

The Foreign Exchange Management Act, 1999

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The Foreign Exchange Management Act, 1999¹

[Act 42 of 1999]

[29th December, 1999]

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

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

Statement of Objects and Reasons.—The Foreign Exchange Regulation Act, 1973 was reviewed in 1993 and several amendments were enacted as part of the on-going process of economic liberalisation relating to foreign investment and foreign trade for closer interaction with the world economy. At that stage, the Central Government decided that a further review of the Foreign Exchange Regulation Act would be undertaken in the light of subsequent developments and experience in relation to foreign trade and investment. It was subsequently felt that a better course would be to repeal the existing Foreign Exchange Regulation Act and enact a new legislation. Reserve Bank of India was accordingly asked to undertake a fresh exercise and suggest a new legislation. A Task Force constituted for this purpose submitted its report in 1994 recommending substantial changes in the existing Act.

2. Significant developments have taken place since 1993 such as substantial increase in our foreign exchange reserves, growth in foreign trade, rationalisation of tariffs, current account convertibility, liberalisation of Indian investments abroad, increased access to external commercial borrowings by Indian corporates and participation of foreign institutional investors in our stock markets.

3. Taking into consideration the above facts a Bill to repeal and replace the Foreign Exchange Regulation Act, 1973 was introduced in Lok Sabha on 4th August, 1998. The said Bill was referred to the Standing Committee on Finance, which submitted its report to the House on 23rd December, 1998 with certain modifications and suggestions. Before any decision could be taken by the Central Government on the recommendations of the Standing Committee on Finance, the 12th Lok Sabha was dissolved. Due to the dissolution of the Lok Sabha the Bill also lapsed.

4. After incorporating certain modifications and suggestions of the Standing Committee on Finance, the Central Government has decided to introduce the Foreign Exchange Management Bill and repeal the Foreign Exchange Regulation Act, 1973. The provisions of the Bill aim at consolidating and amending 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 markets in India.

5. The notes on clauses explain in detail various provisions contained in the Bill.

CASE LAW ► Scope of FEMA.—FEMA is a complete code in itself. Chapter V of FEMA, read with the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000, provides a complete network of provisions adequately structuring the rights and remedies available to a person who is aggrieved

1. Received the assent of the President on December 29, 1999 and published in the Gazette of India, Extra., Part II, Section 1, dated 29th December, 1999, pp. 1-19, No. 55.

by any adjudication under FEMA. The statutory scheme under Section 34 of FEMA is to exclude the jurisdiction of the civil court in express terms, *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772.

CHAPTER I PRELIMINARY

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

(2) It extends to the whole of India.

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

(4) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CASE LAW ► Commencement of Act.—When the Legislature fixes the date and clearly expresses the intention that the Act shall come into force from that date, it is immaterial whether the Bill after having been passed by both the Houses, receives the assent of the Governor or President, as the case may be, prior to such date or subsequently. In either case, the intention being express and manifest, the Act shall come into force on that date, *Guntur District Co-Operative Marketing Society Ltd. v. State of A.P.*, 1966 SCC Online AP 203.

► **Applicability of Act.**—Legislature clearly intended the 1999 Act to be prospective and not retrospective, *Union of India v. Nandalal Kushwaha*, 2004 SCC Online Cal 378.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “Adjudicating Authority” means an officer authorised under sub-section (1) of Section 16;
- ³[(b) “Appellate Tribunal” means the Appellate Tribunal referred to in Section 18;]
- (c) “Authorised person” means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of Section 10 to deal in foreign exchange or foreign securities;
- ⁴[(cc) “Authorised Officer” means an officer of the Directorate of Enforcement authorised by the Central Government under Section 37-A;]
- (d) “Bench” means a Bench of the Appellate Tribunal;
- (e) “capital account transaction” means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident

2. 1-6-2000 [Vide GSR 371(E), dated 1-5-2000].

3. Subs. by Act 7 of 2017, S. 165(a)(i) (w.e.f. 26-5-2017). Prior to substitution it read as:

‘(b) “Appellate Tribunal” means the Appellate Tribunal for Foreign Exchange established under Section 18;’.

4. Ins. by Act 20 of 2015, S. 138(B) (w.e.f. 9-9-2015).



outside India, and includes transactions referred to in sub-section (3) of Section 6;

- (f) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949;
- ⁵[(gg) "Competent Authority" means the Authority appointed by the Central Government under sub-section (2) of Section 37-A;]
- (h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;
- (i) "currency notes" means and includes cash in the form of coins and bank notes;
- (j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—
 - (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
 - (ii) payments due as interest on loans and as net income from investments,
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;
- (k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of Section 36;
- (l) "export", with its grammatical variations and cognate expressions, means—
 - (i) the taking out of India to a place outside India any goods,
 - (ii) provision of services from India to any person outside India;
- (m) "foreign currency" means any currency other than Indian currency;
- (n) "foreign exchange" means foreign currency and includes,—
 - (i) deposits, credits and balances payable in any foreign currency,
 - (ii) drafts, 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 person outside India, but payable in Indian currency;
- (o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in

foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

- (p) “import”, with its grammatical variations and cognate expressions, means bringing into India any goods or services;
- (q) “Indian currency” means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under Section 28-A of the Reserve Bank of India Act, 1934;
- (r) “legal practitioner” shall have the meaning assigned to it in clause (i) of sub-section (1) of Section 2 of the Advocates Act, 1961;
- (s) “Member” means a Member of the Appellate Tribunal and includes the Chairperson thereof;
- (t) “notify” means to notify in the Official Gazette and the expression “notification” shall be construed accordingly;
- (u) “person” includes—
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (vii) any agency, office or branch owned or controlled by such person;
- (v) “person resident in India” means—
 - (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—
 - (A) a person who has gone out of India or who stays outside India, in either case—
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than—
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or

- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
 - (ii) any person or body corporate registered or incorporated in India,
 - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
 - (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
- (w) “person resident outside India” means a person who is not resident in India;
- (x) “prescribed” means prescribed by rules made under this Act;
- (y) “repatriate to India” means bringing into India the 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,
 and 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;
- (z) “Reserve Bank” means the Reserve Bank of India constituted under sub-section (1) of Section 3 of the Reserve Bank of India Act, 1934;
- (za) “security” means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of Section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;
- (zb) “service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
- (zc) “Special Director (Appeals)” means an officer appointed under ⁶[Section 17];

6. Subs. for “Section 18” by Act 7 of 2017, S. 165(a)(ii) (w.e.f. 26-5-2017).

- (zd) “specify” means to specify by regulations made under this Act and the expression “specified” shall be construed accordingly;
- (ze) “transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

CHAPTER II

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

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

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- (b) make any payment to or for the credit of any person resident outside India in any manner;
- (c) receive otherwise 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.

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.

CASE LAW ► Foreign contribution.—Receiving “foreign exchange” is itself made subject to the Foreign Exchange Management Act, 1999. Conjoint reading of provisions of 1999 Act and regulatory mechanism provided for in Foreign Contribution (Regulation) Act, 2010, held, clearly establishes the strict regime to be followed by all concerned for allowing inflow of “foreign contribution” (donation) only in the manner prescribed and its utilisation only for definite purposes permitted by competent authority, *Noel Harper v. Union of India*, (2023) 3 SCC 544.

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

5. Current account transactions.—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 for current account transactions as may be prescribed.

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

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

- ⁷[(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;
- ⁸[(c) any conditions which may be placed on such transactions];

⁹[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 amortisation of loans or for depreciation of direct investments in the ordinary course of business.]

¹⁰[(2-A) 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.]
- (3) ¹¹[* * *]

7. *Subs.* by Act 20 of 2015, S. 139(A)(i) (w.e.f. 15-10-2019). Prior to substitution it read as:

“(a) Any class or classes of capital account transactions which are permissible;”

8. *Ins.* by Act 20 of 2015, S. 139(A)(ii) (w.e.f. 15-10-2019).

9. *Subs.* by Act 20 of 2015, S. 139(A)(iii) (w.e.f. 15-10-2019). Prior to substitution it read as:

“Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.”

10. *Ins.* by Act 20 of 2015, S. 139(B) (w.e.f. 15-10-2019).

11. *Omitted* by Act 20 of 2015, S. 139(C) (w.e.f. 15-10-2019). Prior to omission it read as:

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

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

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

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

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

¹²[(7) For the purposes of this section, the term “debt instruments” shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.]

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

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

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

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

8. Realisation and repatriation of foreign exchange.—Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued

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- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
 - (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.”

to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9. Exemption from realisation and repatriation in certain cases.—The provisions of Sections 4 and 8 shall not apply to the following, namely:—

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;
- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

CHAPTER III AUTHORISED PERSON

10. Authorised person.—(1) 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.

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

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

- (a) it is in public interest so to do; or
- (b) the 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 or order made thereunder:

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

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous

permission of the Reserve Bank, an authorised 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.

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

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised 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 thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

CASE LAW ► Violation of provisions.—Contravention of the 1999 Act or the Foreign Exchange Regulation Act, 1973 has created a strict liability. The violation of these two Acts would come within the meaning of economic offence and cannot be treated as technical offence. Hence, after initial committal and/or contravention of Section 10(6) of the 1999 Act, the violation continues till the time compliance is made, *Suborno Bose v. Appellate Tribunal for Foreign Exchange*, 2008 SCC OnLine Cal 638, See also *Suborno Bose v. Directorate of Enforcement*, (2020) 14 SCC 241.

► Vicarious liability.—Individual, who is venturing to go abroad by availing foreign exchange, should take a personal liability, because if anything goes wrong, then criminal liability would be fastened on such person. Merely, because employer signs a letter it would not be sufficient. If such person commits any criminal offence, it would be very difficult for enforcing authorities to fasten the very traveller, who violated provisions of the Act, *Elof Hansson (I) (P) Ltd. v. Prithvi Softech Ltd.*, 2011 SCC OnLine Mad 562.

11. Reserve Bank's powers to issue directions to authorised person.—(1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the 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.

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order

made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.

(3) 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.

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

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

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

CHAPTER IV

CONTRAVENTION AND PENALTIES

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

¹³[(1-A) 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 under the proviso to sub-section (1) of Section

37-A, 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.

(1-B) If the Adjudicating Authority, in a proceeding under sub-section (1-A) 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.

(1-C) 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 under the proviso to sub-section (1) of Section 37-A, he shall be, in addition to the penalty imposed under sub-section (1-A), punishable with imprisonment for a term which may extend to five years and with fine.

(1-D) No court shall take cognizance of an offence under sub-section (1-C) of Section 13 except as on complaint in writing by an officer not below the rank of Assistant Director referred to in sub-section (1-B).]

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

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

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

CASE LAW ► Illegally carrying on business.—Under the provisions of the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Establishment in India of a Branch Office or other Place of Business) Regulations, 2000, prior approval of the Reserve Bank of India is required for establishment of a branch or liaison office or office or any other place of business in India by any entity resident outside India other than a banking company, *IAE International Aero Engines AG v. Union of India*, 2017 SCC OnLine Kar 615.

14. Enforcement of the orders of Adjudicating Authority.—(1) Subject to the provisions of sub-section (2) of Section 19, if any person fails to make full

payment of the penalty imposed on him under Section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the 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 pay the same.

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

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

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

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

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

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

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

(8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the

Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

(9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

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

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

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

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

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

(12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

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

¹⁴[**14-A. Power to recover arrears of penalty.**—(1) Save as otherwise provided in this Act, 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.

(2) The officer referred to in sub-section (1) 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 (43 of 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.]

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

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

CHAPTER V

ADJUDICATION AND APPEAL

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

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

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

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

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

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

- (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code;
- (b) shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973.

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

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

CASE LAW ► Supply of documents.—Neither the rules of natural justice nor the provisions of the Foreign Exchange Management Act, 1999 or the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 require the supply of documents upon which no reliance has been placed by the authority to set the law into motion, *Kanwar Natwar Singh v. Director of Enforcement*, (2010) 13 SCC 255.

► Exercise of power by authority.—While holding inquiry into allegations of contravention, every adjudicating authority shall have the powers of a civil court under CPC in respect of the matters, namely, (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring discovery and production of documents; (c) receiving evidence on affidavits; (d) requisitioning any public record, document or copy of such record or document from any office; (e) issuing commissions for examination of witnesses or documents, etc., *Kanwar Natwar Singh v. Director of Enforcement*, (2010) 13 SCC 255 : AIR 2010 SC Supp 9.

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

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

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

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

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

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

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

- (a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code;
- (b) shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973.

¹⁵[**18. Appellate Tribunal.**—The Appellate Tribunal constituted under sub-section (1) of Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.]

CASE LAW ► Interpretation/Construction.—Word “reasonable” has to be viewed under the circumstances of each case and in consonance with the object of the Act, *Renuga Soft-X Towels v. Deputy Director, Directorate Enforcement, Shastri Bhavan*, 2010 SCC Online Mad 5619.

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

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

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

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

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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

15. Subs. by Act 7 of 2017, S. 165(b) (w.e.f. 26-5-2017). Prior to substitution it read as:

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

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

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

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

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

CASE LAW ▶ Condonation of Delay.—Under Section 52(2), FERA, a delay of only 90 days was permissible and beyond that delay was not condonable. Under Section 19(2) proviso, FEMA, there was no upper limit for condonation of delay. On a combined reading of Section 49, FEMA and Section 6, General Clauses Act, it is clear that procedure prescribed by FEMA would be applicable in respect of an appeal filed under FEMA though cause of action had arisen under FERA, *Thirumalai Chemicals Ltd. v. Union of India*, (2011) 6 SCC 739 : (2011) 3 SCC (Civ) 458, See also *Opera House Exports Ltd. v. Union of India*, (2014) 12 SCC 610.

20. Composition of Appellate Tribunal.—¹⁶[* * *]

¹⁷[21. Qualifications, for appointment of Special Director (Appeals).—A person shall not be qualified for appointment as a Special Director (Appeals) unless he—

16. Omitted by Act 7 of 2017, S. 165(c) (w.e.f. 26-5-2017). Prior to omission it read as:

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

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

- (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;
- (c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;
- (d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

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

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

17. Subs. by Act 7 of 2017, S. 165(d) (w.e.f. 26-5-2017). Prior to substitution it read as:

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

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

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



- (a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or
- (b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.]

22. Term of office.—¹⁸[* * *]

¹⁹[**23. Terms and conditions of service of Special Director (Appeals).**—The salary and allowances payable to and the other terms and conditions of service of the Special Director (Appeals) shall be such as may be prescribed.]

24. Vacancies.—²⁰[* * *]

25. Resignation and removal.—²¹[* * *]

26. Member to act as Chairperson in certain circumstances.—²²[* * *]

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- (a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or
 - (b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.”
18. *Omitted* by Act 7 of 2017, S. 165(e) (w.e.f. 26-5-2017). Prior to omission it read as:
 “22. *Term of office.*—The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:
 Provided that no Chairperson or other Member shall hold office as such after he has attained,—
 (a) in the case of the Chairperson, the age of sixty-five years;
 (b) in the case of any other Member, the age of sixty-two years.”
19. *Subs.* by Act 7 of 2017, S. 165(f) (w.e.f. 26-5-2017). Prior to substitution it read as:
 “23. *Terms and conditions of service.*—The salary and allowances payable to and the other terms and conditions of service of the Chairperson, other Members and the Special Director (Appeals) shall be such as may be prescribed:
 Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment.”
20. *Omitted* by Act 7 of 2017, S. 165(g) (w.e.f. 26-5-2017). Prior to omission it read as:
 “24. *Vacancies.*—If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.”
21. *Omitted* by Act 7 of 2017, S. 165(g) (w.e.f. 26-5-2017). Prior to omission it read as:
 “25. *Resignation and removal.*—(1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:
 Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.
 (2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.”
22. *Omitted* by Act 7 of 2017, S. 165(g) (w.e.f. 26-5-2017). Prior to omission it read as:
 “26. *Member to act as Chairperson in certain circumstances.*—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
 (2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.”

²³[**27. Staff of Special Director (Appeals).**—(1) The Central Government shall provide the office of the Special Director (Appeals) with such officers and employees as it may deem fit.

(2) The officers and employees of the office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Special Director (Appeals).

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

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

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation of default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court.

23. Subs. by Act 7 of 2017, S. 165(h) (w.e.f. 26-5-2017). Prior to substitution it read as:

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

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

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

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

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

29. Distribution of business amongst Benches.—²⁴[* * *]

30. Power of Chairperson to transfer cases.—²⁵[* * *]

31. Decision to be by majority.—²⁶[* * *]

32. Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers.—(1) A person preferring an appeal to the ²⁷[Special Director (Appeals)] under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the ²⁸[Special Director (Appeals)].

(2) The Central Government may authorise one or more legal practitioners or chartered accountants or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the ²⁹[Special Director (Appeals)].

³⁰[**33. Officers and employees, etc., to be public servant.**—The Adjudicating Authority, Competent Authority and the Special Director (Appeals) and other

24. Omitted by Act 7 of 2017, S. 165(i) (w.e.f. 26-5-2017). Prior to omission it read as:

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

25. Omitted by Act 7 of 2017, S. 165(i) (w.e.f. 26-5-2017). Prior to omission it read as:

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

26. Omitted by Act 7 of 2017, S. 165(i) (w.e.f. 26-5-2017). Prior to omission it read as:

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

27. Subs. for “Appellate Tribunal or the Special Director (Appeals)” by Act 7 of 2017, S. 165(j)(ii) (w.e.f. 26-5-2017).

28. Subs. for “Appellate Tribunal or the Special Director (Appeals), as the case may be” by Act 7 of 2017, S. 165(j)(i) (w.e.f. 26-5-2017).

29. Subs. for “Appellate Tribunal or the Special Director (Appeals), as the case may be” by Act 7 of 2017, S. 165(j)(i) (w.e.f. 26-5-2017).

30. Subs. by Act 7 of 2017, S. 165(k) (w.e.f. 26-5-2017). Prior to substitution it read as:

officers and employees of the Special Director (Appeals) shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).]

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

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

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

Explanation.—In this section “High Court” means—

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

CASE LAW ► Interpretation/Construction.—Expression “any decision or order of the appellate authority” is applicable not only to final orders but includes interlocutory orders and word “any” would mean “all”, *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772.

► **Maintainability of writ petition.**—Writ petition against Orders of Tribunal (including interlocutory orders) is not ordinarily maintainable and High Court should not entertain a writ petition against order of Tribunal when such order on a question of law, is appealable before the High Court under Section 35, *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772.

When a statutory forum is created for redressal of grievances, especially in a fiscal statute, a writ petition should not be entertained ignoring the statutory scheme. Liability of appellant under FEMA is a statutory liability for which statutory remedy is an appeal. High Court is itself the statutory forum of appeal, *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772.

► **Limitation.**—Appellant can seek exclusion of time under Section 14 of the Limitation Act, 1963. Section 35 of the Foreign Exchange Management Act, 1999 does not expressly exclude application of Section 14 of the Limitation Act, 1963, *Raj Kumar Shivhare v. Union of India*, 2011 SCC OnLine Bom 845.

“33. *Members, etc., to be public servants.*—The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Special Director (Appeals) and the Adjudicating Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.”

An appeal, which has not been preferred before the commencement of the 1999 Act can be preferred before the High Court within 60 days of such commencement, *Union of India v. Nandalal Kushwaha*, 2004 SCC OnLine Cal 378.

► **Appeal.**—A writ petition should not ordinarily be entertained if the petitioner has an alternative effective remedy by way of an appeal, *S.K. Khandelwal v. Special Director of Enforcement*, 2016 SCC OnLine Del 1040.

CHAPTER VI

DIRECTORATE OF ENFORCEMENT

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

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

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

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

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

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

³¹**[37-A. Special provisions relating to assets held outside India in contravention of Section 4.**—(1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

31. Ins. by Act 20 of 2015, S. 142 (w.e.f. 9-9-2015).

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

(3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

Explanation.—While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) Nothing contained in Section 15 shall apply to this section.]

CASE LAW ► Constitutional validity.—Section 37-A is constitutionally valid, *Xiaomi Technology India (P) Ltd. v. Union of India*, 2023 SCC OnLine Kar 24.

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

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

CHAPTER VII MISCELLANEOUS

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

- (i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or
- (ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,

and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall—

- (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

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

(2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.

(3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified

form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

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

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

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

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

Explanation.—For the purposes of this section—

- (i) “company” means any body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

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

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

44. Bar of legal proceedings.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything

in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

³²[**44-A. Powers of Reserve Bank not to apply to International Financial Services Centre.**—Notwithstanding anything contained in any other law for the time being in force, the powers exercisable by the Reserve Bank under this Act,—

- (a) shall not extend to an International Financial Services Centre set up under sub-section (1) of Section 18 of the Special Economic Zones Act, 2005 (28 of 2005);
- (b) shall be exercisable by the International Financial Services Centres Authority established under sub-section (1) of Section 4 of the International Financial Services Centres Authority Act, 2019,

insofar as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.]

45. Removal of difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty:

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

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

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

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

- (a) the imposition of reasonable restrictions on current account transactions under Section 5;
- ³³[(aa) the instruments which are determined to be debt instruments under sub-section (7) of Section 6;
- (ab) the permissible classes of capital account transactions in accordance with sub-section (2-A) of Section 6, the limits of admissibility of foreign exchange, and the prohibition, restriction or regulation of such transactions;]
- (b) the manner in which the contravention may be compounded under sub-section (1) of Section 15;
- (c) the manner of holding an injury by the Adjudicating Authority under sub-section (1) of Section 16;
- (d) the form of appeal and fee for filing such appeal under Sections 17 and 19;

32. Ins. by Act 50 of 2019, S. 33 and Sch. II (w.e.f. 1-10-2020).

33. Ins. by Act 20 of 2015, S. 143(i) (w.e.f. 15-10-2019).

- (e) the salary and allowances payable to and the other terms and conditions of service of the ³⁴[Special Director (Appeals)] under Section 23;
- (f) the salaries and allowances and other conditions of service of the officers and employees of the ³⁵[office of the Special Director (Appeals)] under sub-section (3) of Section 27;
- (g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of Section 28;
- ³⁶[(gg) the aggregate value of foreign exchange referred to in sub-section (1) of Section 37-A;]
- (h) the authority or person and the manner in which any document may be authenticated under clause (ii) of Section 39; and
- (i) any other matter which is required to be, or may be, prescribed.

47. Power to make regulations.—(1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.

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

- ³⁷[(a) the permissible classes of capital account transactions involving debt instruments determined under sub-section (7) of Section 6, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of such capital account transactions under Section 6;]
- (b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of Section 7;
- (c) the period within which and the manner of repatriation of foreign exchange under Section 8;
- (d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of Section 9;
- (e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of Section 9;
- (f) the limit up to which foreign exchange acquired may be exempted under clause (d) of Section 9;
- (g) the limit up to which foreign exchange acquired may be retained under clause (e) of Section 9;

34. Subs. for "Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals)" by Act 7 of 2017, S. 165(I)(i) (w.e.f. 26-5-2017).

35. Subs. for "Appellate Tribunal and the office of the Special Director (Appeals)" by Act 7 of 2017, S. 165(I)(ii) (w.e.f. 26-5-2017).

36. Ins. by Act 20 of 2015, S. 143(ii) (w.e.f. 9-9-2015).

37. Subs. by Act 20 of 2015, S. 144(A)(i) (w.e.f. 15-10-2019). Prior to substitution it read as:

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

³⁸[(ga) export, import or holding of currency or currency notes;]

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

³⁹[(3) All regulations made by the Reserve Bank before the date on which the provisions of this section are notified under Section 6 and Section 47 of this Act on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government.]

CASE LAW ► Provisions of FEMA and jurisdiction of SEBI.—There is no statutory prohibition either under FEMA or the RBI Act preventing SEBI from taking action on allegations of wrongdoing re interest of investors in securities and securities market, in exercise of its powers under Sections 11, 11-B and 12-A of the SEBI Act, 1992. That apart, under Section 11(3) of the SEBI Act it is provided that SEBI can exercise its powers under sub-section (2)(i) or (i-a) or sub-section (2-A) of Section 11, notwithstanding anything contained in any other law for the time being in force, meaning thereby, that for the action that can be taken for any of the violation under FEMA or RBI Act, SEBI can validly exercise its powers under the SEBI Act, 1992. Even under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 as well as the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, there are provisions which make specific reference to the role of SEBI in dealing with the securities, *SEBI v. Pan Asia Advisors Ltd.*, (2015) 14 SCC 71.

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

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

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

38. Ins. by Act 20 of 2015, S. 144(A)(ii) (w.e.f. 15-10-2019).

39. Ins. by Act 20 of 2015, S. 144(B) (w.e.f. 15-10-2019).

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

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

(5) Notwithstanding such repeal,—

- (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
- (b) any appeal preferred to the Appellate Board under sub-section (2) of Section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
- (c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

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

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

CASE LAW ► Filing of complaint under FERA.—An Enforcement Officer can file a complaint under repealed provisions of Foreign Exchange Regulation Act, 1973 during the sunset period of 2 years, after enforcement of Foreign Exchange Management Act, 1999, *First Global Stockbroking (P) Ltd. v. Anil Rishiraj*, 2023 SCC OnLine SC 1199.

NOTIFICATIONS**(1)**

Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs), Noti. No. S.O. 531(E), dated June 1, 2000, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 1st June, 2000, p. 1, No. 370 [F. No. A-12026/1/2000-Admn. IV(LA)]

In exercise of the powers conferred by Section 18 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby establishes, with immediate effect, the Appellate Tribunal for Foreign Exchange at New Delhi.

(2)

Ministry of Finance (Deptt. of Revenue), Noti. No. 534(E), dated June 1, 2000, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 1st June, 2000, pp. 1-2, No. 372 [Noti. No. 10/2000/F. No. 1/2/2000-Ad. I-C]

In exercise of the powers conferred under sub-section (1) of Section 36 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby establishes a Directorate called the Directorate of Enforcement with the following officers as "Officers of Enforcement" for the purposes of this Act, namely:—

- (a) Director of Enforcement;
- (b) Special Director of Enforcement;
- (c) Additional Director of Enforcement;
- (d) Joint Director of Enforcement;
- (e) Deputy Legal Adviser;
- (f) Assistant Director of Enforcement; and
- (g) Assistant Legal Adviser.

(3)

Ministry of Finance (Deptt. of Revenue), Noti. No. S.O. 536(E), dated June 1, 2000, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 1st June, 2000, p. 4, No. 372 [Notification No. 12/2000/(F. No. 1/2/2000-Ad.I-C.)]

In exercise of the powers conferred under sub-section (2) of Section 36 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby authorises the Director of Enforcement to appoint the Chief Enforcement Officer, Enforcement Officer and Assistant Enforcement Officer as Officers of Enforcement.

(4)

Ministry of Finance (Deptt. of Revenue), Noti. No. S.O. 537(E), dated June 1, 2000, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 1st June, 2000, p. 4, No. 372 [Notification No. 13/2000/(F. No. 1/2/2000-Ad.I-C.)]

In exercise of the powers conferred under the proviso to sub-section (1) of Section 19 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby notifies the Deputy Director of the Directorate of Enforcement of the concerned zone to accept the deposit of such penalty as imposed by the Adjudicating Authorities or the Special Director (Appeals) under the provisions of the Act.

(5)

Enforcement Directorate, Noti. No. DLA (S)/Misc/16/Legal/2003, S.O. 797(E), dated July 3, 2003, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 14th July, 2003, p. 1, No. 615 [F. No. T-19/02-Coord/03]

In pursuance of the Central Government Notification bearing No. S.O. 536(E), dated 1-6-2000, issued under sub-section (2) of Section 36 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in exercise of the powers conferred by the said notification, the persons holding office under the Foreign Exchange Regulation Act, 1973 (46 of 1973) as Chief Enforcement Officers, Enforcement Officers and Assistant Enforcement Officers are appointed as "Officers of Enforcement" with effect from the first day of June, 2000 for the purposes of the Foreign Exchange Management Act, 1999 (42 of 1999).

(6)

Reserve Bank of India (Foreign Exchange Department)(CENTRAL OFFICE), Noti. No. G.S.R. 944(E), dated March 7, 2012, published in the Gazette of India, Extra., Part II, Section 3(i), dated 31st December, 2012, p. 1, No. 674 [F. No. FEMA233/2012-RB]

In pursuance of clause (za) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA), the Reserve Bank notifies Indian Depository Receipts (IDRs) as defined under clause (c) of sub-rule (i) of Rule 3 of Companies (Issue of Indian Depository Receipts) Rules, 2004, as "security" for the purposes of FEMA.

(7)

Ministry of Finance (Deptt. of Revenue), Noti. No. S.O. 4990(E), dated September 27, 2018 and published in the Gazette of India, Extra., Part II, Section 3(ii), dated 27th September, 2018, p. 2, No. 3812 [F. No. K-11022/54/2018-Ad.-ED]

In exercise of the powers conferred by Section 16 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii) vide number S.O. 2564 (E), dated the 30th September, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the following officers of the Directorate of Enforcement specified in Column (2) of the Table below as adjudicating authorities to hold an inquiry for the purpose of adjudication under Section 13 of the said Act, involving an amount or value as specified in column (3) of the said Table.

TABLE

Sl. No.	Designation of Officers	Monetary limit
(1)	(2)	(3)
(1)	Director of Enforcement	Cases involving amount exceeding Rupees Twenty five crores.
(2)	Principal Special Director of Enforcement	Cases involving amount exceeding Rupees Twenty five crores.
(3)	Special Director of Enforcement	Cases involving amount exceeding Rupees Twenty five crores.

(4)	Additional Director of Enforcement	Cases involving amount upto Rupees Twenty five crores but not less than ten crores.
(5)	Joint Director of Enforcement	Cases involving amount upto Rupees Ten crores but not less than five crores.
(6)	Deputy Director of Enforcement	Cases involving amount upto Rupees Five crores and not less than two crores
(7)	Assistant Director of Enforcement	Cases involved of amount not exceeding Rupees Two crores.

(8)

Ministry of Finance (Deptt. of Revenue), Noti. No. S.O. 2565(E), dated September 30, 2014, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 30th September, 2014, pp. 3-4, No. 2023 [F. No. K-11022/80/2011-Ad.ED]

Whereas, the Foreign Exchange Management Act, 1999 (42 of 1999) was brought into force vide G.S.R 371(E) published in the Gazette of India, Part II, Section 3, sub-section (i) on 1st May, 2000 giving effect to the provisions of the said Act from 1st June, 2000.

And, whereas, the Central Government by orders published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii) vide G.S.R. Number 308(E) dated 20th March, 2003, 395(E) dated 31st March, 2003, 986(E) dated 28th August, 2003, 964(E) dated 25th August, 2003, 1394(E) dated 28th November, 2003 and 1424(E) dated 16th December, 2003 in exercise of the powers conferred by Section 50 read with sub-sections (1) and (3) of Section 4 of the Foreign Exchange Regulation Act, 1973 (46 of 1973) (repealed Act), appointed certain officers of the Central Government to adjudicate certain cases of contravention under the repealed Act;

Now, therefore, in exercise of the powers conferred by Section 50 read with sub-sections (1) and (3) of Section 4 of the repealed Act and sub-sections (3), (4) and (5) of Section 49 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of notification No. S.O. 1966(E), dated 24-8-2012, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the following officers of the Directorate of Enforcement under the Department of Revenue specified in column (2) of the Table below as adjudicating officers for the purpose of adjudicating cases involving an amount or value of contravention as specified in column (3) of the said Table in respect of those contraventions made on or before the 31st May, 2002 under the provisions of the repealed Act—

TABLE

Sl. No.	Designation of Officers	Amount or value of contravention
(1)	(2)	(3)
(1)	Director of Enforcement	Cases involving amount or value exceeding Rupees Ten crore

(2)	Special Director of Enforcement	Cases involving amount or value exceeding Rupees Ten crore
(3)	Additional Director of Enforcement	Cases involving an amount or value in excess of Rupees Five crore but not exceeding rupees ten crore
(4)	Joint Director of Enforcement	Cases involving an amount or value in excess of Rupees Two crore but not exceeding Rupees Five crore
(5)	Deputy Director of Enforcement	Cases involving an amount or value of Rupees Fifty lakh but not exceeding Rupees One crore
(6)	Assistant Director of Enforcement	Cases involving amount or value not exceeding Rupees Fifty lakh.

(9)

Ministry of Finance (Deptt. of Revenue), Noti. No. G.S.R. 10(E), dated January 6, 2016, published in the Gazette of India, Extra., Part II, Section 3(i), dated 6th January, 2016, p. 1, No. 10 [F. No. A-12011/02/2014-Ad.ED]

In exercise of the powers conferred by sub-section (2) of Section 37-A of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby appoints the Commissioner of Customs (Appeals), Delhi, Commissioner of Customs (Appeals), Mumbai-I, Commissioner of Customs (Appeals), Kolkata and Commissioner of Customs (Appeals-I), Chennai to be a Competent Authority under the said Act.

(10)

Ministry of Finance (Deptt. of Revenue), Noti. No. G.S.R. 701(E), dated September 16, 2015, published in the Gazette of India, Extra., Part II, Section 3(i), dated 16th September, 2015, p. 1, No. 564 [F. No. A-12011/02/2014-Ad.ED]

In exercise of the powers conferred by the proviso to sub-section (1) of Section 37-A of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby prescribes the mandatory threshold of the aggregate value of Foreign Exchange, Foreign Security or any immovable property, situated outside India as not less than Rupees One crore.

(11)

Ministry of Finance (Deptt. of Revenue), Noti. No. G.S.R. 702(E), dated September 16, 2015, published in the Gazette of India, Extra., Part II, Section 3(i), dated 16th September, 2015, p. 2, No. 564 [F. No. A-12011/02/2014-Ad.ED]

In exercise of the powers conferred by sub-section (1) of Section 37-A of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby authorises, the officers of the Directorate of Enforcement, not below the rank of Assistant Director, to act as the Authorised Officer.

(12)

Ministry of Finance (Deptt. of Economic Affairs), Noti. No. S.O. 3722(E), dated October 16, 2019, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 16th October, 2019, p. 2, No. 3384 [F. No. 1/14/EM/2015]

In exercise of the powers conferred by sub-section (7) of Section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby determines the following instruments as debt instruments, namely—

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by Indian firms through loans;
- (v) depository receipts whose underlying securities are debt securities.

2. Instruments specified below shall be considered as non-debt instruments, namely—

- (i) all investments in equity in incorporated entities (public, private, listed and unlisted);
- (ii) capital participation in Limited Liability Partnerships (LLPs);
- (iii) all instruments of investment as recognised in the FDI policy as notified from time to time;
- (iv) investment in units of Alternative Investment Funds (AIFs) and Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvITs);
- (v) investment in units of mutual funds and Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
- (vi) the junior-most layer (i.e. equity tranche) of securitisation structure;
- (vii) acquisition, sale or dealing directly in immovable property;
- (viii) contribution to trusts;
- (ix) depository receipts issued against equity instruments.

3. All other instruments which are not specified in paragraphs (1) and (2) above, shall be deemed as debt instruments.
