

CHAPTER-1

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

INTRODUCTION

❖ Need for the Act

- ✓ The change in the economic scenario, globalization of capital, free trade across the globe, necessitated the need for managing foreign exchange in the country in an orderly manner.
- ✓ To facilitate cross border trade and cross border capital flows, exchange control law was required.
- ✓ Foreign exchange control led to introduction of exchange control law through Defense of India rules by the Britishers in 1939. **Subsequently, Foreign Exchange Regulation Act (FERA) was enacted in 1947 which was later replaced with 'the Foreign Exchange Regulation Act, 1973' (FERA).**
- ✓ The Act has been made effective from 1st June, 2000.
- ✓ This Act enables management of foreign exchange reserves for the country.

Salient Features of the Act: It provides for-

- Regulation of transactions between residents and non-residents
- Investments in India by non-residents and overseas investments by Indian residents
- Freely permissible transactions on current account subject to reasonable restrictions that may be imposed
- RBI and Central Government control over capital account transactions
- Requirement for realisation of export proceeds and repatriation to India
- Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/Money Changer/Off-shore banking unit
- Adjudication and Compounding of Offences
- Investigation of offences by Directorate of Enforcement
- Appeal provisions including Special Director (Appeals) and Appellate Tribunal.

Enforcement of FEMA: Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement' formed for this purpose. [Section 36].

Broad Structure of FEMA

Now let us have a glance at the broad structure the Act. The Act consists of 7 Chapters dealing with following areas:

Chapters	Matters	Sections
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PREAMBLE, EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999

Preamble: This Act aims 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.

Extent and Application [Sections 1]:

- ✓ FEMA, 1999 extends to the whole of India.
- ✓ In addition, 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 there under committed outside India by any person to whom this Act applies.
- ✓ The scope of the Act has been extended to include branches, offices and agencies outside India.
- ✓ The scope is thus wide enough because the emphasis is on the words “Owned or Controlled”. Contravention of the FEMA committed outside India by a person to whom this Act applies will also be covered by FEMA.

Commencement: The Act, 1999 came into force with effect from 1st June, 2000 vide Notification *G.S.R. 371(E), dated 1.5.2000*.

DEFINITIONS [SECTION 2]

In this Act, unless the context otherwise requires:

“Adjudicating Authority” means an officer authorised under sub-section (1) of section 16(1);[Section 2(a)]

“Appellate Tribunal” means the Appellate Tribunal for Foreign Exchange established under section 18; [Section 2(b)]

“Authorised person” means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities; [Section 2(c)]

“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 liability in India of persons resident outside India, and includes transactions referred to in 1Section 6(3); [Section 2(e)]

“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. [Section 2(h)]

“Currency Notes” means and includes cash in the form of coins and bank notes; [Section 2(i)]

“Current Account Transaction” means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

- ✓ payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- ✓ payments due as interest on loans and as net income from investments.
- ✓ remittances for living expenses of parents, spouse and children residing abroad, and
- ✓ expenses in connection with foreign travel, education and medical care of parents, spouse and children; [Section 2(j)]

“Export”, with its grammatical variations and cognate expressions means;

- ✓ the taking out of India to a place outside India any goods.
- ✓ provision of services from India to any person outside India;[Section 2(l)]

“Foreign Currency” means any currency other than Indian currency; [Section 2(m)]

“Foreign Exchange” means foreign currency and includes:

- ✓ deposits, credits and balances payable in any foreign currency,
- ✓ drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- ✓ drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; [Section 2(n)]

“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;[Section 2(o)]

“Person” includes:

- an individual,
- a Hindu undivided family,
- a company,
- a firm,
- an association of persons or a body of individuals, whether incorporated or not,
- every artificial juridical person, not falling within any of the preceding sub-clauses, and;
- any agency, office or branch owned or controlled by such person;[Section 2(u)]

“Person resident in India” means:

a person residing in India for more than 182 days during the course of the preceding financial year but does not include—

- ✚ a person who has gone out of India or who stays outside India, in either case—
 - ✓ for or on taking up employment outside India, or
 - ✓ for carrying on outside India a business or vocation outside India, or
 - ✓ for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- ✚ a person who has come to or stays in India, in either case, otherwise than:
 - ✓ for or on taking up employment in India, or
 - ✓ for carrying on in India a business or vocation in India, or
 - ✓ for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- any person or body corporate registered or incorporated in India,
- an office, branch or agency in India owned or controlled by a person resident outside India,
- an office, branch or agency outside India owned or controlled by a person resident in India; [Section 2(v)]

“Person Resident Outside India” means a person who is not resident in India;[Section 2(w)]

“Repatriate to India” means bringing into India the realised foreign exchange and

- ✓ the selling of such foreign exchange to an authorised person in India in exchange for rupees, or

- ✓ the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank.

It includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly; [Section 2(y)]

“Security” means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Saving Certificates Act, 1959 applies, deposit receipts in respect of deposit 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 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; [Section 2(za)]

“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; [Section 2(zb)]

RESIDENTIAL STATUS UNDER FEMA, 1999

The definition of “person” is similar to the definition contained in the Income-tax Act, 1961. The term ‘**person**’ includes entities such as companies, firms, individuals, HUF, Association of Persons (AOP), artificial juridical persons agencies, as well as offices and branches. Agencies, offices and branches do not have independent status separate from their owners. Yet these have been considered as persons. Under FEMA such offices and branches are included in definition of Person Resident in India. Therefore, they have been included in the definition of “Person”.

The term ‘**person resident in India**’ means the following entities:

1. A person who resides in India for more than 182 days during the preceding financial year;

The following persons are NOT persons resident, in India even though they may have resided in India for more than 182 days.

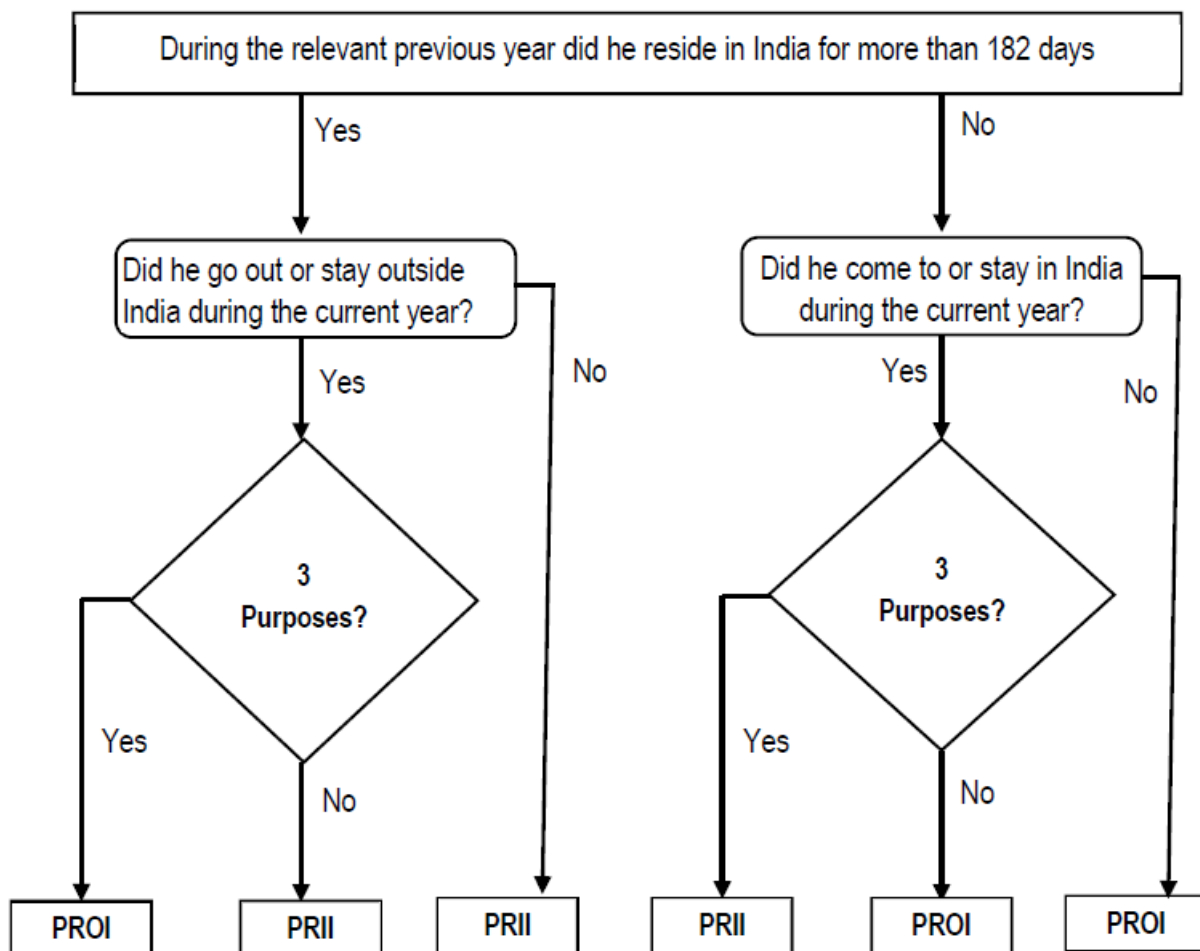
- A person who has gone out of India or stays outside India for any of the three purposes given below,
- A person who has come to or stays in India OTHERWISE THAN for any of the three purposes given below;

Three Purposes

- For or on taking up Employment
- For carrying on a business or Vacation

- iii. For any other purpose in such circumstances as would indicate stay for an uncertain period.
- 2. Any person or body corporate registered or incorporated in India;
- 3. An office, branch or agency in India owned or controlled by a person resident outside India;
- 4. An office, branch or agency outside India owned or controlled by a person resident in India.

Person resident outside India means a person who is **not** resident in India.



As the definitions of Person Resident in India and Person Resident outside India are quite relevant for determining the applicability of the Act on an entity, let us analyse and understand it better.

In the case of individuals, to be considered as "resident", the person should have resided in India in the preceding financial year for more than 182 days. **Citizenship is not the criteria for determining whether or not a person is resident in India.** There are three limbs in the definition. The first limb prescribes the number of days stay. Then there are two limbs which are exceptions to the first limb.

First limb – It states that a person who is in India for more than 182 days in the “preceding year” will be a Person Resident in India. Thus, at the threshold or basic level, one has to consider the period of stay during the preceding year.

Example 1: If a person resides in India for more than 182 days during FY 2018-19, then for the FY 2019-20, the person will be an Indian resident. For FY 2018-19, one will have to consider residence during FY 2017-18, and so on.

There are two exceptions provided in clauses (A) and (B). Clause (A) is for persons going out of India. Clause (B) is for persons coming into India. Exceptions carve out situations that do not fall under the main body of a section, even though they satisfy the criteria. This means that even if a person is an Indian resident based on the test provided in the first limb, the person will be a “Person Resident Outside India (PROI) if he falls within limb (A) or limb (B).

Clause (A) – second limb – It states that if a person leaves India in any of the THREE PURPOSES we saw above, he will not be a PRII. He will be a PROI.

Thus, in the **example** given for the first limb above, if a person leaves India on 1st November 2019, he will be a non-resident from 2nd November 2019 – even though his number of days in India was more than 182 days in FY 2018-19. Similarly, if a person goes and stays out of India for carrying on any business, he will be a PROI from that date. For FY 2019-20 the person will be a PRII till 1st November 2019. He will then be a PROI. From 1st April 2020, the person will continue to be a PROI as long as he stays out of India for employment.

An **example** for clause (iii) can be a person who has a green card in the USA. The green card entitles a person to stay in the USA and eventually become a US citizen. If a person goes abroad and starts staying in the USA, he will be a non-resident from that date as his stay abroad indicates that he is going to stay there for an uncertain period.

Clause (B) – third limb – This is a complex clause as first limb read with third limb has two exceptions. Limb one uses the phrase “but does not include”. Third limb uses the phrase “otherwise than”. Use of two exceptions make it complex reading.

It states that if a person has come to India **for any reason otherwise than** for - employment, business or circumstances which indicate his intention to stay for uncertain period – he will be a non-resident. This will be so even if the person has stayed in India for more than 182 days in the preceding year.

For example, if a person comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he stays till 31st March 2020. Thereafter he continues to stay in India. It is however certain that he will leave India in next 6 months when his parents recover. His stay in India is neither for employment, nor for business, nor for circumstances which show that he will stay in India for an uncertain period. In such a case, even if he has resided in India for more than 182 days in FY 2019-20, he will continue to be a non-resident from 1st April 2020 also. In FY 2019-20, he is of course a PROI as he did not reside in India for more than 182 in FY 2018-19.

If a person comes to India on 1st June 2019 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRII from 1st June 2019.

Person or Body corporate: Any person or body corporate registered or incorporated in India, will be considered a PRII. This definition too, does not apply to AOP, BOI etc.

Office, branch or agency: Any agency, branch or agency outside India but **owned or controlled by PRII** will be considered as person resident in India (PRII). Thus, one cannot set up a branch outside India and attempt to avoid FEMA provisions.

Any agency, branch or agency in India but **owned or controlled by a person resident outside India (PROI)** will be considered as a person resident in India. This is relevant as Indian residents can deal with such branch in India without considering FEMA. If such branch is considered as a PROI then it will be difficult to undertake several transactions.

Example 2: Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Answer: As explained in the above example, Mr. X will be considered as a person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

Example 3: Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021-2022?

Answer: Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Example 4: Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Answer: Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

Example 5: Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer: Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

❖ Dealing in foreign exchange, etc. [Section 3]

No person shall-

- A. deal in or transfer any foreign exchange or foreign security to any person not being an authorised person(AP);
- B. make any payment to or for the credit of any person resident outside India in any manner;
- C. receive otherwise than through an authorised 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 authorised 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 authorised 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.

The above transactions may carried on

- a) **as otherwise provided in this Act; or**
- b) **with the general or special permission of the Reserve Bank.**

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.

This section imposes blanket restrictions on the specified transactions. This section applies to PRIs and PROs. The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner.

Consider following examples:

(i) **Example pertaining to clause (a)- Dealing in foreign exchange** – A PROI comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.

(ii) **Example pertaining to clause (b)** – A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.

(iii) **Example pertaining to clause (c)**– A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.

(iv) **Example pertaining to clause (d)**—Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives Rs` 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

❖ **Holding of foreign exchange [Section 4]**

Except as 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.

This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property abroad. Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions and compliance rules.

Example 6: If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

❖ **Current account transactions [Section 5]**

The term 'Current Account Transaction' is defined negatively by Section 2(j) of the Act. It means a transaction **other than a capital account transaction** and includes the following types of transactions:

- (i) Payments in the course of ordinary course of foreign trade, other services such as short-term banking and credit facilities in the ordinary course of business etc.
- (ii) Payments in the form of interest on loans or income from investments.
- (iii) Remittances for living expenses of parents, spouse, or children living abroad
- (iv) Expenses in connection with foreign travel, education etc.

Example 7: An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor is owed anything in the other country. Hence it is a Current Account Transaction.

Example 8 An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and income-tax law, for the credit

period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j)(i)], “short-term banking and credit facilities in the ordinary course of business” are considered as a Current Account Transaction. Hence import of machinery on credit terms is Current Account Transaction.

What if the credit period is 12 months? Under Master Directions for imports, payment has to be made within 6 months. If the credit period is in excess of 6 months, then it is a loan. There are separate rules for loan. If the transaction falls within the loan rules, then it is permitted. Short term loan by and large means for 6 months. For exports, the period for realisation of proceeds, is 9 months.

The Central Government may, in public interest and in consultation with the Reserve Bank, impose such **reasonable restrictions** for current account transactions as prescribed under the FEM (Current Account Transactions) Rules, 2000.

Section 5 of the Act permits any person to sell or draw Foreign Exchange to or from an Authorised person to undertake any current account transaction. The Central Government has the power to impose reasonable restrictions, in consultation with the RBI and in public interest on current account transactions. The Central Government has in exercise of this power issued the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Let us now see the various schedules to the Rules that lay down the restrictions:

I. SCHEDULE

Transactions for which drawal of foreign exchange is prohibited:

- i. Remittance out of lottery winnings.
- ii. Remittance of income from racing/riding, etc., or any other hobby.
- iii. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- iv. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- v. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- vi. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- vii. Payment related to “Call Back Services” of telephones.
- viii. Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

II. SCHEDULE II

Transactions, which require prior approval of the Government of India for drawal of foreign exchange:

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
Remittance of hiring charges of transponders by (a) TV Channels (b) Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology.
Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

Transactions which require RBI's prior approval for drawal of foreign exchange:

SCHEDULE III

1. Facilities for individuals—Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 250,000 only.:

- i. Private visits to any country (except Nepal and Bhutan)
- ii. Gift or donation.
- iii. Going abroad for employment
- iv. Emigration
- v. Maintenance of close relatives abroad
- vi. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- vii. Expenses in connection with medical treatment abroad
- viii. Studies abroad
- ix. Any other current account transaction

Any additional remittance in excess of the said limit for the said purposes shall require prior approval of the Reserve Bank of India.

However, for the purposes mentioned at item numbers (iv), (vii) and (viii) above, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000 (here in after referred to as the said Liberalised Remittance Scheme) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted: Further, that for a person who is resident but not permanently resident in India and-

(a) is a citizen of a foreign State **other than** Pakistan; or

(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,

may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident:

Further, a person other than an individual may also avail of foreign exchange facility, *mutatis mutandis*, within the limit prescribed under the said Liberalized Remittance Scheme for the purposes mentioned herein above.

2. Facilities for persons other than individual—The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:

(i) Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-

- creation of Chairs in reputed educational institutes,
- contribution to funds (not being an investment fund) promoted by educational institutes; and
- contribution to a technical institution or body or association in the field of activity of the donor Company.

(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more.

(iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression “infrastructure’ shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.

(iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Procedure—The procedure for drawal or remittance of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme.

If the transaction is not listed in any of the above three schedules, it can be freely undertaken.

Exemption for remittance from RFC Account – No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an RFC account.

Exemption for remittance from EEFC Account – If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from EEFC account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:

- Remittance for membership of P & I Club.
- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. Remittances exceeding five per cent of investment brought into India or USD 100,000

whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Exemption for payment by International Credit Card while on a visit abroad – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

Note: Liberalized Remittance Scheme (LRS): Under the Liberalized Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporate, partnership firms, HUF, Trusts etc.

Consolidation of remittance of family members - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

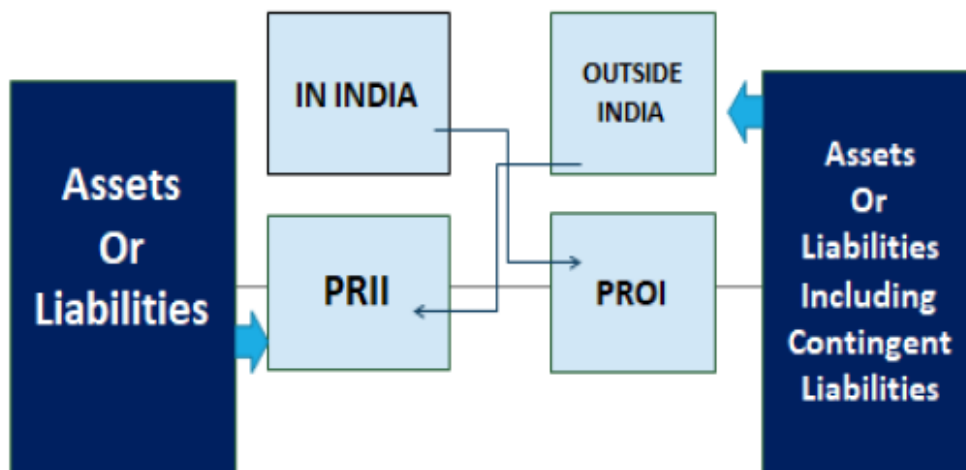
Exception: clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/investment/property.

Capital account transactions [Section 6]

- ✓ The definitions of “Capital Account Transactions” and its opposite “current account transactions are contained in clauses (e) and (j) of Section 2.
- ✓ The regulations under FEMA apply to a transaction based on whether the transaction is “Capital Account Transaction” or a “Current Account Transaction”.
- ✓ These transactions broadly outline the basics and whole approach of the Act. Basically these two transactions have to be understood as being similar to the concepts of items relating to the profit and loss account or revenue items (with respect to current account transactions) and of Balance Sheet or capital items (with respect to capital account transactions).

Capital Account Transactions 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 would be a capital account transaction.”

Capital Account Transaction means any transaction which alters



Capital Accounts Transaction in India can be carried out only to the extent permitted because Indian Rupee is not yet fully convertible. Capital and current account transactions are intended to be mutually exclusive. **A transaction which alters the asset or liabilities in India of non-residents falls under the category of capital account.** However, as far as residents are concerned **transactions which alter the contingent liabilities outside India are also capital account transactions.** The Reserve Bank of India may by regulations place restrictions on various specified capital account transactions. **In simple terms, cross border transactions pertaining to investments, loans, immovable property, transfer of assets are Capital Account Transactions.**

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

(2) Reserve Bank had the **power to specify the Capital Account transactions which are permitted and the relevant limits, terms and conditions.** By Finance Act 2015, powers for regulation of Capital Account Transactions for Non-debt instruments were transferred to Central Government. RBI continued to have powers to regulate debt instruments. The amendments have however been made effective from 15th October 2019. Now the regulations are as under:

The Reserve Bank may, in consultation with the Central Government, specify:

- (a) any class or classes of capital account transactions, involving debt instruments, which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions;
- (c) any conditions which may be placed on such transactions;

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.]

Capital account transaction is basically split into the following categories under Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000 -:

- (I) transaction, which are permissible in respect of persons resident in India and outside India.
- (II) transaction on which restrictions cannot be imposed; and
- (III) transactions, which are prohibited.

I. Permissible Transactions

Under Sub-section (2) of Section 6, the RBI has issued the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The Regulations specify the list of transaction, which are permissible in respect of persons resident in India in Schedule-I and the classes of capital account transactions of persons resident outside India in Schedule-II.

Further, subject to the provisions of the Act or the rules or regulations or direction or orders made or issued there under, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules; provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

SCHEDULE I

The list of permissible classes of transactions made by **persons resident in India** is:

- a) Investment by a person resident in India in foreign securities.
- b) Foreign currency loans raised in India and abroad by a person resident in India.
- c) Transfer of immovable property outside India by a person resident in India.
- d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- e) Export, import and holding of currency/currency notes.

- f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- i) Loans and overdrafts by a person resident in India to a person resident outside India.
- j) Remittance outside India of capital assets of a person resident in India.
- k) Undertake derivative contracts

SCHEDULE II

The list of permissible classes of transactions made by **persons resident outside India** is:

- (a) Investment in India by a person resident outside India, that is to say,
 - issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India.
- b) Acquisition and transfer of immovable property in India by a person resident outside India.
- c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- d) Import and export of currency/currency notes into/from India by a person resident outside India.
- e) Deposits between a person resident in India and a person resident outside India.
- f) Foreign currency accounts in India of a person resident outside India.
- g) Remittance outside India of capital assets in India of a person resident outside India.
- h) Undertake derivative contracts

Transactions with no restriction

They are:

- 1) For amortization of loan and
- 2) For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.

Prohibited Transactions

On certain transactions, the Reserve Bank of India imposes prohibition.

- (a) no person shall **undertake or sell or draw foreign exchange to or from an authorised person** for any capital account transaction,

provided that-

(i) subject to the provisions of the Act or the rules or regulations or directions or orders made or issued there under, **a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank** from time to time for a capital account transaction specified in Schedule I.

Explanation: Drawal of foreign exchange as per item number 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above.

(ii) Where the **drawal of foreign exchange** by a resident individual for any capital account transaction specified in Schedule I **exceeds USD 250,000 per financial year, or as decided by Reserve Bank** from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.

Provided further that no part of the foreign exchange of USD 250,000, drawn under proviso

(a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned.

(b) The **person resident outside India is prohibited from making investments in India** in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

(i) In **the business of chit fund**; 16[Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians. Non- resident Indians shall be eligible to subscribe, through banking channel and on non- repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time]

(ii) As **Nidhi company**;

(iii) In **agricultural or plantation activities**;

(iv) In **real estate business, or construction of farm houses** or

Explanation: In “real estate business” the term shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.;
or

(v) In **trading in Transferable Development Rights (TDRs)**.

'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole;

[(c) **No person resident in India shall undertake** any capital account transaction which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs, **with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea,** until further orders, unless there is specific approval from the Central Government to carry on any transaction.

(d) The **existing investment transactions, with any person** who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, **by a person resident in India,** which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs **shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification,** unless there is specific approval from the Central Government to continue beyond that period.”]

Thus, a capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.

❖ **Export of goods and services (Section 7)**

(1) **Filing of declaration and other information:** Every exporter of goods shall-

(a) Furnish declaration to the Reserve Bank / to such other authority in such form and manner as may be specified. It will be 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) **Direction to exporter to comply with requirements for ensuring export value of goods:** 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) Submission of declaration in relation to payment for such services: 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.

Regulations:

1. Short title and commencement: These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 w.e.f.12-1-2016.

2. Definitions:- Some definitions: In these Regulations, unless the context requires otherwise,

(i) 'export' includes the taking or sending out of goods by land, sea or air, on consignment or by way of sale, lease, hire-purchase, or under any other arrangement by whatever name called, and in the case of software, also includes transmission through any electronic media;

(ii) 'export value' in relation to export by way of lease or hire-purchase or under any other similar arrangement, includes the charges, by whatever name called, payable in respect of such lease or hire-purchase or any other similar arrangement;

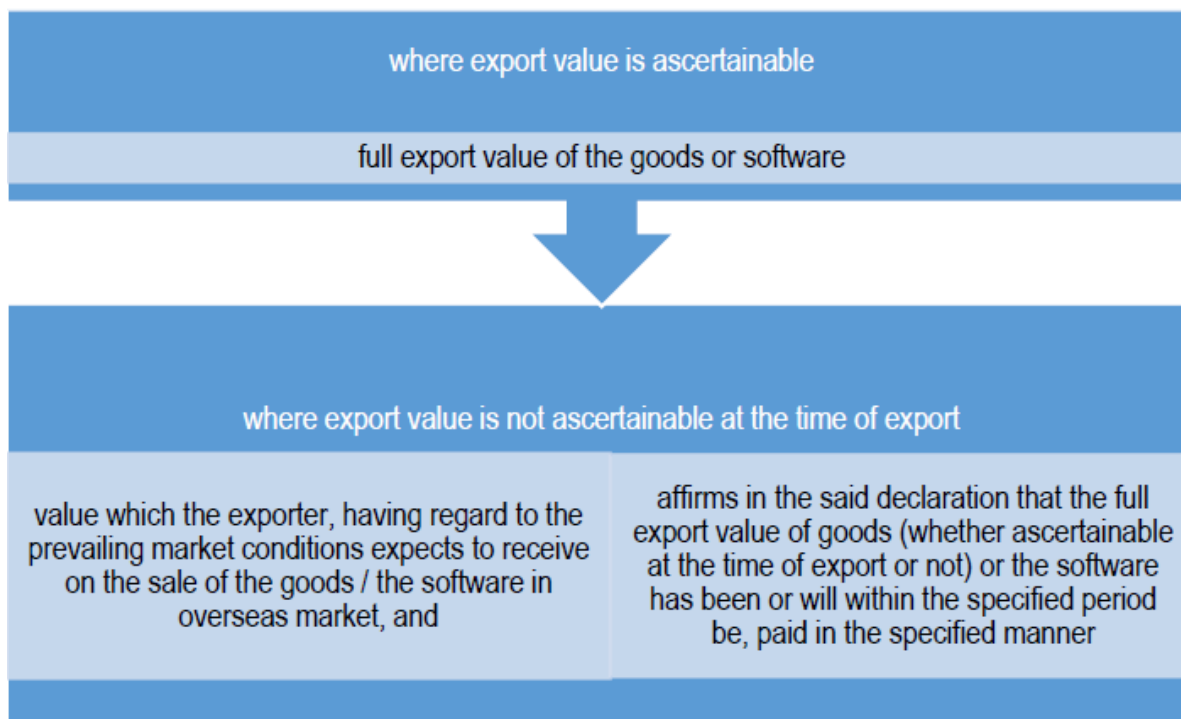
(iii) 'form' means form annexed to these Regulations;

(iv) 'software' means any computer programmed, database, drawing, design, audio/video signals, any information by whatever name called in or on any medium other than in or on any physical medium;

(v) 'specified authority' means the person or the authority to whom the declaration as specified in Regulation 3 is to be furnished;

3. Declaration of exports: In case of exports taking place through Customs manual ports: every exporter of goods or software in physical or any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority-

a declaration in the forms set out in the Schedule with the support of evidence containing true and correct material particulars including the amount representing –



In respect of export of services to which none of the Forms specified in these Regulations apply: the exporter may export such services without furnishing any declaration, but shall be liable to realize the amount of foreign exchange which becomes due /accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.

4. Exemptions: Export of goods / software may be made without furnishing the declaration in the following cases, namely:

- a) trade samples of goods and publicity material supplied free of payment;
- b) personal effects of travelers, whether accompanied or unaccompanied;
- c) ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;
- d) by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value
- e) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;
- f) goods imported free of cost on re-export basis;
- g) the following goods which are permitted by the Development Commissioner of the Special Economic Zones, Electronic Hardware Technology Parks, Software Technology Parks or Free Trade Zones to be re-exported, namely:

- ✓ imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators
- ✓ goods imported from foreign suppliers/collaborators on loan basis;
- ✓ goods imported from foreign suppliers/collaborators free of cost, found surplus after production operations.

(h) replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy in force, for the time being.

(i) goods sent outside India for testing subject to re-import into India;

(j) defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorised dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.

(k) exports permitted by the Reserve Bank, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.

5. Indication of importer-exporter code number: The importer-exporter code number (allotted by the Director General of Foreign Trade under Section 7 of the Foreign Trade (Development & Regulation) Act, 1992) shall be indicated on all copies of the declaration forms submitted by the exporter to the specified authority and shall be used in all correspondence of the exporter with the authorised dealer or the Reserve Bank, as the case may be.

6. Authority to whom declaration is to be furnished and the manner of dealing with the declaration:

Declaration in Form EDF	<p>(i) It shall be submitted in duplicate to the Commissioner of Customs.</p> <p>(ii) After verification and authentication of the declaration form, the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the Reserve Bank, and</p> <p>(iii) hand over the duplicate form to the exporter for being submitted to the authorised dealer.</p>
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Declaration in Form SOFTEX	<p>(i) It shall be, in respect of export of computer software and audio/video/ television software, submitted in triplicate to the designated official of Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.</p> <p>(ii) After certifying all three copies of the SOFTEX form, the designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter.</p> <p>(iii) The triplicate shall be retained by the designated official for record.</p>
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Duplicate Declaration Forms to be retained with Authorised Dealers: On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX shall be retained by the Authorised Dealers.

7. Evidence in support of declaration:-The Commissioner of Customs/ the postal authority/ the official of Department of Electronics, to whom the declaration form is submitted, may, in order to satisfy themselves of due compliance with Section 7 of the Act and these regulations, require such evidence in support of the declaration as may establish that –

- (a) the exporter is a person resident in India and has a place of business in India;
- (b) the destination stated on the declaration is the final place of the destination of the goods exported;
- (c) the value stated in the declaration represents –
 - (i) the full export value of the goods or software; or
 - (ii) where the full export value of the goods or software 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 the overseas market.

Explanation—For the purpose of this regulation, 'final place of destination' means a place in a country in which the goods are ultimately imported and cleared through Customs of that country.

8. Manner of payment of export value of goods: Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

Explanation—For the purpose of this regulation, re-import into India, within the period specified for realisation of the export value, of the exported goods in respect of which a

declaration was made under Regulation 3, shall be deemed to be realisation of full export value of such goods.

9. Period within which export value of goods/software/ services to be realised:-

(1) **In ordinary case:** The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India **within nine months or within such period** as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export, provided.

However, **where the goods are exported to a warehouse established outside India** with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within **fifteen months or within such period** as may be specified by the Reserve Bank, in consultation with the Government, from time to time from the date of shipment of goods;

Extension of period: Further the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause, extend the said period.

(2) Where the export of goods / software / services has been made by Units in Special Economic Zones (SEZ) / Status Holder exporter / Export Oriented Units (EOUs) and units in Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) as defined in the Foreign Trade Policy in force, the amount representing the full export value of goods or software shall be realised and repatriated to India within nine months from the date of export.

Extension of period: Provided further that the Reserve Bank, or subject to the directions issued by the Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period.

The Reserve Bank may for reasonable and sufficient cause direct that the said exporter/s shall cease to be governed by above sub-regulation (2). Such a direction shall be given only when the unit has been given a reasonable opportunity to make a representation in the matter.

On such direction, the said exporter/s shall be governed by the provisions of sub-regulation (1), until directed otherwise by the Reserve Bank.

For the purpose of this regulation, the “date of export” in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.

10. Submission of export documents: The documents pertaining to export shall be submitted to the authorised dealer mentioned in the relevant export declaration form, within 21 days from the date of export, or from the date of certification of the SOFTEx form:

Provided that, subject to the directions issued by the Reserve Bank from time to time, the authorized dealer may accept the documents pertaining to export submitted after the expiry of the specified period of 21 days, for reasons beyond the control of the exporter.

11. Transfer of documents: An authorised dealer may accept, for negotiation or collection, shipping documents including invoice and bill of exchange covering exports, from his constituent (not being a person who has signed the declaration in terms of Regulation 3): Provided that before accepting such documents for negotiation or collection, the authorised dealer shall –

(a) where the value declared in the declaration does not differ from the value shown in the documents being negotiated or sent for collection, or

(b) where the value declared in the declaration is less than the value shown in the documents being negotiated or sent for collection, require the constituent concerned also to sign such declaration and thereupon such constituent shall be bound to comply with such requisition and such constituent signing the declaration shall be considered to be the exporter for the purposes of these Regulations to the extent of the full value shown in the documents being negotiated or sent for collection and shall be governed by these Regulations accordingly.

❖ **Realisation and repatriation of foreign exchange [Section 8]**

Foreign Exchange is a common resource and has a vital impact on interest rates and inflation. The funds belong to the individual but the equivalent foreign exchange belongs to the Government of India. Therefore all foreign exchange should be realized, repatriated and surrendered to the Reserve Bank through Authorised Persons. Permitted amounts can be held as foreign currency as per the guidelines issued from time to time.

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.

Exemption from realisation and repatriation in certain cases [Section 9]

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 there from;

(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.

AUTHORISED PERSON [SECTION 10]

The term authorised person (AP) is defined under Section 2(c) of the Act to mean an authorised dealer, money changer, off-shore banking unit or any other person authorised to deal in foreign exchange or foreign securities.

Off Shore Banking Unit

An Off Shore Banking Unit means a branch of a bank in India, located in the Special Economic Zone.

Although such an Off Shore Banking Unit may have a licence to operate as an Authorised Dealer, it shall not be regarded as an Authorised Dealer under Foreign Exchange Management Act, 1999.

An Off Shore Banking Unit shall NOT conduct any activity or undertake any transaction with residents in India. An Off Shore Banking Unit may undertake any transaction with any Authorised Dealer in India on Principal-to-Principal basis. Off Shore Banking Units are meant to facilitate units in Special Economic Zones and may undertake transactions in Foreign Exchange with a unit in the Special Economic Zone to the extent the latter is eligible to enter into or undertake such transactions.

Appointment of authorized person: The RBI has the power to appoint authorised person under Section 10 of the Act.

Appointment on application: Any person may be authorised by the Reserve Bank of India, on an application made to it in this behalf, **to deal in Foreign exchange or in foreign securities**. Such an authorised person may function as an authorised dealer, money changer or offshore banking unit or in any other manner as he deems fit.

Any such authorisation made by the RBI shall be in writing and shall be subject to the conditions laid down in the authorisation.

AP shall comply with the directions of the RBI : An authorized person must, 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. Also, except with the previous permission of the Reserve Bank, an authorized person may not

engage in any transaction involving any foreign exchange or foreign security, which is not in conformity with the terms of his authorization.

AP may ask for declaration and information for carrying of any transaction on behalf of any person: Before commencement of any transactions in Foreign exchange on behalf of any person, an authorised person must insist that such person should make a declaration and give whatever information is required in order to satisfy him that the transaction will not involve and is not designed to contravene or evade the provisions of this Act or any Rule, Regulation, Notification, Direction, or order made under this Act.

In case of contravention/non-compliance of any requirement: If such person refuses to abide by such requirement or his compliance is not good enough, the authorised person shall refuse in writing to undertake the transaction. If the authorised person has reason to believe that any such contravention or evasion (as aforesaid) is contemplated by the other person, the authorised person shall report the matter to the Reserve Bank of India.

If 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

- Does not use it for such purpose or
- Does not surrender it to the authorized person within the specified period or
- Uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made there under

Such person shall be deemed to have committed contravention of the provisions of the Act.

Revocation of authorisation : Any authorisation given by the Reserve Bank of India may be revoked by it, at any time, if it is satisfied that: -

1. It is in public interest so to do, or
2. The authorised person has failed to comply with the conditions laid down in the authorisation.
3. The authorised person has contravened any of the provisions of this Act or any Rule, Regulation, Notification, Direction, or order made under this Act.

An authorisation shall not be revoked on grounds mentioned in 2 and 3 above, unless the authorised person has been given a reasonable opportunity of making a representation in.

❖ **Reserve Bank's powers to issue directions to authorised person**
[Section 11]

In order to secure strict compliance with the provisions of this Act and of any Rules, Regulations, Notifications, or directions, the Reserve Bank may direct the authorised persons with regard to :

1. Matters pertaining to

- (i) Making of payment; or
- (ii) The doing or desisting from doing of any act relating to Foreign Exchange or foreign security.

2. Furnishing such information, in such manner, as it deems fit.

Penalty for Contravention of Directions by an Authorised Person

Where any authorised 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 reasonable opportunity of being heard, impose on the authorised 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.

Note: The Authorized person shall be given a reasonable opportunity of being heard before imposing penalty.

Power of Reserve Bank to inspect authorised person [Section 12]

It shall appear to the Reserve Bank that it is necessary and expedient to cause an inspection of the business of any Authorised person. There upon, it may at any time specially authorize any officer, in writing to inspect such business, such an inspection may be made for the following purpose:-

1. **Verification of the correctness** of any statement, information, or particulars furnished to the Reserve Bank.
2. **Obtaining any information or particulars**, which such authorised person, has failed to furnish, on being called upon to do so.
3. **Securing compliance** with the provisions of this Act or of any Rules, Regulations, Directions, or orders made under the Act.

Every authorized person is duty-bound

- (i) to **produce** such books, accounts and other documents in his custody or power to the officer making the inspection, and
- (ii) to **furnish** any statement relating to the affairs of such person, company or firm.

In the **case of company or firm** it shall be the duty of **every director, partner or other officer** of such company or firm.

CONTRAVENTIONS AND PENALTIES IN BRIEF

Section No.	Contravention	Quantum of Penalty
Section 11	By Authorised person any direction by RBI or failure to file any return as directed by RBI	<ul style="list-style-type: none"> ✓ UptoRs.10,000. ✓ If continuing offence additional penalty upto Rs 2,000 per day.
Section 13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorization issued	<ul style="list-style-type: none"> ✓ Upto three times, the sum involved, if it is quantifiable. ✓ If not quantifiable upto ` 2 lacs. ✓ If continuing offence, further penalty upto ` 5,000 per day after first day.
Section 13(1A) and 13(1C)	Acquisition of any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A	<ul style="list-style-type: none"> ✓ Upto three times, the sum involved. ✓ confiscation of the value equivalent of foreign assets involved in contravention, situated in India. ✓ W.r.t contravention related to13(1C), in addition to the penalty imposed above i.e. for 13(1A),Imprisonment upto 5 years and with a fine
Section 14	Failure to pay penalty as above –where demand is of an amount exceeding ` 1 crore. –in any other case	Civil imprisonment. Upto 3 years Upto 6 months.

Any Adjudicating Authority adjudging any contravention under section 13(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 person committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with 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.

❖ **Enforcement of the orders of Adjudicating Authority [Section 14]**

(1) **In case of failure to make full payment of the penalty:** 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) **Order of arrest and detention in civil prison:** No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating 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 do the same.

(3) **Issue of warrant for the arrest of the defaulter:** 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) **In case of absence pursuant to the notice served:** Where appearance is not made pursuant to a notice issued and served, the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) Every person arrested in pursuance of a warrant of arrest 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.

Default by HUF: Where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

(6) Where a defaulter appears before the Adjudicating Authority pursuant to a notice, the Adjudicating Authority shall give the defaulter an opportunity showing cause when he should not be committed to the civil prison.

(7) **In case of pending of an 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.

(8) **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:

(9) **Upon satisfaction of arrears:** Provided 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) **Order of release:** When the Adjudicating Authority does not make an order of detention; 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) **Defaulter liable for payment of arrears:** 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 detained in the civil prison.

(13) **Execution of detention order:** 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.

❖ **Power to recover arrears of penalty [Section 14A]**

(1) **An officer of Enforcement to recover any arrears of penalty:** The Adjudicating Authority may, by order in writing, authorize an officer of Enforcement (not below the rank of Assistant Director) to recover any arrears of penalty from any person who fails to make full payment of penalty imposed on him under section 13 within the period of ninety days from the date on which the notice for payment of such penalty is served on him.

(2) **Powers:** The officer of Enforcement, shall exercise all the like powers which are conferred on the income-tax authority in relation to recovery of tax under the Income-tax Act, 1961 and the procedure laid down under the Second Schedule to the said Act shall mutatis mutandis apply in relation to recovery of arrears of penalty under this Act.