

A.P. (DIR Series) Circular No. 9 (August 24, 2000)

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

A.P.(DIR Series) Circular No. 9

August 24, 2000

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Foreign Exchange Management Act, 1999

Attention of authorised dealers is invited to the Government of India Notification No.GSR.381(E) dated May 3, 2000, notifying the Foreign Exchange Management (Current Account Transactions) Rules, 2000, in terms of which drawal of exchange for certain current account transactions has been prohibited and restrictions have been placed on certain other transactions. In terms of Rule 4 *ibid*, the transactions specified in Schedule II to the said Notification require prior approval of the Government of India and in terms of the Rule 5, the transactions specified in Schedule III to the Notification require prior approval of the Reserve Bank. Authorised dealers may follow directions contained in Annexure while dealing with applications relating to import of goods and services into India.

2. Import trade is regulated by the Directorate General of Foreign Trade (DGFT) and its regional offices, functioning under the Ministry of Commerce and Industries, Department of Commerce, Government of India. Policies and procedures required to be followed for imports into India are announced by the DGFT from time to time. Authorised dealers may, therefore, sell foreign exchange or transfer rupees to non-resident account towards payment for imports into India, from any foreign country, in conformity with the Export-Import Policy in vogue and the Rules framed by the Government of India and the Directions issued by Reserve Bank from time to time under the Act.

3. Authorised dealers should follow normal banking procedures and the provisions of Uniform Customs and Procedures for Documentary Credits (UCPDC), etc., while opening letters of credit for import into India on behalf of their customers. In respect of import of drawings & designs, importers may be advised to submit certificate or undertaking regarding compliance with the Research and Development Cess Act, 1986. An undertaking, in the prescribed format, regarding payment of Income Tax or a No Objection Certificate from Income Tax authorities, wherever required under the extant provisions of the Act, should be obtained in case of remittances relating to import of services and drawings and designs into India.

4. It is further clarified that the Directions contained in the Annexure should be read with the Rules notified by the Government of India, Ministry of Finance, vide Notification dated May 3, 2000, referred to earlier.
5. The Directions contained in the Annexure, supercede the instructions contained in Part A, Part C and Part D of Chapter 7 of the Exchange Control Manual, 1993 edition.
6. Authorised dealers may bring the contents of this circular to the notice of their constituents concerned.
7. The Directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999). Any contravention or non-observance of these Directions is subject to the penalties prescribed under the said Act.

Yours faithfully,

B. MAHESHWARAN
Chief General Manager

Part A : Import of Goods

A.1 General

For Exchange Control purposes, rupee accounts maintained in India by citizens of India, Nepal & Bhutan, residents in Nepal & 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. In terms of Rule 3 of the Government of India Notification No GSR 381(E) dated May 3, 2000, 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 prohibited.

A.2 Import Licences

Authorised dealers 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.

A.3 Obligation of Purchaser of Foreign Exchange

- (i) In terms of Section 10(6) of the Foreign Exchange Management Act, 1999 (FEMA), any person acquiring foreign exchange is permitted to use it either for the purpose mentioned in the declaration made by him to an authorised dealer under Section 10(5) of the Act or to use it for any other purpose for which acquisition of exchange is permissible under the said Act, or Rules or Regulations framed thereunder.
- (ii) Where foreign exchange acquired has been utilised for import of goods into India the authorised dealer should ensure that importer furnishes an evidence of import to his satisfaction, as laid down in paragraph A.17.
- (iii) 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, authorised dealer should ensure compliance with sub-paragraph (i) above.
- (iv) The Directions contained in this paragraph are also applicable where payment for imports into India is made through ACU mechanism.

A.4 Manner of Rupee Payment

Payments for retirement of bills drawn under letters of credit as well as bills received from abroad for collection against imports into India, must be received by authorised dealers, 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. Payments against bills under no circumstances should be accepted in cash.

A.5 Letters of Authority

Authorised dealers may open letters of credit or make remittances where the Exchange Control (EC) 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). Authorised dealers may also open letters of credit or make remittances towards imports permitted without licences on behalf of authorised agents of importers, after satisfying themselves by reference 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.

A.6 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.

Care should be taken to ensure that duly filled in A1 form in appropriate format has been obtained.

A.7 Imports Financed in Rupees

Directions contained herein 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.

A.8 Endorsement on Import Licences

- (i) Authorised dealers should note to endorse on the 'Exchange Control Copy' of import licences, under their stamp and signature, the details of letters of credit opened or forward contracts booked or remittances made in foreign currency as also the amount of insurance and freight paid by the importer locally in rupees, wherever licences have been obtained by importers.
- (ii) Authorised dealers may likewise endorse on the 'Exchange Control Copy' of the import licence the value of the back-to-back inland letters of credit opened by them on behalf of duty free licence holders (including transferees) as required in terms of the relevant provisions of the Export-Import Policy in force.

A.9 Import Licences for c.i.f. Value

- (i) 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.

- (ii) 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.

A.10 Surrender of Import Licences

Exchange Control copy of the import licence submitted by importer for opening of L/C or making remittance when fully utilised, should be retained by authorised dealers and may be preserved till scrutiny by the internal audit or inspection is completed.

A.11 Advance Remittance

Authorised dealers may allow advance remittance for import of goods without any ceiling subject to the following conditions :

- (a) the importer should hold the EC copy of a valid import licence if the goods to be imported are those included in the negative list of imports in the Export and Import Policy in force;
- (b) remittance is made direct to the suppliers;
- (c) if the amount of advance remittance exceeds U.S.\$25,000 or its equivalent, a guarantee from an international bank of repute situated outside India or a guarantee of an authorised dealer in India, if such a guarantee is issued against the counter-guarantee of an international bank of repute situated outside India, should be obtained. An unconditional standby L/C from an international bank of repute situated outside India may also be accepted in lieu of bank guarantee provided it is irrevocable, non-transferable and lists out full particulars of the transactions and there is a clear provision for prompt payment being received in convertible currency in an approved manner. The validity of the guarantee /letter of credit should adequately cover the period for the purpose of enforcing payment;
- (d) physical import of goods into India should be made within three months (twelve months in case of capital goods) from the date of remittance and the importer should give an undertaking to furnish documentary evidence of import within fifteen days from the close of the relevant period. Authorised dealers, if satisfied with the request, may allow extension of time for import not exceeding one month (three months in case of capital goods). In cases where the advance remittance has been made against a bank guarantee, the guarantee

should be suitably amended, if need be, to cover the extended period for import of goods into India; and

- (e) authorised dealer should ensure that in the event of non-import of goods, the amount of advance remittance is repatriated to India or is utilised for any other purposes for which release of exchange is permissible under the Act, Rules or Regulations made thereunder, to the satisfaction of the authorised dealer.

A.12 Time Limit for Settlement of Import Payments

(i) In terms of the extant Rules, 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 {cf: Regulation 5 (3) of Reserve Bank Notification No. FEMA 3/2000-RB dated May 3, 2000}. 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. Authorised dealers 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. Authorised dealers may make remittances in such cases even if the period of six months has expired, provided -

- (a) authorised dealer is satisfied about the genuineness of the circumstances leading to the delay in payment; and
- (b) no payment of interest is involved for the additional period. However, in cases where the overseas supplier insists on payment of interest, it may be allowed in accordance with the provisions contained in paragraph A.13, upto a maximum period of 60 days beyond 180 days from the date of shipment provided the import bill is paid within that period.

NOTES:A. In case of import bills negotiated under letter of credit and retired by importer after expiry of six months from the date of shipment of relative goods, settlement of the payment would be deemed to be completed within six months from the date of shipment if reimbursement was made to the overseas bank within that period,

B. Remittances against import of books may be allowed without restriction as to time limit, provided no interest payment is involved nor has the importer forgone any part of the discount/ rebate normally allowed to importers towards compensation for delay in settlement of dues.

A.13 Interest on Import Bills

(i) Authorised dealers may make remittances on account of interest accrued on usance bills under 'normal interest clause' or of overdue interest payable on sight bills for a period not exceeding six months from the date of shipment in respect of imports without prior approval of Reserve Bank.

NOTE : Interest under 'normal interest clause' would mean interest at the 'prime' rate (or its equivalent) of the country in the currency of which the goods are invoiced or LIBOR for the currency.

(ii) In case of pre-payment of usance import bills, remittances may be made only after reducing the proportionate interest for the un-expired portion of usance at the rate, according to the contract, at which the interest has been claimed for the usance period or the prime rate or LIBOR of the currency in which the goods have been invoiced, whichever is applicable. Where interest is not separately claimed, remittances may be allowed after deducting the proportionate interest for the un-expired portion of usance at the prevailing 'prime' rate/ LIBOR of the currency of invoice.

A.14 War Risk Insurance/Bunker/Congestion Surcharge /Premium for Extended Insurance

Authorised dealers 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.

A.15 Imports under Penalty

Authorised dealers may make remittances against goods imported without authority, but later allowed to be cleared by the Customs Authorities against payment of penalty, to the extent of c.i.f. value of the goods indicated on the relative Exchange Control copy of the Customs Bill of Entry evidencing imports of goods to India.

A.16 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 for the same import.

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

- (a) In cases where no letter of credit has been opened or remittances made, Exchange Control copy of the import licence may be automatically treated as valid for the replacement consignment, provided it is shipped within the validity period of the licence.

- (b) If the Exchange Control copy has already been utilised to cover the opening of a letter of credit against the original goods which have been lost, the original endorsement to the extent of the value of the lost goods may be cancelled by authorised dealers without reference to the Reserve Bank, provided the insurance claim relating to the lost goods has been settled in favour of the importer by remittance from abroad through an authorised dealer, if insurance was covered abroad and by local payment in rupees if insurance was covered in India. Payment for the replacement goods may then be made against suitable endorsement on the import licence subject to the conditions that the replacement consignment is shipped within the validity period of the licence.
- (c) If replacement goods are to be shipped after the expiry of import licence, the importer should be asked to apply to DGFT for replacement or for revalidation of the expired licence.

A.16 A Guarantee for Replacement Import

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, authorised dealers may issue guarantees at the request of importer clients for the despatch/return of defective goods, according to their commercial judgement.

A.17 Evidence of Import

(i) Obligations of purchaser of foreign exchange as contained in sub-section (6) of Section 10 of Foreign Exchange Management Act, 1999 are indicated in paragraph A.3 *ibid*.

(ii) In case of all imports, except import through couriers, where value of foreign exchange remitted/paid for import into India exceeds US \$ 5000 or its equivalent, it is obligatory on the part of authorised dealers through whom the relative remittance was made to ensure that the importer submits

- (a) the Exchange Control copy of the Bill of Entry for home consumption, or
- (b) in case of 100% Export Oriented Units the exchange control copy of the Bill of Entry for warehousing, or
- (c) Customs Assessment Certificate or Postal Appraisal Form as declared by the importer to the custom authorities, where import has been made by post, as an evidence that the goods for which the payment was made have actually been imported into India.

(iii) where imports are made in non-physical form, i.e., software or data through internet/dacom channels and drawings and designs through e-mail/fax a certificate from a chartered accountant that the software/data/ drawing/design has been received by the importer may be obtained.

Note: Authorised dealers should advise importers to keep Custom authorities informed of the imports made by them under this clause.

(iv) In respect of remittances for imports through courier services, authorised dealers should ensure submission of the Exchange Control copy of the Bill of Entry in case of imports valued at Rupees one lakh or more. Where the value of import is less than Rs. one lakh, authorised dealers may obtain from the importer, a copy of the Bill of Entry, in the prescribed form issued by the Customs in the name of registered courier, duly certified by the courier company indicating thereon the particulars of the consignment for which the copy has been issued.

(v) Authorised dealers should ensure that in all cases, including cases of advance remittance permitted in terms of paragraph A.11 above, evidence of import is submitted by their importer customer and is duly verified. In respect of imports on D/A. basis, since goods would normally be cleared before the due date of payment, authorised dealers should insist on production of evidence of import at the time of effecting remittance of import bill. Authorised dealers should advise this requirement to their importer customer while delivering the documents against acceptance.

NOTE: A. In respect of imports on D/A basis 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., authorised dealers may, if satisfied with the genuineness of request, allow reasonable time not exceeding three months from the date of remittance to the importer to submit the evidence of import.

(vi) Authorised dealers should in all cases acknowledge receipt of evidence of import e.g. Exchange Control copy of the Bill of Entry, Postal Appraisal Form or Customs Assessment Certificate, etc., from importers by issuing acknowledgement slips containing the following particulars:

- (a) importer's full name and address with code number ;
- (b) import licence number and date (wherever applicable);
- (c) bank's reference of letter of credit number ,etc., if any;
- (d) number and date of Exchange Control copy of the Bill of Entry/ Postal Appraisal Form or Customs Assessment Certificate and the amount of import ;and
- (e) particulars of goods imported.

(vii) Internal inspectors or auditors (including external auditors appointed by authorised dealers) 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.

(viii) Documents evidencing import into India received in terms of paragraph A.17 above should be preserved by authorised dealers for a period of one year from the date of its verification as required under sub-paragraph (vii) above. However, in respect of cases which are under investigation by investigating agencies, the documents should be destroyed **only** after obtaining clearance from the investigating agency concerned.

A.18 Follow up by Authorised Dealers

(i) In case an importer does not furnish the document of evidence of import, as required under paragraph A.17, within 3 months from the date of remittance involving foreign exchange exceeding US\$5,000, the authorised dealer should rigorously follow-up for the next 3 months, including issue of 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 statement on half yearly basis as at the end of June & December of every year, in form BEF (format enclosed) furnishing details of import transactions, exceeding US\$5,000 in respect of which importers have defaulted in submission of an appropriate document evidencing import within 6 months from the date of remittance. The said half yearly statement should be submitted to the Regional Office of the Reserve Bank under whose jurisdiction the authorised dealer is functioning, within 15 days from the end of half year to which the statement relates.

Note: A. *In cases where at the time of advance remittance purpose of remittance was indicated as import and subsequently the exchange has been used for a purpose for which sale of exchange is permissible, and a document to the satisfaction of authorised dealer has been produced, such cases should **not** be treated as default and hence be excluded from the BEF statement.*

B. *Authorised dealers may accept Into Bond Bill of Entry as a provisional evidence of import into India. However, they may ensure submission of Exchange Control copy of the Bill of Entry for Home consumption within a reasonable period of time. Wherever Into Bond Bill of Entry has been submitted such cases need **not** be reported in BEF statement.*

A.19 Precautions for Handling Import Documents

Authorised dealers 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. In the case of bills involving large values, authorised dealers should satisfy themselves that the importer is known to be trading in items mentioned in the shipping documents or that the items are required for his actual use. In case of importers who are not their constituents, authorised dealers should, at the time of acceptance of the documents/making payment, call for detailed Certificate-cum-Report from their bankers in support of the genuineness of imports.

A.20 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. Authorised dealers should not, therefore, make remittances where

import bills have been received directly by the importers from the overseas seller, except in the following cases:

- (a) Where the value of import bill does not exceed U.S.\$ 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 U.S.\$ 25,000 in respect of import of -
 - (i) books and magazines
 - (ii) life saving drugs/equipments by Hospitals, etc. and
 - (iii) 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 viz. Public limited, public limited and private limited companies.

(ii) In all other cases, at the request of importer clients, authorised dealers may receive bills direct from the overseas seller up to U.S.\$ 25,000 (U.S. Dollars Twenty five thousand only), provided the authorised dealer is fully satisfied about the financial standing/status and track record of the importer customer. Before extending the facility, authorised dealer should obtain report on each individual overseas seller from the overseas banker or reputed credit agency.

A.21 Postal Imports

Remittances against bills received for collection in respect of imports by post parcel may be made by authorised dealers, provided the goods imported are such as are normally despatched by post parcel. In these cases, the relative parcel receipts must be produced as evidence of despatch through the post and an undertaking to submit Postal Appraisal Form or Customs Assessment Certificate as evidence of import within three months from the date of remittance should be furnished by importers. If the parcel has already been received in India Postal Appraisal Form or Customs Assessment Certificate should be produced in support of the remittance application. Where goods to be imported are not of a kind normally imported by post parcel or where authorised dealer is not satisfied about the bonafides of the application, the case should be referred to the Reserve Bank for prior approval with full particulars together with relative parcel receipt/s and Postal Appraisal Form or Customs Assessment Certificate.

NOTE: Authorised dealers may make remittances towards import of books by post parcel by book-sellers/publishers against bills received for collection, irrespective of the amounts involved, without prior approval of the Reserve Bank against endorsement on the import licence wherever applicable in the normal course. They may also make remittances even if import licences covering the imports have been issued subsequent to the date of import subject to endorsement on such licences.

A.22 Import of Gold/Platinum/Silver by Nominated Banks/Agencies

(i) Import of Gold on Consignment basis

Gold may be imported by the nominated agencies/banks on consignment basis where the ownership of the goods will remain with the supplier and the importer (consignee) will be acting as an agent of the supplier (consignor). Remittances towards the cost of import shall be made as and when sales take place and in terms of the provisions of agreement entered into between the overseas supplier and nominated agency/bank.

(ii) Import of gold on unfixed price basis

The nominated agency/bank may import gold on outright purchase basis subject to the condition that although ownership of the gold shall be passed on to the importer at the time of import itself, the price of gold shall be fixed later, as and when the importer sells the gold to the users.

NOTE: Instructions contained in this paragraph would also apply to import of platinum and silver.

A.23 Import of films on lease/rental basis

Authorised dealers may allow remittance of rent, royalty, licence fee, profit, etc., in connection with import of cinematograph feature films and video films subject to the following conditions :

- (i) a 'No Objection Certificate' from Central Board of Film Certification, wherever required, has been submitted;
- (ii) a Chartered Accountant's certificate is produced indicating that the payment to overseas supplier is due and the amount sought to be remitted is in conformity with the terms of contract; and
- (iii) an undertaking/Certificate regarding payment of income-tax has been submitted .

A.24 Import factoring

Authorised dealers may enter into arrangements with international factoring companies of repute, preferably members of Factors Chain International, without approval of the Reserve Bank. However, authorised dealers will have to ensure compliance with the extant exchange control directions relating to imports, Import Trade Control policy in force and any other guidelines/directives issued by the Reserve Bank in this regard.

A.25 Import of Gold, Silver & Jewellery

Gold brought by an NRI in accordance with the Export and Import Policy in vogue, is permitted to be sold to residents against payment in rupees. Authorised dealers should credit

the amounts so received only to ordinary non-resident rupee (NRO) accounts of the concerned NRI seller.

Part B – Merchanting Trade

Authorised dealers 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 . Authorised dealers are also required to ensure timely receipt of payment for the export leg of such transactions.

Part C- Import of Currency

C.1 Import of Currency

(i) Import of currency , including cheques, is governed by clause (g) of sub-section (3) of Section 6 of the Foreign Exchange Management Act, 1999, and the Foreign Exchange Management (Export and import of currency) Regulations 2000, made by the Reserve Bank vide Notification No. FEMA 6/RB-2000 dated May 3, 2000.

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