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I. INTRODUCTION

In the Mid-Term Review of Monetary and Credit Policy for the year 2003-04, announced on November 3, 2003, Governor, Reserve Bank of India (RBI), Dr. Y.V. Reddy indicated that a Committee on Procedures and Performance Audit on Public Services is being set up. Accordingly the Committee was constituted with the following members:

Shri S.S.Tarapore	Chairman
Shri C.B. Bhawe	Member
Shri M.G. Bhide	Member
Shri M.M.Chitale	Member
Shri H.N.Sinor	Member

1.2 The terms of reference of the Committee are:

- (a) To advise the Bank on improving the quality of its public services to common persons and institutions and to benchmark such services in terms of quality and timeliness.
- (b) To review existing policies and procedures with a view to their rationalisation and simplification and to suggest appropriate incentives to facilitate change on an on going basis.
- (c) To undertake performance audit on public services and regulatory clearances in RBI.
- (d) To coordinate with the Ad hoc Committees on Customer Services to be set up by banks and consider and make recommendations on suggestions made by such Committees.
- (e) To dialogue with various fora/associations concerned with customers' interest to the extent it impinges on the services provided by the RBI.
- (f) To tender advice on any other issue relevant to the Committee's work as also any specific issues referred to it by the RBI.

1.3 The Committee is to function for one year with effect from January 1, 2004. The Memorandum on the terms of reference of the Committee is at Annex I.

1.4 At the first meeting of the Committee, the Committee had the benefit of guidance from the Governor Dr. Y.V. Reddy. The Governor indicated that the Committee had been constituted in order to benchmark the level of public services rendered by the RBI and to introduce a system of periodic review. The Governor emphasized that the quality of service to **individual** customers was a matter of great concern and factors that inhibited the attainment of best customer service to the **Common Persons** should be addressed by the Committee with a sense of urgency. The Governor referred to the provision of services directly by the Bank as also by the banks functioning as agents and there could be cases where the banks' services were found wanting essentially because of the rules/regulations framed by the RBI. Governor urged the Committee to complete its first round of work relating to individuals by the end of March 2004 and within this the work relating to the Exchange Control should be submitted by the end of January 2004.

1.5 Pursuant to the prioritisation indicated by Governor, this Report No.1 of the Committee deals with matters relating to Exchange Control insofar as it relates to **individuals**. In view of the paucity of time this Report is essentially confined to assessing the RBI instructions and procedures as they impinge on the services provided to the final customer. While the Committee has made a number of specific recommendations, which are self-contained the Committee may need to revisit some of

the issues after its dialogue with the *Ad hoc* Committees of banks as also the Committee's interaction with user associations and visits to select offices of the RBI/banks. Furthermore, issues relating to benchmarking of services as also the development of a system of performance audit on public services and regulatory clearances in the RBI would be addressed in future Reports of the Committee.

1.6 The Committee had the privilege of interacting with the Governor Dr.Y.V. Reddy, Deputy Governor Smt. K.J. Udeshi and also extensive discussion with the former Deputy Governor Shri Vepa Kamesam. The Committee is appreciative of the help given by Executive Directors Smt. Shyamala Gopinath and Smt. Usha Thorat in facilitating the work of the Committee. The Department of Government and Bank Accounts, under Chief General Manager-in-Charge Shri V.S. Das, provided administrative support to the Committee. This Report No.1 deals with matters relating to Exchange Control and the Committee deeply appreciates the forbearance with which the Chief General Manager-in-Charge Smt. Grace Koshie responded to the Committee's manifold queries; Shri A.K. Salvi, Assistant General Manager helped the Committee as the ECD nodal officer. The Committee is greatly indebted to the magnificent support given to Committee by Shri Vinay Bajjal, General Manager, who enabled us to understand the intricacies of the Control and provided immense help in the drafting of the Report. Smt. S. A. Talpade, Private Secretary and Shri G.K. Koshti, Typist provided exemplary support to the Committee.

II. APPROACH OF THE COMMITTEE

2.1 At the outset the Committee recognized that the task set before the Committee was complex and daunting as the Committee was expected to review the processes with a view to identifying measures, which could make them effective and enable the provision of services to the satisfaction of customers. Early on, in its deliberations, the Committee felt that merely confining its assessment to procedures *per se* would not meet the objectives set out to the Committee. The Committee was greatly encouraged by the Governor's interaction with the Committee wherein he had felt that the task set out to the Committee would be better served if the Committee looked at issues in a broader perspective.

2.2 The Committee was conscious of the fact that the Committee's mandate was essentially on procedures and, therefore, review of policies by the Committee should be only to the extent they impinge on procedures prescribed by the RBI/banks while providing specific services.

2.3 In this context, the Committee has attempted to look at whether, within the overarching framework of policy **intent**, the policy **contents** were such as to enable a seamless flow of services.

2.4 The Committee recognised that the present framework of procedures has its origin when foreign exchange was critically short over prolonged periods during 1939 to 1991 and the economy was punctuated with a succession of foreign exchange crises. The last foreign exchange crisis of 1991 was searing in that the country was left with less than US \$ one billion of foreign currency assets. In contrast, today, the foreign currency assets are US \$ 100 billion. The psychosis deeply embedded in the collective unconscious of the Indian mind, of foreign exchange being in short supply, has not been erased by the foreign exchange pile up of recent years. This reflects in the illusion of exchange wherein the authorities, as also the public at large, erroneously believe that US \$ 1 is prized more than the current exchange rate of Rs.45.50. To enable a change in the mindset the Committee recommends that the authorities need to move towards a policy content which would then require procedures wherein foreign exchange transactions, at least for individuals, would have the same ease of operations as rupee transactions. The Committee feels, that at least for individuals, this should be an objective and that the policy content and procedures should be chiselled in a manner which would work towards this objective.

2.5 The Committee recognises that many of the procedures are embedded in the system as prevailing at the time of severe rationing of foreign exchange. While the present policy intent is quite clearly to liberalise foreign exchange transactions, the Committee is of the view that in many areas the policy content is a relict of the era of acute foreign exchange shortages. Moreover, the policy content in some areas is a remnant of the dirigiste regime with value judgements by the State as to the **proper** use of assets by citizens of the country. Such micro management has resulted in complex procedures which hinder the provision of adequate services particularly for individuals in the area of foreign exchange.

2.6 The Committee recommends that in the current environ, the Exchange Control Department, as the regulator for foreign exchange transactions, should move away from micro management of controlling forex **transactions**, particularly for individuals, and concentrate on monitoring **flows**. If the policy **intent** is to offer seamless services, particularly to individuals, the policy **content** would need certain adjustments. The Committee recognises that the overall extent and pace of liberalisation has to be a judgement of the authorities, but within this overall judgement there is much merit in moving away from detailed and fractionated

sub-limits which are difficult to monitor and cause unnecessary hardship to individuals by way of complex and avoidable procedures which serve little or no purpose.

III THE GENESIS OF EXCHANGE CONTROL AND ITS IMPACT ON CUSTOMER SERVICE

3.1 Exchange Control in India dates back to 1939 when for the first time it was introduced as a war measure under the Defence of India Rules and subsequently placed on statutory basis by the **Foreign Exchange Regulation Act, 1947 (FERA, 1947)**. Subsequently, this Act was replaced by the **Foreign Exchange Regulation Act, 1973 (FERA, 1973)**, which came into force with effect from January 1, 1974. The purpose of the Act, *inter alia*, was

“regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency, for the conservation of foreign exchange resources of the country”.

In FERA, 1947, burden of proof that a person had requisite permission or the foreign exchange acquired by him had been used for the purpose for which permission was granted rested with him (Section 24). With the emphasis on conservation of foreign exchange in FERA 1973 the burden of proof (Section 71) was reinforced by the “presumption of culpable mental state” (Section 59). As a consequence, till FERA 1973 was in force every person was presumed to be guilty till he proved innocence. Therefore, the two statutes, viz. FERA, 1947, as well as FERA, 1973, started with a negative presumptive approach that everybody is guilty unless proved innocent.

3.2 Commensurate with the negative approach, the Foreign Exchange Regulation Act, 1947, contained Section 3, sub-section (4):

“an authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank”.

Similar provisions were also contained in Section 6, sub-section (5), of the Foreign Exchange Regulation Act, 1973.

3.3 During the currency of these two Statutes no declaration was required either by the RBI or Authorised Dealers (A.Ds), by way of a **specific** compliance of these provisions when all applications for release of foreign exchange required prior approval of the RBI. Furthermore, the Exchange Control Manual (Paragraph I.14, Exchange Control Manual – Volume I, 1978 Edition) provided that stamp and signature of an authorised dealer on the prescribed forms were regarded as indication that the authorised dealer was satisfied as to: (a) the correctness of the statement made on the form and (b) the bonafides of the application. The Foreign Exchange Dealers’ Association of India (FEDAI) has also confirmed the position.

3.4 Introduction of the **Foreign Exchange Management Act, 1999, (FEMA, 1999)**, which came into effect from June 1, 2000, was a paradigm shift in the philosophical approach to Exchange Control, in as much as the object of the statute, *inter alia*, is:

“facilitating external trade and payment and for promoting the orderly development and maintenance of foreign exchange markets in India”.

3.5 Clearly, from regulating transactions and conserving foreign exchange the intent now is on facilitating trade and payments. The new approach to the Control is reflected in the Statute by the absence of provisions relating to burden of proof and presumption of culpable mental state. Like the previous two Statutes, however, FEMA in sub-section (5) of Section 10, provides that:

“An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not

involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.”

3.6 In line with the changing economic realities, including convertibility on current account transactions, the RBI decided that it:

“will not prescribe the documents which should be verified by the authorised dealers while permitting remittances for various transactions, particularly of current account.”

{Annexure I, paragraph 8, A.D. (M.A. Series) Circular No.11 dated May 16, 2000}

Therefore, the ADs who till that time were being guided by the detailed guidelines from the RBI were given the freedom and responsibility of deciding what documents should be obtained before allowing a remittance for current account transactions. Added to this, the responsibility of compliance with the overarching provisions of Section 10(5) of FEMA which require **reasonable satisfaction** before allowing any transaction created some apprehension among ADs. It was in this context that the Foreign Exchange Dealers' Association of India (FEDAI), for the guidance of their members, issued a circular dated June 19, 2000, (Annex II) suggesting two formats devised by them for the declaration to be obtained from the applicants. One form, to be obtained on a one-time basis, related to the applicants who were having regular foreign exchange transactions and the other form related to the applicants who were occasional or casual applicants.

3.7 Formats of declarations collected from ADs, on a random basis, indicate that currently all banks are obtaining a declaration from **all** applicants for all transactions, whether current account or capital account, irrespective of the value of transaction. Even in cases where full set of documents have been taken the declaration is being obtained. The declaration required to be submitted by an applicant that he is **not** violating any rules/regulations and in case of violation he is liable for action under FEMA, puts the onus of compliance squarely on the applicant and runs counter to the basic spirit of the Act. The declaration does not seek the applicant to confirm as to what he is doing but seeks to confirm what he is **not doing**. The Act casts a responsibility on ADs to reasonably satisfy themselves that what the customers are doing is not violative of the Act/rules/regulations. In practice, by obtaining the declarations ADs are absolving themselves of the responsibility of **reasonably satisfying** themselves about the bonafides of the application but are putting the onus of innocence on the customer. In effect the present practice has given new lease of life to the presumption of criminal mind as contained in FERA. The Committee is of the view that the underlying philosophy of a progressive liberalisation implicit in FEMA has been undermined by the prevailing practice of obtaining such a declaration. The FEDAI formats are clearly in the knowledge of RBI and the RBI, FEDAI and ADs cannot be absolved of the atrocity perpetrated on the user of exchange.

3.8 In particular, from the **common person's** point of view, it is all the more significant that he is required to sign a declaration about not violating the Act/rules/regulations of which he has no idea. The language used in the declaration is humiliating and does not treat the customers with dignity and this is clearly not the intent of FEMA. The Committee, therefore, recommends that RBI, FEDAI and ADs should take immediate action to withdraw this Declaration. The Committee is of the view that any Declaration by the user of exchange should relate to what the remitter is doing rather than what is not being done. The Committee has made a specific suggestion on this matter later in the Report.

IV ATTEMPTS BY RBI TO RENDER USER FRIENDLY SERVICES

4.1 The Committee recognises the efforts made by the Exchange Control Department (ECD) in customer education. It notes that circulars issued by the ECD and Frequently Asked Questions (FAQs) have been put on the Department's website (www.fema.rbi.org.in). All circulars addressed to the authorised dealers have also been put on the site. The ECD has also inserted an advertisement in public interest in national daily newspapers. The Citizens' Charter of the ECD, which is also available on the web site, *inter alia*, indicates time limit for disposal of applications received in the Department. The Committee takes note of the fact that the Mumbai Regional Office of ECD, inquiry office does seem to provide customer-services of a high quality. The RBI had in October,2003, invited the attention of banks to (a) give adequate publicity , (b) have easily accessible and retrievable instructions and (c) develop a right attitude and approach and the nodal teams of banks were required to conduct surprise checks at branches to see that the measures introduced by RBI were being implemented in letter and spirit.

4.2 The Committee notes that the Department has also advised all in-charges of its Regional Offices to visit International Banking Divisions of banks under their jurisdiction. The Regional Offices are to provide feedback, *inter alia*, regarding, whether any guidelines were issued by them in connection with dealing with customers' applications upto the prescribed limit on self-declaration basis as per RBI guidelines and documentation requirements for dealing with other applications. A perusal of the reports submitted by the Regional Offices, as made available by the Department to the Committee, is not very encouraging. Limited anecdotal experiences of the Committee with a few bank branches in Mumbai reinforces a view that the base level officials in AD branches still remain unaware of the present liberalised facilities. In fact, bank branches are still following restrictions which were lifted a year or two ago.

4.3 The Committee is of the view that the efforts of the Department so far have been directed essentially to ensuring better communication between the RBI and the banks but have not adequately addressed the trickling down of the liberalisation to the branch level where branches have an interface with individual customers.

4.4 The Committee recommends that the Exchange Control Department should reinforce its efforts to selectively assess the progress at the bank branch level in providing fair and expeditious services to individual customers for remittances upto US\$25,000 per annum. *Inter alia* the processes followed by the bank branches while dealing with these cases should be studied by the ECD. Furthermore, banks should be advised to closely monitor that the branches process cases relating to individuals for remittances upto US\$25,000, expeditiously within the framework of the extant policies.

V ASSESSMENT OF FACILITIES AND PROCEDURES RELATING TO RESIDENT INDIVIDUALS

5.1 The current account facilities for resident individuals are now very liberal. Moreover, the authorities have announced the intention to introduce a further element of liberalisation under which resident individuals would be allowed to remit US \$25,000 per annum with minimum of formalities for current and capital account transactions. The Committee is of the view that this is a path-breaking relaxation which would impact on the policy and procedures relating to remittances by resident individuals.

5.2 At the present time, there is a complex maze of facilities for remittances by resident individuals and these are subject to a plethora of limits and tortuous procedures. The individual is subject to completion of unnecessary formalities including humiliating declarations of what the individual is **not** doing.

5.3 The Committee recommends that for resident individuals the present set of policies should be rationalised and the procedures simplified. The Committee considers the extant facilities as given but suggests the removal of the clutter of micro management and procedures.

5.4 The Committee's recommendations relating to remittances by resident individuals and the broad approach are as follows:

(i) All limits below US \$ 25,000 per annum should be scrapped and subsumed under the new aggregate limit of US \$ 25,000 per annum for current and capital remittances already proposed to be announced by the authorities. Thus, Items 1, 3, 4, (set out in the tabular material) should be discontinued as separate facilities.

(ii) For all remittances upto US \$ 25,000 per annum there should be a **Simple Letter-Cum-Declaration** for which the Committee has set out a model format. The model format requires the remitter to declare what the remitter proposes to do and **not** what he will not do. The A2 form should be dispensed with for remittances upto US \$ 25,000 per annum and any reporting to the RBI for balance of payments purposes should be filled by the **AD and not the remitter**.

(iii) For all other facilities above US \$ 25,000 per annum the AD may call for appropriate additional information but any information sought by the ADs should relate to the specific transaction and no declaration should be taken on what the remitter is not doing. As such the entire system of banks demanding a **negative** declaration should be given up.

(iv) As regards remittances for Miscellaneous Purposes (Item 11 of the tabular material) there is a clear discord between the policy intent and the policy. The present limit of US \$ 5,000 for Miscellaneous Purposes is per **transaction** and not **per annum** and, as such, this totally subverts the intent of policy. This is a case of an appropriate liberalisation being miscued which should be rectified. It is not the intention of the Committee to recommend a tightening of the Exchange Control. All that the Committee would recommend is that a limit of US \$ 5,000 per **transaction** does not fit into the rest of the regulatory structure with per annum limits. In the context of the proposed limit of US \$ 25,000 per annum for all current and capital transactions the Committee recommends that this facility of US \$ 5,000 **per transaction** should be scrapped.

(v) As regards the ESOP Scheme (Item 13 of the tabular material) the Committee recommends that the proviso that the ESOP should be at a concessional price could be re-examined by the RBI.

(vi) The portfolio investment facility for individuals (Item 14 of the tabular material) is liberal but in the absence of a facility for individuals to maintain a foreign currency account outside India, the facility is rendered infructuous. The Committee recommends that the RBI should allow foreign currency accounts to be held abroad by individuals subject to reasonable safeguards. For remittances upto US\$25,000 per annum the condition, stipulating that the investments can be made only in companies which have investments of at least 10 per cent in a company listed on a recognised Indian stock exchange, should be waived.

The Committee recommends that as a corollary to the facility on portfolio investments, residents should be allowed to maintain foreign currency accounts outside India for any purpose within the aggregate limit of remittances upto US\$25,000 per annum.

(vii) The Committee has taken note of the facilities for International Credit Cards (ICC) (Item 18 of the tabular material). This is a major liberalisation and while the Committee does not intend to recommend any rollback of the liberalisation, the Committee would urge that the operation of the ICC be carefully reviewed by the RBI.

(viii) The Committee recommends that the proposed limit of US \$ 25,000 per annum for current and capital remittances by resident individuals be reviewed and raised annually and this should be the route for a progressive liberalisation of the current and capital account regime for resident individuals. The Committee would, however, stress that the procedures for these remittances should be kept simple and hassle free and the simple letter-cum-declaration set out by the Committee could be the basis for the format to be devised by ADs.

5.5 The draft model letter-cum-declaration and the various facilities for resident individuals and the Committee's recommendations/comments are set out below:

Draft for model "Simple Letter –cum- declaration"

The Manager

(Name and address of the Bank)
.....

Dear Sir,

Application for purchase of foreign exchange

Details of the applicant

1. Name
2. Address
3. Name and address of the bank.....
4. Account no.

Details of the foreign exchange required

1. Amount (Specify currency) (in figures)
.....(in words)
2. Purpose (specify)

Draft..... T.Cs..... Cash..... Direct remittance

Details of the Beneficiary

1. Name
2. Address
- * 3. Name and address of the bank.....
- * 4. Account No.

..... (required only when the remittance is to be directly credited to the bank account of the beneficiary)

This is to authorise you to debit my account and effect the foreign exchange remittance / issue a draft as detailed above. (strike out whichever is not applicable)

Date

(Name)

Signature of the applicant

Declaration

I,, hereby declare that the total amount of foreign exchange
(Name)
purchased from or remitted through, all sources in India during last one year,
including this application is within US\$ 25,000/= (US Dollar Twenty five thousands
only) the annual limit prescribed by the Reserve Bank for the purpose .

Date

Signature of the applicant
(Name)

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	1 Release of exchange in one calendar year, for one or more private visits to any country (except Nepal and Bhutan - please see Item 2).	Item 2 of Sch.III of Current A/c. Rules 2000. 51/18.11.02 3/17.07.03	USD 10,000	No conditions.	Simple letter.	<ul style="list-style-type: none"> No limit if ICC is used except the card limit. Form A2 required if the amount exceeds USD 5000 	<ul style="list-style-type: none"> Within the Committees' general recommendations of allowing remittances, under all heads, of US\$25,000 per annum this separate limit of US\$10,000 should be scrapped. There should be no A2 form and present Declaration should be altered on the lines of Committee's model declaration.
	2 Travel to Nepal and Bhutan.	Rule No.3(b) of Current A/c. Rules, 2000.	No foreign exchange admissible.	--	--	Indian currency only except currency notes of denomination of Rs.500 and above.	--
	3 Gift remittance	Item No.3 of Sch.III to Current A/c. Rules ,2000.	USD 5000	Per remitter / donor per annum.	Simple letter.	<ul style="list-style-type: none"> No A2 Form. 	As per Item 1.
	4 Donations	Item No.4 of Sch.III to Current A/c. Rules, 2000.	USD 5000	Per remitter / donor per annum.	Simple letter.	<ul style="list-style-type: none"> No A2 Form. 	As per Item 1.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
5.	Exchange facilities for person going abroad for employment.	Item No.5 of Sch.III to Current A/c. Rules, 2000. 3/17.7.03	USD 100,000	Payment for purchase of foreign exchange to be made by applicant by means of cheque or demand draft or by debit to his/her account.	Self declaration giving basic details of the transaction.	<ul style="list-style-type: none"> Form A2 required if the amount exceeds USD 5000 	Within the Committee's general recommendations of allowing remittances, under all heads, of US\$25,000 per annum , remittances under this head should also be subject to the documentations as per Item 1. For remittances above US\$25,000 per annum the extant documentation can be continued.
6.	Exchange facilities for emigration.	Item No.6 of Sch.III to Current A/c. Rules, 2000. 3/17.07.03	USD 100,000 or amount prescribed by country of emigration.	Payment for purchase of foreign exchange to be made by applicant by means of cheque or demand draft or by debit to his/her account.	Self declaration giving basic details of the transaction.	<ul style="list-style-type: none"> Form A2 required if the amount exceeds USD 5000 	As per Item 5.

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
7.	Remittance for maintenance of close relatives abroad. <ul style="list-style-type: none"> A person who is resident but not permanently resident in India and a citizen of foreign state other than Pakistan. <ul style="list-style-type: none"> In all other cases Continued	Item No.7(i) of Sch.III to Current A/c. Rules, 2000. 3/17.07.03 Item No.7(ii) of Sch.III to Current A/c. Rules, 2000. 3/17.07.03	Net salary (after deduction of taxes, contribution to Provident Fund and other deductions) USD 100,000 per annum.	Payment for purchase of foreign exchange to be made by means of cheque or demand draft or debit to his/her account.	No specific directions to ADs on documentation Self declaration giving basic details of the transaction.	<ul style="list-style-type: none"> Form A2 required if the amount exceeds USD 5000 Form A2 required if the amount exceeds USD 5000 	As per Item 5. As per Item 5.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	<ul style="list-style-type: none"> A national of foreign state resident in India being an employee of foreign company or a citizen of India employed by a foreign company outside India and either case on deputation 	Notifications FEMA.34 dt.22.1.2001 [A.P.(DIR) 28 dt.30.3.2001] FEMA.89 dt.29.4.2003 [A.P.(DIR) 17 dt.20.9.2003]	Not exceeding 75% of the salary accrued to or received from the foreign company.	<ul style="list-style-type: none"> The remaining salary to be paid in rupees in India. Subject to applicable taxes on the entire salary as accrued in India. 	No specific directions to ADs on documentation.	<ul style="list-style-type: none"> Form A2 required if the amount exceeds USD 5000 	As per Item 5.
8.	Business Travel or attending a conference or	Item No.8 of Sch.III to Current A/c.	USD 25,000 per trip,	No conditions stipulated.	Self Declaration.	<ul style="list-style-type: none"> No limit if ICC is used except the card 	

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
	specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment /check-up.	Rules, 2000.	irrespective of period of stay abroad.			limit. • Form A2 required if the amount exceeds USD 5000	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
9.	Expenses for medical treatment abroad.	Item No.9 of Sch.III to Current A/c. Rules, 2000.	<ul style="list-style-type: none"> • USD 100,000 • Above USD 100,000 - As per estimate from the doctor in India or hospital/ doctor abroad 	Payment for purchase of foreign exchange to be made by applicant by means of cheque or demand draft or by debit to his/her account. -do-	<ul style="list-style-type: none"> • Declaration from the applicant that he is drawing exchange for medical treatment outside India • Estimate from the doctor in India or hospital/ doctor abroad. 	<ul style="list-style-type: none"> • Form A2 required if the amount exceeds USD 5000 	As per Item 5.
10.	Studies abroad. Continued.....	Item No.10 of Sch.III to Current A/c. Rules, 2000.	<ul style="list-style-type: none"> • USD 100,000 	Payment for purchase of foreign exchange to be made by applicant by means of cheque or demand draft or by debit to his/her account.	<ul style="list-style-type: none"> • Self declaration giving basic details 	<ul style="list-style-type: none"> • Form A2 required if the amount exceeds USD 5000 	As per Item 5.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		Item No.10 of Sch.III to Current A/c. Rules, 2000.	<ul style="list-style-type: none"> • Above USD 100,000 - As per estimate from the institution abroad 	Payment for purchase of foreign exchange to be made by applicant by means of cheque or demand draft or by debit to	Estimate from the Institution abroad.	<ul style="list-style-type: none"> • Form A2 required. 	As per Item 5.

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
				his/her			
11.	Remittances for miscellaneous purposes (all permissible current account transactions).	55/23.12.03	USD 5,000	No conditions.	Simple letter containing the basic information viz. names and addresses of the applicant, and the beneficiary, amount to be remitted and the purpose of remittance.	No A2 form.	There appears to be some discord between the policy intent and the policy and in view of the recommendations for item 1 of the table this needs to be scrapped as the present limit of US\$5,000 is per <u>transaction</u> and not <u>per annum</u> .
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
12.	Release of exchange for all other current account transactions.	FEMA, 1999 i.e. Items not indicated in Sch.I, II and III to the Current A/c. Rules, 2000.	No limits specified.	The transactions should be bonafide current account transactions.	For remittance upto USD 5000, simple letter containing the basic information viz. names and addresses of the applicant, and the beneficiary, amount to be remitted and the purpose of remittance • For remittance exceeding USD 5000, documentary evidence to show that the transaction is bonafide.	• Form A2 required if the amount exceeds USD 5000	As per Item 1.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
13.	ESOP Scheme - Remittance for acquisition of foreign securities.	68/13.01.03 104/31.05.04	No limit.	The resident individual has to be an employee or director of an Indian Office or	Documentary evidence in compliance of the	• Form A2 required if the amount exceeds USD 5000	As per Item 5. The proviso that the ESOP should be at a concessional price could be re-examined by the RBI.

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
				branch of a foreign company or of a subsidiary of a foreign company or of an Indian company in which the foreign equity holding is not less than 51 per cent. The shares under the ESOP Scheme have to be offered at a concessional price.	conditions stated in column No.5.		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
14.	Portfolio investment - Overseas - In equity and debt instruments.	66/13.01.03 104/31.05.03	No ceiling.	The overseas companies have to be listed on a recognised stock exchange which have the share holding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India (as on January 1 of the year of investment).	Documentary evidence in compliance of the conditions stated in column No.5.	<ul style="list-style-type: none"> Form A2 required if the amount exceeds USD 5000 	As per Item5. The Committee is of the view that this facility for individuals is virtually inoperative in the absence of a foreign currency bank account outside India. The Committee, therefore, recommends that resident individuals should be allowed to have foreign currency bank accounts subject to reasonable safeguards.
15.	Receipt of disinvestment proceeds/sponsored ADRs/ GDRs (In foreign currency or to credit it to EEFC / RFC (D) A/c.).	75/03.02.03	No ceiling.	The conversion to such ADRs/GDRs should have the approval of FIPB.	Documentary evidence in compliance of the conditions stated in column No.5.	--	--
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
16.	Retention of foreign exchange on return.	FEMA.11/ 2000-RB of 03.05.2000	USD 2,000 in the form of currency notes / TCs	<ul style="list-style-type: none"> Exchange acquired from specified sources as detailed in the annexure enclosed Surrender provisions - a) Foreign 	.	--	--

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
				<p>exchange received within seven days from the date of receipt.</p> <p>b) FE not utilised at all within 60 days.</p> <p>c) FE unspent - currency within 90 days and TCs within 180 days.</p> <p>For retention of coins no limit.</p>			
17.	Resident Foreign Currency (Domestic) Account - RFC(D) A/c.	37/01.11.02 53/23.11.02 64/24.12.02	No limit	<ul style="list-style-type: none"> • Non-interest bearing Current Account. • Permitted credits - <ul style="list-style-type: none"> - Unspent balance after travel abroad. - received from non-resident for services rendered to them - when they were in India. - earnings as honorarium, consultant, royalty for any service or towards export of goods. • Permitted debits - <ul style="list-style-type: none"> - For any permitted purpose under FEMA. 	Account opening formalities as applicable to domestic accounts including KYC Guidelines to be followed by ADs.	--	-
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
18.	International Credit Cards	59/09.12.02 73/24.01.03 103/21.05.03	Upto the credit limits prescribed by the issuer.	<ul style="list-style-type: none"> • Issued by Domestic Bank - No condition. • Issued by overseas Bank/Agencies - one need to have a foreign currency account in India or with a bank 		No restriction apply to the use of ICCs for making payments by a person towards meeting expenses while such person is on a visit outside India.	The intent of the policy, its content and procedures could subvert the policy intent and the Committee recommends that unless the policy intent is meant to be unfettered limits for all Items in the table, the usage of ICC should be reviewed by RBI.

EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO RESIDENT INDIVIDUALS (As made available by the Exchange Control Department, Central Office)							Committee's Recommendations/ Comments
Sr. No.	Item	Reference to FEMA/A.P. (DIR Series) Circular)	Limits specified Rs.	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
				overseas.			
Notes attached to the table provided by the Exchange Control Department: -							
<ol style="list-style-type: none"> 1. In terms of Sub-section (5) of Section 10 of the FEMA, 1999 ADs are required to obtain a declaration and such other information from the applicant on whose behalf the transaction has been undertaken that will reasonably satisfy him that transaction is not designed to contravene or evade the provisions of the Act or any of the Rules or Regulations made or Notifications or directions issued under the Act. 2. A2 Form need not be obtained for remittance upto USD 5,000 [A.P.(DIR Series) Circular No.55 dated 23.12.2003]. 3. Release of exchange exceeding the limits indicated in the statement are to be considered by ROs of ECD. 4. At the time of introduction of FEMA, ADs have been advised that RBI will not prescribe documentation which should be verified by the ADs while permitting remittances for various transactions, particularly current account. They have also been advised, with a view to maintaining uniform practices they may consider prescribing requirements or documents to be obtained by their branches to ensure compliance with provisions of sub-section (5) of the Section 10 of the Act. 							

VI ASSESSMENT OF FACILITIES AND PROCEDURES FOR NON- RESIDENT INDIVIDUALS

6.1 The various facilities for non-resident individuals are very liberal and should fully meet the requirements of those holding balances under various accounts. The procedures in many cases, however, totally subvert the intent of policy as well as the extant policy. While non-resident account holders under the **Foreign Currency Non-Resident Bank (FCNRB)** Account and the **Non-Resident External (NRE)** Account Schemes are subject to procedures which are generally hassle free the **Non-Resident Ordinary (NRO)** Account holders are subject to severe procedural problems. As of June 30, 2003, the FCNR, NRE and NRNR accounts together amount to US \$ 30.8 billion, while the NRO balances amount to US \$ 770 million.

6.2 It is true that the NRO accounts were totally non-repatriable upto August 1994 when repatriation was permitted for current income. More recently, remittances can be made upto **US \$ 1 million** per annum from NRO Accounts on both current and capital accounts. Given that the total amount outstanding in NRO Accounts is a meagre US \$ 770 million, the facilities are extremely liberal. The Committee recommends that the RBI should obtain a one-time census count of size-wise NRO accounts. The Committee's guess would be that the number of NRO Accounts would be large and the bulk of these accounts would be in the lower ranges of size-wise deposits. Thus, the bulk of NRO Account holders do not pose any macro problem and the Committee would expect that most of these account holders would not also pose any problem to the tax authorities. Ideally, NRO Accounts should be merged into NRE Accounts and allowed free repatriability. This would be a salutary measure which would bring considerable goodwill at minimal costs. The Committee, however, recognises that any blanket repatriability of NRO balances without any procedures could be hazardous as a future NRO Account holder could put large amounts into the deposit account before rendering the account into a NRO status. The Committee recommends that to the extent the NRO Accounts are continued as a separate and distinct entity, it is incumbent on the RBI and the Government to ensure that within the present liberal facilities NRO Account holders are not subject to unnecessary procedural hassles. This is of utmost importance as this is a clear case of the policy intent and the policy being totally derailed by procedures. In the upshot, NRO Account holders who were intended to have facilities better than residents are, because of cumbersome procedures, in effect treated more harshly than residents.

6.3 Joint accounts with residents are not permitted under FCNR(B) and NRE Account Schemes though this is permitted under the NRO Accounts Scheme. While under all the three non-resident account Schemes a resident, holding Power of Attorney (P.A.) is allowed to execute domestic transactions, the PA holder cannot use it for remittances outside India. For remittances abroad the non-resident account holder is required to send a letter/fax requesting for the remittance. While there is a possibility that there may have been some instances of PA being misused by a resident, the use of letter/fax messages carry even greater hazards. The Committee recommends that the matter should be reviewed urgently by the ECD and transactions for remittances outside India should also be allowed with use of a PA given to a resident. The Committee also takes note of the fact that there are some instructions by the Department of Banking Supervision on frauds in non-resident accounts and the Committee would revisit this issue when dealing with the matters relating to Banking Regulations and Operations.

6.4 The Committee has the following recommendations which are set out in the tabular material:

(i) In the case of repatriation of current income (Item 1 of the tabular material) as well as other remittances from NRO Accounts, individuals are subject to the A2 form, and for tax purposes Forms A and B (Annex III) and the negative declaration (Annex II). The Committee is of the considered view that the present formats and procedures are extremely arduous, almost rendering the facilities infructuous. The Committee recommends that the RBI should take up with the tax authorities the need for formats tailored to individuals. The present formats are difficult, if not impossible, for the individual

and the Chartered Accountant to fill and in practice the forms are perforce filled in a meaningless manner. The Committee recommends that in the case of remittances within an aggregate amount upto US \$ 25,000 per annum the present formats including A2 forms, Forms A and B and the Declaration should be dispensed with and requisite information could be sought based on the format for model letter-cum-declaration suggested by the Committee for resident individuals. The Committee further recommends that as regards tax compliance for remittances upto US\$25,000 per annum it should suffice if the individual produces a copy of the Assessment Order for the year for which the remittance is sought or if an Assessment Order is not available, the remittance may be permitted six months after the date of the filing of the income tax return on production of a copy of the return duly acknowledged by the tax authorities.

- (ii) The sale proceeds of assets, including immovable property and other investments (Items 2 and 8 of the tabular material) should be allowed to be remitted as set out in paragraph 6.4 (i) above.
- (iii) The implications of Section 195 of the Income Tax Act are analysed in Annex IV. The Committee is of the view that the provisions of Section 195 of the Income Tax Act are very onerous and are met only in the breach and need to be reviewed.
- (iv) The Committee recognises that the use of the ICC out of NRO funds is a very liberal facility. In comparison the stringency of procedures for other facilities comes into sharp focus and the Committee recommends that hardship to NROs by way of extremely difficult procedures should receive the urgent attention of the RBI.

6.5 The various facilities for non-resident individuals and the Committee's recommendations/comments are set out in the tabular material below:

**EXISTING POSITION ON FOREIGN EXCHANGE FACILITIES AVAILABLE TO
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(As made available by the Exchange Control Department, Central Office**

**Committee's
Recommendations/
Comments**

Sr. No	Item	Reference to FEMA/ A.P. (DIR Series) Circular)	Limits specified	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Repatriation of all current income	45/14.05.02 5/15.07. 02 26/28.9. 2002	No limit	Subject to an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and applicable taxes have been paid / provided for.	CA certificate as stated in col.5. (It was clarified that NRIs/PIOs who do not maintain NRO account and who have no taxable income in India need not submit the certificate. ADs may obtain a simple declaration that he / she is not a tax payer in India).	Current income can also be credited to NRE account subject to compliance with the conditions as stated in column 5.	<ul style="list-style-type: none"> The Committee is of the view that while the present policy is quite liberal the procedures are extremely arduous. While Forms A and B are to meet the tax authorities' requirements the Committee recommends that the RBI should place before tax authorities the difficulties faced by ADs and individuals. The tax authorities could consider devising a special format for individuals, at least for remittances upto an aggregate amount of US\$25,000 per annum. For remittances upto US\$25,000 per annum it should suffice if the individual produces a copy of the Assessment Order for the year for which the
	Continued....						Continued.....
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
							remittance is sought or if an Assessment Order is not available, the remittance may be permitted six months after the date of the filing of the income tax return on production of a copy of the return duly acknowledged by the tax authorities. <ul style="list-style-type: none"> For individuals who have no taxable income a simple declaration should suffice. In all cases of remittances by individuals upto an aggregate amount of US\$25,000 per annum, under all heads, the A2 form and the negative declaration, should

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Sr. No	Item	Reference to FEMA/ A.P. (DIR Series) Circular)	Limits specified	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
							be dispensed with and the model letter-cum-declaration format set out by the Committee for residents could be used as a basis for devising the format.
2.	Repatriation of balances in NRO A/c. / Sale proceeds of assets/sale proceeds of immovable property	67/13.01.03 104/31.05.03	USD 1 mn. p.a.	<ul style="list-style-type: none"> Subject to applicable taxes. Immovable property and/or sale proceeds or together should be held in India for a period of 10 years. 	<ul style="list-style-type: none"> Evidence of sale of assets. Evidence of holding of property/ sale proceeds. 		The Committee is of the view that the provisions of Section 195 of the Income Tax Act are very onerous and are met only in the breach. For remittances upto US\$25,000 per annum the procedure suggested for Item 1 may be followed.
3.	Sale proceeds of immovable property acquired out of repatriable funds (i.e. Inward remittances/ balance in NRE/FCNR(B) A/c.)	FEMA.21/ 2000-RB of 03.05.2000	To the extent amount paid in foreign exchange.	<ul style="list-style-type: none"> Property is acquired in accordance with the provisions of Foreign Exchange Law. In the case of residential properties, the repatriation of sale proceeds is restricted to not more than two properties. 	AD to get satisfied that the property was acquired out of inward remittances received or by debit to NRE / FCNR accounts.		-
4.	Refund of application/ earnest money / purchase consideration made by house building agencies/ seller on account of non-allotment /cancellation of bookings (togetherwith	FEMA.64/ 2002-RB of 29.06.2002 46/12.11.02	To the extent amount paid in foreign exchange.	Provided the original payment was made out of NRE/FCNR(B) A/c. or remittance from outside India through normal banking channel and the AD is satisfied about the genuineness of the transaction.	Evidence in respect of refund etc.		-

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Sr. No	Item	Reference to FEMA/ A.P. (DIR Series) Circular)	Limits specified	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
	interest, if any).						
5.	Facilities for returning NRIs/PIOs - continue to hold / maintain <ul style="list-style-type: none"> • FC Account (abroad) • Investment (abroad) • Immovable property outside India 	FEMA.10/2000-RB of 03.05.2000	No Limit.	Foreign Exchange, Security, property /any other asset should have been held or owned when resident outside India.	--	--	-
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
6.	Facilities for returning NRIs/PIOs - Resident Foreign Currency A/c.	FEMA.10/2000-RB of 03.05.2000	No limit.	--	Account opening formalities including KYC guidelines.	Balances in NRE/FCNR(B) A/c. can be transferred to the A/c. The funds in the account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form, by whatever name called, outside India.	-
7.	Investment opportunities Bank Accounts - i) FCNR (B), ii) NRE iii) NRO	FEMA.5/2000-RB of 03.05.2000	No limit.	--	Account opening formalities including KYC guidelines.		-
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
8.	Other investments <ul style="list-style-type: none"> • Government debt securities / Treasury Bills. • Units of Domestic Mutual Funds. • Bonds of PSUs. • Shares in PSUs disinvested by Govt. • Shares/ • Debentures firms. of Indian 	38/03.12.03	As per Government policy	As per Government policy.			-

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Sr. No	Item	Reference to FEMA/ A.P. (DIR Series) Circular)	Limits specified	Conditions stipulated by RBI/ Government of India	Documents	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	companies from primary market Continued....						
	<ul style="list-style-type: none"> Shares /debentures of Indian companies from Stock exchanges under PIS. 						
9.	Investment in immovable property both on repatriation and non-repatriation basis.	FEMA.21/ 2000-RB of 03.05.2000. 43/08.12.03.	No restriction.	Not permitted to acquire agricultural plantation/ farm house or in real estate activity (i.e. buying and selling of the immovable property). Repatriation of only two residential properties.	--	--	-
10.	Payment of Credit Card dues out of NRO Funds by NRIs/PIOs.	59/09.12.02	To the extent of card limit.	The debits are also subject to conditions for use of ICCs by residents.	--	--	The Committee recognises this liberal facility but the Committee would stress that the uneven treatment of various NRO facilities should be expeditiously examined by the RBI.

VII OVERALL OBSERVATIONS

7.1 While the Committee recognises the genesis of the Exchange Control and the liberalisation since 1991, the Committee must stress that some of the procedural hassles are quite clearly not the intent of policy. While appreciating that there will be a historical baggage in the instructions set out by the ECD, the Committee recommends that in the first instance, for **individuals**, a set of Master Circulars should be prepared. These Master Circulars should be self-contained and all earlier circulars should be withdrawn. Before finalising the Master Circulars they should be test checked with ADs whether the circulars convey the intent of the Control. Moreover, circulars should refrain from using jargon only understood by the Control and the circulars should be in unambiguous language. The Committee also recommends that each circular should have a sunset clause of one year and unless reissued would lapse. At least for individuals it would suffice if the Master Circulars are revised every year so that the AD does not have to keep track of a large number of circulars on any specific subject.

7.2 For individuals the Committee recommends that a *Child's Guide* should be prepared which would set out, free from jargon, the content of the ECD circulars. The Committee greatly appreciates the preparation by RBI of the **Citizen's Charter** and the small brochures for individuals. While this is indeed commendable, these documents do not prepare the individual customer for the shock which he gets when he actually visits the branch of a bank for undertaking legitimate forex transactions. Given the resolute will of the RBI not to prescribe formats the FEDAI or any other agency could be persuaded to prepare the *Child's Guide*, which would, inter alia, set out in simple language the kind of information an individual would be required to provide at the time of seeking a remittance.

7.3 The Committee recognises that the RBI has been undertaking a large number of training programmes for bank officials at the cutting edge of customer service. The officials are on a number of occasions found wanting as they are often not aware of the liberalisation which has taken place say a year or two ago. The RBI should urge banks to so undertake job rotation that there is always core staff at the branches with knowledge of foreign exchange regulations/operations as applicable to individuals.

7.4 Reflecting the sea change in the forex situation it would be useful, as a signal, to alter the name of the Exchange Control Department to say Foreign Exchange Department. The Committee reiterates its recommendation that the ECD should make a conscious effort to eschew from micro management and to this effect should move away from controlling forex **transactions** to monitoring **flows**. The endeavour should be to provide seamless service and the longer term objective should be that services for forex transaction are as hassle free as for rupee transactions.

7.5 The Committee would urge that the bogey of Money Laundering and terrorist activity should not be used as a pretext for not providing high quality customer service to individual users of foreign exchange. In almost all cases of individuals a quick scanning of the operations of individual bank accounts, as is normally required for domestic transactions, should satisfy the bank as to the legitimate nature of the transactions sought to be put through by individuals.

7.6 In all this, the ECD has to undergo a paradigm change, away from controlling to facilitating individual transactions. This will require a major attitudinal change in the Department. The ECD should endeavour to become a lean strategic task force dedicated to facilitating foreign exchange transactions and not an army of controllers whose objective is to conserve foreign exchange. The watchword of ECD should be the empowered of the common person undertaking legitimate transactions in foreign exchange.

VIII SUMMARY RECOMMENDATIONS OF THE COMMITTEE

The recommendations of the Committee are as follows:

1. The Committee has attempted to look at whether, within the overarching framework of policy **intent**, the policy **contents** were such as to enable a seamless flow of services (Paragraph 2.3).
2. To enable a change in the mindset the Committee recommends that the authorities need to move towards a policy content which would then require procedures wherein foreign exchange transactions, at least for individuals, would have the same ease of operations as rupee transactions (Paragraph 2.4).
3. The Committee recommends that in the current environ, the Exchange Control Department, as the regulator for foreign exchange transactions, should move away from micro management of controlling forex **transactions**, particularly for individuals, and concentrate on monitoring **flows**. If the policy **intent** is to offer seamless services, particularly to individuals, the policy **content** would need certain adjustments. The Committee recognises that the overall extent and pace of liberalisation has to be a judgement of the authorities, but within this overall judgement there is much merit in moving away from detailed and fractionated sub-limits which are difficult to monitor and cause unnecessary hardship to individuals by way of complex and avoidable procedures which serve little or no purpose (Paragraph 2.6).
4. The Committee is of the view that the declaration required to be submitted by an applicant that he is **not** violating any rules/regulations and in case of violation he is liable for action under FEMA, puts the onus of compliance squarely on the applicant and runs counter to the basic spirit of the Act. The declaration does not seek the applicant to confirm as to what he is doing but seeks to confirm what he is **not doing**. The Committee is of the view that the underlying philosophy of a progressive liberalisation implicit in FEMA has been undermined by the prevailing practice of obtaining such a declaration. The FEDAI formats are clearly in the knowledge of RBI and the RBI, FEDAI and ADs cannot be absolved of the atrocity perpetrated on the user of exchange. The Committee, therefore, recommends that RBI, FEDAI and ADs should take immediate action to withdraw this Declaration. The Committee is of the view that any Declaration by the user of exchange should relate to what the remitter is doing rather than what is not being done (Paragraphs 3.7 and 3.8).
5. The Committee recommends that the Exchange Control Department should reinforce its efforts to selectively assess the progress at the bank branch level in providing fair and expeditious services to individual customers for remittances upto US\$25,000 per annum. *Inter alia* the processes followed by the bank branches while dealing with these cases should be studied by the ECD. Furthermore, banks should be advised to closely monitor that the branches process cases relating to individuals for remittances upto US\$25,000, expeditiously within the framework of the extant policies (Paragraph 4.4).
6. The Committee's recommendations relating to remittances by resident individuals are as follows:
 - (i) All limits below US \$ 25,000 per annum should be scrapped and subsumed under the new aggregate limit of US \$ 25,000 per annum for current and capital remittances already proposed to be announced by the authorities. Thus, Items 1, 3, 4, (set out in the tabular material) should be discontinued as separate facilities.
 - (ii) For all remittances upto US \$ 25,000 per annum there should be a **Simple Letter-Cum-Declaration** for which the Committee has set out a model format. The A2 form should be dispensed with for remittances upto US \$ 25,000 per annum.
 - (iii) For all other facilities above US \$ 25,000 per annum the AD may call for appropriate additional information.
 - (iv) As regards remittances for Miscellaneous Purposes (Item 11 of the tabular material) there is a clear discord between the policy intent and the policy. The present limit of US \$ 5,000 for Miscellaneous Purposes is per

transaction and not **per annum** and, as such, this totally subverts the intent of policy. This is a case of an appropriate liberalisation being miscued which should be rectified. . In the context of the proposed limit of US \$ 25,000 per annum for all current and capital transactions the Committee recommends that this facility of US \$ 5,000 **per transaction** should be scrapped.

- (v) As regards the ESOP Scheme (Item 13 of the tabular material) the Committee recommends that the proviso that the ESOP should be at a concessional price could be re-examined by the RBI.
- (vi) In case of portfolio investment facility for individuals (Item 14 of the tabular material) the Committee recommends that the RBI should allow foreign currency account to be held abroad by individuals subject to reasonable safeguards. For remittances upto US\$25,000 per annum the condition, stipulating that the investment can be made only in companies which have investment of at least 10 per cent in a company listed on a recognised Indian stock exchange, should be waived. The Committee recommends that as a corollary to the facility on portfolio investment, residents should be allowed to maintain foreign currency accounts outside India for any purpose within the aggregate limit of remittances upto US\$25,000 per annum.
- (vii) While the Committee has taken note of the facilities for International Credit Cards (ICC) {Item 18 of the tabular material} the Committee would urge that the operation of the ICC be carefully reviewed by the RBI.
- (viii) The Committee recommends that the proposed limit of US \$ 25,000 per annum for current and capital remittances by resident individuals be reviewed and raised annually. The Committee stresses that the procedures for these remittances should be kept simple and hassle free and the simple letter-cum-declaration set out by the Committee could be the basis for the format to be devised by ADs.

(Paragraph 5.4 and tabular material)

7. The Committee recommends that to the extent the NRO Accounts are continued as a separate and distinct entity, it is incumbent on the RBI and the Government to ensure that within the present liberal facilities NRO Account holders are not subject to unnecessary procedural hassles. NRO Account holders who were intended to have facilities better than residents are, because of cumbersome procedures, in effect treated more harshly than residents (Paragraph 6.2).
8. Joint accounts with residents are not permitted under FCNR(B) and NRE Account Schemes though this is permitted under the NRO Accounts Scheme. While under all the three non-resident account Schemes a resident, holding Power of Attorney (P.A.) is allowed to execute domestic transactions, the PA holder cannot use it for remittances outside India. For remittances abroad the non-resident account holder is required to send a letter/fax requesting for the remittance. The Committee recommends that the matter should be reviewed urgently by the ECD and transactions for remittances outside India should also be allowed with use of a PA given to a resident (Paragraph 6.3).
9. The Committee has the following recommendations which are set out in the tabular material :
 - (i) In the case of repatriation of current income (Item 1 of the tabular material) as well as other remittances from NRO Accounts, the Committee is of the considered view that the present formats and procedures are extremely arduous, almost rendering the facilities infructuous. The Committee recommends that the RBI should take up with the tax authorities the need for formats tailored to individuals. In the case of remittances within an aggregate amount upto US \$ 25,000 per annum the present formats including A2 forms, Forms A and B and the Declaration should be dispensed with and requisite information could be sought based on the format for model letter-cum-declaration suggested by the Committee for resident individuals. The Committee further recommends that as regards tax compliance for remittances upto US\$25,000 per annum it should suffice if the individual produces a copy of the Assessment Order for the year for which the

remittance is sought or if an Assessment Order is not available, the remittance may be permitted six months after the date of the filing of the income tax return on production of a copy of the return duly acknowledged by the tax authorities.

- (ii) The sale proceeds of assets, including immovable property and other investments (Items 2 and 8 of the tabular material) should be allowed to be remitted as set out in paragraph (i) above.
- (iii) The Committee is of the view that the provisions of Section 195 of the Income Tax Act are very onerous and are met only in the breach and need to be reviewed.
- (iv) The Committee recognises that the use of the ICC out of NRO funds is a very liberal facility. In comparison the stringency of procedures for other facilities comes into sharp focus and the Committee recommends that hardship to NROs by way of extremely difficult procedures should receive the urgent attention of the RBI.

(Paragraph 6.4 and tabular material)

10. The Committee recommends that in the first instance, for **individuals**, a set of Master Circulars should be prepared. The Committee also recommends that each circular should have a sunset clause of one year and unless reissued would lapse (Paragraph 7.1).
11. For individuals the Committee recommends that a *Child's Guide* should be prepared which would set out, free from jargon, the content of the ECD circulars (Paragraph 7.2).
12. The Committee recommends that the RBI should urge banks to so undertake job rotation that there is always core staff at the branches with knowledge of foreign exchange regulations/operations as applicable to individuals (Paragraph 7.3).
13. Reflecting the sea change in the forex situation it would be useful, as a signal, to alter the name of the Exchange Control Department to say Foreign Exchange Department. The Committee reiterates its recommendation that the ECD should make a conscious effort to eschew from micro management and to this effect should move away from controlling forex **transactions** to monitoring **flows**. The endeavour should be to provide seamless service and the longer term objective should be that services for forex transaction are as hassle free as for rupee transactions (Paragraph 7.4).
14. The Committee recommends that the ECD has to undergo a paradigm change, away from controlling to facilitating individual transactions. This will require a major attitudinal change in the Department. The ECD should endeavour to become a lean strategic task force dedicated to facilitating foreign exchange transactions and not an army of controllers whose objective is to conserve foreign exchange. The watchword of ECD should be the empowerment of the common person undertaking legitimate transactions in foreign exchange (Paragraph 7.6).

**Reserve Bank of India
Central Office
Mumbai 400 001**

MEMORANDUM

1. In the Mid-Term Review of Monetary and Credit Policy for the year 2003-04 announced on November 3, 2003 it was indicated that in order to benchmark the current level of public services rendered by the RBI, review of the progress periodically, enhance the timeliness and quality, rationalize the processes taking into account technological developments, and suggest appropriate incentives to facilitate change on an on-going basis, a Committee on Procedures and Performance Audit is being constituted.
2. The constitution of the above mentioned Committee is as under:

1) Shri S.S. Tarapore	Chairman
2) Shri M.G.Bhide	Member
3) Shri H.N. Sinor	Member
4) Shri C.B. Bhawe	Member
5) Shri M.M. Chitale	Member

The Committee may associate any other person as special invitee.
3. The terms of reference of the Committee are:
 - (g) To advise the Bank on improving the quality of its public services to common persons and institutions and to benchmark such services in terms of quality and timeliness.
 - (h) To review existing policies and procedures with a view to their rationalization and simplification and to suggest appropriate incentives to facilitate change on an on going basis.
 - (i) To undertake performance audit on public services and regulatory clearances in RBI.
 - (j) To coordinate with the Ad hoc Committees on Customer Services to be set up by banks and consider and make recommendations on suggestions made by such Committees.
 - (k) To dialogue with various fora/associations concerned with customers' interest to the extent it impinges on the services provided by the RBI.
 - (l) To tender advice on any other issue relevant to the Committee's work as also any specific issues referred to it by the RBI.
4. The Committee will meet as often as may be necessary and would maintain an on-going dialogue with the Top Management of the Bank and present periodic reports to the Bank.
5. The Committee will initially function for one year with effect from 1st January 2004.
6. The secretarial services will be provided by the Department of Government and Bank Accounts.

**(Y.V.Reddy)
Governor
23-12-2004
ANNEX IV**

IV.1 The provisions pertaining to deduction of income tax at source while making payments to individuals are contained in Section 195 of the Income Tax Act 1961.

IV.2 The method of deduction of tax at source is well accepted in India. The provisions pertaining to Tax Deduction at Source (T.D.S.) while making payments by individuals to Residents are contained in Section 192 to Section 194. A quick review of these sections bring out that an individual is required to deduct tax at source while making payment to residents in the following situations only:

- (a) Payment of salary by any individual
- (b) Other specified payments such as Commission, Rent, Professional Fees, etc. only when the paying individual is required to get his account audited under the provisions of The Income Tax Act 1961.

IV.3 An individual is not required to deduct tax at source when he makes any payment for purchase of property or shares to a resident even though the seller of such property may be realising some capital gain.

IV.4 Presently, when a individual is making a Form 'A' is to be filled-up by the person who is making a remittance in foreign exchange while Form 'B' is the certificate to be issued by the Chartered Accountant (CA).

IV.5 The following issues arise:

- (i) Every individual making payment to a Non-Resident is required to deduct tax at appropriate rates whenever the payment is in the nature of any interest or any other sum chargeable under the provisions of the Income Tax Act (not being salary).
- (ii) Thus, an individual is required to deduct tax at source while making payment to non-residents even when,
 - (a) The paying individual is not required to get his accounts audited.
 - (b) The payment is towards purchase of property or shares.
- (iii) In case the transaction pertains to purchase of property, the purchaser will have to determine the capital gain payable by the seller and then deduct appropriate tax at source. This is very difficult in practice.
- (iv) In case the transaction pertains to purchase of shares in the market, it is impossible to identify the seller and calculate his capital gain. Thus, the purchaser of shares through stock market can never comply with the provisions of Section 195 of Income Tax Act.
- (v) Certain items in Form 'B' such as item 5, 6 and 7 are not relevant for individuals.

IV.6 Thus, Forms 'A' & 'B' need to be modified suitably and specifically tailored to transactions by individuals.