

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

OBJECTIVES OF THE ACT

- Facilitating external trade
- For promoting the orderly development and maintenance of foreign exchange market in India.
- FEMA extends to the whole of India. It applies to all branches, offices and agencies outside India owned or controlled by a person, who is a resident of India.

FEATURES OF FEMA

- It is consistent with full current account convertibility and contains provisions for progressive liberalization of capital account transactions.
- It is more transparent in its application as it lays down the areas requiring specific permissions of the Reserve Bank/Government of India on acquisition/holding of foreign exchange.
- It classified the foreign exchange transactions in two categories, viz. capital account and current account transactions.
- It provides power to the Reserve Bank for specifying, in , consultation with the central government, the classes of capital account transactions and limits to which exchange is admissible for such transactions.
- It gives full freedom to a person resident in India, who was earlier resident outside India, to hold/own/transfer any foreign security/immovable property situated outside India and acquired when s/he was resident.
- This act is a civil law and the contraventions of the Act provide for arrest only in exceptional cases.

DEFINITIONS

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

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

"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;

“Current account transaction” means a transaction other than a capital account transaction and includes –

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

"foreign exchange" means foreign currency and includes,-

- (i) deposits, credits and balances payable in any foreign currency,
- (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

"Person" includes –

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses

"Repatriate to India" means bringing into India the realized foreign exchange and –

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

“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;

EXEMPTION FROM REALIZATION AND REPATRIATION IN CERTAIN CASES

- (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 RBI;
- (d) foreign exchange held by a PRI up to such limit as the RBI 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.

DUTIES OF THE EXPORTER

- To disclose the material information
- To ensure the receipts of export proceeds
- To inform delayed receipts
- To make declaration in respect of services

CONTRAVENTION AND PENALTY

Penalties [Section 13(1)]

If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to 2 lakh rupees where the amount is not quantifiable.

If any person fails to make full payment of the penalty imposed on him under section 13 within a period of 90 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.

(However, the defaulting person shall not be arrested or detained in civil prison unless Adjudicating Authority issue or serve a notice upon him to appear.)

THE DEFAULTER MUST BE AN OPPORTUNITY OF BEING HEARD

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 amount exceeding rupees one crore, up to three years, and

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

IMPORTANT PROVISIONS OF - ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY

1.Obstruction in recovery of Penalty:

- a) If the defaulter has obstructed the recovery of penalty, or dishonestly transferred, concealed, or removed any part of his property.
- b) If defaulter has means to pay the amount of penalty but refuses or neglects to pay the same.

2.Intend to Abscond

A warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if satisfied, that the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(A warrant of arrest issued by the Adjudicating Authority may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.)

(3) Non- Compliance of Served Notice:

The Adjudicating Authority may issue a warrant for the arrest of the defaulter if such person does not comply with notice issued and served to present himself before the authority.

(4)Presenting Arrested person before the authority

Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within 24 hours of his arrest (exclusive of the time required for the journey).

But, if the defaulter pays the amount entered in the warrant and the costs of arrest to the officer arresting him, he should be released at once.

(5) Opportunity of Being Heard

When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority shall give the defaulter an opportunity of being heard

(6) Detention in the Custody

Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security amount to the satisfaction of the Adjudicating Authority for his appearance as and when required.

Upon the conclusion of the inquiry, the defaulter will be released by giving an opportunity to satisfy the arrears of penalty with a period of 15 days.

If arrears are not satisfied, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and cause him to be arrested if he is not already under arrest. Sec 14(9) .

(7) Release of the Defaulter

When the Adjudicating Authority does not make an order of detention under Sec 14(9), he shall, if the defaulter is under arrest, direct his release.

(8) Execution of Certificate:

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 3 years, and
- (b) in any other case, up to 6 months:

Compounding of offence

All contravention punishable under section 13 can be compounded within 180 days from the date of receipt of application by the Director of Enforcement or other authorities.

— NO compounding allowed:

- (a) Where amount is not quantifiable.
- (b) appeal has been filed.
- (c) contravention has been repeated within 3 years contravention by an authorized dealer

