FOREIGN EXCHANGE MANAGEMENT ACT, 1999

- Economic Liberalization
- FERA 1973 was reviewed in 1993
- Task Force set up - Submitted Report in 1994 - Resulted in FEMA
- Changes in Economy
    1) Substantial increase in Foreign Exchange Reserves
    2) Growth in Foreign trade
    3) Rationalization of Tariffs
    4) Current Account convertibility
    5) Liberalization of Indian investments abroad
    6) Increased access to external commercial borrowings
    7) Participation of Financial Institutional Investors in our Stock Markets

OBJECTS

1) To consolidate and amend law relating to Foreign Exchange
2) Facilitation of external trade and payments
3) Promoting the orderly development and maintenance of Foreign Exchange market in India

EXTENSION

- Whole of India

APPLICATION

- All Branches, Offices and Agencies outside India owned or controlled by a person resident in India

- Any contravention committed outside India by any person to whom the Act applies

DEFINITIONS

1) Sec. 2(c) : 'AUTHORISED PERSON' - means an authorized dealer, money changer, off-shore banking unit, any person authorized under Sub-Sec. (1) of Sec. 10 to deal in foreign exchange or securities

2) Sec. 2(e) : 'CAPITAL ACCOUNT TRANSACTION' - means a transaction which alters the assets and 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 under Sec. 6(3)

3) Sec. 2(h) - 'CURRENCY' includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellor cheques, letter of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by Reserve Bank

4) Sec. 2(i) - 'CURRENCY NOTES' means and includes cash in the form of coins and bank notes

5) Sec. 2(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
    a) Payments due in connection with foreign trade, other current business services, and short term banking and credit facilities in the ordinary course of business
    b) Payments due as interest on loans and as net income from investments
    c) Remittances for living expenses of parents, spouse and children residing abroad

d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children

6. Sec. 2(l) - 'EXPORT' with its grammatical variations and cognate expressions means

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

   b) provision of services from India to any person outside India

7. Sec. 2(m) - 'FOREIGN CURRENCY' means any currency other than Indian currency

8. Sec. 2(n) - 'FOREIGN EXCHANGE' means foreign currency and includes

   a) Deposits, credits and balances payable in any foreign currency

   b) Drafts, travellor cheques, letter of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency

   c) Drafts, travellor cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency

9. Sec. 2(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 dividend is payable in Indian currency

10. Sec. 2(p) ‘IMPORT’ with its grammatical variations and cognate expressions, means bringing into India goods and services

11. Sec. 2(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 U/S 28A of RBI Act, 1934

12. Sec. 2(u) ‘PERSON’ includes
    a) An individual
    b) A HUF - Hindu Undivided Family
    c) A Company
    d) A Firm
    e) An association of persons or a body of individuals, whether incorporated or not
    f) Every artificial juridical person, not falling within any of the preceding sub-clauses
    g) Any agency, office or branch owned or controlled by such person

13. Sec. 2(v) - ‘PERSON RESIDENT IN INDIA’ means
    i) A person residing in India for more than 182 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 of employment in India or

   b) For carrying on in India a business or vocation in India or

   c) 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

14. Sec. 2(w) 'PERSON RESIDENT OUTSIDE INDIA' means a person who is not resident in India.

15. Sec. 2(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

    ii) The holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank of India

    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.

16. Sec. 2(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.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Sec. 3 - Dealing in FE shall be only with general or special permission of Reserve Bank of India

i.e. Dealings or transfer of Foreign Exchange or Foreign Securities through Authorized Person

Payments or credits to persons resident outside India

Payments on behalf of persons resident outside India through Authorized Person

Financial transaction in India resulting in creation of asset outside India

Exp. All remittances through Authorized Person

Transactions involving money - Foreign Trade

Sec. 4 - No person resident in India shall acquire, hold, own, possess or transfer any Foreign Exchange, Foreign Security or immoveable property situated outside India

Sec. 5 - Current Account Transactions through Authorized Person - Central Government in public interest and on consultation with Reserve Bank of India impose reasonable restrictions

Sec. 6 - All Capital Account Transactions through Authorized Dealer

- Reserve Bank of India with consultation of Central Government - Specify class or classes of Capital Account Transactions which are permissible and limit Foreign Exchange in such transactions:
- Reserve Bank of India may specifically impose the following restrictions

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 Foreign Exchange 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 persons 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 immoveable 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

- A person residing in India may hold asset outside India if acquired when they are inherited from person residing there

- A person residing outside India may hold asset in India acquired when residing here or inherited from person residing here

- Reserve Bank of India to put restrictions for setting up business in India by person outside

Sec. 7 - EXPORT OF GOODS AND SERVICES

- Every Exporter of goods to furnish following information to Reserve Bank of India
  a) Authority of declaration
  b) Containing true and material particulars
  c) Full export value or
  d) Full export value as per market rate
  e) Information for ensuring realization of export proceeds
- Reserve Bank of India to inform exporter the requirements to realize export proceeds
- Every exporter of services to provide material particulars to Reserve Bank of India

Sec. 8 - REALIZATION & REPATRIATION OF FOREIGN EXCHANGE by person resident in India as per procedure of Reserve Bank of India

Sec. 9 - EXEMPTION FROM REALIZATION AND REPATRIATION in certain cases - Secs. 4 to 8 not to apply in the following cases:

i) Possession of foreign currency or foreign coins by any person upto limit provided by Reserve Bank of India

ii) Foreign currency account held or operated by such person or class of persons and upto limit specified by Reserve Bank of India

iii) Foreign Exchange acquired or received before 8/7/1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of general or special permission granted by Reserve Bank of India

iv) Foreign Exchange held by a person resident in India upto such limit as the Reserve Bank of India may specify, if such Foreign Exchange was acquired by way of gift or inheritance from a person as in clause (iii) including any income arising therefrom

v) Foreign Exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means upto such limit as Reserve Bank of India may specify

vi) Such other receipts specified by Reserve Bank of India

Sec.10 - AUTHORIZED PERSON

- Application to Reserve Bank of India - to deal in Foreign Exchange and foreign securities i.e. to be a Dealer, Money Changer, Off-shore Banking Unit
- Authorization granted in writing subject to conditions
- Authorization can be revoked by Reserve Bank of India
  a) in public interest
  b) violation of conditions, rules, regulations and law after opportunity of hearing
- Authorized Person to comply with terms of authorization and special and general directions of Reserve Bank of India
- Authorized Person to require declaration by person regarding compliance with law and to report to Reserve Bank of India if person fails to comply with declaration or fails to give it
- Any person fails to use acquired Foreign Exchange as per declaration or fails to give it to Authorized Dealer has contravened this Act

Sec.11 - RESERVE BANK OF INDIA's POWER TO ISSUE DIRECTIONS TO AUTHORIZED PERSON

- For the following purposes

a) Securing compliance with provisions of this Act relating to Foreign Exchange and Foreign Securities

b) Ensure compliance with provisions of Act and supply of information

- Failure of Authorized Person - Opportunity of being heard - fine of upto Rs.10,000/-, Rs.2,000/- per day in case of continuing offence

Sec.12 - POWER OF RESERVE BANK OF INDIA TO INSPECT AUTHORIZED PERSON

- By Inspector of Reserve Bank of India for following purposes

i) Verifying the correctness of any statement, information or particulars provided to Reserve Bank of India

ii) Obtaining any information or particulars which such Authorized Person has failed to furnish on being called upon to do so

iii) Securing compliance with the provisions of this Act of any rules, regulations, directions or orders made thereunder

- Duty of AP to make available all documents and information for this purpose

Sec.36 - DIRECTORATE OF ENFORCEMENT

- Central Government to establish Directorate of Enforcement with the following personnel

a) Director

b) Officers of Enforcement - Its powers and duties

c) Additional Director of Enforcement

d) Special Director of Enforcement

e) Deputy Director of Enforcement

f) Assistant Director of Enforcement

Sec.37 - POWER OF SEARCH AND SEIZURE

- All the above to exercise power of investigation under this Act - Powers of Income Tax Officers
- Also Officers of Central Government, State Government, Reserve Bank of India not below rank of Under Secretary

Sec.38 - EMPOWERING OTHER OFFICERS

- Under Order of Central Government subject to conditions and limitations

- Officer of Customs	) Exercise powers of
- Central Excise Officer	) Directorate of Enforcement
- Police Officer	) and powers of Income Tax
- Officer of Central Government or	) Officers
State Government	)