/MT/LT loans)
		S1404	Remittance of interest on debt securities - debentures / bonds / FRNs etc.
		S1405	Remittance towards interest payment by



			ADs on their own account (to VOSTRO a/c holders or the OD on NOSTRO a/c.)
		S1406	Repatriation of profits
		S1407	Payment/ repatriation of dividends
15	Others	S1501	Refunds / rebates / reduction in invoice value on account of exports
		S1502	Reversal of wrong entries, refunds of amount remitted for non-exports
		S1503	Payments by resident for international bidding
		S1504	Crystallize / Cancel export bills

## **85. MERCHANTING TRADE TRANSACTION (MTT)- EXPLANATION AND DOCUMENTS**

Export & Import are two important aspects of International Trade. The importance of International Trade in the economy of the country is of very high magnitude. All the countries promote their exports and try to minimize the import.

Each country will have her rules & regulations for import in to the country and export from the country. India too has set of rules for import & exports. Activities of imports & exports are subject to following:

The Customs Act, 1962,  
The Foreign Trade Policy & Handbook of Procedures,  
The Foreign Trade (Development & Registration) Act, 1992  
The Foreign Exchange Management Act, 1999  
Reserve Bank of India Guidelines.  
And several other miscellaneous acts.

Several times, it happens that you wish to import certain goods from country "A" and sale the **same** product as it is in country "B". This is a transaction of import & export both together. Many people refer this type of transaction as "3<sup>rd</sup> Country transaction". Multinational company has coined this transaction as "Drop Shipment".

There are various aspects of the transaction, which need to be understood more in detail. This transaction is a distinct then near import or near export. It is a combination of both.

We now examine the various provisions of Merchanting Trade Transaction which is also known as Intermediary Trade Transactions.

1. Since the goods are not going from India, it is not considered as export from India and therefore the Foreign Trade Policy is not applicable.
2. Since the goods are not coming in to India, it is not considered as import in to India and therefore the Customs Act, 1962 is not applicable.
3. This transaction is appropriately covered under Merchanting Trade Transaction of RBI under RBI / FED / 2015 - 16/ 17 dated 01.01.2016 - Import Para C. 14. This Master Direction is last amended on 28.11.2020

4. For a trade to be classified as Merchanting Trade Transaction following conditions should be satisfied.
5. Goods acquired should not enter the Domestic Tariff Area, and
6. The state of the goods should not undergo any transformation.
7. AD Category – I bank may handle bonafide Merchanting Trade Transactions and ensure that:
  8. 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,
  9. Both the legs of a Merchanting Trade Transaction are routed through the **same** AD bank.
  10. 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.
  11. 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.
  12. The commencement of Merchanting Trade Transactions 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;
  13. 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 AD bank, as in the case of import transactions ;
  14. In case advance against the export leg is received by the Merchanting Trader, AD bank should ensure that the same is earmarked for making payment for the respective import leg. However, AD bank may allow short-term deployment of such funds for the intervening period in an interest bearing account;
  15. 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, AD bank may handle such transactions by providing facility based on commercial judgement.

16. It may, however, be ensured that any such advance payment for the import leg beyond USD 500,000/- per transaction, should be made 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;
17. 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;
18. Payment for import leg may also be allowed to be made out of the balances in Exchange Earners Foreign Currency Account (EEFC) of the Merchants' Trader.
19. AD 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 within 15 days from the close of each half year, i.e. June and December.
20. Defaulting Merchanting Traders, whose outstanding reach 5% of their annual export earnings, would be caution-listed.
21. The KYC and AML guidelines should be observed by the AD bank while handling such transactions.
22. Merchanting Traders have to be genuine traders of goods and not mere financial intermediaries.
23. Confirmed orders have to be received by them from the overseas buyers. AD banks should satisfy themselves about the capabilities of the Merchanting Trader to perform the obligations under the order.
24. The overall Merchanting Trade Transaction should result in reasonable profits to the Merchanting Trader.
25. Merchanting Trade Transactions to Nepal and Bhutan: 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.
26. 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.
27. Third Party Payments for export and import legs of the MTT are not allowed.
28. Bank may write-off the unrealized amount of export leg, without any ceiling, on the request made by the Merchanting trader, in the following circumstances:

- a) The MTT buyer has been declared insolvent and a certificate from the official liquidator specifying that there is no possibility of recovery of export proceeds has been produced.
- b) The goods exported have been auctioned or destroyed by the Port / Customs / 28 Health authorities in the importing country and a certificate to that effect has been produced.
- c) The unrealized amount of the export leg represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization.
- d) The counterparty to the merchant trader is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non-Co-operative Jurisdictions on which FATF has called for counter measures.

29. The counterparty to the merchant trader is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non-Co-operative Jurisdictions on which FATF has called for counter measures.

30. Reporting for Merchanting or Intermediary Trade Transaction for compilation of R-return should be done on gross basis, against the undernoted codes (for your bank) :

<b>Trade</b>	<b>Purpose Code under FETERS</b>	<b>Description</b>
Export	P0108	Goods sold under Merchanting /receipt against export leg of Merchanting trade
Import	S0108	Goods acquired under Merchanting /payment against import leg of Merchanting Trade Transaction

31. MTT is well within the scope of FEMA. RBI is very strict about compliance of all provisions of MTT by the bank. MTT transactions are also subject to scrutiny of the Auditors. Some Authorized Dealer Banks are not comfortable to handle the transaction of MTT. They try to avoid this transaction under some pretext.

32. It is advisable to contact your Banker beforehand to avoid the problem later on.

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## **Documentation under Merchanting Trade Transaction**

Like any other international transaction, certain documents are essentially required for Merchanting Trade Transaction also.

Different types of documents are as follow:

**INVOICE:** Invoice is a fundamental and basic document of prime importance. It is the exporter's bill for sale of goods. It contains name of Exporter, Importer, consignee, description of goods. No. & kind of packages, shipping mark, port of loading, port of discharge and many other details of the transaction. It is a basis of transaction and value, mentioned in invoice is taken normally as value of goods.

This Invoice is standardized. It is required to be signed by an exporter.

Example: Radhika Enterprises, an Indian Merchanting Trader has decided purchase 3,00,000 pieces of Stainless Steel Spoons for USD 70,000/- CIF by sea, from M/s. Young Chau and Company, China. The said goods will be sent to M/s. Johnson International (JI) Colombo at USD 80,000/-.

The goods will move from Chinese Sea Port to Colombo Sea Port directly. We now understand the documentation under Merchanting Trade Transaction on the basis of above example.

1. Radhika Enterprises (RE) Merchanting Trader will first receive the Invoice from M/s. Young Chau and Company, China (YC).
2. RE will check all the details as per order.
3. RE will now prepare supply invoice based on Chinese invoice. All the details will be copied as it is except the following changes.

<b>Heading</b>	<b>From</b>	<b>Change to</b>
Exporter	YC	RE
Consignee / Buyer	RE	JI
Invoice No.	101	501
Buyers Order No.	51	61
Rate	USD 23.33 per 100 pieces	USD 26.66 per 100 pieces
Amount	USD 70,000/- CIF	USD 80,000/- CIF
Signature	YC	RE

4. All rest of the details will be the same. In short it will be a mirror document.

**PACKING LIST:** Packing list is a consolidated statement in a prescribed format detailing how goods are packed. It is very useful document for customs at the time of examination and warehouse keeper of buyer to maintain record of inventory and to effect delivery.

Packing list will have many details which are as per invoice. It does not indicate unit rate and value of goods. Packing list describe carton / package wise detail of goods, quantity, net weight, gross weight and dimension.

The above changes, as made in the invoice, must be reflected in supply invoice / supply packing list.

**CERTIFICATE OF ORIGIN:** Certificate of origin is one useful document in import-export trade. This certificate indicates that the goods which are being exported are actually manufactured in a specific country mentioned therein. This certificate is sent by the exporter to the importer and is useful for clearance of the goods from the customs authority of the importing country. This is the documents required by the importer for his import clearance. This certificate of origin is normally issued by Chamber of Commerce. From 01.11.2021, in India this COO, Non-Preferential will be issued online by all the concerned authorities including Chamber of Commerce.

In this Merchanting Trade Transaction, RE will receive COO from YC issued by Chinese Chamber of Commerce certifying that the goods are of Chinese origin. In Merchanting Trade, since the goods are not undergoing any transformation, the country of origin will remain China only. It is wrong to declare the goods as any Origin other than China. This will be mis-declaration and it is not permitted.

RE, wanted to hide the name and detail of YC from JI. In that case RE has to approach a chamber of commerce in India, for example Indian Merchants' Chamber in Mumbai and follow the guideline issued by chamber for the same.

1. RE has to make an application for issue of COO.
2. RE has to prepare the prescribed form of COO with all the details based on invoice - as modified above - and incorporate the same.
3. The certification will read that the goods are of Chinese origin.
4. RE has to satisfy the Indian Merchants' Chamber about the transaction and provide additional documents as required.
5. Necessary fees are to be paid.

This will amount to be a replacement of COO received from China.

**BILLS OF LADING:** The bills of lading is a document issued by the shipping company or its agent acknowledging the receipt of goods; for shipment on board of the vessel and undertaking to deliver the goods in the like order and condition as received, to the consignee or his order provided the freight and other charges specified in the bills of lading have been duly paid. Bills of Lading are issued in the standardized aligned document format.

A bill of lading is a transport document. In Merchanting Trade Transaction goods are moving directly from China to Colombo. However, only documents are arriving in India. RE is preparing another set of documents and sending then to JI.

RE always wanted to hide the details of YC from JI. If the original set of Bills of lading are sent to JI by RE then the business secret is not maintain. In that case, RE will prefer to switch the BL with the help of shipping company or its agent in India, who has issued this.

RE is required to approach shipping company with original BL received from YC. RE will complete the formalities with shipping company in India and pay the charges for switch BL. In the Switched BL the following details will be modified.

- Shipper's name & address
- Consignee's name and address.
- Notify party.

It is always advisable to speak to the shipping company, well in advance for the arrangement to Switch the BL and understand their requirements. It is complex process.

The Merchanting Trader can hide the name and details of the supplier but cannot hide the name of the country of the supply.

## **86. LIST OF CIRCULARS WHICH HAVE BEEN CONSOLIDATED IN THE MASTER DIRECTION ON EXPORT OF GOODS AND SERVICES**

<b>Sr No</b>	<b>Circular No.</b>	<b>Subject</b>	<b>Date</b>
1	FEMA Notification No. 23 (R) / 2015-RB dated January 12, 2016	Foreign Exchange Management (Export of Goods and Services) Regulations, 2015	January 1, 2016
2	<a href="#">A.P. (DIR Series) Circular No.28</a>	Opening, holding and maintaining Foreign Currency Account in India by Unit in Special Economic Zones (SEZs)	October 3, 2002
3	<a href="#">A.P. (DIR Series) Circular No.41</a>	Issue of Corporate Guarantee in lieu of Bid Bond Guarantee	November 8, 2002
4	<a href="#">A.P. (DIR Series) Circular No.91</a>	Export of Goods and Services - Facilities to Units in Special Economic Zones (SEZs)	April 1, 2003
5	<a href="#">A.P. (DIR Series) Circular No.100</a>	Export of Goods and Services - Exports to Warehouses Abroad	May 2, 2003
6	<a href="#">A.P. (DIR Series) Circular No.77</a>	Foreign Exchange Management Act, 1999 - Guidelines for Compilation of R>Returns	March 13, 2004
7	<a href="#">A.P. (DIR Series) Circular No.71</a>	Data on Project Export Finance	June 8, 2007
8	<a href="#">A.P. (DIR Series) Circular No.30</a>	Compilation of Bank-wide consolidated R-Return	February 25,2008
9	<a href="#">A.P (DIR Series) Circular No.43</a>	Settlement system under ACU Mechanism	December 26, 2008
10	<a href="#">A.P. (DIR Series) Circular</a>	Compilation of R>Returns : Reporting under	February 29, 2012

	<a href="#">No.84</a>	FETERS	
11	<a href="#">A.P. (DIR Series) Circular No.46</a>	Supply of Goods and Services by Special Economic Zones to Units in Domestic Tariff Areas	October 23, 2012
12	<a href="#">A.P. (DIR Series) Circular No.60</a>	Export Outstanding Statement (XOS) Online Bank wide Submission	October 01, 2013
13	<a href="#">A.P. (DIR Series) Circular No.62</a>	Closing of Old Outstanding Bills : Export - Follow-up - XOS Statements	October 14, 2013
14	<a href="#">A.P. (DIR Series) Circular No.63</a>	Memorandum of Procedure for Channeling Transactions through Asian Clearing Union (ACU)	October 18, 2013
15	<a href="#">A.P.(DIR Series) Circular No.146</a>	Export & Import of Currencies: Enhanced facilities for residents and non-residents	June 19, 2014
16	<a href="#">A.P. (DIR Series) Circular No. 11</a>	Export of Goods and Services - Project Exports	July 22, 2014
17	<a href="#">A.P. (DIR Series) Circular No.93</a>	Export of Goods and Services - Project Exports	April 1, 2015
18	<a href="#">A.P.(DIR Series) Circular No. 21</a>	Memorandum of Procedure for channeling transactions through Asian Clearing Union (ACU)	October 08, 2015
19	<a href="#">A.P. (DIR Series) Circular No. 68 [(1)/23(R)]</a>	Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015	May 12, 2016
20	<a href="#">A.P. (DIR Series) Circular No. 74</a>	Export Data Processing and Monitoring System (EDPMS) – Additional Modules for caution listing of exporters, reporting of advance remittance for exports and migration of old XOS data	May 26, 2016
21	<a href="#">A.P. (DIR Series) Circular No. 04</a>	Export Data Processing and Monitoring System (EDPMS) Issuance of Electronic Bank Realisation Certificate (eBRC)	September 15, 2017
22	<a href="#">A.P. (DIR Series) Circular No. 10</a>	Re-export of unsold rough diamonds from Special Notified Zone of Customs without Export Declaration Form (EDF) formality	November 22, 2019
23	<a href="#">A.P. (DIR Series) Circular No. 22</a>	Settlement system under Asian Clearing Union (ACU) Mechanism	March 17, 2020
24	<a href="#">A.P. (DIR Series) Circular No. 27</a>	Export of Goods and Services- Realisation and Repatriation of Export Proceeds-Relaxation	April 01, 2020
25	<a href="#">A.P. (DIR Series) Circular No. 03</a>	Export Data Processing and Monitoring System (EDPMS) Module for 'Caution/De-caution Listing of Exporters' – Review	October 09, 2020
26	<a href="#">A.P. (DIR Series) Circular No. 08</a>	External Trade – Facilitation - Export of Goods and Services	December 04, 2020



## **87. CONSOLIDATED LIST OF CIRCULARS ON IMPORT OF GOODS AND SERVICES**

Sr. No	AP (DIR Series Circular No	Subject	Date of Circular
1.	<a href="#">106</a>	Import of goods and services into India.	June 19, 2003
2.	<a href="#">4</a>	Merchanting Trade Transactions – Clarifications - Short term credit	July 19, 2003
3.	<a href="#">9</a>	Evidence of Import – Liberalization	August 18, 2003
4.	<a href="#">15</a>	Advance Remittance for Imports	September 17, 2003
5.	<a href="#">49</a>	Advance Remittance for Imports	December 15, 2003
6.	<a href="#">66</a>	Imports into India – Direct Receipt of Import Bills / Documents	February 6, 2004
7.	<a href="#">72</a>	Foreign Exchange Management Act, 1999 - Import of Goods into India – Evidence of Import	February 20, 2004
8.	<a href="#">2</a>	Import of Gold by (i) Export Oriented Units (EOUs), (ii) Units in SEZ/EPZ, and (iii) Nominated Agencies	July 9, 2004
9.	<a href="#">34</a>	Import of Gold on Loan Basis – Tenor of Loan and Opening of Stand-By Letter of Credit	February 18, 2005
10.	<a href="#">1</a>	Import of Goods of Value USD 100,000 and Less - Clarification on Follow up for Evidence of Import	July 12, 2005
11.	<a href="#">33</a>	Liberalisation of Export and Import procedures	February 28, 2007
12.	<a href="#">34</a>	Import of Goods of Value USD 100,000 and Less - Clarification on Follow up for Evidence of Import	March 2, 2007
13.	<a href="#">63</a>	Import of Equipment's by BPO Companies in India for International Call Centre	May 25, 2007
14.	<a href="#">77</a>	Advance Remittance for Import of aircrafts / helicopters / other aviation related purchases	June 29, 2007
15.	<a href="#">18</a>	Direct Receipt of Import Bills / Documents - Liberalisation	November 7, 2007
16.	<a href="#">37</a>	Direct Receipt of Import Bills / Documents for Import of Rough Precious & Semi-Precious Stones	April 16, 2008
17.	<a href="#">03</a>	Advance Remittance for Import of Rough Diamonds	August 4, 2008
18.	<a href="#">08</a>	Advance Remittance for Import of Rough Diamonds	August 21, 2008
19.	<a href="#">09</a>	Foreign Exchange Management Act, 1999- Advance Remittance for Import of Goods - Liberalisation	August 21, 2008
20.	<a href="#">12</a>	Foreign Exchange Management Act, 1999 –	August 28, 2008

		Import of Platinum / Palladium / Rhodium / Silver	
21.	<a href="#">13</a>	Direct Receipt of Import Bills / Documents - Liberalisation	September 1, 2008
22.	<a href="#">15</a>	Foreign Exchange Management Act, 1999 – Advance Remittances for Import of Services	September 8, 2008
23.	<a href="#">21</a>	Advance Remittance for Import of Rough Diamonds	December 29, 2009
24.	<a href="#">56</a>	Advance Remittance for Import of Goods – Liberalisation	April 29, 2011
25.	<a href="#">59</a>	Import of rough, cut and polished diamonds	May 06, 2011
26.	<a href="#">82</a>	Release of Foreign Exchange for Imports – Further Liberalisation	February 21, 2012
27.	<a href="#">83</a>	Import of Gold on Loan Basis - Tenor of Loan and Opening of Stand - By Letter of Credit	February 27, 2012
28.	<a href="#">103</a>	Data on import of Gold – Statements – Modification	April 03, 2012
29.	<a href="#">83</a>	Import of precious and semi-precious stones- Clarification	February 20, 2013
30.	<a href="#">103</a>	Import of Gold by Nominated Banks/Agencies	May 13, 2013
31.	<a href="#">107</a>	Import of Gold by Nominated Banks/Agencies	June 4, 2013
32.	<a href="#">122</a>	Import of Gold by Nominated Banks/Agencies	June 27, 2013
33.	<a href="#">15</a>	Import of Gold by Nominated Banks /Agencies/Entities	July 22, 2013
34.	<a href="#">39</a>	Export import of Currency	September 6, 2013
35.	<a href="#">70</a>	Third party payments for export / import transactions	November 8 , 2013
36.	<a href="#">71</a>	Advance Remittance for Import of Rough Diamonds	November 8, 2013
37.	<a href="#">73</a>	Import of Gold by Nominated Banks /Agencies/Entities	November 11, 2013
38.	<a href="#">75</a>	Trade Credit for imports into India- Online submission of data on issuance of Guarantee/Letter of Undertaking (LoU)/Letter of Comfort (LoC) by ADs	November 19, 2013
39.	<a href="#">82</a>	Import of Gold by Nominated Banks/Agencies/Entities	December 31, 2013
40.	<a href="#">95</a>	Merchanting Trade Transactions	January 17, 2014
41.	<a href="#">100</a>	Third party payments for export / import transactions	February 04, 2014
42.	<a href="#">103</a>	Import of Gold / Gold Dore by Nominated Banks /Agencies /Entities - Clarifications	February 14, 2014
43.	<a href="#">115</a>	Merchanting Trade Transactions - Revised guidelines	March 28, 2014
44.	<a href="#">116</a>	Advance Remittance for Import of Rough Diamonds	April 01, 2014
45.	<a href="#">122</a>	Trade Credits for Imports into India – Review of all-in-cost ceiling	April 10, 2014

46.	<a href="#">133</a>	Import of Gold by Nominated Banks / Agencies / Entities	May 21, 2014
47.	<a href="#">146</a>	Export & Import of Currency- Enhanced Facilities	June 19, 2014
48.	<a href="#">2</a>	Import of Rough, Cut and Polished Diamonds - credit relaxation	July 07, 2014
49.	<a href="#">42</a>	Import of Gold by Nominated Banks/Agencies	November 28, 2014
50.	<a href="#">76</a>	Form A1- Payments for Imports - Discontinuance thereof	February 12, 2015
51.	<a href="#">79</a>	Guidelines on Import of Gold by Nominated Banks / Agencies	February 18, 2015
52.	<a href="#">96</a>	Merchanting Trade to Nepal and Bhutan	April 30, 2015
53.	<a href="#">16</a>	Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers	September 24, 2015
54.	<a href="#">29</a>	Import of Goods into India – Evidence of Import	November 26, 2015
55.	<a href="#">30</a>	Advance Remittance for Import of aircrafts / helicopters /other aviation related purchases	November 26, 2015
56.	<a href="#">42</a>	Settlement of Export/ Import transactions in currencies not having a direct exchange rate	February 4, 2016
57.	<a href="#">57</a>	Import of Rough, Cut and Polished Diamonds	March 31, 2016
58.	<a href="#">65</a>	Import of goods- Import Data Processing and Monitoring System (IDPMS)	April 28, 2016
59.	<a href="#">05</a>	Import Data Processing and Monitoring System (IDPMS)	October 06, 2016
60.	<a href="#">11(1)/14(R) 1</a>	Foreign Exchange Management (Manner of Receipt and Payment) Regulations 2016	October 20, 2016
61.	<a href="#">27</a>	Evidence of Import under Import Data Processing and Monitoring System (IDPMS)	January 12, 2017
62.	<a href="#">33</a>	Import of goods and services- Extension of time limits for Settlement of import payment	May 22, 2020

## **88. QUESTIONS AND ANSWERS**

**Q. 1 Few clients receiving funds through payment gateway like PayPal etc. What are the compliances to be followed?**

**A 1:**

1. The amount representing the full export value of the goods exported shall be received through an A D Bank. (Para A.3 of Master Direction no 16 dated 1-1-16)
2. E-commerce is different method of selling as compared to traditional export. Payment thereof is also done differently.
3. In this case, the payment is initially received by say PayPal, which is commonly known as Payment Gateway. This payment is transferred to exporter's bank account.

4. Authorized Dealer Bank has been allowed to offer the facility of repatriation of export related remittances by entering into standing arrangement with Online Payment Gateway Service Providers (OPGSPs).
  5. This facility shall only be available for export of goods and services of value not exceeding USD 10,000/-.
  6. Authorized Dealer Bank and OPGSPs has to operate as per guidelines provided in Para no. A.3 (iii) of Master Direction no 16.
  7. If AD Bank receives the payment from OPGSPs through NOSTRO collection account mechanism then only, that payment is considered against export, not otherwise.
  8. AD Bank will issue e-BRC for the same.
- 

**Q. 3 can an Indian exported forfeit advance received if order is cancelled.**

**OR**

**Q. 3 Advance taken for exports of goods not returned, what are the consequences**

**OR**

**Q. 3 What if the advance amount received is forfeited at a later stage by us without exporting the goods? What do provisions say in such instance?**

**A 3:**

1. Advance payment, which is one of the payment terms, is considered as the most preferred by the exporters.
2. Exporters will be in financially comfortable position, if they receive advance payment.
3. Although, it is not very common, but under certain conditions, exporters do receive Advance payment against export.
4. Para C.2 of Master Direction no 16 dated 1/1/16 deals with receipt of advance against exports:  
Where an exporter receives advance payment, 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.
5. Banks can also allow exporters having minimum of three years' satisfactory track record to receive long term export advance up to maximum of 10 years to be utilized for execution of long term supply contracts for export of goods, subject to the conditions as under:-
  - a) Firm irrevocable supply orders and contracts should be in place. The contract with the overseas party/buyer should be vetted and the same shall clearly specify the nature, amount, and delivery timelines of the products over the years and penalty in case of non - performance or contract cancellation. Product pricing should be in consonance with prevailing International prices.
  - b) 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.
  - c) The entity should not be under adverse notice of Enforcement Directorate or any such regulatory agencies.
  - d) The entity should not be caution listed.
  - e) Such advances should be adjusted through the future exports.

- f) The rate of interest payable, if any should not exceed LIBOR plus 200basis points.
  - g) The documents should be routed through one Authorized Dealer bank only.
  - h) AML/ KYC guidelines must be complied with.
  - i) Such export advances shall not be permitted to be used to liquidate Rupee loans classified as NPA.
  - j) Double financing for working capital for execution of export orders should be avoided.
  - k) Receipt of such advances of USD 100 Million or more should be immediately reported to RBI.
  - l) In case AD banks are required to issue BG / SBLC it should be done very strictly and rigorously.
  - m) Banks may allow the purchase of foreign exchange from open market for refunding advance payment credited to EEFC account, only after utilizing the entire balances of exporter's EEFC accounts.
6. 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.

This is also subject to certain conditions.

AD Banks are advised to ensure that, no misuse of these provisions take place.

- 7. In case the overseas party fails to comply with his contractual obligation and the same is properly documented then it may be justifiable by Indian exporter to forfeit the advance received by him.
- 8. However it is prudent for Indian exporter to inform his bank / RBI about the facts of the case and circumstances under which the Indian exporter wants to forfeit this amount.
- 9. Amount received in advance for which no corresponding shipping bill is generated will have an outstanding IRM in EDPMS. This need to be resolved.
- 10. RBI will examine the case and will grant or reject the application with or without stipulation of conditions.
- 11. RBI is not in favor of exporter's forfeiting the advance amount unless it is genuine fallout of commercial contract having bonafide circumstances.

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**Q. 4 In case of software services we don't do the STPI valuation what is the consequence and penalties?**

**A. 4:**

- 1. The above query is related to the procedural compliance with STPI against export of software services.
- 2. For software exporting companies, not in STPI or SEZ, it is possible to bypass and get remittances without filing Softex under the guise of service export.

3. Softex form certifies your export as export of software.
  4. STPI is designated authority for "Software Export Valuation". STPI is entrusted with the task of valuation of software services/ IT enabled services. This you can compare with valuation done by Customs for export of goods.
  5. When " export " of software takes place, it has to comply with
    - Realisation of forex and
    - Valuation of Software.Not submitting, software form amount to be noncompliance of this second condition.
  6. Exporter of Software should file softex.
  7. If softex is not filed, the amount realized is either treated as "General Services" or not as export proceeds or illegal.
  8. Your software export, for want of Softex Form, will not be classified as "Software Export". This may attract problems of noncompliance of FEMA provisions.
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**Q. 5 "What if money not realized in time, what is the penalty? Also, what if payment not realized in time. The exporter has been penalized. Now, he receives the payment afterwards. What then"**

**OR**

**Q. 5 Penalty on amount not being realized, and if amount realized later, after being penalized. What is the remedy?**

**A. 5:**

1. It is obligatory on the part of the exporter to realize and repatriate the full value of goods to India within stipulated period from the date of Export.
  2. In case, the exporter is unable to realize the proceeds, he has an option to seek an extension of time.
  3. When he feels that in spite of his best efforts, he cannot get the money; he can apply for Write off as per FED/16 dated 1/1/16 Para C 23.
  4. In case the exporter has failed to comply with above provisions. , AD bank reports the same, and / or EDPMS system will alert the exporter's details in the system.
  5. Based on the IEC ,the exporter will be flagged as 'Alert' or " Caution Listed'
  6. This will result into several restrictions in operation.
  7. RBI may refer the matter, to Enforcement Directorate to take further action after proper investigation.
  8. RBI will consider the circumstance under which exporter has failed to realize the exports proceeds. You have to submit convincing documents and prove it that you have put your best efforts.
  9. Each case will be considered on merit.
  10. In case, you have received the payment subsequently, then it is better to inform to RBI, so that record against you can be improved.
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**Q. 6 What if within 12 months the money is to be refunded, does AD have power to approve it, or is it under auto-approval?**

**A. 6:**

1. Para C.2 of FED Master Direction No. 16/2015-16 dated 1.1.2016 deals with Receipts of advance against exports.
2. In terms of Regulation 15 of Notification No. FEMA 23 @/2015-RB dated January 12, 2016, 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 if advance payment.
3. In case, you are not in a position to export the goods in stipulated time, and you wish to refund the said amount of advance before expiry of one year from the date of amount received. You are requested to apply to your AD bank with whom you have received the advance for refunding the amount.
4. In this application, give full details of circumstances under which you wish to refund this amount. AD bank will closely scrutinize your application. The permission will be granted only in genuine case having merit. Please provide supporting documents to substantiate your request.
5. Although it is within the delegated power to the bank but the banker will apply abandoned precautions before granting the permission.
6. There should be no instance of refund exceeding 10% of the advance payment received in the last three years.
7. As it has been observed that there is substantial increase in the number and amount of advance received for exports remaining outstanding beyond the stipulated period on account of non-performance of such exports (shipments in case of export of goods), AD category- 1 banks are advised to efficiently follow up with the concerned exports in order to ensure that export performance (shipments in case of export of goods are completed within the stipulated time period.
8. It is further reiterated that AD category- 1 banks should exercise proper due diligence and ensure compliance with KYC and AML guidelines so that only bonafide export advances flow into India. Doubtful cases as also instance of chronic defaulters may be referred to Directorate of Enforcement (DoE) for further investigation. A quarterly statement indicating details of such cases may be forwarded to the concerned Regional Offices of RBI within 21 days from the end of each quarter.

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**Q. 7 Sir does, it apply for the services as well, the EDPMS part. Not just for goods?**

**A.7:**

1. The nature of the transaction of export of goods and export of services is absolutely different.
2. However, the common factor in both cases is that it results into earning of foreign exchange for the nation.
3. Valuation, documentation and export procedure are also different in both cases.
4. Master Direction Numbers 16 is having title as" export of goods and services."

So, simple interpretation is that this Master Direction intends to cover, goods and services both.

However, most of the text refers to goods while narrating the provisions.

5. Under services, Software services are specifically mentioned.
6. Softex procedure is laid down. STPI is nominated for valuation purpose.
7. For services, other than software, no such details are available except Para A.2.
8. Master Direction no 18, which deals with reporting by bank to RBI is also not covering reference of export/import of services other than software.
9. In case, you have received an advance against export of services and you wish to refund the same before the expiry of one year from the date of receipt of advance, you will require to make the application to your bank for necessary approval.
10. EDPMS is mainly for export of goods. Details of shipping bill migrate from ICEGATE.

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**Q. 8 Is there any restriction in receipt of sale proceeds in a different currency from the export currency? Kindly clarify**

**A. 8:**

1. As an exporter you can raise the invoice in INR or in all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
2. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible vostro account of account of a non-resident bank situated in any country other than a member country of Asian clearing Union (ACU) or Nepal or Bhutan.
3. Additionally, rupee payment through vostro account must be against payment in free foreign currency by buyer in his non-resident bank account.
4. Following are freely Convertible Currencies.

1. Australian Dollars	2. Bahraini Dinar	3. Canadian Dollar
4. Danish Kroner	5. Euro	6. Hongkong Dollar
7. Kenya Shilling	8. Kuwait Dinar	9. New Zealand Dollar
10. Norwegian Dollar	11. Pound Sterling	12. Singapore Dollar
13. South Africa Rand	14. Saudi Arabia Riyal	15. Swedish Kroner
16. Swiss Franc	17. UAE Dirham	18. U.S Dollar

5. As per clause 3 (B) (ii) receipts should be in any freely Convertible Currency.
6. In case you have raised the invoice in Canadian Dollar and you have received the payment in U. S. Dollar, then it is acceptable as both are freely Convertible Currencies.
7. In case you have raised the invoice in Canadian Dollar and you have received the payment in Nigerian Naira, then it is not acceptable as Nigerian Naira is not freely Convertible Currency.



8. In case you have raised the invoice in Nigerian Naira and you have received the payment in Canadian Dollar, then it is acceptable as Canadian Dollar is freely Convertible Currency.

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**Q.9. is there any restrictions in receipt of export proceeds in crypto currencies?**

**A 9:** Receipt of export proceeds in crypto currencies is not allowed.

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**Q. 10 for import vendor outstanding shown in books of account, can EDPMS statement issued by bank be relied?**

**A 10:** Yes.

1. EDPMS is a portal by RBI to monitor export proceeds realization.
  2. At the time of export shipment, the detail of shipping bill is floating from ICEGATE to EDPMS portal, automatically and in real time.
  3. When the exporter submits the documents to the bank, the AD Bank makes the entry of the fact and the status of the shipping bill is updated accordingly.
  4. When the payment is received by the bank and the exporter gives instructions along with purpose code, the bank will appropriate this receipt accordingly.
  5. The bank will issue e-BRC through the EDPMS portal.
  6. The outstanding shipping bill entry will get knocked off.
  7. The above procedure is operative for all exports shipments.
  8. In case, the exporter has received the payment in advance, before the shipping bill is raised, then the AD Bank will create IRM in the EDPMS.
  9. Shipping bill details received from ICEGATE will be utilized to knock off the IRM.
  10. The entire system is auto driven and your banker has to be active and regular.
  11. Under the circumstances, we have the reasons to believe that the outstanding shown in EDPMS statement can be relied.
  12. However, if there are some discrepancies in the statement, than the exporter should draw the attention of his banker along with documentary support.
  13. The bank will do the needful and element the irregularities.
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**Q. 11 "whether amount outstanding on account of export of goods be adjusted against bills outstanding for import of services?"**

**A.11:**

1. A D Banks may consider request received from their exporter/importer constituent for allowing set off of outstanding export receivables against Import payables for goods.
2. Setoff of outstanding export receivables against outstanding Import payables from/ to same overseas buyer/ supplier.
3. This arrangement shall be through one bank only.

4. Bank should be satisfied about bonafides of the transactions and parties.
  5. The invoices are not under investigation.
  6. **Setoff of export receivables against goods shall not be allowed against Import payables for services and vice versa.**
  7. Bank shall ensure that import payables/ export receivables are outstanding at the time of allowing setoff.
  8. Setoff shall be allowed between the export and import leg taking place during the same calendar year.
  9. Setoff shall not result in tax evasion/ avoidance by either party.
  10. Bank may seek Auditor/CA Certificate, wherever felt necessary.  
Ref: Para C. 26 of Master Direction no 16 dated 1 -1- 16.
  11. Provisions of set- off of export of receivables against Import payables can be referred to A P (DIR Series) Circular no 8 dated 4/12/2020 of RBI.
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**Q. 12 (A) what is the time limit for settlement of import of services bills?**

**A. 12(A).**

1. Para B.5.1.of FED master direction no 17/2016-17 dated 1.01.2016 deals with time limit for normal imports.
  2. This master direction covers import of goods and services.
  3. In terms of the extant regulations, remittance 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, etc.
  4. further, in view of the disruptions due to outbreak of COVID-19 pandemic, with effect from May 22, 2020, the time period for completion of remittances against normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) has been extended from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020.
  5. AD category- 1 banks may permit settlement of import dues delayed due to disputes, financial difficulties, etc.
  6. However, interest if any, on such delayed payments, usance bills or overdue interest is payable only for a period of up to 3 years from the date of shipment. It is subject to certain provisions.
  7. AD Category- 1 banks can consider granting extension of time for settlement of import dues up to a period of six months at a time (Maximum up to the period of 3 years) irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfillment of terms of contract; financial difficulties and cases where importer has filed suit against the seller. In cases where sector specific guidelines have been issued by reserve bank of India for extension of time (i.e. rough, cut and polished diamonds). The same will be applicable.
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**Q.12. (B) Export of goods bills are outstanding for more than 270 days"?**

**A. 12(B):**

1. It is obligatory on the part of the exporter to realize and repatriate the full value of goods to India within stipulated period from the date of Export.

2. In case, the exporter is unable to realize the proceeds, he has an option to seek an extension of time.
  3. In your above question, you have mentioned that export of goods bills are outstanding for more than 270 days, in that case, the exporter has to apply to his bank, for an extension of time.
  4. When an exporter feels that, in spite of his best efforts, the exporter cannot realize the export proceeds; he can apply for Write off as per FED/16 dated 1/1/16 Para C 23.
  5. In case the exporter has failed to comply with above provisions. , AD bank reports the same, and / or EDPMS system will alert the exporter's details in the system.
  6. Based on the IEC ,the exporter will be flagged as 'Alert' or " Caution Listed'
  7. This will result into several restrictions in operation with customs and bank.
  8. RBI may refer the matter, to Enforcement Directorate to take further action after proper investigation.
- 

**Q. 13 In case of Export of Services, the realisation got delayed.**

**A. 13:**

1. It is obligatory on the part of the Services Providers to realize and repatriate the full value of services to India within stipulated period from the date of rendering of services/date of invoice.
  2. In case, the Services Providers is unable to realize the proceeds, he has an option to seek an extension of time.
  3. In your above question, you have mentioned that Invoice of services are outstanding for more than 270 days, in that case, the Service provider has to apply to his bank, for an extension of time.
  4. When a Service Provider feels that, in spite of his best efforts, the proceeds cannot be realized, then he can apply for write off as per FED/16 dated 1/1/16 Para C 23.
  5. In case the Service Provider has failed to comply with above provisions. , AD bank reports the same.
  6. This will result into several restrictions in operation with bank.
  7. RBI may refer the matter, to Enforcement Directorate to take further action after proper investigation.
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**Q. 14 what are the compliances required when sending goods as samples (without any payment)? Specially when the goods are sent through courier?**

**A. 14:**

1. Sampling is an important aspect in marketing the product. Exporter is required to send representative samples to overseas buyer.
2. Outgoing samples bring the order in.
3. The exporter may send the samples, free of charge, to promote his business.
4. The governments are aware of this business requirement, and have therefore permitted sending of samples, free of charge, without realizing foreign exchange.
5. Refer clause 4(a) of FEM (Export of Goods and Services) Regulations, 2015 dated January 12, 2016. Notification No. FEMA 23(R)/2015-RB which reads as follow:-  
*“Trade samples of goods and publicity material supplied free of payment”* are exempted from furnishing the declaration at the time of export.

6. To prevent the misuse of above provision, Department of Revenue has determine the guideline from time to time. The exporter should refer the same.
  7. In case, you are sending samples to your overseas buyer through courier, you have to follow the procedure prescribed by the customs.
  8. Courier Company will require invoice, having full particulars of the sample, its value. The courier company may ask for certain declarations as required by customs/Airlines.
  9. Many courier companies wanted the parcel should be packed in front of them, after verification.
  10. The courier company will issue Way bill to the exporter.
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**Q. 15 Can you please help clarify a scenario in which invoice is raised in Euro to a Customer in Europe but they pay in Rupee from their US bank. It's a consulting payment for the client?**

**A.15:**

1. Indian exporter has raised export invoice to an European buyer in Euro.
  2. It is expected that the European buyer makes the payment as per invoice.
  3. Since, Euro is home currency of the buyer, there should not be any problem for the buyer to make the payment in Euro.
  4. However the buyer wants to make payment in INR from their US bank, from FEMA compliance, we can refer Para 3(B) (i) which reads: ***Receipt in rupees from the account of the bank situated in any country other than a member country of the Asian Clearing Union.***
  5. Exporter has also to examine the GST condition for export of services. If the exporter wants to consider his supply of services as an export of services and wanted to avail LUT or Refund, then realization of Foreign Exchange is essential
  6. Export of service is defined under Para 2(6) of GST.
  7. The fourth condition in this definition reads as "The payment for such services has been received by the supplier of services in Convertible foreign exchange."
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**Q. 16 (A) Whether softex required only software export or also for consulting service?**

**A.16 (A):**

1. FEMA provision deals with exports/ imports of :
  - (1) Goods
  - (2) Software Services and IT enabled services
  - (3) Other services including Management services
2. SOFTEX is require only for exports of Software Services including IT enabled services.
3. In other words, softex is not require for export of consulting services/other services.

**Q. 16. (B) Please explains about softex formalities for software exports. How to get softex cleared with inward remittance?**

**A. 16 (B):**

1. The above question is related to the procedural compliance with STPI against export of software services.

2. STPI is entrusted with the task of valuation of software services/ IT enabled services.
  3. This you can compare with valuation done by Customs for export of goods.
  4. You will agree that valuation of services is more difficult due to its nature and nonstandard parameters.
  5. STPI has prescribed "contract" or "agreement" as one of the documents. On the basis of which, entire transaction of services can be properly evaluated by the officer of STPI.
  6. Generally, this contract is for a particular assignment or for particular period. This contract also contains various other terms and conditions which help the officer of STPI proper valuation.
  7. In case of export of software/ IT enabled services, this valuation is done by technically qualified officer of STPI.
  8. As far as, goods and software/services are concerned, AD bank has role to play regarding realization of Foreign exchange and monitoring thereof.
  9. A company intends to export software or IT enabled services has to get Registration with STPI Authority.
  10. This registration will be as Non- STPI Unit.
  11. There is a payment of fees.
  12. Documents required are:
    - a. Covering letter of the company
    - b. Application form
    - c. Copy of IEC
    - d. Pan card
    - e. Details of Directors/ partners/proprietor
    - f. MOA & AOA or Partnership deed.
    - g. Form no DIR12/INC22
    - h. Registration of Contract
    - i. Certificate of Incorporation
    - j. Proof of address.
    - k. Bank Certificate with AD code.
    - l. GST certificate
    - m. Any other documents.
  13. After initial registration is received, the exporter will have to apply with softex form on monthly basis.
  14. This softex will be per buyer, irrespective of numbers of invoices per month.
  15. You submit, invoice/ contract along with gist of the contract (executive summary)/ proof of usage of internet time/ links etc.
  16. The technical officer evaluates, the valuation on the basis of the involvement of software personnel, knowledge level involved, required expertise of staff/ engineers/ man hours and complexity of the work.
  17. As there is a huge scope of overvaluation/ undervaluation in software Export, the role of STPI is very critical.
  18. Upon receipt of certified softex, one copy is submitted to AD bank along with invoice and FIRC, if any.
  19. As soon as, inward remittance is received, the bank will record the same against invoice/ softex form as per your interactions.
  20. AD bank will monitor the realization of forex.
-

**Q. 17 If a person located in INDIA buys and sells goods outside INDIA without goods being imported into INDIA, What are the compliances to be followed in terms of FEMA and other statute..**

**A.17:**

1. The transaction described by you is termed as Merchanting Trade Transaction (MTT).
  2. Goods acquired should not enter the Domestic Tariff Area.
  3. Goods involved in the transactions are permitted for export / import under the prevailing (FTP) as on the date of shipment.
  4. The bank should verify the documents like invoice, packing list, transport documents and insurance documents and satisfy itself about the genuineness of the trade.
  5. The entire Merchanting Trade Transactions should be completed within an overall period of 9 months and there should not be any outlay of foreign exchange beyond **4** months.
  6. The commencement of Merchanting Trade would be:-
    - The date of shipment
    - Export leg receipt
    - Import leg payment, whichever is first.
  7. The completion date would be:-
    - The date of shipment
    - Export leg receipt
    - Import leg payment, whichever is the last.
  8. Merchanting Traders may be allowed to make advance payment for the import leg on demand made by the overseas seller.
  9. 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.
  10. Bank should ensure one-to-one matching in case of each Merchanting Trade Transaction and report defaults to RBI.
  11. Merchanting Traders have to be **genuine** traders of goods and not mere financial intermediaries.
  12. Third Party Payment is not permitted under MTT.
- 

**Q. 18 Do we need to submit documents to bank even in case of Export of Services?**

**A. 18: Yes.**

1. Against exports of services, you will raised invoice on your overseas buyer.
2. The amount will be received by your bank from overseas bank through banking channel.
3. For crediting this amount of foreign exchange, you will have to give an instruction to the bank as to purpose code under which this amount is to be credited.
4. The bank will also require supporting documents of export of services to match the amount and other particulars.
5. In respect of export of services, no forms are specified in FEMA regulations.
6. The exporter may export such services without furnishing any declaration, but shall be liable to realize the amount of foreign exchange which become due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the FEMA.
7. The bank has an important role to play in International Trade.

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**Q.19 Will the exporter be held liable as per FEMA provisions for not providing documents to banker?**

**A.19: Yes.**

1. Exports involve foreign exchange.
2. RBI governs foreign exchange transactions through FEMA and Regulations made their under.
3. AD Bank is responsible for handling export import transactions. These bank operate under the guideline provided by RBI.
4. An exporter is required to submit original shipment documents to the bank within 21 days from the date of shipment.
5. In cases where exporter's present documents pertaining to exports after the prescribed period of 21 days from date of export, AD category- 1 Banks may handle them without prior approval of the RBI, provided they are satisfied with the reasons for the delay.
6. Banks may also permit 'Status Holder Exporters' (as defined in the Foreign Trade Policy), and units in Special Economic Zones(SEZ) to dispatch the export documents directly to the consignees outside India subject to the terms and conditions that: the export proceeds are repatriated through the AD banks named in the EDF.
7. In case, the exporter has received full payment in advance then the bank may permits him to dispatch original documents directly to overseas consignee or buyer. However, a copy of documents may please be submitted to the bank for completing the formalities.
8. 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.
9. The AD category-1 banks may also accede to the request of the exporter provided the exporter is a regular customer and the AD category-1 bank is satisfied, on the basis of standing and track record of the exporter and arrangements have been made for realization of export proceeds.
10. The exporter be held liable as per FEMA provisions for not providing documents to banker.

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**Q. 20 Will there be any assessment on the exporter or importer by adjudating officer as per FEMA provisions?**

**OR**

**Do we need to file any return/form with respect to Imports and Exports as per FEMA provisions?**

**A. 20: NO.**

1. There is no requirement for exporter or importer to file any return or form in respect of exports or imports as per FEMA provisions.

2. However, under DGFT guideline, every exporter is require to update his IEC status every year.
  3. DGFT has made it mandatory to update IECs in the period April-June every year.
  4. As per Para 2.96(b) of the Hand Book of Procedures, exporter was required to furnish quarterly return / details for his exports to the concerned export promotion councils/ commodity boards. Status holders were required the same to submit to FIEO as per FIEO format. This requirement was **deleted** from 12.07.2020 vide public notice 12/2015-20
  5. At the time of export/ import, the concerned custom officer will do the necessary assessment of the documents submitted by exporter or importer.
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**Q. 21 Any Penal provisions under FEMA for non-compliance in case of not submitting documents to bank?**

**A. 21:**

1. An exporter is required to submit export documents to his bank within 21 days from the date of exports as per FED Master Direction No. 16/2015-16 dated January 1, 2016.
  2. In case where exporters' present documents pertaining to exports after the prescribed period of 21 days from date of export, AD category-1 Banks may handle them without prior approval of the RBI, provided they are satisfied with the reasons for the delay.
  3. In case, the exporter fails to submit the document to the bank then the bank will call for documents from the exporter at the time of crediting the export realization, when received.
  4. The bank may hold/may not credit the amount in exporter's bank account in absence of export documents.
  5. If necessary, AD bank may report to RBI about the exporter for non -compliance of the provision of the FEMA.
  6. RBI may call for the explanation from the exporter and take appropriate steps including penal provisions for non-compliance.
- 

**Q. 22. How will the data uploaded in EDPMS and IDPMS from the banks? If yes, then if the data is updated in bank will that be sufficient. Any penal provisions for incorrect data in EDPMS and IDPMS by RBI?**

**A. 22:**

1. When an exporter is filling shipping bill in ICEGATE, it is processed in the system by the officer.
2. "Let Export Order" (LEO) is endorsed on the passed shipping bill.
3. ICEGATE is transmitted gateway from where the Shipping bill will float to EDPMS.
4. EDPMS is a software/platform of RBI, which will receives inward data of shipping bill.
5. RBI or AD bank only receives the data on EDPMS platform/software.
6. RBI/ bank cannot changes/ modify or cancel the data i.e. SB.
7. EDPMS portal is controlled by RBI.
8. Banks have an access to the portal to limited extent and that to for limited fields.



9. Whenever payments are received by the bank, the exporter has to confirm the corresponding details about invoice/ shipping bill/ buyer's name and the amount.
  10. Bank will also check swift message and or MT.103 for further details/ Narration.
  11. The bank will enter the details of realization in EDPMS. The entry will be knocked off.
- In case, there is an error in entry, then it needs to be corrected.

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**Q. 23. Can an Indian company accept USD from another Indian company, who is his customer?**

**A. 23.** No.

Valid currency in India is only INR. Indian company cannot accept payment in foreign currency from an Indian vendor. But if the customer is a unit in SEZ, then it is allowed.

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**Q.24. Indian Company A has received foreign exchange from the overseas buyer. Company A has supplied the goods domestically to a company in India. Is it allowed?**

**A. 24.** This is the case of supply of goods in India against amount received in foreign exchange from the overseas buyer. There is no general or special permission granted by RBI.

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**Q.25. If we raise our export invoice in INR, then how our Dubai buyer will make the payment?**

**A. 25.** INR is a Restricted Currency and cannot be available to your buyer in Dubai. But Dubai Buyer can pay in Dirham or USD in the bank in Dubai. These banks in turn convert it to INR at a prevailing exchange rate at the country in Dubai. The bank in Dubai will remit in the bank of exporters in India. This bank will credit/ or do RTGS to exporter's accounts. The risk of the fluctuation in Exchange Rate is on buyer's account.

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## **89. DISCLAIMER**

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Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour 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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