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FIIs to trade in Derivatives

The Foreign Institutional Investors (FIIs) have now been permitted to invest in exchange traded index futures by way of hedging on the recognised stock exchanges of India. FIIs having valid approval under FERA, 1973 and under FEMA, 1999 and registered with Securities and Exchange Board of India (SEBI) can now invest/trade in the exchange traded index futures in the futures segment of Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) subject to the following conditions.

- (i) The FII/and its SEBI approved sub account may open a separate sub account of their special non-resident rupee account through which all receipts and payments pertaining to trading/investment in exchange traded index futures including initial margins and mark to market settlement, transaction charges, brokerage, etc, will be made.
- (ii) The FIIs or their SEBI approved sub accounts may keep with the trading member /clearing member, amount sufficient to cover the margins prescribed by the exchange /clearing house and further such amounts as may be considered necessary to meet the immediate needs.
- (iii) Transfer between the special non-resident rupee account and sub account maintained for the purpose of investment /trading in index futures can be freely effected. However, repatriation of the rupee amount will be effected only through their special non-resident rupee account subject to payment of relevant taxes.
- (iv) The designated banks should submit to the Reserve Bank, FII/sub account wise details, daily statement on margin utilisation on behalf of all their clients in the prescribed format mentioning the opening balance as per the ledger and the available margin as at the close of business for the transaction day.
- (v) THE overall open interest of the FII should not exceed 100 per cent of market value of the concerned FII's total investment.

The designated banks may keep proper records of the sub-account and submit them to the Reserve Bank when required.

Oil Hedging

The Reserve Bank now considers applications from persons resident in India for granting permission to enter into contracts for hedging the price risk also in oil and petroleum products. Corporates desiring to avail of the facility of hedging their underlying exposure in crude oil/ petroleum products may approach the Reserve Bank for one time approval subject only to monthly reporting of transactions through the concerned authorised dealers. No approval is required for individual transactions. The earlier guidelines issued by the Reserve Bank for hedging of commodity exposure would be applicable also to hedging of crude oil and petroleum products.

External Commercial Borrowings

With a view to further liberalising ECB approvals, the Government has operationalised the automatic route for fresh ECB approvals upto USD 50 million and for all refinancing of existing ECBs with effect from September 1, 2000. Accordingly, under the automatic route arrangement, any legal entity, registered under the Companies Act, Societies Registration Act, Co-operative Societies Act, including proprietorship/partnership concerns, would be eligible to enter into loan agreements with overseas lender(s) for raising fresh ECB with average maturity of not less than three years for an amount upto USD 50 million and for refinancing an existing ECB provided it is in compliance with both the ECB guidelines framed by the Ministry of Finance, Government of India, and the regulations/directions issued by the Reserve Bank. Corporates would not be required to obtain prior approval for raising ECB upto USD 50 million and for refinancing of an existing ECB from the Ministry of Finance / Reserve Bank.

The corporate should ensure that they raise ECB from an internationally acceptable and/or recognised lender, such as, export credit agencies, suppliers of equipments, foreign collaborators, foreign equity holders, international capital markets, reputed international banks and financial institutions, etc. Further, the loan should be organised through a reputed merchant banker registered with the regulatory authorities of the host countries as may be notified from time to time by the Government of India. The lenders should be recognised and registered in the host countries for the purpose of extending international finance.

The corporate should submit through an authorised dealer of its choice, three copies of the loan agreement signed along with the lender to the concerned Regional Office of the Reserve Bank. The Regional Office of the Reserve Bank would acknowledge receipt of the copies of the agreement and would allot a loan identification number to such an agreement. The primary responsibility to ensure that ECBs raised are in conformity with the ECB guidelines and the Reserve Bank regulations/directions would be that of the concerned corporate. If, however, at a later stage, any violation is found, appropriate action would be taken by the Reserve Bank under the Foreign Exchange Management Act, 1999.

Corporates would also be permitted to make necessary draw-downs under the automatic route without prior permission from the Reserve Bank. It should file quarterly returns in a prescribed format through the authorised dealer. The withholding tax exemption would continue to be granted by the Ministry of Finance (Department of Revenue/Department of Economic Affairs), Government of India.

Authorised dealers, should continue to forward all applications to the Reserve Bank of India, to obtain prior permission for prepayment of outstanding ECBs. Opening of foreign currency account for temporarily parking ECB proceeds pending utilisation, would require prior approval of the concerned regional office of the Reserve Bank.

Import under FEMA

The Reserve Bank has recently issued a detailed circular regarding import of goods and services, merchanting trade and import of currency. While the entire circular is available on the RBI website (www.rbi.org.in) a summary is reproduced below :

Import of Goods

For exchange control purposes, rupee accounts maintained in India by citizens of India, Nepal and Bhutan, residents in Nepal and Bhutan, as well as Indian, Nepalese and Bhutanese firms, companies or other organisations, including banks functioning in these countries, are regarded as resident accounts and rupee transfers to such accounts, for imports into India (or for any other purpose), may be made freely, without reference to the Reserve Bank. Sale of foreign exchange for current account transactions with persons resident in Nepal and/or Bhutan, or against import into these countries made by residents in India, is, however, prohibited.

Import Licences

ADs should not open letters of credit or allow remittances for import of goods included in the negative list unless the importer submits a licence marked 'For Exchange Control Purposes'. Special conditions, if any, attached to such licence should strictly be adhered to while opening letters of credit or making remittances.

Obligation of Purchaser of Forex

1. Any person acquiring foreign exchange is permitted to use it either for the purpose mentioned in the declaration made by him to an AD or to use it for any other purpose for which acquisition of exchange is permissible under FEMA, or rules or regulations framed under it.
2. Where foreign exchange acquired has been utilised for import of goods into India the AD should ensure that importer furnishes an evidence of import to his satisfaction.
3. In case payment for import is made by way of credit to non-resident account of the overseas exporter or by way of credit to resident account of a non-resident bank, AD should ensure compliance of provisions regarding end-use of the acquired foreign exchange. These directions are also applicable where payment for imports into India is made through ACU mechanism.

Manner of Rupee Payment

The ADs must receive payments for retirement of bills drawn under letters of credit as well as bills received from abroad for collection against imports into India, irrespective of amount, by debit to the account of the importer maintained with themselves or by means of a crossed cheque drawn by the importer on his other bankers. Under any circumstances they should not accept payments against bills in cash.

Letters of Authority

ADs may open letters of credit or make remittances where the exchange control copy of the relative import licence has been issued in the name of a party other than the applicant,

provided the applicant produces a letter of authority obtained from the import licence holder in his favour authorising him, inter alia, to open letters of credit or make remittances for payment towards import under the licence (subject to the terms and conditions, if any, stipulated in this regard in the Import Policy in force). ADs may also open letters of credit or make remittances towards imports permitted without licences on behalf of authorised agents of importers, after referring to the Import Policy in force, that the importers are permitted to utilise services of agents for the imports in question. In all such cases, the responsibility for production of the Customs Bill of Entry, wherever required, will rest on the letter of authority holder or agent.

Form A 1

Applications by persons, firms and companies for making payments towards imports into India must be made on form A1. Variants of this form have been devised in different colours to be used for -

- (i) remittance in foreign currency,
- (ii) transfer of rupees to non-resident bank accounts, and
- (iii) remittance through Asian Clearing Union.

It should be ensured that duly filled in A1 form in appropriate format has been obtained.

Imports financed in Rupees

These Directions are also applicable to imports which are financed in rupees and payment for which is made by crediting rupees to a non-resident account in India or to a rupee account maintained by a non-resident bank.

Import Licences for c.i.f. Value

1. Import licences are normally issued for the c.i.f. value of the goods to be imported. Import licences cannot be used to the full amount in cover of f.o.b. cost of the goods leaving insurance and freight to local agent of the supplier, as additional charges to be paid in rupees over the amount specified in the import licence.

2. Importers sometime enter into contracts on f.o.b. terms and agree to the suppliers paying for the freight to be reimbursed to them along with the cost of the goods. Authorised dealers in such cases should, before making the remittance of freight charges, ascertain the actual freight amount paid with reference to the original freight bill or memo issued by the shipping company or the amount stated on the relative bill of lading.

Surrender of Import Licences

The ADs should retain exchange control copy of the import licence submitted by importer for opening of letter of credit or making remittance when fully utilised, and preserve it till scrutiny by the internal audit or inspection is completed.

Advance Remittance

ADs may allow advance remittance for import of goods without any ceiling subject to certain conditions.

Time Limit for Settlement of Import Payments

(i) Remittances against imports should be completed not later than six months from the date of shipment. Accordingly, deferred payment arrangements involving payments beyond a period of six months from the date of shipment are treated as external commercial borrowings which require prior approval of the Reserve Bank/Government of India. There would, however, be no objection to importers withholding amounts not exceeding 15 per cent of the cost of goods towards guarantee of performance, etc. ADs

may make remittances of amounts so withheld, provided the earlier remittance had been made through them. No payment of interest is permissible on such withheld amounts.

(ii) Sometimes, settlement of import dues may be delayed due to disputes, financial difficulties, etc. ADs may make remittances in such cases even if the period of six months has expired, subject to certain conditions.

Insurance

ADs may make remittances towards war risk insurance premium, bunker/congestion surcharge at foreign ports, premia for extended insurance cover, etc., which are incidental to imports.

Remittances against Replacement Imports

(i) In case import of an item does not require licence under the Export -Import Policy in force and there is a need for remittance of foreign exchange for import of replacement goods for a defective item imported earlier, the remittance should be made after ensuring that there is no double payment.

(ii) Where goods are short-supplied, damaged, short-landed or lost in transit, the procedure laid down for the purpose should be followed for payment against replacement goods:

Guarantee for Replacement Imports

In case replacement goods for a defective import are being sent by the overseas supplier before the defective goods imported earlier are dispatched out of India, ADs may issue guarantees at the request of importer clients for the despatch/return of defective goods, according to their commercial judgement.

Evidence of Import

(i) In case of all imports, except import through couriers, where value of foreign exchange remitted/paid for import into India exceeds USD 5000 or its equivalent, it is obligatory on the part of ADs through whom the remittance was made to ensure that the importer submits appropriate documents evidencing the import.

(ii) ADs should in all cases acknowledge receipt of evidence of import.

(iii) Internal inspectors or auditors (including external auditors appointed by ADs) should carry out 100 per cent verification of the documents evidencing import, e.g. Exchange Control copies of Bills of Entry or Postal Appraisal Form or Customs Assessment Certificate, etc.

(iv) Prescribed documents evidencing import into India received should be preserved by ADs for a period of one year from the date of its verification as required. However, in respect of cases which are under investigation, the documents should be destroyed only after obtaining clearance from the investigating agency.

Follow up

(i) In case an importer does not furnish the document of evidence of import, within 3 months from the date of remittance involving foreign exchange exceeding USD 5,000, the AD should rigorously follow-up for the next 3 months, including sending registered letters to the importer, for submission of an appropriate document as evidence of import.

(ii) Authorised dealers should forward to the Reserve Bank a half-yearly statement in form BEF containing details of importers defaulting in submission of appropriate documents evidencing imports as prescribed. The BEF form should be submitted as at the end of June and December of every year.

Precautions

ADs should exercise due care while handling import documents on collection basis on behalf of importer customers with reference to their line of business, financial standing, frequency of import, etc. to establish the genuineness of the import.

Receipt of Import Bills/Documents

(i) Import bills and documents should be received from the banker of the seller by the banker of the buyer in India. ADs should not, therefore, make remittances where import bills have been received directly by the importers from the overseas seller, except in cases

- (a) Where the value of import bill does not exceed USD 10,000.
- (b) Import bills received by wholly-owned Indian subsidiaries of foreign companies from their principals.
- (c) Import bills received by Super Star Trading Houses, Star Trading Houses, Trading Houses, Export Houses, 100% Export Oriented Units/ Units in Free Trade Zones, Public Sector Undertakings and Limited Companies.
- (d) Where the value of import bill does not exceed USD 25,000 in respect of import of - books and magazines, life saving drugs/equipments by Hospitals, etc. and imports by reputed research and other development institutions like Tata Institute of Fundamental Research, C-DOT, Indian Institute of Technology, Indian Institute of Science and Universities.
- (e) Import bills received by all limited companies.

(ii) In all other cases, at the request of importer clients, ADs may receive bills direct from the overseas seller up to USD 25,000 provided the AD is fully satisfied about the financial standing/status and track record of the importer customer. Before extending the facility, AD should obtain report on each individual overseas seller from the overseas banker or reputed credit agency.

Merchanting Trade

ADs may take necessary precautions in handling merchant trade transactions or intermediary trade transactions to ensure that (a) goods involved in the transaction are permitted to be imported into India, (b) such transactions do not involve foreign exchange outlay for a period exceeding three months, and (c) all Rules, Regulations and Directions applicable to export out of India are complied with by the export leg and all Rules, Regulations and Directions applicable to import are complied with by the import leg of merchanting trade transactions. ADs should ensure timely receipt of payment for the export leg of such transactions

Import of Currency

(i) Import of currency, including cheques, is governed by the FEMA, 1999, and the Foreign Exchange Management (Export and import of currency) Regulations 2000, made by the Reserve Bank.

(ii) All imports of currency not covered by the general permission granted under the regulations require prior permission of the Reserve Bank.

BANKING OPERATIONS

Opening of Deposit Accounts

The Reserve Bank of India has advised all scheduled commercial banks to strictly follow the extant instructions regarding opening of deposit accounts and to ensure that all account opening formalities are undertaken at the bank's premises and no document is

allowed to be taken out for execution. Where it is absolutely necessary to make exemption, banks should take precaution, such as, deputing an officer to verify the particulars, obtaining a signed photograph on a suitably formatted verification sheet, forwarding by registered A.D. a copy of the account opening form and accompanying instructions to the client for necessary verification before any operations are conducted in the accounts.

These instructions were issued after observing that frauds were facilitated due to non-compliance of the stipulated formalities for opening of deposit accounts.

Leased Property and Banks

The Reserve Bank has reiterated its instructions to the public sector banks to examine the legitimate grievances of owners of property leased to the bank at an appropriately senior level and to take expeditious action for redressal of such grievances. It was brought to the notice of the Reserve Bank by the Government of India, Ministry of Finance that it was receiving a large number of complaints relating to non-renewal of lease agreements, non-vacation of premises leased out even after expiry of lease, etc, by public sector banks.

Staff Loans

Assignment of Risk Weight

Banks should assign 100 per cent risk weight to all types of loans and advances granted to the bank's own staff. As per the earlier instructions, such loans and advances used to carry zero weight for computation of capital adequacy ratio.

Treatment in the Balance Sheet

All loans and advances granted to the bank's own staff should be shown under 'other assets' in schedule 11 of the balance sheet with a footnote indicating their aggregate quantum. As per the earlier instructions, advances given to staff by a bank as an employer and not as a banker were included in 'Others' under schedule 11.

Withdrawal of Interest Tax

The Reserve Bank has advised all scheduled commercial banks (excluding regional rural banks) that they should not charge interest tax in respect of any chargeable interest accruing or arising after March 31, 2000. This advice has been issued in view of the advice received from the Government of India regarding passing of Finance Bill and Finance Act, 2000, giving sanction to the proposal of abolition of interest tax.

Recovery of Dues

The period by which banks should give notice to the eligible defaulting borrowers to avail of the opportunity for one time settlement of their outstanding dues has been extended up to September 30, 2000. This has been done in view of the representations received from some banks stating that the time stipulated for giving notice to the borrowers is short considering the large number of borrowers to be covered.

Exposure Limits

The Reserve Bank has clarified to all the commercial banks (excluding RRBs) that the rupee subordinated debts raised by them as Tier II capital, would not be considered for inclusion in capital funds for the purpose of determining the exposure ceilings to individual/group borrowers. This clarification has been given in view of representations received from banks that such debts raised by them may be included in capital funds for the purpose of determining the exposure ceilings to individual /group borrowers.

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