Foreign Exchange Management (Foreign exchange derivative contracts) Regulations, 2000

Notification No.FEMA 25 /RB-2000, dated 3rd May 2000

RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
MUMBAI 400 001

In exercise of the powers conferred by clause (h) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations, to promote orderly development and maintenance of foreign exchange market in India, namely:

1. Short title & commencement :-

(1) These Regulations may be called the Foreign Exchange Management (Foreign exchange derivative contracts) Regulations, 2000.

(2) They shall come in force on the 1st day of June,2000.

2. Definitions :-

In these Regulations, unless the context requires otherwise, -

(i) 'Act' means the Foreign Exchange Management Act,1999 (42 of 1999);

(ii) 'authorised dealer' means a person authorised as authorised dealer under subsection (1) of section 10 of the Act;

(iii) 'Cash delivery ' means delivery of foreign exchange on the day of transaction ;

(iv) 'Forward contract' means a transaction involving delivery, other than Cash or Tom or Spot delivery, of foreign exchange;

(v) 'Foreign exchange derivative contract' means a financial transaction or an arrangement in whatever form and by whatever name called, whose value is derived from price movement in one or more underlying assets, and includes,

(a) a transaction which involves at least one foreign currency other than currency of Nepal or Bhutan, or

(b) a transaction which involves at least one interest rate applicable to a foreign currency not being a currency of Nepal or Bhutan , or

(c) a forward contract,
but does not include foreign exchange transaction for Cash or Tom or Spot deliveries;

(vi) 'Registered Foreign Institutional Investor (FII) ' means a foreign institutional investor registered with Securities and Exchange board of India;

(vii) 'Schedule' means a schedule annexed to these Regulations;

(viii) 'Spot delivery' means delivery of foreign exchange on the second working day after the day of transaction;

(ix) 'Tom delivery' means delivery of foreign exchange on a working day next to the day of transaction;

(x) the words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Prohibition :-

Save as otherwise provided in these Regulations, no person in India shall enter into a foreign exchange derivative contract without the prior permission of the Reserve Bank.

4. Permission to a person resident in India to enter into a Foreign Exchange Derivative contract :-

A person resident in India may enter into a foreign exchange derivative contract in accordance with provisions contained in Schedule I, to hedge an exposure to risk in respect of a transaction permissible under the Act, or rules or regulations or directions or orders made or issued thereunder.

5. Permission to a person resident outside India to enter into a Foreign Exchange Derivative contract :-

A person resident outside India may enter into a foreign exchange derivative contract with a person resident in India in accordance with provisions contained in Schedule II, to hedge an exposure to risk in respect of a transaction permissible under the Act, or rules or regulations or directions or orders made or issued thereunder

6. Commodity Hedge :-

Reserve Bank may, on an application made in accordance with the procedure specified in Schedule III, permit subject to such terms and conditions as it may consider necessary, a person resident in India to enter into a contract in a commodity exchange or market outside India to hedge price risk in a commodity .

7. Remittance related to a Foreign Exchange Derivative contract :-

An authorised dealer in India may remit outside India foreign exchange in respect of a transaction, undertaken in accordance with these Regulations, in the following cases, namely;

(a) option premium payable by a person resident in India to a person resident outside India ,

(b) remittance by a person resident in India of amount incidental to a foreign exchange derivative contract entered into in accordance with Regulation 4,

(c) remittance by a person resident outside India of amount incidental to a foreign exchange derivative contract entered into in accordance with Regulation 5,

(d) any other remittance related to a foreign exchange derivative contract approved by Reserve Bank.

(P.R. GOPALA RAO)
Executive Director

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Schedule I
(See regulation 4)

Foreign exchange derivative contract permissible for a person resident in India

A. Forward Contract

1. A person resident in India may enter into a forward contract with an authorised dealer in India to hedge an exposure to exchange risk in respect of a transaction for which sale and/or purchase of foreign exchange is permitted under the Act, or rules or regulations or directions or orders made or issued thereunder, subject to following terms and conditions-

   a) the authorised dealer through verification of documentary evidence is satisfied about the genuineness of the underlying exposure,

   b) the maturity of the hedge does not exceed the maturity of the underlying transaction,

   c) the currency of hedge and tenor are left to the choice of the customer,

   d) where the exact amount of the underlying transaction is not ascertainable, the contract is booked on the basis of a reasonable estimate,

   e) foreign currency loans/bonds will be eligible for hedge only after final approval is accorded by the Reserve Bank where such approval is necessary,

   f) in case of Global Depository Receipts (GDRs) the issue price has been finalised,

   g) balances in the Exchange Earner's Foreign Currency(EEFC) accounts sold forward by the account holders shall remain earmarked for delivery and such contracts shall not be cancelled. They may be ,however, be rolled-over,

   h) contracts involving rupee as one of the currencies, once cancelled shall not be re-booked although they can be rolled over at ongoing rates on or before maturity. This restriction shall not apply to contracts covering export transactions which may be cancelled, rebooked or rolled over at on-going rates,

   i) substitution of contracts for hedging trade transactions may be permitted by an authorised dealer on being satisfied with the circumstances under which such substitution has become necessary.

B. Contract other than Forward Contract

2. (1) A person resident in India who has borrowed foreign exchange in accordance with the provisions of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 , may enter into an Interest rate swap or Currency swap or Coupon Swap or Foreign Currency Option or Interest rate cap or collar (purchases) or Forward Rate Agreement (FRA) contract with an authorised dealer in India or with a branch outside India of an authorised dealer for hedging his loan exposure and unwinding from such hedges,

   Provided that -

   (a) the contract does not involve rupee,

   (b) the Reserve Bank has accorded final approval for borrowing in foreign currency,

(c) the notional principal amount of the hedge does not exceed the outstanding amount of the foreign currency loan, and

(d) the maturity of the hedge does not exceed the un-expired maturity of the underlying loan,

(2) A person resident in India, who owes a foreign exchange or rupee liability, may enter into a contract for foreign currency-rupee swap with an authorised dealer in India to hedge long term exposure,

(3) The contract entered into under sub-paragraph 2, if cancelled shall not be rebooked or re-entered, by whatever name called.

3. (1) A person resident in India may enter into a foreign currency option contract with an authorised dealer in India to hedge foreign exchange exposure of such person arising out of his trade :

Provided that in respect of cost effective risk reduction strategies like range forwards, ratio-range forwards or any other variable by whatever name called there shall not be any net inflow of premium.

Explanation

The contingent foreign exchange exposure arising out of submission of a tender bid in foreign exchange is also eligible for hedging under this sub-paragraph.

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(2) A Transactions undertaken under sub-paragraph (1) may be freely booked and/or cancelled.

Schedule II
(See regulation 5)

Foreign exchange derivative contracts permissible for a person resident outside India

1. A Registered Foreign Institutional Investor (FII) may enter into a forward contract with rupee as one of the currencies with an authorised dealer in India to hedge its exposure in India,

   Provided that -

   a) the value of the hedge does not exceed the current market value in respect of investments in debt instruments,

   b) the value of the hedge does not exceed 15% of the market value of the equity as at the close of business on 31st March 1999, converted at the rate of US $ 1= Rs.42.43 plus the increase in market value/inflows after 31st March 1999 provided that the forward cover once taken shall be allowed to continue as long as it does not exceed the value of the underlying investment,

   c) forward contracts once cancelled shall not be rebooked but may be rolled over on or before the maturity,

   d) the cost of hedge is met out of repatriable funds and/or inward remittance through normal banking channel,

   e) all outward remittances incidental to hedge are net of applicable Indian taxes.

2. A non-resident Indian or Overseas Corporate Body may enter into forward contract with rupee as one of the currencies, with an authorised dealer in India to hedge;

   (a) the amount of dividend due to him/it on shares held in an Indian company;

   (b) the balances held in Foreign Currency Non-Resident (FCNR) account or NonResident External Rupee (NRE) account,

   (c) the amount of investment made under portfolio scheme in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 or under notifications issued thereunder or is made in accordance with the provisions of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 and in both cases subject to the terms and conditions specified in the proviso to paragraph 1 of this Schedule.

3. Reserve Bank may, on application, allow a person resident outside India to purchase a forward contract to hedge his investment made since 1st January 1993.

Schedule III
(See Regulation 6)

Procedure for application for approval for hedging of commodity price risk

1. A person resident in India , engaged in export-import trade ,who seeks to hedge price risk in respect of any commodity including Gold, but excluding oil and petroleum products, may submit an application to the International Banking Division of an authorised dealer giving the following details.

    i) A brief description of the hedging strategy proposed ; namely :

        a) description of business activity and nature of risk;

        b) instruments proposed to be used for hedging ;

        c) names of commodity exchange and brokers through whom the risk is proposed to be hedged and credit lines proposed to be availed. The name and address of the regulatory authority in the country concerned may also be given ;

        d) size/average tenure of exposure and/or total turnover in a year , together with expected peak positions thereof and the basis of calculation.

    ii) copy of the Risk Management Policy approved by the Management covering:

        a) risk identification,

        b) risk measurements,

        c) guidelines and procedures to be followed with respect to revaluation and/or monitoring of positions,

        d) names and designations of the officials authorised to undertake transactions and limits.

    iii) Any other relevant information.

2. Authorised dealer after ensuring that the application is supported by documents indicated in paragraph 1, may forward the application with its recommendations to Reserve Bank for consideration.