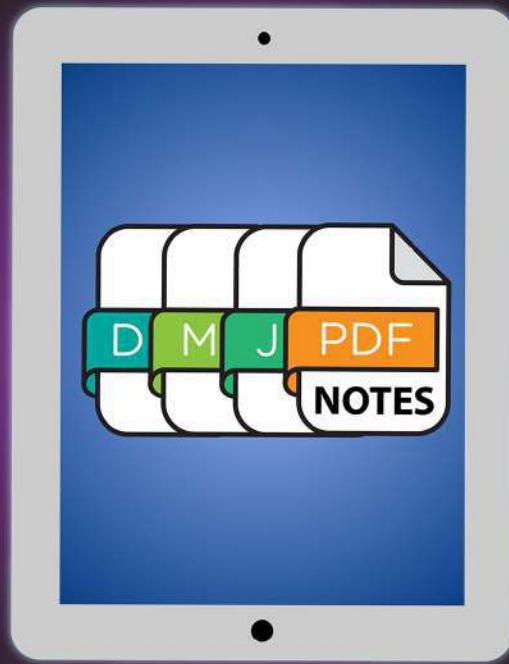




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# **The Foreign Exchange Management Act, 1999**

**(Economic Laws)**

**Paper 4 - Corporate Laws  
(CA Final)**

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# Foreign Exchange Management Act, 1999

This increased the flow of foreign exchange to India and consequently foreign exchange reserves increased substantially. The Act has been made effective from 1st June, 2000. This Act enables management of foreign exchange reserves for the country.

FEMA, 1999 extends to the whole of India. It also applies to :-

- All branches, offices and agencies outside India owned and controlled by a person resident in India; and
- Any contravention committed outside India by any person to whom this Act applies.

## Objectives of the Act

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.

## Definitions [Section 2]

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

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

**Authorised person [Section 2(c)]** 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;

**Capital Account Transaction [Section 2(e)]** 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 Section 6(3);

**Currency [Section 2(h)]** 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.

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

**Current Account Transaction [Section 2(j)]** 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;

**Export [Section 2(l)]**, 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;

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

**Foreign Exchange [Section 2(n)]** 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;

**Foreign Security [Section 2(o)]** 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;

**Import [Section 2(p)],** with its grammatical variations and cognate expressions, means bringing into India any goods or services;

**Person [Section 2(u)]** 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;

**Person resident in India [Section 2(v)]** 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 up **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;

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

**Repatriate to India [Section 2(y)]** means bringing into India the realised foreign exchange and

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

(ii) 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;

**Security [Section 2(za)]** 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;

**Service [Section 2(zb)]** 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;

**Transfer [Section 2(ze)]** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

### **Restrictions on Foreign Exchange – Section 3**

All restrictions mentioned may be relaxed by making provisions in Act, Rules, Regulations and by 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 **authorised person**;

(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.

(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 be 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.

#### General Permissions

**Prohibitions** shall **not apply to** any **transaction** entered into **in Indian Rupees by** or with-

- a) a **person** who is a **citizen of India, Nepal or Bhutan resident in Nepal or Bhutan.**
- b) A **branch situated in Nepal or Bhutan** of any business **carried on by** a company or a **corporation incorporated in India, Nepal or Bhutan;** and
- c) A **branch situated in Nepal or Bhutan** of any business **carried on** as a partnership firm or **otherwise by a citizen of India, Nepal or Bhutan**

### Restriction on holding of Foreign Currency – Section 4

No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

### Current Account Transaction – 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

Any person may sell or draw foreign exchange to or from an authorised 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.

Hence, **such transactions are freely available if it is not prohibited and it is within limit or permission obtained**

As per rules, drawal of foreign exchange for certain current account transactions is prohibited, a few need permission of appropriate Govt. of India authority and some other transactions would require RBI permission if they exceed a certain ceiling.

The three categories are:

- ✓ Transactions which are prohibited
- ✓ Transactions for which foreign exchange can be drawn subject to prior approval of CG
- ✓ Transactions for which foreign exchange can be drawn subject to prior approval of Reserve Bank of India

No approval of the Reserve Bank is required where payment is made out of funds held in Resident Foreign Currency Account of the remitter.

### **SCHEDULE I**

*2 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.

### **Schedule II**

**Prior approval of the Government of India for drawal of foreign exchange is required for following transactions:**

- ✓ Cultural Tours
- ✓ 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.
- ✓ Remittance of freight of vessel chartered by a PSU
- ✓ Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis
- ✓ Multi-modal transport operators making remittance to their agents abroad
- ✓ Remittance of hiring charges of transponders by TV Channels & Internet service providers

- ✓ Remittance of container detention charges exceeding the rate prescribed by 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
- ✓ Remittance for membership of P & I Club

Rule 5 Read with Schedule III

### **Facilities for individuals**

**Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only.** Any **additional remittance** in excess of the said limit for the following purposes shall **require prior approval of the Reserve Bank of India.**

- ✓ Private visits to any country (except Nepal and Bhutan)
- ✓ Gift or donation.
- ✓ Going abroad for employment
- ✓ Emigration
- ✓ Maintenance of close relatives abroad
- ✓ 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.
- ✓ Expenses in connection with medical treatment abroad
- ✓ Studies abroad
- ✓ Any other current account transaction

For the following purposes from above:

- ✓ Emigration
- ✓ Medical treatment
- ✓ Studies abroad

the individual may avail of exchange facility for an amount in excess of the limit prescribed under the 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

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).

#### Meaning Of Person Resident but not Permanently Resident

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 Liberalised Remittance Scheme for the

purposes mentioned herein above.

#### Facilities for Persons Other than Individual

The **following remittances by persons other than individuals** shall **require prior approval of the Reserve Bank of India**.

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

- 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.

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

✓ 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.

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.

#### Capital Account Transaction – Section 6

“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**

**In simple terms, cross border transactions pertaining to investments, loans, immovable property, transfer of assets are Capital Account Transactions.**

Any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

The Reserve Bank may, by regulations, prohibit, restrict or regulate Capital Account transactions as specified in section 6(3).

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

- ✓ any class or classes of capital account transactions, which are permissible
- ✓ the limit up to which foreign exchange shall be admissible for such transactions

Capital account transaction is basically split into the following categories:

- ✓ transaction, which are permissible in respect of persons resident in India and outside India.
- ✓ transaction on which restrictions cannot be imposed; and
- ✓ transactions, which are prohibited.

The Central Government may, in consultation with the Reserve Bank, prescribe— (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible; (b) the limit up to which foreign exchange shall be admissible for such transactions; and (c) any conditions which may be placed on such transactions

**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.**

This circular clarifies that section 6(4) of the Act covers the following transactions:

(i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;

(ii) Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;

(iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.

(iv) A person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.

(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 a such person when **he was resident in India or inherited from a person who was resident in India**

### **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 thereunder, 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,

- (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
- (ii) 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 amortisation 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 thereunder, **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**

**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.**

## **Foreign Exchange Management (Export of Goods and Services) Regulations, 2015**

### **Declaration of Exports**

In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through 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 one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing

- ✓ the full export value of the goods or software; or
- ✓ if the full export value is not ascertainable at the time of export,
- ✓ imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators;
- ✓ goods imported from foreign suppliers/collaborators on loan basis

the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not or the software has been or will within the specified period be, paid in the specified manner.

(2) Declarations shall be executed in sets of such number as specified.

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 realise the amount of foreign exchange which becomes due or 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.

(4) **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.

### **Exemptions**

Notwithstanding anything contained in Regulation 3, **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 travellers, 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

(ea) **re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.** (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:

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

(ga) goods listed at items (1), (2) and (3) of clause (i) to be re-exported by units in Special Economic Zones, under intimation to the Development Commissioner of Special Economic Zones / concerned Assistant Commissioner or Deputy Commissioner of Customs

(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.



## **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 documents.

## **Details of Declaration**

### **Declaration in Form EDF**

- (i) It shall be submitted in duplicate to the Commissioner of Customs.
- (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
- (iii) hand over the duplicate form to the exporter for being submitted to the authorised dealer.

### **Declaration in Form SOFTEX**

- (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.
- (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.
- (iii) The triplicate shall be retained by the designated official for record.

### **Duplicate Declaration Forms to be retained with Authorised Dealers**

On the realization of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers.

Power of Authority to Ask for Evidence in Support Of Declaration

The **Commissioner of Customs or the postal authority or 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 –

- ✓ the full export value of the goods or software; or
- ✓ 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.

### **Payment of Export Value of Goods**

- ✓ **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.

- ✓ 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.

### **Period within which Export Value of Goods/Software/ Services to be Realised**

**The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months from the date of export**, provided

(2) (a) 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, then notwithstanding anything contained in subregulation (1), 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.

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 period of nine months.**

(b) The Reserve Bank may for reasonable and sufficient cause direct that the said exporter/s shall cease to be governed by sub-regulation (2);

Provided that no such direction shall be given unless the unit has been given a reasonable opportunity to make a representation in the matter.

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.

### **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.

(i) Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt. of a foreign state shall be governed by the terms and conditions set out in the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.

(ii) An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by these regulations accordingly.

## **Payment for the Export**

In respect of export of any goods or software for which a declaration is required to be furnished under Regulation 3, no person shall except with the permission of the Reserve Bank or, subject to the directions of the Reserve Bank, permission of an authorised dealer, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing –

(i) that the payment for the goods or software is made otherwise than in the specified manner; or

(ii) that the payment is delayed beyond the period specified under these Regulations; or

(iii) that the proceeds of sale of the goods or software exported do not represent the full export value of the goods or software subject to such deductions, if any, as may be allowed by the Reserve Bank or, subject to the directions of the Reserve Bank, by an authorised dealer

Provided that no proceedings in respect of contravention of these provisions shall be instituted unless the specified period has expired and payment for the goods or software representing the full export value, or the value after deductions allowed under clause (iii), has not been made in the specified manner within the specified period.

(iv) Export of services to which no Form specified in these Regulations apply, the exporter may export such services without furnishing any declaration, (i), (ii) & (iii) above shall apply.

## **Certain Exports Requiring Prior Approval**

Exports under trade agreement/rupee credit etc.

(i) Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt. of a foreign state shall be governed by the terms and conditions

set out in the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.

(ii) An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by the terms and conditions advised by the Reserve Bank to the authorised dealers from time to time.

✓ the **shipment of goods is made within one year from the date of receipt of advance** payment

✓ the **rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points** and

✓ the **documents** covering the shipment **are routed through** the **authorised dealer** through whom the advance payment is received

### **Delay in Receipt of Payment**

Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the **payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software** or who is entitled to sell the goods or software or procure the sale thereof, **such directions** as appear to it to be expedient, **for the purpose of securing,**

(a) the **payment** therefor if the goods or software has been sold and

(b) the **sale of goods and payment thereof**, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

## Advance Payment against Exports

**Where an exporter receives advance payment** (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the **exporter shall** be under an obligation to **ensure** that –

### Provision for Refund

Provided that **in** the event of the **exporter's inability to make the shipment**, partly or fully, within one year from the date of receipt of advance payment, **no remittance towards refund** of unutilized portion of advance payment or towards payment of interest, shall be **made** after the expiry of the period of one year, **without the prior approval of the Reserve Bank**.

### Exception

An exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of **one year** from the date of receipt of advance payment.

### Issue of Directions by Reserve Bank in Certain Cases

Without prejudice to the provisions of Regulation 3 in relation to the export of goods or software which is required to be declared, the Reserve Bank may, for the purpose of ensuring that the full export value of the goods or, as the case may be, the value which the exporter having regard to the prevailing market conditions expects to receive on the sale of goods or software in the overseas market, is received in proper time and without delay, by general or special order, direct from time to time that in respect of export of goods or software to any destination or any class of export transactions or any class of goods or software or class of exporters, the exporter shall, prior to the export, comply with the conditions as may be specified in the order, namely.

(a) that the payment of the goods or software is covered by an irrevocable letter of credit or by such other arrangement or document as may be indicated in the order

(b) that any declaration to be furnished to the specified authority shall be submitted to the authorised dealer for its prior approval, which may, having regard to the circumstances, be given or withheld or may be given subject to such conditions as may be specified by the Reserve Bank by directions issued from time to time.

## **Project Exports**

- Where an export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time.
- **In case a guarantee is required to be given prior to post award approval**, the same may be issued by an authorized dealer bank/ a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract / Letter of Award stipulates such requirements

## **Realisation and Repatriation of Foreign Exchange – Section 8**

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.

## **Exemptions from Repatriation – Section 9**

- 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;

The provisions of sections 4 and 8 shall not apply to the following, namely:

- c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on 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, service, 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.

## **Authorized Person – Section 10**

### **Appointment of Authorised Person**

✓ The **Reserve Bank may, on an application made** to it in this behalf, **authorise any person to be known as authorised person to deal in foreign exchange** or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

✓ An **authorisation** under this section shall be **in writing** and shall be subject to the conditions laid down therein

### **Revocation of Authorisation**

An **authorisation granted may be revoked** by the Reserve Bank **after giving reasonable opportunity of being heard** at any time **if the Reserve Bank is satisfied that:**

✓ it is **in public interest** so to do; or

✓ the **authorised person has failed to comply with the condition subject to which** the **authorisation** was **granted** or has contravened any of the provisions of the Act or any rule, regulation, notification, direction order made thereunder

### **Duties of Authorised Persons**

✓ Authorised Person shall **comply with such general or special directions** or orders as the Reserve Bank may, from time to time.

✓ **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 authorisation under this section.

## **Power of RBI to issue directions – Section 11**

✓ 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 authorised 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.**

✓ 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 authorised person to furnish such information, in such manner, as it deems fit.

## **Penalty**

✓ **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.**

## **Power of Reserve Bank to inspect Authorised Person – Section 12**

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:

- ✓ **verifying the correctness of any statement**, information or particulars furnished to the Reserve Bank;
- ✓ **obtaining any information** or particulars which such authorised person has failed to furnish on being called upon to do so;
- ✓ **securing compliance** with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

### **Duty to produce documents**

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.

## **Penalties – Section 13**

**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**.

### **Where Person Acquired Foreign Exchange Assets Exceeding Limit**

✓ If any **person** is **found to have acquired** any foreign **exchange**, foreign **security** or immovable **property**, situated **outside India**,

✓ of the aggregate value **exceeding** the **threshold** prescribed,

✓ he shall **be liable to a penalty up to three times the sum involved in such contravention and**

✓ **confiscation** of the value equivalent, situated in India, the Foreign exchange, foreign security or immovable property.

### **Additional Penalty**

**he shall be, in addition to the penalty imposed above, punishable with imprisonment for a term which may extend to five years and with fine.**

If the Adjudicating Authority, in a proceeding above deems fits, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a Criminal Complaint against the guilty person by an officer not below the rank of Assistant Director.

### **Other Direction by Adjudicating Authority**

Any Adjudicating Authority adjudging any contravention may, if he thinks fit in addition to any penalty 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. "property" in respect of which contravention has taken place, shall include—

- ✓ deposits in a bank, where the said property is converted into such deposits;
- ✓ Indian currency, where the said property is converted into that currency; and
- ✓ any other property which has resulted out of the conversion of that property.

## **Enforcement of 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 so.

(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.

### **Recovery of Penalty – Section 14A**

✓ The Adjudicating Authority may, by order in writing, authorise 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.

✓ The officer 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

### **Compounding of Offences – Section 15**

✓ Persons authorized by Central Government under section 15 i.e. classes of officers of the Enforcement Directorate and classes of officers of the RBI can act as Compounding Authority.

✓ 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.

✓ 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.

## Foreign Exchange (Compounding Proceedings) Rules 2000

### Compounding Not Permissible

✓ No contravention shall be compounded if an appeal has been filed by the applicant.

✓ Nothing shall apply to a contravention committed by any person within a period of **three years** from the date on which a similar contravention committed by him was compounded under these rules.

✓ Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

### Time limit

Sum for which contravention is compounded shall be paid within **15 days** and if applicant fails to pay the fee, it will be deemed that no application for compounding had ever been made by applicant and adjudication will restart.