

Workshop on FEMA

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Regulatory Bodies



विदेश व्यापार महानिदेशालय
DIRECTORATE GENERAL OF
FOREIGN TRADE

DGFT

Formulates Foreign Trade Policy

Goods can be –

- Freely Importable
- Restricted
- Prohibited

HS Code – 8 Digit
IEC Mandatory



RBI

Regulates Foreign Exchange Transactions

- FEMA 1999
- AD Banks



Customs/ STPI

Goods/Software

- Goods – Sea, land & air ports
- Software – STPI



International Chamber of Commerce

International Governing Body

- UCPDC – for LCs
- URC – for Bills
- URDG – for BG
- INCO Terms – Trade terms



FATF/ OFAC

FATF countries require additional due diligence (UAE, Philippines etc)

No transactions with OFAC listed countries (Iran, Syria, Cuba)

Russia-Ukraine Crisis (additional due diligence required)

Prerequisites for Export Import Business

1



Valid Importer Exporter Code (IEC) issued by DGFT

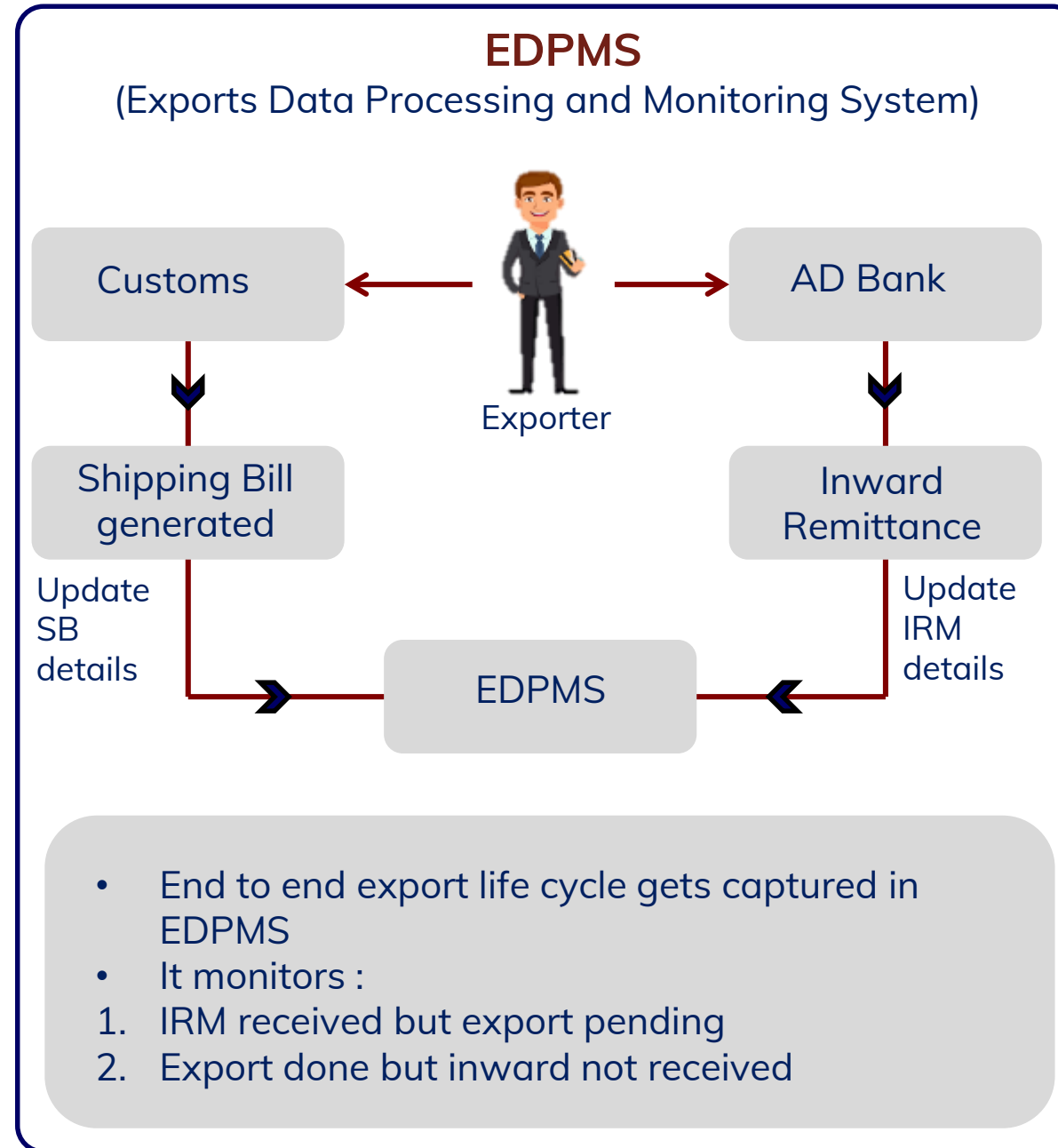
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Awareness of Foreign Trade policy w.r.t concerned product

3

Requirement for export license for restricted goods and prohibited goods cannot be exported

EDPMS



Export of Goods and Services

Export of Goods, Software & Services

- Export means taking or sending out of goods by land, sea, or air, and in the case of software, it also includes transmission through electronic media. Further, it also includes services in non physical form.
- Export trade is regulated by the Directorate General of Foreign Trade (DGFT)
- There is no restriction on invoicing of export contracts in Indian Rupees, however, realization should be in freely convertible currency

Realization and Repatriation of Proceeds

- Exporter to realize and repatriate the full value of goods / software / services to India within nine months from the date of export
- Goods exported to warehouses situated outside India, export proceeds to be realized within 15 months from the date of shipment

Receipt through Online Payment Gateways

- For E Commerce business, AD Banks empowered to enter into standing arrangements with Online Payment Gateway Service Providers (OPGSPs)
- Ecommerce exports (currently USD 2Bn) target raised to USD 200-300 Bn by 2030 in FTP '23
- FTP Benefits made available to ecommerce exporters
- Facility available for export of goods and services of value not exceeding USD 10,000
- Export by courier/ post increased to Rs10 lac per consignment



Manner of Receipt

ACU Countries	Nepal/ Bhutan	Iran	Other Countries
Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives	Receipt may be in INR	Receipt in any freely convertible currency and / or in accordance with the RBI directions	(i) Receipt in rupees from the account of a bank situated in any country (ii) Receipt in any freely convertible currency
1) Export of goods and services – ACU Dollar Account	In free foreign exchange, permitted by the Nepal Rashtra Bank		(a) In respect of an export from India, receipt shall be made in a currency appropriate to the place of final destination
2) For other than above, any freely convertible currency			Third Party receipts allowed as per RBI guidelines
For Myanmar and Srilanka * – it can be freely convertible currency			
*(effective July 08, '22)			



Manner of Receipts in certain cases : -

Receipt for export may also be made by the exporter as under, namely :

- in the form of a bank draft, cheque, pay order, postal order/postal money order issued by a post office outside India, foreign currency notes/ travelers cheque from a buyer during his visit to India;
- by debit to FCNR/ NRE/ SNRR account ;
- in rupees from the credit card servicing bank in India against the charge slip signed by the buyer where such payment is made by the buyer through a credit card;
- from a rupee account held in the name of an Exchange House with an authorized dealer if the amount does not exceed fifteen lakh rupees per export transaction or an amount prescribed by RBI, in consultation with Government of India in this regard;



Manner of Payment

ACU Countries	Nepal/ Bhutan	Iran	Other Countries
Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives	Payment may be in INR	Payment in any freely convertible currency and / or in accordance with the RBI directions	(i) Payment in rupees from the account of a bank situated in any country (ii) Payment in any freely convertible currency
1) Import of goods and services – ACU Dollar Account			(a) Where goods are shipped from ACU countries (other than Nepal/Bhutan, payment shall be made in freely convertible currency of seller's country Or from Vostro Account b) In all other cases, payment shall be made in a currency appropriate to the country of shipment of goods
2) For other than above, any freely convertible currency			Third Party Payments allowed as per RBI guidelines
For Myanmar and Srilanka * – it can be freely convertible currency			
*(effective July 08, '22)			



Manner of Payments in certain cases : -

A person resident in India may make payment for import of goods in foreign exchange :

- Through an international card held by him/ in rupees from international credit card/ debit card through the credit/ debit card servicing bank in India against the charge slip signed by the importer/ as prescribed by Reserve Bank from time to time.
- in rupees towards meeting/ travel related expenses of a person resident outside India who is on a visit to India;
- a company or resident in India may make payment in rupees to its non whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India
- by credit to SNRR account



Export of Goods and Services

International Trade Settlement in Indian Rupees

- With effect from July 11, 2022 an additional arrangement for invoicing, payment, and settlement of exports / imports in INR has been initiated which will be complimentary to existing system of vostro accounts that uses freely convertible currencies This will reduce dependence on hard (freely convertible) currency
- All exports and imports under this arrangement may be denominated and invoiced in Rupee (INR).
- The settlement of trade transactions under this arrangement shall take place in INR in accordance with the procedure laid down
- Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
- Indian exporters undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.
- The surplus rupee balance can be used for payment for project and investments, export/ import advance flow management, and investment in Government Treasury bills, securities etc
- As of now RBI has given approval for Banks from 22 countries to open Special Rupee Vostro Accounts with banks in India



Export of Goods and Services

Foreign Currency Account outside India

- Participants in international exhibition/ trade fair
- Exporters with good track record subject to RBI approval
- Overseas Branch / liaison Office
- SEZ Units
- Project/ Service exporter

Exchange Earners Foreign Account (EEFC A/c)

- Foreign Exchange Earner entities including individuals
- Non interest bearing current account, and no credit facility allowed against funds held
- Total accrual during the month to be converted on or before last day of the succeeding month
- Enable exchange earners to save on conversion/ transaction costs
- Eligible Credits are inward remittances through normal banking channel, received by 100% EOU, Unit in EPZ, STP or EHTP for supply of goods to DTA.
- Eligible Debits towards Import payments, extend trade related loans/ advances to overseas importer, repay packing credit advances, all permissible current and capital account transactions.



Export of Goods and Services

Forfaiting & Export Factoring

- Factoring - sale of firm's receivables as a factor at discounted prices.
- Forfaiting -the exporter renounces his/her right due at a future date, in exchange for instant cash payment, at an agreed discount, to the forfeiter
- .
- In terms of RBI Directions, EXIM Bank and AD Category – I banks have been permitted to undertake forfaiting, for financing of export receivables. AD banks have been permitted to factor the export receivables on a **non-recourse** basis,

Counter Trade Arrangement

- Involving adjustment of value of goods imported into India against value of goods exported from India through an Escrow Account.
- Presently RBI considering such proposal with Romania

Export to Neighboring Countries by Road, Rail or River

- For exports by barges/ country craft/ road transport, EDF should be presented at the customs at border before crossing to foreign territory
- For exports by rail, EDF should be presented to Custom staff posted at designated stations without formalities at border.
- For goods loaded at other stations EDF to be presented at Custom office at Border Land Custom Station.

Export of Goods and Services

Project Exports & Service Exports

- Export of engineering goods on deferred payment terms and execution of turnkey projects and civil construction contracts* abroad are considered Project Exports
- Contracts for Export of Consultancy, technical and other services by Indian companies fall under Service Exports
- AD Banks/ Exim Banks are allowed to consider such approvals.

Post Award Approval from AD/ EXIM bank is mandatorily required in the following cases

- a) Project Export of turnkey/ civil construction project on deferred payment terms or involving fund based/ non fund based limits from the banking system and / or
- b) Export of services in the area of management / technical consultancy involving fund/ non based limit or deferred terms and /or
- c) Supply contracts on deferred terms except pure supply contracts of goods where 90% of proceeds is realized within 6 months and rest within a period of two years from the date of shipment and exporter does not avail any fund / non based limit

*Turnkey projects involve rendering of services like designing, civil construction and erection and commissioning of plant / factory along with supply of machinery, equipment and materials. Execution of civil construction contracts abroad involves mainly erection and civil construction work and supply of construction materials and equipment going into the civil works.



Export of Goods and Services

Export of Goods on Lease, Hire

- RBI approval is required for export of machinery, equipment on lease, hire basis.

Export on Elongated Credit Terms, Deferred Payment Arrangement

- Exporters cannot enter into contract with payment terms of more than nine months (elongated credit terms or deferred payment arrangements) without RBI approval.

Export of Currency

- Person resident in India can take outside India (other than to Nepal and Bhutan) currency notes of Government of India upto an amount not exceeding Rs. 25,000.
- Any visitor who is a resident outside India(other than a citizen / traveler of Pakistan and Bangladesh) may take outside India up to an amount not exceeding Rs. 25,000 (Rupees twenty five thousand only) while exiting only through an airport.



Export of Goods and Services

EDF / Softex Procedure

Export of Goods through Customs EDI ports

Exporter submits shipping bill with Customs/ SEZ

Softex Forms

The exporters need to submit Softex Forms for export of software with Software Technology Park of India (STPI) / Special Economic Zone (SEZ) authorities “, 'software' means any computer program, database, drawing, design, audio/video signals, any information by whatever name called in or on any medium other than in or on any physical medium”

Export of Goods through Non EDI Customs ports

Exporter needs to submit Export Declaration Form (EDF) in duplicate at Non-Electronic i Data Interchange (EDI) port. Customs retain one EDF for transmission to RBI and handover the other to Exporterf.

Courier Shipping Bill (CSB V)/ Postal Bill of Export

Exporter can export goods upto a value of Rs. 10,00,000 by courier. Courier Shipping Bill (CSB V) bill is submitted by Authorised Courier with Customs Airports

Export of Goods through Post

Postal Authorities allow export of goods by post only if the original copy of the EDF has been countersigned by an AD Bank. Postal Bill of Export is filed by the Exporter



Export of Goods and Services

EDF / Softex Procedure

Direct dispatch of documents by the exporter

Generally, Exporters should submit export documents within 21 days from the date of export to the AD Bank for dispatch to overseas branches/ correspondent banks. Further, AD Banks may directly send these documents to consignees or their agents abroad provided 1) Advance payment or Letter of Credit has been received for full value of shipment, 2) Satisfactory track record and standing of the exporter
AD Category – I banks may also permit 'Status Holder Exporters' and units in Special Economic Zones (SEZ) to dispatch the export documents to the consignees outside India provided the duplicate copy of the EDF/Shipping Bill is submitted to the AD banks for monitoring purposes, by the exporters within 21 days from the date of shipment of export.

Export of Services

The exporter may export services without furnishing any declaration, however, they need to ensure realization of export proceeds within stipulated timeline as provided by RBI Regulations

Short Shipment

When part of a shipment covered by an EDF already filed with Customs is short-shipped, the exporter must give notice of short-shipment to the Customs in the form and manner prescribed.

Shut out Shipments

Where a shipment has been entirely shut out and there is delay in making arrangements to re-ship, the exporter will give notice in duplicate to the Customs in the form and manner prescribed, attaching thereto the unused duplicate copy of EDF and the shipping bill.



Export of Goods and Services

Grant of EDF waiver

- Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:
- Annual limit of 2% of average annual export realization during preceding three licensing years for all exporters (excluding the exporters of following sectors-
 - (1) Gems and Jewellery Sector,
 - (2) Articles of Gold and precious metals sector.
- Annual limit of Rupees One Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).
- In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding three licensing years.
- Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.
- Exports of goods not involving any foreign exchange transaction directly or indirectly requires the waiver of EDF procedure from the Reserve Bank.



Exemption from Declaration for export of goods/ software in following few cases

- Trade samples of goods and publicity material supplied free of payment
- by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value
- goods imported free of cost on re-export basis
- replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy in force, for the time being.
- goods sent outside India for testing subject to re-import into India
- defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorised dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.
- exports permitted by the Reserve Bank, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.



Export of Goods and Services



Receipt of advance against Exports

- Shipment of goods is made within one year from the date of receipt of advance payment.
- Documents covering the shipment should be routed through the AD Bank through whom advance payment is received
- On Exporter's inability to make shipment, refund of advance payment after the expiry of said one year period, shall require RBI approval.
- All advance payments shall be captured as IRM in EDPMS



Follow up of Overdue Export Bills

- Banks should closely watch pending overdue bills and promptly take with exporters
- Realisation of all export transactions after February 28, 2014 should be reported in EDPMS.
- Exporter may be reported to DOE by the Banks
- Exporter may be caution listed based on AD Bank recommendations, depending upon the track record of the exporter with AD Bank and Investigating agencies

Third Party Payment for Export

- **Third party payments for Export transactions** Firm irrevocable order backed by a tripartite agreement should be in place. However, it may not be insisted upon in cases where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order/ invoice has been produced
- Exporter should declare third party name in Export Declaration Form (EDF) and realise the export proceeds from such third party
- Third party name may also be mentioned in Invoice/ irrevocable order
- AD Bank should be satisfied about the bonafides of the transaction and export documents such as invoice etc. and should consider the Financial Action Task Force (FATF) Statement before handling the transactions



Export key Regulatory Guidelines

Export Bill Extension



AD Bank can approve extension of bills by 6 months in one go beyond 270 days

1. Transactions not under investigation by ED /CBI / any other investigating agencies
2. Exporter has not been able to realize export proceeds for reasons beyond his control
3. Declaration that the export proceeds will be realized during the extended period
4. The total o/s of the exporter does not exceed USD 1 million or 10% of the avg export realizations during the preceding 3 FY, whichever is higher
5. If exporter filed suit abroad, no restriction on bills / amount



Set Off

1. Through/ by one AD Bank only
2. Payable from/ to the same overseas buyer/ supplier
3. Export and Import legs in same calendar year
4. Set off of goods not allowed against services and vice versa
5. Transactions under investigation not eligible for set off
6. Not applicable for export import transactions with ACU countries



Export key Regulatory Guidelines



Write Off

1. Amount outstanding for more than 1 year
2. Documentary evidence having made all efforts
3. Regular/ KYC/ AML compliant, atleast 6 month relationship
4. Surrender of proportionate benefits along with documentary evidence
5. Export bills under ED/ CBI/ Other investigation / law suit cannot be written off



Write Off limits

Limits for Write Off:

- Self Write off - 5%
- Self Write off(Status holder) – 10%
- AD Bank- 10%

Limits will be related to total export proceeds realized during the previous calendar year



Acceptable Reasons

1. Overseas buyer insolvency
2. Case settled through the intervention of the Indian Embassy
3. Auction by the Port / Customs
4. Overseas buyer un traceable
5. Disproportionate cost of resorting to legal action
6. Unrealized value does not exceed 10% of the invoice value
7. Bills drawn for the difference between the LC value and actual export value or between the provisional and the actual freight charges



* Exporter to hold vintage of 6 months and KYC/AML compliant

Invoice Reduction upto 25%– RBI Guidelines

The reduction does not exceed 25 per cent of invoice value

It does not relate to export of commodities subject to floor price stipulations

The exporter is not on the exporters' caution list of the Reserve Bank

Surrender of proportionate export incentives availed of, if any.



Invoice Reduction above 25%– RBI Guidelines



It does not relate to export of commodities subject to floor price stipulations

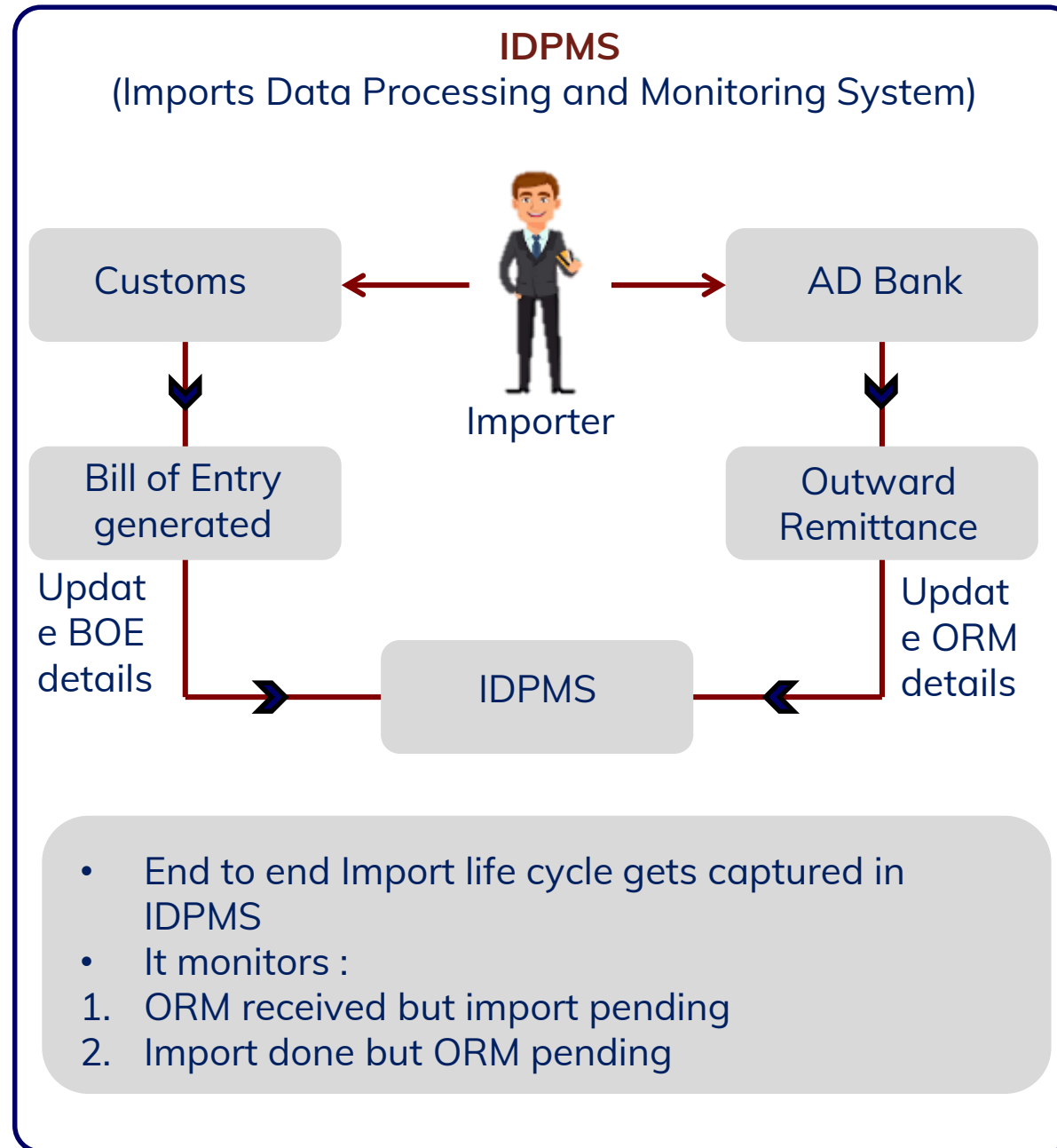
The exporter is not on the exporters' caution list of the Reserve Bank

Surrender of proportionate export benefits, if any availed of

Satisfactory track record i.e., the export outstanding does not exceed 5 per cent of the average annual export realization during the preceding three financial years



Exports made to countries facing externalization problems may be ignored



Import of Goods and Services

Import of Goods, Software, and Services

- Import into India should be in conformity with the Foreign Trade Policy and Foreign Exchange Management (Current Account Transactions) Rules
- Rules and Regulations from foreign exchange angle should be followed by AD Banks while undertaking import payments against import of goods, software, and services, on behalf of their clients, besides adhering to Know Your Customer (KYC) guidelines.

Time limit for settlement of Import Payments

- Remittances against Imports should be completed within six months from the date of shipment
- Delayed settlement is permitted due to disputes, financial difficulties etc, with interest payment, if any, upto three years from the date of shipment
- Trade Credits upto one year for non-capital goods, and upto three for capital goods is permitted
- No time period for settlement of payments against import of books

Extension of Time

- Extension of time limit for settlement of import payment can be granted for six at a time for maximum period of three years.
- Where sector specific guidelines are issues, same would be applicable.
- For extension beyond one year from the date of remittance, the total outstanding of the importer does not exceed USD one million or 10 per cent of the average import remittances during the preceding two financial years, whichever is lower



Import of Goods and Services

Advance Remittance for Import of Goods, Services & Software

- Advance remittance for import of goods exceeding USD 2,00,000 or equivalent, requires Standby LC or guarantee from international bank of repute.
- If same unable to obtain, AD Banks may frame internal guidelines to allow advance remittance upto USD 50,00,000 or equivalent.
- A Public Sector Company or a Department/Undertaking of the Government of India / State Government/s to provide waiver of BG from ministry of finance for advance remittance exceeding USD 1,00,000
- Advance remittance for import of rough diamonds allowed to overseas mining company approved by GJEPC
- Advance Remittance for Import of Aircrafts/Helicopters and other Aviation Related Purchases allowed upto USD 50 million and permission by DGCA
- Advance remittance for import of services exceeding USD 5,00,000 will require guarantee from international bank

Evidence of Import

- For all Imports, Importer to submit Bill of Entry (BOE) number, port code, and date for updating in IDPMS
- Custom Assessment Certificate or Postal Appraisal for import by post, Courier BOE for import by Courier, Exchange Control copy of the Ex-Bond BOE or BOE issued by Customs for goods imported and stored in Free Trade Warehousing Zone (FTWZ) or SEZ Unit Warehouses or Customs Bonded Warehouses, etc, as Evidence of Import



Import of Goods and Services

Third Party Payment for Export / Import Transactions



In case of Third party payments for Import transactions

- Firm irrevocable purchase order / tripartite agreement should be in place. However this requirement may not be insisted upon in case where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order / invoice has been produced.
- The invoice should contain a narration that the payment is to be made to named third party.
- The Bill of Entry should mention the name of the shipper as also the narration that the related payment is to be made to named third party.
- Importer should comply with Import related instructions including related advance payment,
- AD bank should be satisfied with the bonafides of the transactions and should consider the Financial Action Task Force (FATF) Statement before handling the transactions



Framework for pending BOE

Closure of Entries in IDPMS

- Threshold : USD 1 lakh or equivalent (individual remittances)
- Exclusion : **Not applicable for customers under investigating / enforcement agencies**
- Documents
 1. Alternate documents like Certificate /undertaking from CEO/Authorised Signatory and or Auditor confirming receipt of goods into India
 2. Board Approved policy of the AD Bank laying down guidelines to establish genuineness of transaction and bonafides of the remitter



BOE – Write Off

AD Bank can close BOE/ORM up to 5% of Invoice Value on account operational reasons

AD Bank can close BOE in case of quality issues, short shipment or destruction by Port

Operational guidelines are for closure of ORM/BOE in IDPMS and does not absolve the importer

While allowing write off, AD Category - I banks must ensure that the case is not the subject matter of any pending civil or criminal suit or under the adverse notice of ED/CBI or any such other law enforcement agency



Regulatory Developments

Latest developments – Trade Guidelines

- International Trade Settlement in INR- Special Vostro Account
- Integration of Express Cargo System BOEs/ Shipping Bills in I/EDPMS w.e.f Jan 2, 2022
- FTP benefits to be extended to E-Commerce exports
- The value limit for exports through courier service increased from ₹ 5 Lakhs to ₹ 10 Lakhs per consignment.
- Necessary enablement of IT systems in Department of Commerce, Posts, CBIC to be completed in six months
- Restriction on import of laptops, computers and other components effective Nov 1, '23
- Production linked scheme for IT hardware with outlay of Rs17000 Crores, 58 application received for IT manufacture in India



Export/Import of Goods and Services - References

- **Master Direction on Export of Goods and Services**
[Reserve Bank of India - Master Directions \(rbi.org.in\)](https://www.rbi.org.in)
- **Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016**
[Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)
- **Foreign Exchange Management (Export of Goods & Services) Regulations, 2015**
[Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)
- **Export of Goods and Services – Project Exports**
[Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)
- **International Trade Settlement in Indian Rupees (INR)**
[Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)
- **Foreign Exchange Dealers Association of India – Interpretation of term “Outstanding”** SPL-01/Exp-imp/2021 09th March 2021
[Microsoft Word - SPL01.2021 \(fedai.org.in\)](https://www.fedai.org.in)



Export/Import of Goods and Services - References

- **Master Direction on Import of Goods and Services**
[Reserve Bank of India - Master Directions \(rbi.org.in\)](http://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10198)
- **Master Direction - Deposits and Accounts**
https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10198
- **Foreign Trade Policy and Handbook of Procedures**





Thank You