Compliance for Import of Goods under FEMA Law

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Overview of Import of Goods under FEMA Law

Importing is the process in which goods are brought into a particular country. The mode of import can be through land, air, or the sea. For bringing in goods into the country, there are several restrictions placed by the Government of India, Customs Officers and Border Forces. As long as goods brought into the country are compliant with the relevant import laws, they would be allowed in the country. There are several restrictions placed on goods brought into a country. Certain classes of goods are prohibited from the country. **Hence it is crucial for the importer and seller to be compliant with the laws related to import of goods into the country. Compliance for the import of goods under FEMA law has to be maintained by the importer and the concerned parties.**

To understand the import of goods under FEMA law, the following terms have to be defined:

- **Importer** – Importer is the individual or organization that brings goods into the country from a foreign country. An importer can be an individual resident in India or a company that is established under the laws of India.
- **Seller/Foreign Seller** – Seller is the person sending imported goods in exchange for consideration from the importer. Person residents outside India or Company outside India are considered as sellers.
- **Outward Remittance** – Funds that are transferred from the importer to the seller through normal banking channels through the authorized bank or authorized dealer.
- **Authorized Dealer (Category-I)** – Authorised Dealer or the Authorised Bank is the party dealing with transactions relating to importing goods into the country. This bank performs operations such as sending and receiving remittances on behalf of the importer.

Institutions dealing with Imports- Import of Goods under FEMA Law

Several institutions deal with the import of goods under FEMA Law. The primary institution dealing with the import of goods is the Directorate General of Foreign Trade (DGFT). This agency is present under the Ministry of Commerce & Industry, Department of Commerce and the Government of India.

Import of goods under FEMA law is regulated by this nodal agency. All regulations made by this authority are circulated to authorized dealers and importers. **The Government of India has brought out the Foreign Trade Policy (FTP), which applies to all authorized dealers and importers. Goods imported into India have to be compliant with the Foreign Trade Policy (FTP) (The 'Policy').** The Government of India amends the foreign trade policy from time to time. Authorized Dealers and importers must be compliant with the changes in the Foreign Trade Policy.

The Government of India introduced this policy in 1992. The policy is

valid for five years. After every five years, the government would consider further amendments to this policy.

Authorized banks must ensure that importers are compliant with the Foreign Trade Policy before carrying out import related activities in India. The law which applies to the import of goods into India is the Foreign Exchange Management Act 1999 (FEMA). Apart from this, the import of goods under FEMA law would also be covered by Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Reserve Bank of India regulates foreign exchange management in the country. Therefore the Authorised dealer also has to comply with the rules issued by RBI on foreign exchange.

Procedure/ process of Import Transactions- Import of Goods under FEMA Law

There is no particular procedure for import transactions and import of goods under FEMA Law. **When transactions are conducted on behalf of importers, certain guidelines have to be followed. In absence of specific regulations, normal banking conditions would apply to authorized banks. However, banks have to be vigilant when it comes to conducting background and KYC (Know Your Client) checks on their customers.**

- **Outward Remittances for Imports- Import of Goods under FEMA Law**

Authorized Dealers/ Banks allow remittances to be made when goods are brought into the country. However, the importer has to make sure that compliances have been followed before carrying out the transaction. Remittances have to be made for bonafide transactions.

- **Import Licence- Import of Goods under FEMA Law**

Import Licences would be required for the import of goods under FEMA Law. **There are various categories of goods that are prohibited according to the Foreign Trade Policy. Goods that do not have any restrictions would be allowed to be imported into the country. For this, authorized dealers can open letter of credits (LOC) and permit remittances for conducting imports.** When the authorized bank opens a letters of credit, copies of the import license should also be attached to the letter. **This is required for Exchange Control Purposes. A copy of the letter of credit and the import license has to be maintained by the authorized bank for verification by inspectors and internal auditors.**

- **Foreign Exchange Requirements- Import of Goods under FEMA Law**

An individual purchasing foreign exchange has to treat the exchange according to the requirements of the Foreign Exchange Management Act, 1999. **The foreign exchange acquired by the individual can be used according to the statement made in the declaration form, issued by the Authorised dealer. Apart from this, the individual can use the foreign exchange only for bonafide purposes.**

If the individual uses foreign exchange for importing goods into the country, then the authorized bank must make sure that the importer publishes some receipts or evidence on the import of goods. This must be mentioned by the importer in the **Import Data Processing and Monitoring System (IDPMS), Postal Appraisal Form, and the Customs Assessment Certificate.** The importer and the authorized bank must confirm that the value of the remittance is equal to the value of the goods imported.

- **Import Data Processing and Monitoring System (IDPMS)** –

This system has been streamlined and developed by the RBI along with several institutions. **The main aim behind this system is to increase the efficiency of import processing transactions. Apart from this, effective monitoring of import transactions can be made through this system. Authorized banks must make sure that all remittances related to import has to be uploaded on the IDPMS.**

Mode of Payment- Import of Goods under FEMA Law

An individual in India can be the importer of goods. For the payment to be made, the following conditions have to be adhered to:

- **International Debit/Credit Card which is held by the individual in rupees;**
- **Payments made by credit/debit card through the service bank in India;**
- **The importer must issue a charge slip to the bank; and**
- **Transactions must be compliant with the relevant Foreign Trade Policy.**

The individual can also make the payment in rupees:

- **For expenses incurred as boarding and lodging, travel expenses for the individual who is a resident outside India.** These expenses will also include travel to India and Outside India for the individual resident outside India.
- **Payment can be made through a crossed cheque or a draft.** These modes of payment can be made for gold or silver that is purchased outside India. **The purchase of gold or silver must be according to the Foreign Trade (Development and Regulations) Act, 1992.**
- **For a company, the payment can be made in rupees to its director (non-whole time) who is present outside India**. The payment can be made when the director is in India for work purposes. **However, the director has to receive sitting fees, commission, and remuneration from the company, which includes travel expenses to and from India. These modes of payment must be according to the Memorandum of Association or Articles of Association or an agreement or any resolution passed by the shareholders of the company**.

Read, Also: [FEMA/ RBI Compliances Checklist: Foreign Direct Investment](#).

Time for Payment Settlement- Import of Goods under FEMA Law

Payments made by the importer for imports through the authorized bank must be no longer than six months from the day of shipment of the goods. This would not be applicable in cases where payments are withheld towards some form of guarantee for the performance of the service. The settlement of import dues will be allowed by the authorized bank if there are delays in making the payment. **Such delays are caused by legal disputes and financial difficulties that are faced by the importer. If there is any form of interest applicable to these bills, then payment of interest is only allowed for three years. This would be three years from the date of shipment of the import.**

There are stipulated time limits for deferred payments also. Deferred payment is the postponement of payment of an overdue bill. **Differential treatment is present for deferred payment when it comes to the time of payment. Five years are allowed for such a form of deferred payments.**

- **<u>Extension of Time- Import of Goods under FEMA Law</u>**

There are several circumstances where time can be extended for the import of goods under FEMA law. Usually, **Authorised banks would provide six months to complete remittances for an import transaction. However, there are circumstances where the period is extended to 3 years**. Time can be extended for the following circumstances:

- **Settlement Disputes between the seller and the importer;**
- **Suit of action which is filed by the importer on the seller;**
- **Quality of the Import;**
- **Non Fulfilment of the contract; and**
- **Financial difficulties which are faced by the importer.**

However, under no circumstance will an authorized bank increase the period for more than three years. **When an authorized bank is extending the time for the import transaction, the following has to be considered**:

- The import transaction does not come under the jurisdiction or investigation by the **Directorate of Enforcement or the Central Bureau of Investigation or any other investigating agencies.**
- The **total amount** that has to be **paid by the importer must not be more than USD 1 Million or 10 percent of the average import remittances during the two preceding financial years.**
- When the authorized dealer has granted such an extension, then the same must be mentioned.

Any such cases which are not covered by the above would be referred to the RBI.

- **Application for Making Payment in India- Import of Goods under FEMA Law**

When an applicant wants to import goods into India, then an application has to be made. **An individual, company, or partnership that wants to import goods into India must make this application in Form A1**. This form can be used for remittance purposes and transfer of rupees to Non-Resident Indian Bank accounts. The applicant has to be diligent while filling the form.

Third-Party Payment- Import of Goods under FEMA Law

A third party is allowed to receive payments from the Authorised Dealer. However, there are certain conditions which have to be fulfilled for this:

- **There must be an agreement between the three parties (tripartite agreement). The parties which are involved are the importer, the Third Party, and the Authorised Dealer. This would not be required in case the invoices are issued in the name of the third party**. Therefore if there is sufficient documentary evidence between the parties, then there is no requirement of any form of tripartite agreement between the parties.
- The bonafides of the transaction must consider the **Financial Action Task Force Statement before entering into the transaction.**
- There **must be a statement made in the invoice that the payment has to be made by the third party.**
- Where there are bills of entry, **the third-party payment details should be mentioned along with the name of the shipper.**
- **Importer must comply with the relevant regulations related to importing goods.**

Therefore a third party can receive payment for the import of goods under FEMA Law. However, the parties have to comply with the above conditions before entering into the transaction.

- **Interest Charged on Bills of Import- Import of Goods under FEMA Law**

Authorized banks are allowed to charge interest, which is received on the bills. Such interest would be charged as the normal interest clause. This interest can be charged without the prior approval of the RBI. The prime rate at which the interest is charged is called the normal interest clause.

- **Import Evidence- Import of Goods under FEMA Law**

1. Where there are remittances more than USD 5000, or its equivalent then the authorized dealer must ensure that the importer submits the following:
    - Copy of the **Exchange Control of the Bill of Entry**;

- Where there is **100% of Export Oriented Units, then the copy of exchange control related to the warehouse must be submitted** ;
- **Customs Assessment Certificate or the Postal Appraisal Form must be declared by the importer to the customs authorities**. This would be applicable where import is made by post and as evidence that the goods are imported into India.

2. The importer has to also **satisfy that obligations related to foreign exchange have been satisfied.**
3. Where products which are imported relate to **software or data, then a report or certificate is required from a chartered accountant that the software or data is received by the importer.**
4. Remittances which are made through courier services have different requirements:
   - Where the **remittance is one lakh rupees or more, the authorized dealer must submit the exchange control copy of the bill of entry.**
   - Where the **remittance is less than one lakh rupees, the authorized dealer must obtain from the importer a copy of the entry bill, along with the customs declaration form and the form which is issued by the courier company.**
5. Authorized dealers must **make sure that evidence of the importer is duly verified.**
6. Authorized dealers must keep a **copy of evidence of import in all cases. An acknowledgment must be issued in favour of the importer containing details of the importer**:
   - Name of the importer along with full address;
   - License number of the import along with the date of the import;
   - Bank reference related to a letter of credit;
   - Details of the goods which are imported; and
   - Copies of the Exchange Control Copy, Postal Forms and Customs Copy.
7. **Inspectors and auditors will carry out checks of the documents kept by the authorized dealers.**
8. **Authorized dealers are supposed to keep documents for one year from the date of its verification.** However, if the documents are under investigation, they must not be destroyed.

The following evidence is required for the import of goods under FEMA Law. The importer and the authorized bank have to follow the above rules relating to the import of goods under FEMA Law.

Conclusion- Import of Goods under FEMA

Importing is a process of bringing in goods into the country. The parties in an import transaction have to be compliant with various regulations. The Authorised dealer has to follow the guidelines issued by the Foreign Trade Policy and the RBI related to conducting import transactions. There is no specific procedure for importing products into the country. The importer has to make a remittance to the seller through the authorized bank. Once the seller receives the payment, the products are sent to the importer. **There are certain requirements that the importer is required to have in mind while receiving the imports. The authorized dealer has to monitor the process of imports.** Therefore an importer has to follow specific rules for import of goods under FEMA law.

Thank You

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