

CHAPTER 16
ESCROW ACCOUNTS

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16.INTRODUCTION

Escrow accounts is a mechanism for settlement of payment for imports into India and for exports from India under 'Counter Trade' arrangements entered into between Indian parties and their overseas counterparts. 'Counter-Trade' as explained in Foreign Trade Policy means any arrangement under which exports/imports from/into India are balanced either by direct import/export from the importing/exporting country or through a third country under a trade agreement or otherwise. Export/ import under counter-trade may be carried out through Escrow account, buy-back arrangements, barter trade or any similar arrangement. The balancing of exports and imports could wholly or partly be in cash, goods and/or services. Escrow accounts are funded by proceeds of imports made by Indian parties and the funds in these accounts are utilised for payment to them for their exports under counter-trade arrangements. Under the Escrow account mechanism, the overseas importer/ exporter are common whereas the Indian Importer and exporter may be different.

16.1 OPENING OF ESCROW ACCOUNTS

Opening of Escrow Account requires prior permission of RBI. Application for permission for opening Escrow accounts by overseas importing organisation under counter-trade arrangements should be made to the concerned Regional Office of the Exchange Control Dept. of RBI, together with the following documents :

- i) Request letter from the foreign party for opening an account with a bank in India.
- ii) Copy of Memorandum of Understanding (MOU) if any, entered into between the Indian exporter and the counter-party abroad.
- iii) List of items for export and import. Exports from India should not be from the "Negative/Restricted List" of commodities and the import items should conform to the provisions of import trade control policy in force.
- iv) 'No Objection' letter from the Central bank of the country of the overseas counter-part.

16.2 GENERAL GUIDELINES AND PROCEDURE :

Normally, RBI would consider favourably requests for the opening of Escrow accounts, subject to following conditions:

- i) The account will be maintained in a foreign currency as approved by RBI [currently in US Dollars].
- ii) The account will be without cheque facility.

- iii) Current account Balances in Escrow accounts are not eligible for payment of any interest. However surplus balances may be deposited in short term deposits upto a total period not exceeding three months [within a period of 6 months]. In other words this facility should be restricted to a maximum period of 3 months in the aggregate during the currency of 6 months at a time. Principal + interest earned should be credited back to Escrow CD account and has to be utilised only for payment of exports from India.
- iv) Operations in the account should be conducted in accordance with the specific instructions of Reserve Bank. Payment for imports into India will constitute funding of these accounts. Balances held therein can be utilised to settle payment to Indian exporters towards future exports. Where permitted by RBI, the account holders can also make advance payment to Indian exporters.
- v) Items exported under counter trade arrangements should not be from the 'Negative/restricted list' of commodities declared by the Ministry of Commerce from time to time.
- vi) Exports from EOU/EPZ will not be eligible for the purpose of counter trade credit.
- vii) Exports and imports should be at international prices in accordance with the current Foreign Trade policy.
- viii) Counter trade transactions should be on voluntary basis to be agreed to between the two parties.
- ix) No overdraft facility would be allowed in the account, nor can any advance against security of funds in the account be granted.
- x) Banks/branches (in India) maintaining Escrow accounts can also issue LC favouring Indian exporters covering exports to Russia/any other country.
- xi) All contracts/LCs, for export from India should provide for reimbursement to the Indian exporter from Escrow Account.
- xii) The bank should certify the duplicate G.R. Forms after making the payment to the exporter from the Escrow account as under :

'Payment has been received by the exporter from the Escrow account maintained in terms of R.B.I. Approval No. dated in the name of M/s.....'

- xiii) The operations in the account should be restricted to following credits / debits :-

Credits:

Amounts due to the Escrow account holder towards payment for imports into India and interest, if any, thereon.

Debits

- a) Payment to Indian exporters towards their exports from India.
- b) Local legitimate trade related rupee expenses, in India, of the account-holder (subject to a maximum of 20% of the total credits to the account.)
- c) Agency commission to the local indenting Indian agents, bank charges, if any.

All other credits & debits require prior approval of the R B I.

- xiv) Balances in Escrow account will not be allowed to be remitted outside India, but should be adjusted towards payments for exports from India/local expenses within permissible limit.
- xv) Balances in the accounts are not subjected to CRR/SLR requirements.
- xvi) Banks should submit a monthly transcript of the account together with a statement in the enclosed proforma giving full details of the transactions routed through the Escrow account, to the concerned Regional Office of Exchange Control Dept., RBI before the 15th of the following month.
- xvii) GR/PP Forms covering shipments made under counter-trade arrangement should be superscribed by the exporters as under :

‘ Exports-under-counter-trade-arrangement.

Payment will be received from Escrow account maintained with _____(Bank) in terms of R.B.I. approval No._____ dated _____in the name of M/s._____

Packing credit and post-shipment finance can be made available to exporters under counter trade arrangements. The rate of interest will be as per RBI interest rate structure. Whenever an exporter receives advance payment either direct or through Escrow account, the Pre-shipment credit should be curtailed to the extent of amount of advance received. Normally pre shipment advance under Escrow account Reimbursement Mechanism

should be given only against LC opened by the Bank maintaining Escrow account. If importer does not open LC, but only places a confirmed order providing for reimbursement to the debit of Escrow account, branches should forward copies of the confirmed orders to the Bank maintaining Escrow account and obtain confirmation from them that reimbursement will be made on due presentation of export documents maintaining bank should also The Escrow account specify the details of documents required by them for honoring the reimbursement claim Pre-shipment finance should be granted only thereafter.

As USD funds are with the bank maintaining Escrow account and as G R form will be handled by them, branches should not report export bills to our Dealing Room. FDBP/FUDBP advance, however, can be granted in Indian Rupees only at provisional exchange rate. Interest for transit period of 25 days is to be recovered upfront together with handling charges and commission in lieu of exchange (0.25%). Export documents have to be sent to the bank in India maintaining Escrow account together with duplicate GR form. They will pay the amount to our branches in Indian Rupees after converting the USD at the ready rate prevailing on the date of debit to Escrow account. On receipt of realisation proceeds, the rupee advance granted is to be recovered together with out of pocket expenses. If forward contract is booked or PCFC is granted by our branches, the Escrow account maintaining bank should be requested to credit the foreign currency funds to nostro account of concerned 'A' category branch. Similar is the case if EEFC component is involved. The escrow account maintaining bank will certify & retain G R Form.

16.3 AGENCY COMMISSION

In respect of exports against payment out of balances held in Escrow accounts, remittance of agency commission may be allowed, subject to the following conditions:

- i) Payment of commission satisfies the conditions stipulated in Para 2.2.41 of Chapter II of Book of Instructions on Exports.
- ii) The commission is not payable to Escrow account holders themselves.
- iii) The commission should not be allowed by deduction from invoice value.