

Licensing Policy for Authorised Persons: Liberalisation

Foreign Exchange Management Act (FEMA) stipulates that all foreign exchange transactions are required to be routed only through the entities that are licenced by the Reserve Bank to undertake such transactions. Such entities are defined as Authorised persons in Section 10 of the Act. Under current dispensation, such authorised person may be :

- a) A Commercial bank (AD), or
- b) A Money changer (FFMC), or
- c) Any financial institution authorised for limited kind of transactions, depending on their activity, or
- d) Any other entity authorised by the Reserve Bank.

Enhanced Access to Common Person

2. With the progressive liberalisation in foreign exchange related transactions common person can now undertake variety of current account transactions without approaching the Reserve Bank. A large segment of population is increasingly getting connected with forex transactions of an expanding nature on individual accounts. Taking into account the day-to-day needs of (a) common persons for undertaking various transactions, (b) tourists for better encashment services and (c) requests received from existing FFMCs there is a felt need for widening and rationalizing the intermediate tier of authorized persons which is licenced to undertake foreign exchange transactions to meet the day-to-day needs. These would cater to tourists for encashment and common persons for release of foreign exchange for medical treatment, education, employment, travel related transactions and in general a large variety of current account transactions that are not trade transactions. Therefore, with a view to liberalising and rationalising the scope of activities currently undertaken by the authorized persons an internal Group consisting of Shri H. Battacharya, CGM-I-C, DEIO, Shri G. Padmanabhan, CGM-I-C, DIT and Shri Vinay Baijal, CGM, FED was constituted to study the related issues and make

recommendations keeping in view the need for enhanced as well as wider access and accompanying safeguards, especially reporting requirements.

The observations and recommendations of the Group are detailed in following paragraphs.

3. Legal Frame work

3.1. Section 10 (1) of FEMA enables Reserve Bank to authorise any person to be known as Authorised Person (AP), to deal in foreign exchange or foreign securities, as an Authorised Dealer (AD), Money Changer (MC) or Offshore Banking Unit (OBU) or in any other manner as it deems fit. The Bank has therefore wide discretion to authorise a person as AD or MC or OBU or in any other manner, and all such persons would be known as 'authorised person.' Within the broad categories of AD or MC or OBU, it may be permissible to have sub-categories. There should however be clear eligibility norms for the classification and the norms should have nexus with the object of classification.

3.2. The authorization is subject to the conditions laid down therein. The conditions may be for the purpose of ensuring continued eligibility for conducting the authorised business, and/or relatable to the conduct of business. While there may be standard conditions uniformly applicable to all APs or applicable to APs in a category/sub-category, there may also be special conditions applicable in a particular case on the facts thereof.

4. Existing arrangement

4.1. The Reserve Bank has currently authorized 976 entities as authorised persons in following categories :

Category of license (Number)	Entities	Major Activities
Authorised Dealers (87)	Commercial Banks - 84; State Co-operative Bank - 1; Urban Co-operative Bank - 2.	All permissible current and capital account transactions

Financial Institutions (9)	Financial Institutions – 4 (EXIM, IFCI, SIDBI ,CCIL) Factoring Agencies – 5	Activities related to financing of international trade undertaken by these institutions
Full Fledged Money Changers (879)	Department of Post Urban Cooperative Bank – 9 Other FFMCs – 869	Sale/Purchase of foreign exchange for private and business visits abroad
Others (1)	Thomas Cook India Ltd.	Specified non trade related current account transactions
Total (976)		

4.2 Details of the various activities that each of these categories can undertake are given in Annex - I.

5. Review

5.1. The Reserve Bank has been receiving representations from existing Full Fledged Money Changers (FFMCs) requesting to expand the scope of the foreign exchange transactions that they are permitted to undertake. These requests were revisited by the Group in the light of on going liberalisation in foreign exchange transactions, convenience of the tourists, improved technology and with an object to rationalize the institutional structure and expand the number of entities eligible to undertake foreign exchange transactions, while ensuring appropriate safeguards against misuse.

5.2. In the light of the above, the Group had detailed discussions on the transactions that various entities are permitted to undertake and also the growing need of the common person and tourist for foreign exchange transactions in the light of progressive liberalization over the last 15 years as well as globalization of the Indian economy. The Group feels that there is a distinct growing demand to undertake current account foreign exchange transactions that are not related to trade but are required to meet miscellaneous needs of common person like fees and maintenance expenses of students, foreign exchange for medical treatment etc.

6. Recommendations

6.1. With a view to providing adequate foreign exchange facilities to common persons the Group, observes that for efficient customer service through competition there is a need to widen the scope of activities which the Authorised persons are eligible to undertake and also to increase the number of entities that are eligible to sell foreign exchange to public for their day-to-day current account transactions. The Group, therefore, recommends that Reserve Bank may consider granting licences to certain entities to undertake some more transactions, in addition to what FFMCs are currently permitted, by authorizing them to undertake certain non-trade related current account transactions. Such entities may be called Restricted Authorised Dealers (Restricted ADs).

6.2. Proposed Classification of Entities

Sl. No.	Category of license (Number)	Entities	Major Activities
1	Authorised Dealers	Commercial Banks , State Co-op Bank , Urban Co-op Bank ,	All current and capital account transactions according to RBI directions issued from time-to-time. (No Change)
2.	Restricted Authorised Dealers (RADs)		
	i) Category-I	Financial Institutions EXIM, IFCI, SIDBI ,CCIL and Factoring Agencies	Activities incidental to financing of international trade related activities undertaken by these institutions. (No Change)
	ii) Category-II	1. Upgraded FFMCs 2. Select UCBs 3. Select RRBs 4. Thomas Cook India Ltd.	Specified non-trade related current account transactions as at para. 6.3 of the Report
3	Full Fledged Money Changers (FFMCs)	Department of Post Urban Coop Bank Other FFMCs	Sale/Purchase of foreign exchange for private and business visits Abroad. (No Change)

6.3. The Group recommends that RADs-Category II may be permitted to release foreign exchange for the following transactions:

- (a) Private Visits,

- (b) Remittance by tour operators / travel agents to overseas agents / principals / hotels,
- (c) Business Travel,
- (d) Fee for participation in global conferences and specialized training,
- (e) Remittance for participation in international events / competitions (towards training, sponsorship and prize money).
- (f) Film shooting,
- (g) Medical Treatment abroad,
- (h) Disbursement of crew wages,
- (i) Overseas Education,
- (j) Remittance under educational tie up arrangements with universities abroad,
- (k) Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL etc.,
- (l) Employment and processing, assessment fees for overseas job applications,
- (m) Emigration and Emigration Consultancy Fees,
- (n) Skills / credential assessment fees for intending migrants,
- (o) Visa fees,
- (p) Processing fees for registration of documents as required by the Portuguese / other Governments,
- (q) Registration / Subscription / Membership fees to International Organizations,

6.4 It will be observed that the recommendations imply that the entities proposed to be licensed as RAD-Category II may be permitted to undertake the transactions that involve conversion of one currency into other on the basis of a simple declaration from the applicant and/or on production of appropriate document. Such transactions may not necessarily require opening and maintaining foreign currency denominated (NOSTRO) account with a bank outside India. However, the Group recommends that to facilitate issuance of foreign currency draft etc. for such

transactions the RAD-Category II may be allowed enter into an arrangement with banks authorised to deal in foreign exchange in India.

7. Eligibility Criteria for grant of Restricted AD (RAD-Category II) licence

The Group has deliberated in detail the current dispensation available to various categories of authorized persons and in the light of regulatory framework under which each category of institutions is functioning the issue of granting them licence as a Restricted AD has been considered. The eligibility criteria should primarily depend on strong financials, good governance, regulatory / prudential comfort and adequate control mechanism. The Group recommends that the following category of institutions could be considered for the purpose.

7.1. Existing Full-fledged Money Changers as RADs –Category II

Currently, a company with minimum capital of Rs.25 lakhs for a single branch and Rs.50 lakhs for multi-branch is eligible to apply for a licence of FFMC for consideration by the Reserve Bank. The Group recommends that the Reserve Bank may consider granting RAD-Category II licence to the existing, well functioning FFMCs, with strong financials, that demonstrate good governance while providing regulatory/ prudential comfort. Illustratively, the criteria for upgradation of existing FFMC to RAD-Category II may include net owned funds Rs 10 crores; satisfactory functioning as FFMC for at least two years and credit report from their bankers.

7.2. Urban Co-operative Banks (UCBs)

7.2.1 No new Authorised Dealer/FFMC license is being currently granted to any Cooperative Bank. Although, fresh FFMC licences are not being issued to UCBs, the existing licences are being renewed under the same conditions.

7.2.2 The Group observes that with the adoption of the road map as outlined in the “vision document” for Cooperative sector many of the supervisory concerns of the sector are being addressed. Therefore, the Group recommends that the Urban Cooperative banks with strong financials, good governance and providing

regulatory/prudential comfort may be considered, on case by case basis, for licencing as RAD-Category II.

7.2.3 The Group would like to emphasize that the licence to deal in foreign exchange in capacity other than Authorised Dealers is different insofar as these entities are not permitted to undertake any open position risk. The activities permitted under these licences only allow conversion from one currency to other currency. Therefore, a beginning can be made by granting them licence as RAD-Category II.

7.3. Regional Rural Banks

7.3.1. The Group observes that the Regional Rural Banks (RRBs) are jointly promoted by public sector banks, the Central Government and the State Government. As on date there are 177 RRBs (196 - as on March, 2005). Further, currently the RRBs are undergoing financial restructuring and amalgamation. The Group also notes that in terms of ownership the RRBs satisfy the criteria of 'fit and proper'. The sponsor banks have rich experience in foreign exchange transactions and the RRBs can draw upon the sponsor banks for training and skill up gradation, if needed.

7.3.2. Therefore, in view of the wide branch network of RRBs and with a view to providing foreign exchange services at the doorstep of the common person the Group recommends that the Reserve Bank may also consider RRBs with strong financials , good governance and providing regulatory/prudential comfort for granting licences as RAD-Category II.

7.3.3. To ensure active involvement of the sponsor banks the Group recommends that the Reserve Bank may consider requests provided it is recommended by the sponsor bank to grant RAD Category –II licence to RRBs on case by case basis. Since the supervision of the RRBs is entrusted to NABARD the Reserve Bank may consider taking into account the recommendations of the

NABARD also before taking a decision on the application for grant of RAD-Category II licence.

7.3.4. Before granting licence, the Bank may also consider obtaining an undertaking from the sponsor bank of the RRB that it would impart training to the staff of the RRB to ensure that they are able to discharge their responsibility as RAD-Category II.

8. Proposed Structure

Proposed structure of the authorized persons would be as follows:

Sl. No.	Category of license (Number)	Entities	Eligibility	Major Activities
1	Authorised Dealers	Commercial Banks, State Co-op Bank, Urban Co-op Banks	No Change 1) License to conduct Banking business in India. 2) Report from the concerned regulatory department of RBI.	All current and capital account transactions according to RBI directions issued from time-to-time.
2.	Restricted Authorised Dealers (RADs)			
	i) Category-I	Financial Institutions ; EXIM, IFCI, SIDBI ,CCIL and Factoring Agencies	No Change (On case to case basis to facilitate the core activity of the institutions.)	Activities incidental to financing of international trade related activities undertaken by these institutions.
	ii) Category-II	5. Upgraded FFCs 6. Select UCBs 7. Select RRBs 8. Thomas Cook India Ltd.	Strong financials, good governance and regulatory/prudential comfort and adequate control mechanism as in paragraph 7 of the Report.	Specified non-trade related current account transactions as at paragraph 6.3 of the Report
3	Full Fledged Money Changers (FFMCs)	Department of Post Urban Coop Bank , Other FFCs,	No Change 1) Registered under Indian Companies Act. 2) Minimum capital of Rs. 25 lakhs for single branch Rs. 50 lakhs for multi-branch, 3) Satisfactory report from bankers.	Sale/Purchase of foreign exchange for private and business visits Abroad

10. Transitional Arrangements

The Group notes that in adopting the proposed structure it is unlikely that it may result in limiting the present activities of any of the licenced entities. However, in the event that there is any entity which considers the proposed structure restrictive as compared to the current dispensation , the Group recommends that such entity may be granted special dispensation, on case by case basis, with a view to continuing their present status, as appropriate. However, Group is of the view that all such special permission may be granted subject to annual review.

11. Reporting Requirement

11.1 In case of Authorised Dealers, RADs-Category I and FFMCs the existing reporting requirements may continue.

11.2 It is recommended that the RADs-Category II may be required to submit a monthly statement of all transactions (category wise) where the amount exceeds a prescribed cut-off value, say USD 5,000 per transaction initially, so that a review could be made of the threshold in six months and a firmer threshold may arrived at.

12. Inspection / Audit

12.1 The existing arrangement of inspection/audit of Authorised Dealers and RADs-Category I will continue.

12.2 As regards the FFMCs as has been decided that an auditor's certificate confirming the compliance with the Rules/Regulations/ Directions will be adequate. However, the Reserve Bank may reserve the right to inspect when considered necessary.

12.3 For RADs-Category II also the prescription as provided for FFMCs (para. 12.2) may be made applicable. However, the Group recommends that the Reserve Bank may require a special audit of the RADs-Category II depending on the nature of the transactions by an auditor from the approved list of the RBI/ICAI.

13. KYC and Anti Money Laundering norms

13.1 The existing arrangement of KYC and Anti Money Laundering norms for Authorised Dealers may continue.

13.2 KYC and Anti Money Laundering norms are being prescribed separately for FFMCS. These may be made applicable to RADs-Category II also.

14. Miscellaneous

The Group recommends that to begin with all RAD-Category II licences may be issued only for ONE year subject to renewal.

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Annex I

Authorised Dealers (87)	FFMCs (879)	Financial Institutions (9)	Others (1)
All permissible current and capital account transactions	Sale/Purchase of foreign exchange for private and business travel	<p><u>SIDBI, EXIM and IFCI</u></p> <ol style="list-style-type: none"> 1. transactions relating to foreign currency borrowing/lending debt servicing and trade finance (both fund and non-fund based) which are incidental to the normal functions. 2. Maintaining foreign currency accounts with banks, correspondents abroad. 3. Investing surplus foreign currency balances in accordance with RBI/Gol guidelines in force. 4. Buying/selling foreign exchange in the domestic as well as international markets in cover of transactions which are incidental to permitted foreign exchange transactions. 5. Entering into forward contracts and other risk management products on behalf of clients as also for own balance sheet management. 6. Maintaining open exchange/gap positions arising on account of the above transactions upto the limits approved 7. Offering long dated foreign currency-rupee swaps to clients/non-clients 8. Availing temporary overdrafts from the correspondent banks for activities related to negotiation of payment under the letter of credit, other payments etc. 9. Undertaking foreign currency rupee sell/buy swaps 10. Extending pre and post-shipment credit facility. (only SIDBI) 	<ol style="list-style-type: none"> 1. Sale/purchase of foreign exchange for private and business travel, including for medical treatment, participation in conferences/exhibitions/fair, competitions, training, education abroad, membership of International Organisations etc.. 2. Remittances by tour operators / travel agents to overseas agents / principals / hotels, Film shooting, 3. Reimbursement of travel expenses of foreign nationals on business visits to India, / temporarily engaged by organisations in India., Payment of crew wages, Remittance towards cultural tour where prior

Authorised Dealers (87)	FFMCs (879)	Financial Institutions (9)	Others (1)
		<p>Clearing Corporation of India Ltd. (CCIL)</p> <hr/> <ol style="list-style-type: none"> 1. Maintaining foreign currency accounts with a settlement bank outside India. 2. Accept foreign currency deposits from Authorised Persons who are members of CCIL 3. Invest the foreign currency funds placed as deposits by the clearing members in US \$ Treasury Bills/Notes or other US Government Securities. 4. Avail one or more Lines of Credit from the settlement bank outside India to facilitate the clearing operations. 5. Access the domestic forex markets, either directly or through an Authorised Dealer, in case of default by any of the clearing members or for making remittances incidental to forex clearing and settlement operations. <p><u>Factoring agencies</u></p> <ol style="list-style-type: none"> (a) Provide import factoring, assuming all the relevant obligations enjoined on Authorised Dealers in respect of import transactions as per extant exchange control regulations. (b) Handling of all Import/Export documents relating to factoring services and forfeiting transactions. (c) Acceptance and release of GR Forms. (d) Maintenance of Nostro Account balances commensurate with the business needs. (e) Undertaking forex cover operations purely to hedge 	<p>approval has been obtained from the Ministry of Human Resource Development, Remuneration for visiting professionals who are on a short-term assignment in India.</p> <ol style="list-style-type: none"> 4. Remittance for educational tie up arrangements with universities abroad, examination fees etc.,. 5. Visa/Emigration/ Emigration Consultancy Fees, assessment fees for overseas job applications etc. 6. Maintenance of close relatives abroad.

Authorised Dealers (87)	FFMCs (879)	Financial Institutions (9)	Others (1)
		<p>exposures occasioned by factoring/forfeiting.</p> <p>(f) Make payments towards various charges incidental to factoring/ forfeiting to overseas associates/forfeiting agencies.</p> <p>(g) Export factoring to be provided on "with recourse basis" and forfeiting on "without recourse basis".</p> <p>(h) In cases where exporters have availed of pre-shipment finance, funds/discounted value of forfeiting bills should be transferred direct to the concerned bank in foreign currency/ rupee as the case may be.</p> <p>(i) Permitted to consider the requests (i) for reduction in invoice value, (ii) payment of agency commission and (iii) write off of export proceeds from your exporter clients under extant rules and regulations as applicable to authorized dealer in foreign exchange.</p>	