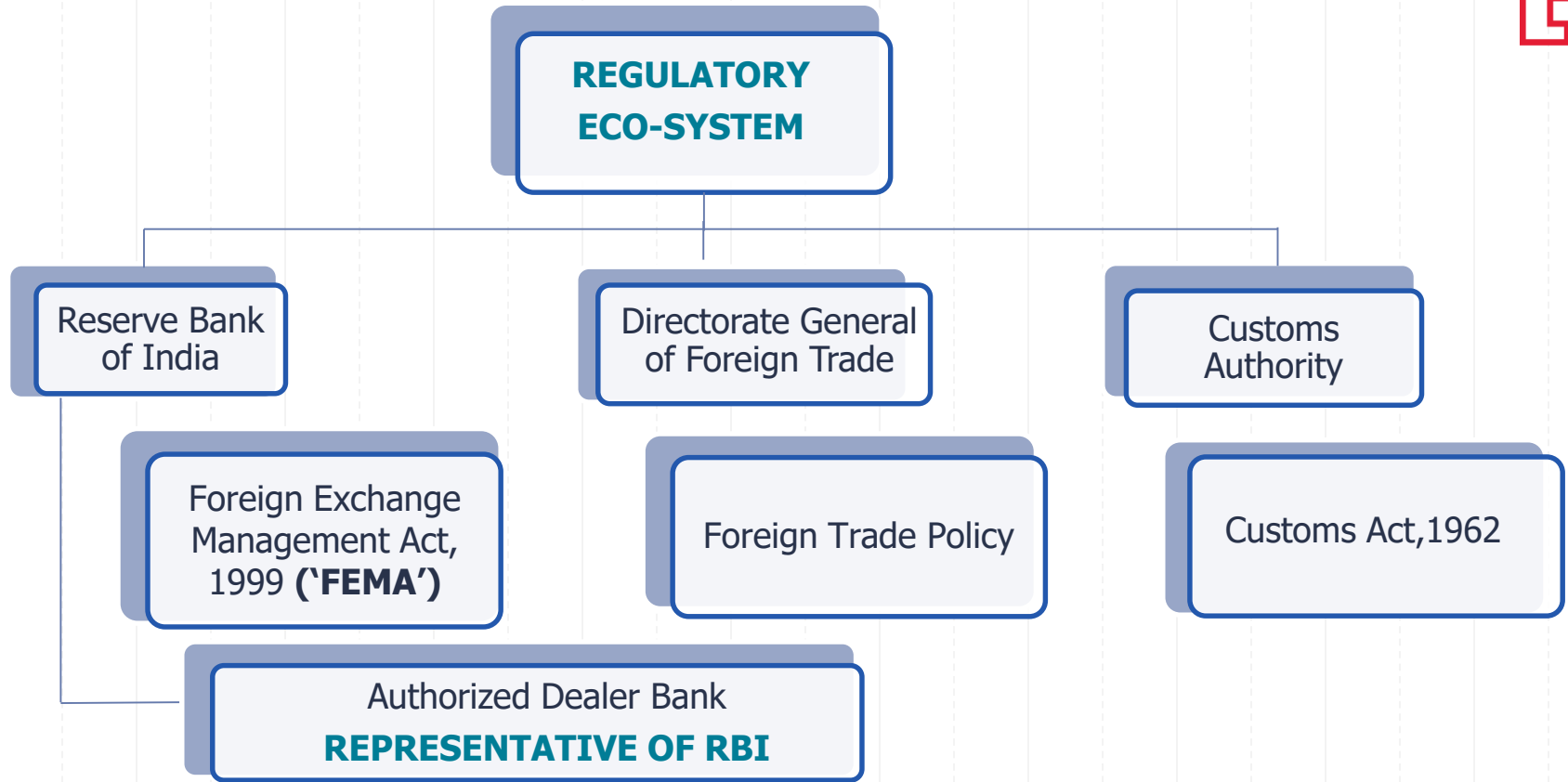
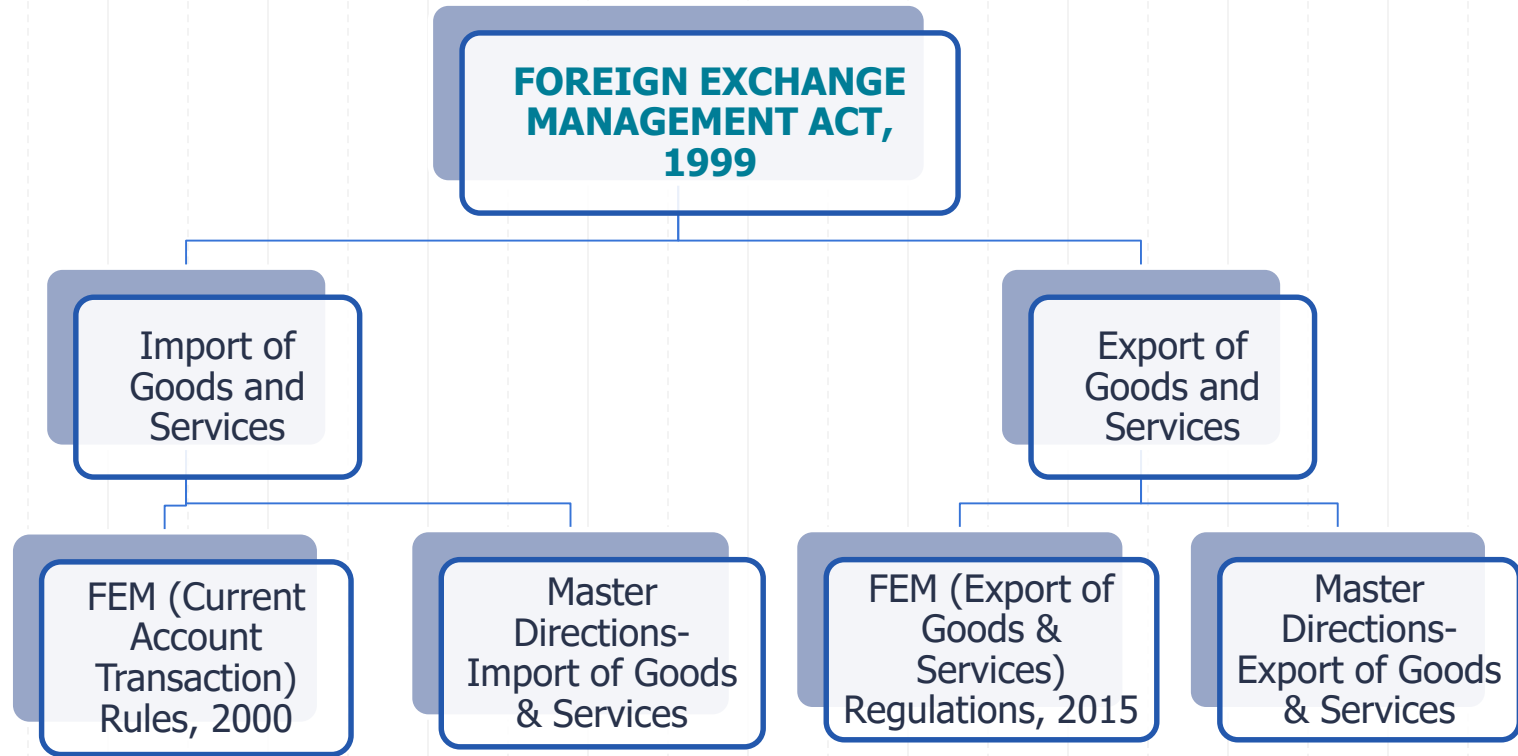


FEMA REGULATORY LANDSCAPE ON IMPORT & EXPORT





An abstract graphic at the top of the slide. It features a dark blue base with a jagged red line on top. A black line graph with red dots is overlaid on the red area. Three points on the graph are highlighted with blue circles. The background has vertical dashed lines.

WHAT FEMA REGULATES?



FOREIGN TRADE- Why FEMA?

Sections 5 and 7 of the FEMA lays down the provisions w.r.t. import and export of goods and services with an objective to-

- ☐ regulate inflow and outflow of ***FOREIGN EXCHANGE***
- ☐ facilitate external trade
- ☐ develop and maintain foreign exchange markets in India



What it Regulates?

Considering the purpose of the FEMA, in foreign trade transactions, the regulatory framework revolves around the **RECEIPT OF EXPORT PROCEEDS** and **PAYMENT OF IMPORT INVOICES**.



KEY TERMS

Imports means bringing any goods and services into India from foreign jurisdictions from the territory of another country into the territory of India.

Exports means taking or sending goods out of India to a place outside India by land, sea, air, on consignment, or by way of sale, lease, hire-purchase, or under any other arrangement by whatever name called. Further, in the case of software, also includes transmission through any electronic media.





KEY TERMS

Service means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Software means any computer programme, 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.

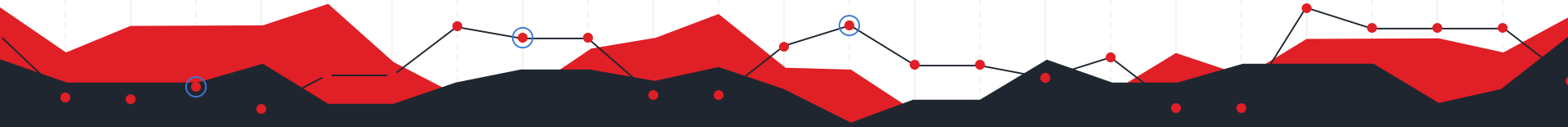


KEY TERMS

Foreign Exchange means foreign currency and includes,—

- (i) deposits, credits and balances payable in any foreign currency,
- (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Deferred Payment Arrangement is an agreement between a lender and a borrower where the buyer proposes to pay against the invoices at a later date.



FEMA → Payment of Import Invoices



Time Limit for Settlement of Import Payments

Normal
Imports

Settlement of invoices shall be completed within 6 months from the date of shipment

Books

Remittance is permitted without any time limit subject to compliance with the provisions for payment of interest

The payment against imports shall be equivalent to the amount of invoice raised



Extension of Time Limit

AD Banks are permitted to grant extension of time for settlement of import dues subject to compliance with the provisions of payment of interest



Up to 6 months at a time (maximum up to the period of 3 years)





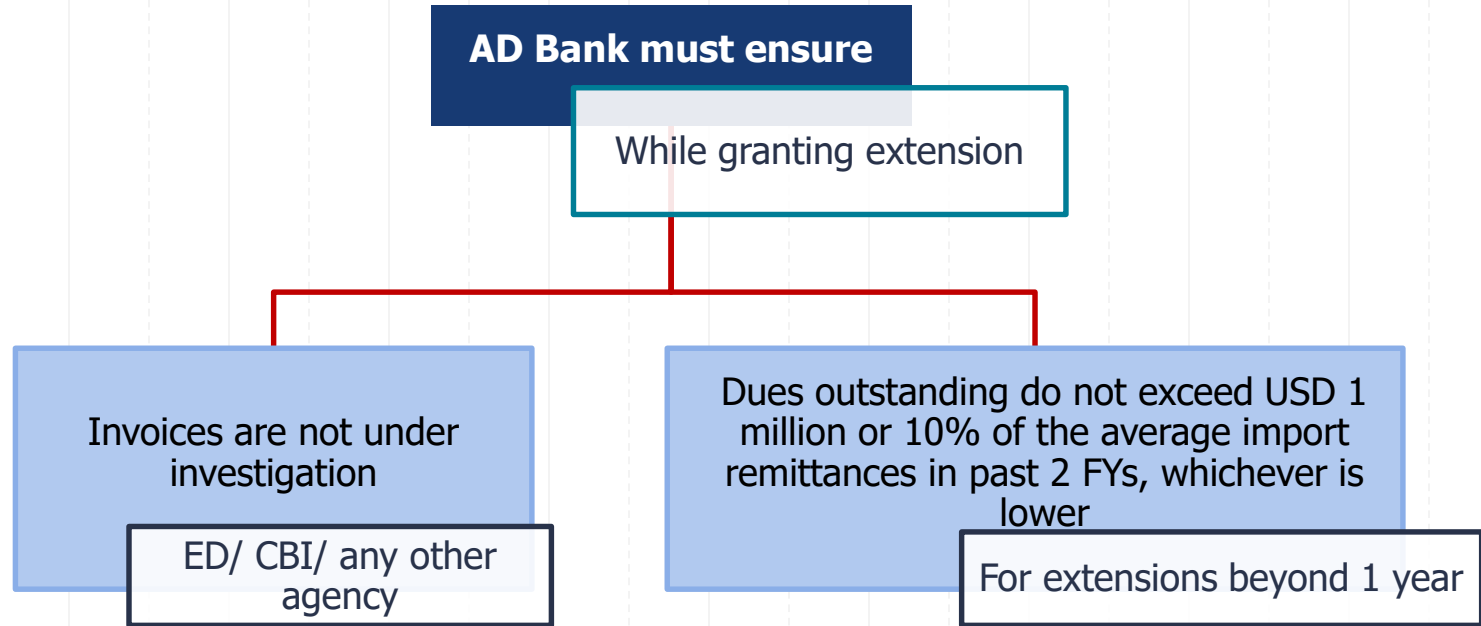
Extension of Time Limit

Reasons for Extensions

- a. Dispute on quantity or quality
- b. non-fulfillment of terms of contract
- c. Financial difficulties
- d. Suit filed by the importer against the foreign seller



Extension of Time Limit





Case Study- 1

Facts of the Case

1. ABC Limited, an Indian company specializing in the manufacturing of electronic products, has been importing electronic components and instruments from PQR LLC, a US-based company.
2. Over the years, ABC Limited has accumulated outstanding invoices for these imports, totaling USD 1 million from 2011 to 2018. However, due to financial constraints, the company has been unable to settle these invoices.
3. As of the fiscal year 2023-24, ABC Limited has successfully recovered from its previous financial losses and now possesses adequate financial resources to address its outstanding liabilities, including the USD 1 million owed to PQR LLC.

Query

Given the non-payment due to the financial crunch, can ABC Limited proceed with the payment of the outstanding invoices without obtaining approval from the RBI, under the automatic route?



Case Study- 2

Facts of the Case

1. PQR Limited, is an Indian company engaged in manufacturing home appliances and regularly importing raw materials and spare parts for the said appliances.
2. During the financial year 2013-14 to 2016-17, the Company imported the raw materials from a China-based company, however, due to quality issues the payments for these imports remained outstanding.
3. Post several correspondences and technical evaluations, the foreign supplier resolved the quality issues in the financial year 2020-23.
4. The Company has approached the AD Bank to clear the outstanding invoices and has been advised to approach RBI to get prior approval as the payments had been delayed for more than 3 years.

Query

Can the Company apply for the approval of all the outstanding invoices collectively or it shall apply in a staggered manner?

Advance Remittance- Imports of Goods



Amount up to USD
2,00,000

Permitted

Amount above USD
2,00,000

Importer should obtain

- Unconditional, irrevocable standby LOC, or
- Guarantee from an international bank situated outside India, or
- Guarantee from AD Bank in India with the counter-guarantee of an international bank outside India

Advance Remittance- Imports of Goods



Amount upto USD
5,000,000

Can be permitted by AD Bank if it is satisfied with the track record and bonafide of importer

Amount exceeding
USD 1,00,000

PSU unable to obtain a guarantee from the foreign bank, shall obtain a waiver for bank guarantee from the Ministry of Finance.



Advance Remittance- Imports of Services

Amount upto
USD 5,00,000

Permitted

Amount above
USD 5,00,000

Importer should obtain

- a. Guarantee from an international bank situated outside Indian, or
- b. Guarantee from AD Bank in India with the counter-guarantee of an international bank outside India



Advance Remittance- Imports of Services

Amount exceeding
USD 1,00,000

PSU unable to obtain guarantee from the foreign bank, shall obtain waiver for bank guarantee from the Ministry of Finance

RBI has issued specific provisions regarding the import of rough diamonds, aircraft, helicopters, and other aviation purchases.



Case Study- 3

Facts of the Case

1. PQR Limited, an Indian company utilizes the technical and strategic services from its holding company PQ LLC based in the USA and accordingly has entered into a Strategic Service Agreement.
2. As per the agreement the Company shall pay upfront fees to its holding company upon demand of the holding company.
3. On several instances, the Company has made advance remittances for the import of the strategic services.

Query

Whether the Company is required to obtain a guarantee from the overseas beneficiary?



Deferred Payment Arrangement

Deferred Payment Arrangement is an agreement between a lender and a borrower where the buyer proposes to pay against the invoices at a later date.

RBI has permitted importers to enter into deferred payment arrangements with the foreign suppliers





Deferred Payment Arrangement

Capital Goods- Agreement to defer payment for a period of maximum 3 years

Non-capital Goods- Arrangement is permitted for a period of 1 year or the operating cycle, whichever is less



Remittances against Replacement Imports

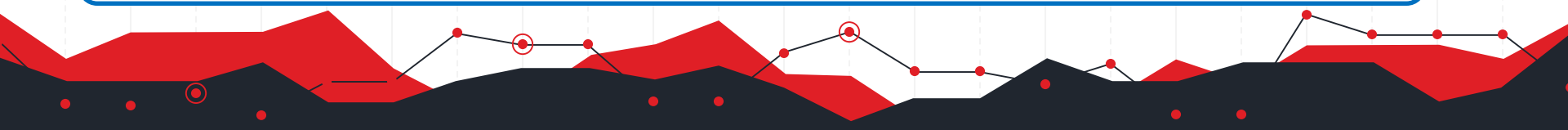
In case the goods imported are short-supplied, damaged, short-landed, or lost in transit.

The original endorsement to the extent of the value of the lost goods may be canceled by the AD Bank

Fresh remittance for replacement imports may be permitted by the AD Bank itself, provided the insurance claim relating to the lost goods has been settled in favor of the importer.

Re-import of replaced goods shall be done within the validity period of the license.

Proper remark/ indicator must be entered by the AD Bank for ORM mark-off/ closure of Bills in IDPMS.





Third Party Payments

Third-party payment is a business deal that involves a person/ entity as the payer of invoices.

The regulatory framework of Imports permits importers to make payments to a third party who is not the seller.





Third Party Payments- Conditions

Third Party Payment fact has been mentioned in the irrevocable purchase order, tripartite agreement, or invoice

AD Bank should be satisfied with the *bonafide* of transactions and should consider FATF statement before handling the transactions

Invoice and Bill of Entry shall mention narration related to the third-party payments



How AD Bank Track Payments?

Import Data Processing and Monitoring System (IDPMS)

- ✓ With the purpose of tracking import transactions through the banking system, RBI introduced the concept of IDPMS in the year 2016.
- ✓ The system has been developed in consideration with the Customs Department, AD Banks and other stakeholders
- ✓ The portal helps to track and effectively monitor all the regulatory reporting along with the status of payments.



How AD Bank Track Payments?

Import Data Processing and Monitoring System (IDPMS)

- ✓ The data in IDPMS is inserted by the AD Bank, Customs, and importers on real time basis.
- ✓ With the help of IDPMS, the data of remittance and bill of entry is mapped to know the status of an import transaction.
- ✓ Upon closure of a transaction, AD Bank issues an Outward Remittance Message (**ORM**) to the importer.



IPDMS- Operational Guidelines

Obligations of AD Bank

- ✓ Ensure the generation of Outward Remittance Message (**ORM**)
- ✓ Ensuring settlement of BoE entries and ORM
- ✓ In case of Advance Payments- Entering BoE details (BoE number, port code and date) for ORM associated.



IPDMS- Operational Guidelines

Obligations of AD Bank

- ✓ Ensuring document submission, outward remittance data, matching with ORM, closing of transactions, etc, as per IDPMS guidelines.
- ✓ Issue of acknowledgment slip to the importer upon settlement of ORM. The particulars of ORM are-
 - a. importer's full name and address with code number;
 - b. number and date of BoE and the amount of import; and
 - c. recap advice on the number and amount of BoE and ORM not settled for the importer.



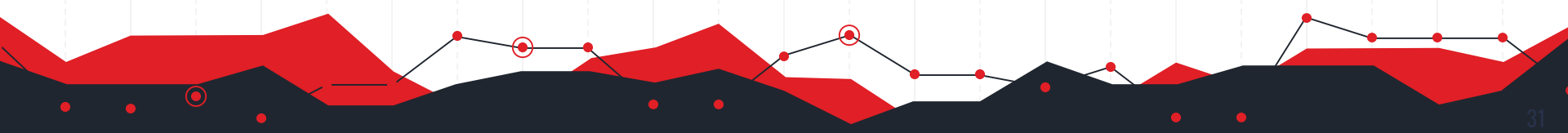
IPDMS- Operational Guidelines

Obligations of Importer

- ✓ Ensuring submission of BoE number, port code, and date for marking evidence of import.
- ✓ Shall preserve the printed Importer copy of BOE as evidentiary proof for import and acknowledgment slip for future use.

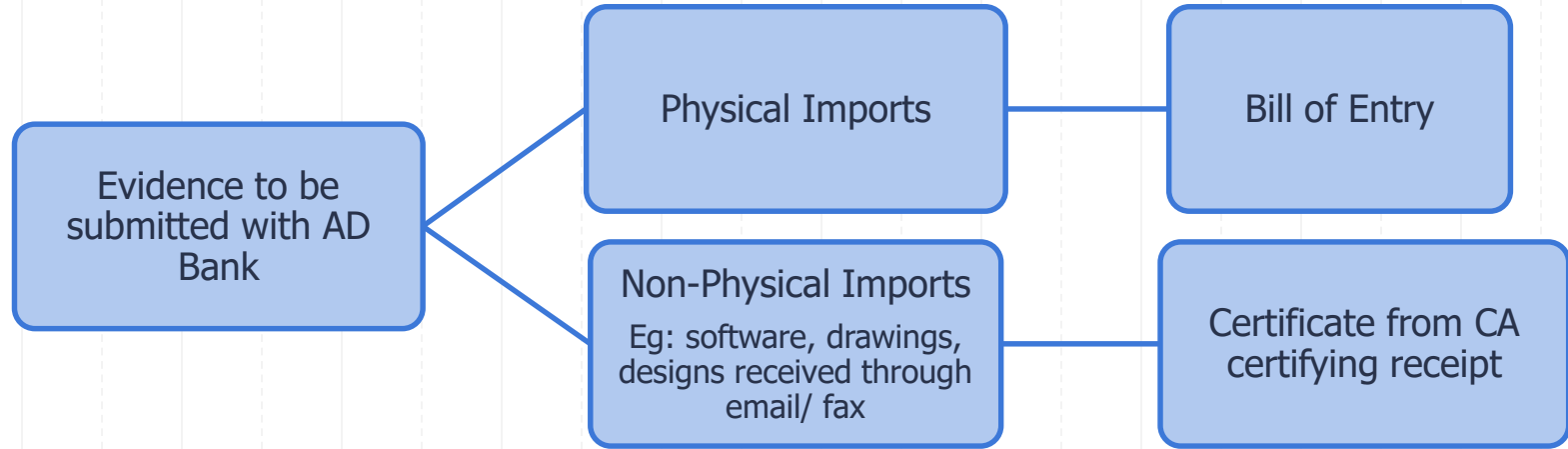
Settlement of ORMs And BOEs

- ✓ Multiple ORMs can be settled against a single BoE
- ✓ Multiple BoE can be settled against one ORM.





Evidence of Imports

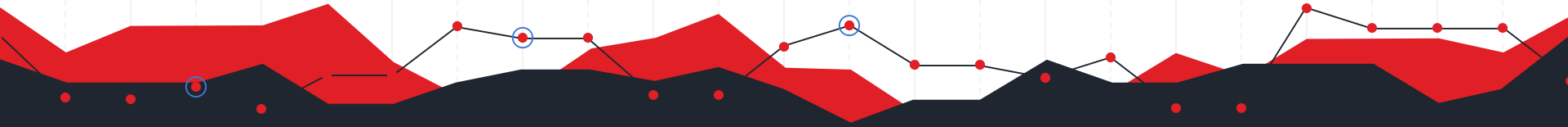




Receipt of Import Documents

Receipt of documents by the importer directly from overseas suppliers

- ✓ Import bills and documents should be received from the banker of the supplier directly by the AD Bank of the importer in India.
- ✓ In cases where the documents are not received to the AD Bank, no remittances shall be made to the overseas supplier, except for the following cases-
 - a. value of the import bill does not exceed USD 300,000;
 - b. Import bills received by Indian WOS of foreign companies from their principals
 - c. Import bills received by-
 - i. Status Holder Exporters
 - ii. 100% Export-Oriented Units
 - iii. Units in Special Economic Zones
 - iv. Public Sector Undertakings
 - v. Limited Companies.



FEMA → Receipt of Export Proceeds



Time Limit for Receipt of Export Proceeds

Exports

Receipt of payment against invoices shall be completed within 9 months from the date of exports

Exports to
Warehouse

Proceeds shall be realized within 15 months from the date of shipment of goods.

The payment against exports shall be equivalent to the amount of the invoice raised

Extension of Time Limit

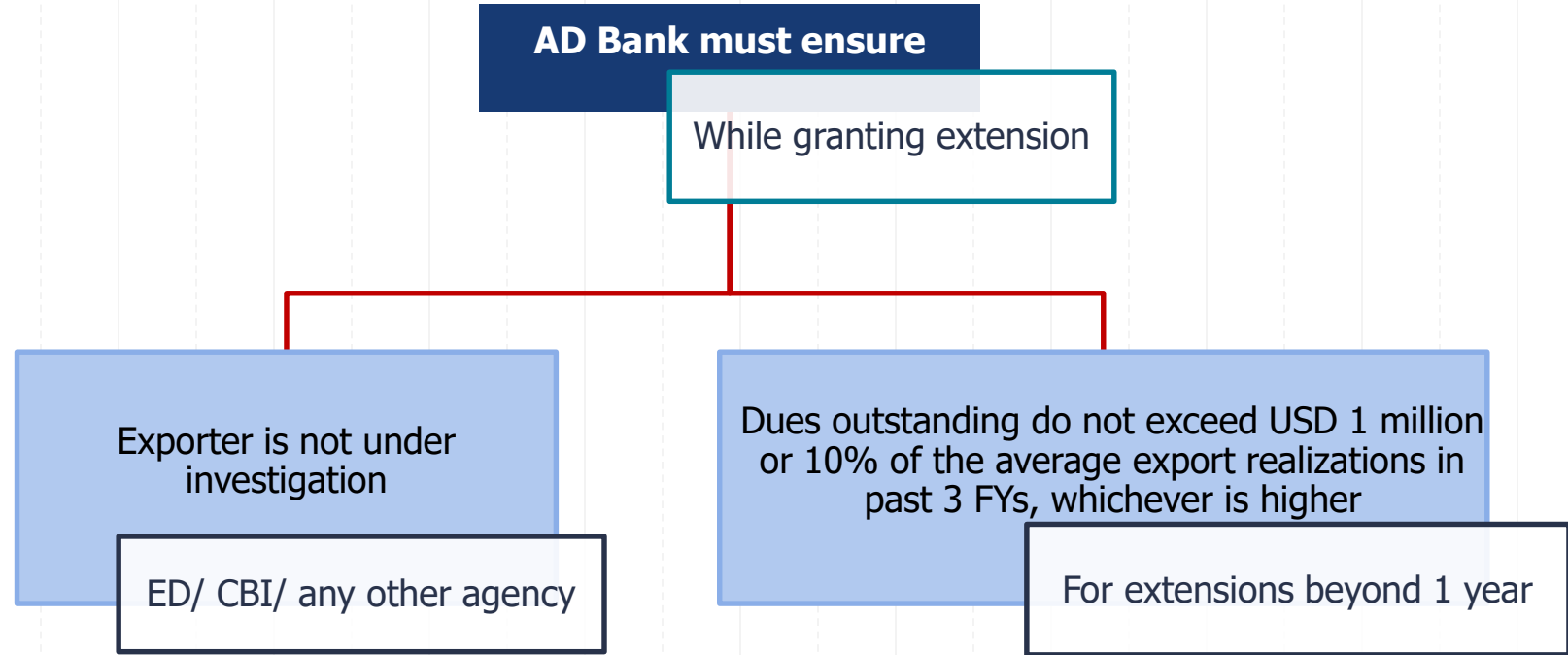
AD Banks are permitted to consider granting of extension of time for a period of 6 months at a time subject to the conditions listed below-



- The exporter is unable to realize the payment for reasons beyond his control
- Declaration to the AD Bank by the exporter that the proceeds will be realized during the extended period



Extension of Time Limit





Manner of Receipt

1. Through AD Bank

*NOSTRO account refers to an account that a bank of a country holds in a foreign currency in a bank of another country.

2. Overseas Visits

In case the payment is received during the overseas visit of the exporter, the payment shall be received in –

- a. NOSTRO account* or
- b. Credit Card or
- c. Debit to the credit card of importer, subject to reimbursement by the foreign entity.
- d. Online Payment Gateway Service Providers (OPGSP) [value not exceeding USD 10,000]

Advance Receipt



The exporter shall ensure the shipment of goods within 1 year from the date of receipt of payment (with or without Interest)



In case of inability to make the shipment, the refund of advance payment shall be made within the said 1 year and in case of failure, prior approval of RBI to be taken



For long-term contracts, advance payments may be received for a maximum tenor of 10 years, subject to compliance with the conditions specified therein





Third Party Payments

Third-party payment is a business deal that involves a person/ entity as the remitter.

The regulatory framework of exports permits exporters to receive payments from a third party who is not the foreign client.





Third Party Payments

Disclosure has been given in the irrevocable purchase order, tripartite agreement, or invoice

AD Bank should be satisfied with the *bonafide* of transactions & export documents and the payment shall be routed through the bank only

Export Declaration Form (EDF) shall mention narration related to the third-party payments

Realization of export proceeds is the responsibility of an Exporter and declaration upon receipt of payment shall be submitted

Unrealized Export Proceeds- Write-off



Limits to Write-off

5% of the total export proceeds realized during the preceding calendar year

Self-write-off by the non-status holder exporter

10% of the total export proceeds realized during the preceding calendar year

- a. Self-write-off by the Status Holder Exporter (as per Foreign Trade Policy)
- b. Write-off through AD Bank

Setting-off – Export and Import Invoices



Permitted Set-off

Export receivables against import payables with the same overseas party

Set-off of invoices of goods with services is not permitted

Export receivables against import payables within the group companies

Through an in-house/ outsourced centralized settlement arrangement



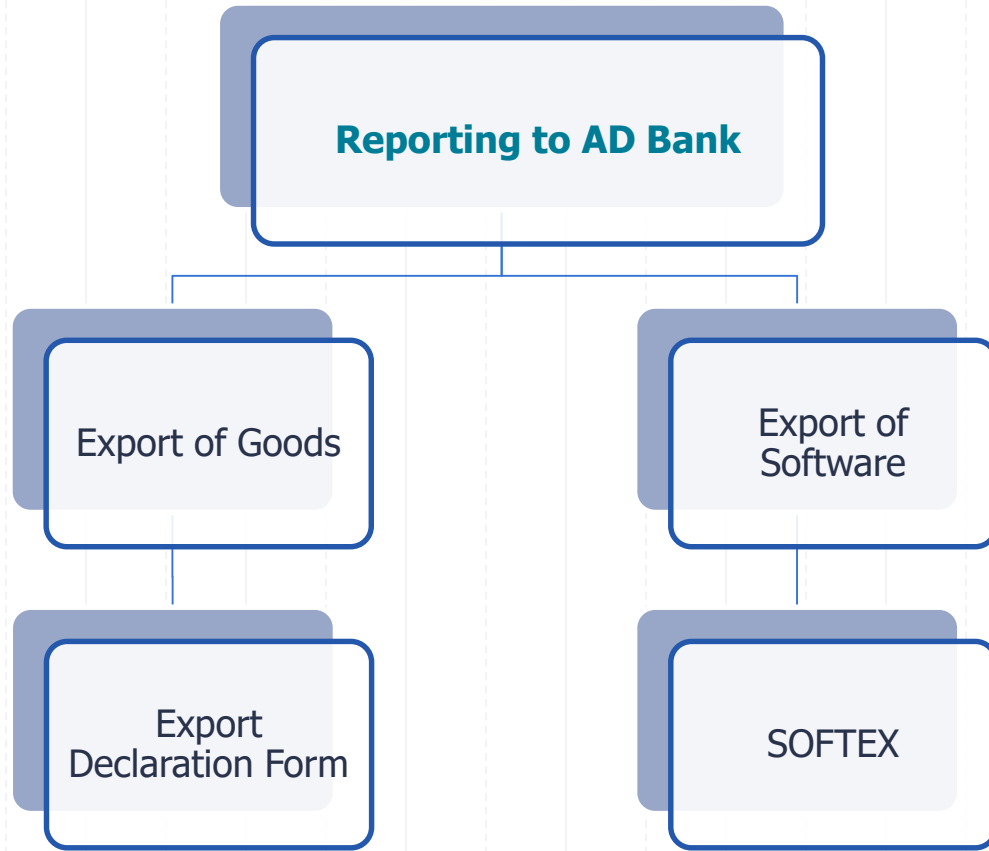
Case Study- 4

Facts of the Case

1. ABC Limited, an Indian apparel company, exports its products to the European markets.
2. It has also engaged the services of an international designer Ms. Lisa, based in the United Kingdom, to design its apparel. Additionally, ABC Limited also exports apparel to Ms. Lisa for sale at her boutique.
3. Currently ABC Limited has export receivables aggregating USD 10 crore including USD 50 lakhs from Ms. Lisa. Furthermore, ABC Limited has outstanding payables amounting to USD 40 lakhs to Ms. Lisa towards her designing services.

Query

The Company now intends to offset the receivables against the payables to Ms. Lisa. Is this possible?





Evidence of Imports





How AD Bank Track Receivables?

Export Data Processing and Monitoring System (EDPMS)

- ✓ With the purpose of tracking export transactions through the banking system, RBI introduced the concept of EDPMS in the year 2014.
- ✓ The system has been developed in consideration with the Customs Department, AD Banks and other stakeholders
- ✓ The portal helps to track and effectively monitor all the regulatory reporting along with the status of payments.



How AD Bank Track Receivables?

Export Data Processing and Monitoring System (EDPMS)

- ✓ The data in EPDMS is inserted on real real-time basis.
- ✓ With the help of EDPMS, the data of remittance and bill of entry is mapped to know the status of an export transaction.
- ✓ A report named Export Outstanding Statement (**XOS**) compiling the details of outstanding dues is generated by the AD Bank on half yearly basis



EPDMS- OBLIGATIONS OF AD BANK

OBLIGATIONS OF AD BANK

Issuance of Electronic Bank Realization Certificate (eBRC)

AD Banks shall update data of all inward remittances (export proceeds) in EDPMS, to ensure consistency of data in EDPMS and issue e-BRC based on the data in EDPMS.

Export Bills Register

AD Banks should maintain Export Bills Register, in physical or electronic form aligned with EDPMS. The bill number should be given to all types of export transactions on a financial year basis (i.e. April to March) and the same should be reported in EDPMS.

Write-off of Export Bills

AD Banks shall report write-off of export bills in EDPMS.



Case Study- 5

Facts of the Case

1. ABC Limited, an Indian company, specializes in manufacturing automobile parts.
2. To facilitate its business operations, the Company engages in the import of raw materials and exports its finished products globally.
3. It has diligently settled all receipts and payments related to its export and import transactions, respectively. Additionally, the Company has undertaken third-party payments and written off certain invoices.
4. However, post submission of all the documents with its AD Bank, there remain open transactions in both the EDPMS and IDPMS software platforms.

Query

Whether the Company should ensure the closure of entries in the EDPMS and IDPMS software?

Consequences and Resolution

The challenges encountered by the Indian exporter/ importer occasionally results to violations of law which may further result to notice from the-

- AD Bank, or
- Reserve Bank of India, or
- Enforcement Directorate

Failure to resolve these notices may lead to a comprehensive investigation of the company's business activities. Hence, it is imperative to respond to these notices with utmost sincerity.

Additionally, if any violations are identified during internal due diligence, the Indian party should promptly take steps to rectify the default and submit a suo-moto compounding application.



Thank You

