

THE FOREIGN EXCHANGE MANAGEMENT ACT 1999

ACT NO. 42 OF 1999

[29th December, 1999.]

An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

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PRELIMINARY

1. Short title, extent, application and commencement.-(1) This Act may be called the Foreign Exchange Management Act, 1999.

(2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies .

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2.

Definitions.

2. Definitions.-In this Act, unless the context otherwise requires,- (a) "Adjudicating Authority" means an officer authorized under sub-section (1) of section 16

(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;

(c) "authorized person" means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

(d) "Bench" means a Bench of the Appellate Tribunal;

(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accounts Act, 1949 (38 of 1949);

(h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(i) "currency notes" means and includes cash in the form of coins and bank notes;

(j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,-

(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 36;

(l) "export", with its grammatical variations and cognate expressions, means-

(i) the taking out of India to a place outside India any goods,

(ii) provision of services from India to any person outside India;

(m) "foreign currency" means any currency other than Indian currency;

(n) "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;

(o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(p) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;

(q) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934);

(r) "legal practitioner" shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

(s) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;

(t) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;

(u) "person" includes-

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person;

(v) "person resident in India" means- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

(A) a person who has gone out of India or who stays outside India, in either case-

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than-

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c)(i) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(w) "person resident outside India" means a person who is not resident in India;

(x) "prescribed" means prescribed by rules made under this Act;

(y) "repatriate to India" means bringing into India the realized foreign exchange and-

(i) the selling of such foreign exchange to an authorized person in India in exchange for rupees, or

(ii) the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank, and includes use of the realized amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

(z) "Reserve Bank" means the Reserve Bank of India constituted

under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(za) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;

(zb) "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 ;

(zc) "Special Director (Appeals)" means an officer appointed under section 18;

(zd) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;

(ze) "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

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REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

CHAPTER II REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

3.

Dealing in foreign exchange, etc.

3. Dealing in foreign exchange, etc.-Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall-

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner. Explanation.-For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person. Explanation.-For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

4.

Holding of foreign exchange, etc.

4. Holding of foreign exchange, etc.-Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

5.

Current account transactions.

5. Current account transactions.-Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction: Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

6.

Capital account transactions.

6. Capital account transactions. -(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify-

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions: Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following-

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in rupees in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

(i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;

(j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-

(i) by a person resident in India and owed to a person resident outside India; or

(ii) by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

7.

Export of goods and services.

7. Export of goods and services.-(1) Every exporter of goods shall-

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services

8.

Realisation and repatriation of foreign exchange.

8. Realisation and repatriation of foreign exchange.-Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9.

Exemption from realization and repatriation in certain cases.

9. Exemption from realization and repatriation in certain cases.
-The provisions of sections 4 and 8 shall not apply to the following, namely:-

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

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AUTHORISED PERSON

CHAPTER III AUTHORISED PERSON

10.

Authorised person.

10. Authorised person.-(1) The Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

(2) An authorization under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorization granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that-

(a) it is in public interest so to do; or

(b) the authorized person has failed to comply with the condition subject to which the authorization was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

Provided that no such authorization shall be revoked on any ground referred to in clause (b) unless the authorized person has been given a reasonable opportunity of making a representation in the matter.

(4) An authorized person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorized person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorization under this section.

(5) An authorized person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or make only unsatisfactory compliance therewith, the authorized person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(6) Any person, other than an authorized person, who has acquired or purchased foreign exchange for any purpose mentioned in the

declaration made by him to authorized person under sub-section (5) does not use it for such purpose or does not surrender it to authorized person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition or foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

11.

Reserve Bank's powers to issue directions to authorized person.

11. Reserve Bank's powers to issue directions to authorized person.-(1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorized persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit.

(3) Where any authorized person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues. reasonable opportunity of being heard, impose on the authorized

12.

Power of Reserve Bank to inspect authorised person.

12. Power of Reserve Bank to inspect authorised person.-(1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of-

(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;

(b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to

do so;

(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

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CONTRAVENTION AND PENALTIES

CHAPTER IV CONTRAVENTION AND PENALTIES

13.

Penalties.

13. Penalties.-(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.-For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include-

(a) deposits in a bank, where the said property is converted into such deposits;

(b) Indian currency, where the said property is converted into that currency; and

(c) any other property which has resulted out of the conversion of that property.

14.

Enforcement of the orders of Adjudicating Authority.

14. Enforcement of the orders of Adjudicating Authority.-(1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudication Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied-

(a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Explanation.-For the purposes of this sub-section, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison. (8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

(9) Upon the conclusion of the inquiry, the Adjudicating authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest: Provide that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

(10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.

(11) Every person detained in the civil prison in execution of the certificate may be so detained, -

(a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and

(b) in any other case, up to six months:

Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

(12) A defaulter released from detention under this section shall

not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detainee in the civil prison.

(13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

15.

Power to compound contravention.

15. Power to compound contravention.-(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

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ADJUDICATION AND APPEAL

CHAPTER V ADJUDICATION AND APPEAL

16.

Appointment of Adjudicating Authority.

16. Appointment of Adjudicating Authority.-(1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that

the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

(5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and-

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:

Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

17.

Appeal to Special Director (Appeals).

17. Appeal to Special Director (Appeals).-(1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

(2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).

(3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.

(6) The Special Director (Appeals) shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and-

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

18.

Establishment of Appellate Tribunal.

18. Establishment of Appellate Tribunal.-The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act.

19.

Appeal to Appellate Tribunal.

19. Appeal to Appellate Tribunal.-(1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed : Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks

fit.

20.

Composition of Appellate Tribunal.

20. Composition of Appellate Tribunal.-(1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.

(2) Subject to the provisions of this Act,-

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

21.

Qualifications for appointment of Chairperson, Member and Special Director (Appeals).

21. Qualifications for appointment of Chairperson, Member and Special Director (Appeals).-(1) A person shall not be qualified for appointment as the Chairperson or a Member unless he-

(a) in the case of Chairperson, is or has been, or is qualified to be, a Judge of a High Court; and

(b) in the case of a Member, is or has been, or is qualified to be, a District Judge.

(2) A person shall not be qualified for appointment as a Special Director (Appeals) unless he-

(a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or

(b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.

22.

Term of Office.

22. Term of office.-The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office: Provided that no Chairperson or other Member shall hold office as such after he has attained,-

(a) in the case of the Chairperson, the age of sixty-five years;

(b) in the case of any other Member, the age of sixty-two years.

23.

Term and Conditions of service.

23. Terms and conditions of service.-The salary and allowances payable to and the other terms and conditions of service of the Chairperson, other Members and the Special Director (Appeals) shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment.

24.

Vacancies.

24. Vacancies.-If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

25.

Resignation and removal.

25. Resignation and removal.-(1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

26.

Member to act as Chairperson in certain circumstances.

26. Member to act as Chairperson in certain circumstances.-(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

27.

Staff of Appellate Tribunal and Special Director (Appeals).

27. Staff of Appellate Tribunal and Special Director (Appeals).-(1) The Central Government shall provide the Appellate Tribunal and the Special Director (Appeals) with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Chairperson and the Special Director (Appeals), as the case may be.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall be such as may be prescribed.

28.

Procedure and powers of Appellate Tribunal and Special Director(Appeals).

28. Procedure and powers of Appellate Tribunal and Special Director (Appeals).-(1) The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal and the Special Director (Appeals) shall have powers to regulate its own procedure.

(2) The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree

of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal or the Special Director (Appeals) may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

29.

Distribution of business amongst Benches.

29. Distribution of business amongst Benches.-Where Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

30.

Power of Chairperson to transfer cases.

30. Power of Chairperson to transfer cases.-On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

31.

Decision to be by majority.

31. Decision to be by majority.-If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate

Tribunal who have heard the case, including those who first heard it.

32.

Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers.

32. Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers.-(1) A person preferring an appeal to the Appellate Tribunal or the Special Director (Appeals) under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the Appellate Tribunal or the Special Director (Appeals), as the case may be.

(2) The Central Government may authorise one or more legal practitioners or chartered accountants or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal or the Special Director (Appeals), as the case may be.

33.

Members, etc., to be public servants.

33. Members, etc., to be public servants.-The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Special Director (Appeals) and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

34.

Civil court not to have jurisdiction.

34. Civil court not to have jurisdiction.-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Tribunal or the Special Director (Appeals) is empowered by or u

35.

Appeal to High Court.

35. Appeal to High Court.-Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.-In this section "High Court" means-

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAP

DIRECTORATE OF ENFORCEMENT

CHAPTER VI DIRECTORATE OF ENFORCEMENT

36.

Directorate of Enforcement.

36. Directorate of Enforcement.-(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central

Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

37.

Power of search, seizure, etc.

37. Power of search, seizure, etc.-(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

38.

Empowering other officers.

38. Empowering other officers.-(1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.

(2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961 (43 of 1961), subject to such conditions and limitations as the Central Government may impose.

CHAP

MISCELLANEOUS

CHAPTER VII MISCELLANEOUS

39.

Presumption as to documents in certain cases.

39. Presumption as to documents in certain cases.-Where any document-

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person, and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

40.

Suspension of operation of this Act.

40. Suspension of operation of this Act.-(1) If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act.

(2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such

suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.

(3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

41.

Power of Central Government to give directions.

41. Power of Central Government to give directions.-For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

42.

Contravention by companies.

42. Contravention by companies.-(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contraven

ion and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section-

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

43.

Death or insolvency in certain cases.

43. Death or insolvency in certain cases.-Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be:

Provided that a legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.

44.

Bar of legal proceedings.

44. Bar of legal proceedings.-No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

45.

Removal of difficulties.

45. Removal of difficulties.-(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty: Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

46.

Power to make rules.

46. Power to make rules.-(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for, -

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authority under sub-section (1) of section 16;

(d) the form of appeal and fee for filing such appeal under sections 17 and 19;

(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;

(g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of section 28;

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be, prescribed.

47.

Power to make regulations.

47. Power to make regulations.-(1) The Reserve Bank may, by

notification, make regulations to carry out the provisions of this Act and the rules made thereunder.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for, -

(a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

(h) any other matter which is required to be, or may be, specified.

48

Rules and regulations to be laid before Parliament.

48. Rules and regulations to be laid before Parliament.-Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

49.

Repeal and saving.

49. Repeal and saving.-(1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act;

(b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement :

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the

appeal within the said period.

(6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

RAGHBIR SINGH, Secy.to the Govt. of India.

FEMA Rules & Policies

The *Foreign Exchange Management Act, 1999* (FEMA) came into force with effect from June 1, 2000. With the introduction of the new Act in place of FERA, certain structural changes were brought in. The Act consolidates and amends the law relating to foreign exchange to facilitate external trade and payments, and to promote the orderly development and maintenance of foreign exchange in India.

From the **NRI perspective**, FEMA broadly covers all matters related to foreign exchange, investment avenues for NRIs such as immovable property, bank deposits, government bonds, investment in shares, units and other securities, and foreign direct investment in India.

FEMA vests with the Reserve Bank of India, the sole authority to grant general or special permission for all foreign exchange related activities mentioned above.

Section 2 - The Act here provides clarity on several definitions and terms used in the context of foreign exchange. Starting with the identification of the Non-resident Indian and Persons of Indian origin, it defines "foreign exchange" and "foreign security" in sections 2(n) and 2(o) respectively of the Act. It describes at length the foreign exchange facilities and where one can buy foreign exchange in India. FEMA defines an authorised dealer, and addresses the permissible exchange allowed for a business trip, for studies and medical treatment abroad, forex for foreign travel, the use of an international credit card, and remittance facility

Section 3 prohibits dealings in foreign exchange except through an authorised person. Similarly, without the prior approval of the RBI, no person can make any payment to any person resident outside India in any manner other than that prescribed by it. The Act restricts non-authorised persons from entering into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire any asset outside India.

Section 4 restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act.

Section 6 deals with capital account transactions. This section allows a person to draw or sell foreign exchange from or to an authorised person for a capital account transaction. RBI in consultation with the Central Government has issued various regulations on capital account transactions in terms of sub-section (2) and (3) of section 6.

Section 7 covers the export of goods and services. All exporters are required to furnish to the RBI or any other authority, a declaration regarding full export value.

Section 8 puts the responsibility of repatriation on the persons resident in India who have any amount of foreign exchange due or accrued in their favour to get the same realised and repatriated to India within the specific period and in the manner specified by the RBI.

The duties and liabilities of the Authorised Dealers have been dealt with in **Sections 10, 11 and 12**, while **Sections 13 to 15** cover penalties and enforcement of the orders of the Adjudicating Authority as well as the power to compound contraventions under the Act.

Sections 36 and 37 deal with the establishment of an Enforcement Directorate, and empowers it to investigate the violation of any provisions of the Act, rules, regulations, notifications, directions or order issued under this Act.

FAQs on FEMA: Foreign Exchange Management Act India

From where does one purchase foreign exchange?

From authorised dealers or money changers.

Who are authorized dealers?

Banks certified by the RBI to transact in foreign exchange and foreign securities are also referred to as authorized dealers.

How much currency is allowed for a business tour?

USD 25,000 is permitted for a business tour to any country, with the exception of Nepal and Bhutan. Requirements in excess of this amount require permission of the RBI. No foreign exchange is permissible for journey to Nepal and Bhutan.

Can additional foreign exchange be taken for a medical trip abroad?

Upto USD 100,000 is allowed for medical treatment overseas. Requirements over and above this will be sanctioned on the basis of an approximation by a doctor or hospital in India or overseas.

How much forex is permitted for studies abroad?

Since students studying abroad are treated as NRIs, all rules applicable to NRIs apply to them as well. They are also entitled to receive forex upto USD 100,000 from relatives towards the cost of their studies.

How much foreign exchange is permitted for persons traveling abroad for employment?

Upto USD 100,000 is allowed from any authorised dealer on the basis of self-declaration.

How much foreign currency can an emigrant take?

Upto USD 100,000 on self-declaration basis is permitted to meet initial expenses in the adopted country. No foreign exchange remittance outside India is permitted to earn points or credits for immigration. Such outward remittances have to be supported by the RBI.

How much foreign currency can be sent as a gift to a person residing overseas?

One can send upto USD 5,000 a year, though amount exceeding this requires permission from the RBI.

How much foreign exchange can be carried by a person visiting India?

Unlimited foreign exchange is allowed. In case the total value of cash instruments - currency notes and travellers cheques - exceeds USD 10,000; a Currency Declaration Form has to be presented to the customs officials on arrival at the airport.

Can a non-resident accept local hospitality from a resident?

Yes.

Can resident Indians open foreign currency accounts in India?

Yes, EEFC Accounts and RFC Accounts can be kept by resident Indians.

In the EEFC account maintained with a bank, residents are allowed to keep 50% of foreign currency remittances received from abroad which can be used for current account transactions and approved capital account transactions as specified by the RBI.

In the RFC Accounts, returning Indians (ex-NRIs), can hold and maintain foreign currency. These funds are free from restrictions on use outside India.

A RFC (Domestic) Account can also be maintained by resident Indians for receiving payments for services abroad, or proceeds of export of goods abroad, or received as gifts from relatives outside India.

Can resident Indians hold possessions outside India?

Yes, as per Section 6 of the Foreign Exchange Management Act, 1999, if such assets were purchased, held or owned during their residence outside India or inherited from a person who was resident outside India.

Can an individual repatriate funds a second time during a calendar year?

Repatriation is allowed only upto a limit of USD 25,000 in a calendar year, and no further remittances are permitted, even if the same funds have been remitted back to India.

How are shares transferred from NRIs to Resident Indians and vice versa?

Transfer from Non-Resident to Non-Resident:

Transfer by way of sale: A person resident outside India can sell his shares or convertible debentures in the following manner:

- The sale can take place provided the receiver does not have any venture in India in the same business
- A NRI may sell the shares and convertible debentures possessed by him only to another NRI.
- An NRI can sell his shares through an authorized broker in India

Transfer by way of Gift: NRIs can gift to resident Indians as under:

- Any person be located in outside India, can present stocks or convertible debentures to any person resident outside India; provided the receiver does not have an existing tie up in India in the same business.
- A NRI may gift his shares and/ or convertible debentures to another NRI only
- Any person residing overseas may gift shares and/or convertible debentures to a person resident in India.

Transfer from Resident to Non-Resident:

Transfer by sale- General Permission

A resident Indian may sell shares and convertible debentures of any Indian company whose business falls under the Automatic Route, to any person living outside India subject to the sectoral limits.

- Any Indian company that proposes to sell shares or convertible debentures should not be involved in extending any financial service;
- The sale should not fall within the ambit of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997; and
- Pricing procedures, documentation and reporting requirements for such a deal must be as per requirements of the RBI.

Transfer by way of gift:

An Indian resident who proposes to gift to a person resident outside India is required to make an application to the Central Office of Foreign Exchange Department, Reserve Bank with details of

- 1) Name and address of the involved parties - transferor and transferee
- 2) Relationship between the two, and
- 3) Reasons for gifting

What procedure is to be followed in case the transfer does not fall into any of the above categories?
In such cases, an application to the RBI has to be made with

- A copy of FIPB approval.
- Consent/approval letter from transferor and transferee stating the number of shares, name of company in which investment is to be made and the rate at which the transfer is to be made.
- Details of equity participation in the company by residents and non-residents.
- All approvals and copies of FC-GPR from RBI pertaining to existing shares of the non-residents.
- In case the seller is an NRI or an OCB, the copies of RBI approvals of the shares held on repatriation or non-repatriation basis.
- In case the shares by the non-resident are under the SEBI Takeover Regulations, an Open Offer document filed with SEBI
- A Chartered Accountant needs to certify the value of shares in a Fair Valuation Certificate as per guidelines
- If the shares are unlisted, the fair value has to be calculated as per the former Controller of Capital Issue/s.

Can the savings and income earned in India be repatriated?

Yes, except where NRIs invest expressly in non-repatriable schemes. Dividends earned on foreign investments can be remitted without restriction.

Can Foreign Currency Convertible Bonds (FCCBs) be issued by Indian companies?

Yes, in compliance with the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism), 1993 provided the External Commercial Borrowing guidelines of the RBI are adhered to.

Can Preference Shares be used as a route to foreign investment?

Yes. Proposals for such investments, which are considered as part of share capital, are filtered either through the automatic route or FIPB depending on the specific case.

Can investment be made by NRIs in unlisted shares issued by an Indian company?

Yes.

Is a foreigner allowed to establish a partnership/proprietorship concern in India?

No. Only NRIs/PIOs are allowed to set up a partnership or proprietorship business in India on a non-repatriation basis.

Can rights shares issued by Indian companies be offered to foreigners at a discount?

Yes, provided the rights shares are offered at par to residents as well.
Foreign Technical Collaboration

How are payments made for foreign technology transfer under the Automatic Route of RBI?

Such payments are subject to:

- a maximum of US\$2 million;
- Royalty upto 5 % for domestic sales and 8 % for exports, with no bar on the duration of the payments.
- The royalty limits are exclusive of taxes and are calculated as per standard conditions.
- The royalty is worked on the basis of the net ex-factory sale price of the product.
- Payments are made through authorised banks

What is to be done in cases where the Automatic Route of RBI for technology transfer does not apply?
The Ministry of Commerce, Department of Industrial Policy and Promotion, is referred to in such cases.

What is the procedure for foreign firms to establish a Liaison office in India?

RBI approval is required to set up office in India by a foreign company.

How does a foreign company obtain RBI sanction to start a Liaison Office in India?

- The Liaison Office operates as a channel of communication between its overseas Head Office and parties in India. No business activity in India is permitted, and neither can it earn any income in India. The liaison office meets its expenses through inward remittances of foreign exchange from its Head Office abroad.

- To open a liaison office, an submission in form FNC-1 along with relevant documents is made to
Foreign Investment Division,
Foreign Exchange Department, Reserve Bank of India,
Central Office, Mumbai.
- Consent to set up a liaison office at the outset is given for 3 years, which can be subsequently extended by the RBI's Regional Office
- An annual Activity Certificate from a Chartered Accountant has to be presented at the Regional Office of the RBI, verifying that the Liaison Office is engaged in only those activities which are allowed by the RBI.

How is a Project Office set up?

- Foreign companies have been granted General Permission by the RBI to open Project Offices in India provided they have secured a contract for a project from an Indian company
- the project is funded wholly by remittance from overseas; or
- the project is funded by a bilateral or multilateral International Financing Agency; or
- the project has been agreed to by a suitable authority; or
- The Indian company awarding the contract has been extended a Term Loan by a financing institution
- In case the above conditions are not met, or if the foreign company is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, such requests are sent to the Central Office of the Foreign Exchange Department of the RBI at Mumbai for sanction.

How is a Branch office set up?

RBI permits foreign companies in the manufacturing and trading business to set up Branch Offices in India:

- To represent its parent company to conduct business in India
- To undertake research work in its area of business
- To trade on a wholesale basis
- To encourage possible technical and financial tie-ups between Indian companies and overseas companies.
- Offering professional or consultancy services
- Offering IT and software services
- Giving technical sustenance to the products supplied by the parent company.

Branch offices are not permitted to carry out manufacturing, processing and trading activities on their own. An Activity Certificate from a Chartered Accountant has to be submitted annually to the Central Office of FED. For annual remittance of income, Branch Offices may submit required documents to a bank.

The track record of the Applicant Company, its existing trade relations with India and financial position of the company are taken into account by the RBI while scrutinizing the application.