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## **FOREIGN EXCHANGE REGULATION ACT, 1973**

### **46 of 1973**

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## **FOREIGN EXCHANGE REGULATION ACT, 1973**

### **46 of 1973**

[ ]

An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting, foreign exchange and 'the import and export of currency 1[\* \* \*], for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interests of the economic development of the country BE IT ENACTED BY PARLIAMENT IN THE TWENTY-FOURTH YEAR OF THE REPUBLIC OF INDIA AS FOLLOWS :-

#### **1. Short title, extent, application and commencement :-**

(1) This Act may be called the Foreign Exchange Regulation Act, 1973.

(2) It extends to the whole of India.

(3) It applies also to all citizens of India outside India and to branches and agencies outside India of companies or bodies corporate, registered or incorporated in India.

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

## **2. Definitions :-**

In this Act, unless the context otherwise requires, -

(a) "Appellate Board" means the Foreign Exchange Regulation Appellate Board constituted by the Central Government under sub-section (1) of section 52;

( b) "authorised dealer" means a person for the time being authorised under section 6 to deal in foreign exchange;

(c) "bearer certificate" means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

(d) "certificate of title to a security" means any document used in the ordinary course of business as proof of the possession or control of the security, or authorising or purporting to authorise, either by an endorsement or by delivery, the possessor of the document to transfer or receive the security thereby represented;

(e) "coupon" means a coupon representing dividends or interest on a security;

(f) "currency" includes all coins, currency notes, bank notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letters of credit, bills of exchange and promissory notes;

(g) "foreign currency" means any currency other than Indian currency;

(h) "foreign exchange" means foreign currency and includes-

(i) all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;

(ii) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other;

(i) "foreign security" means any security created or issued elsewhere than in India, and any security the principal of or

interest on which is payable in any foreign currency or elsewhere than in India;

<sup>1</sup>[(j) Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993,w.r.e.f. 8-1-1993.]

(k) "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 S.28A of the Reserve Bank of India Act, 1934;

(l) "Indian customs waters" means the waters extending into the sea to a distance of twelve nautical miles measured from the appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river;

(m) "money-changer" means a person for the time being authorised under section 7 to deal in foreign currency;

(n) "overseas market", in relation to any goods, means the market in the country outside India and in which such goods are intended to be sold;

(o) "owner", in relation to any security, includes any person who has power to sell or transfer the security, or who has the custody thereof or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other person, the trust or any terms thereof, or to control the investment of the trust moneys;

(p) "person resident in India" means -

(i) a citizen of India, who has, at any time after the 25th day of March, 1947, been staying in India, but does not include a citizen of India who has gone out of, or 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;

(ii) a citizen of India, who having ceased by virtue of paragraph (a) or paragraph (b) or paragraph (c) of sub-clause (i) to be resident in India, returns to, or stays in, India, in either case-

(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;

(iii) a person, not being a citizen of India, who has come to, or stays in, India, in either case-

(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 staying with his or her spouse, such spouse being a person resident in India, or

(d) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(iv) a citizen of India, who, not having stayed in India at any time after the 25th day of March, 1947, comes to India for any of the purposes referred to in paragraphs (a), (b) and (c) of sub-clause (iii) or for the purpose and in the circumstances referred to in paragraph (d) of that sub-clause or having come to India stays in India for any such purpose and in such circumstances. Explanation: A person, who has, by reason only of paragraph (a) or paragraph (b) or paragraph (d) of sub-clause (iii) been resident in India, shall, during any period in which he is outside India, be deemed to be not resident in India;

(q) "person resident outside India" means a person who is not resident in India;

(r) "precious stone" includes pearl and semi-precious stone and such other stone or gem as the Central Government may, for the purposes of this Act, notify in this behalf in the Official Gazette;

(s) "prescribed" means prescribed by rules made under this Act;

(t) "Reserve Bank" means the Reserve Bank of India;

(u) "security" means shares, stocks, bonds, debentures, debenture

stock, Government securities as defined in Public Debt Act, 1944, savings certificates to which Government Savings Certificates Act, 1959, applies, deposit receipts in respect of deposits of securities, and units or sub-units of unit trusts and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes;

**2** (v) Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

(w) "transfer", in relation to any security, includes transfer by way of loan or security.

1. Prior to its omission, clause (j) read as under : (j) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not and jewellery or articles made wholly or mainly of gold. Explanation: Any jewellery or article which contains gold shall be deemed to be made wholly or mainly of gold, if the value of the gold contained therein exceeds such percentage (not being below forty per cent), as the Reserve Bank may, from time to time, notify in the Official Gazette, of the value of such jewellery or article;

2. Prior to its omission, clause (v) read as under: (v) "silver" includes silver bullion or ingot, silver sheets and plates which have undergone no process of manufacture subsequent to rolling and uncurrent silver coin which is not legal tender in India or elsewhere and jewellery or articles made wholly or mainly of silver,'

### **3. Classes of officers of Enforcement :-**

There shall be the following classes of officers of Enforcement, namely:-

(a) Directors of Enforcement:

(b) Additional Directors of Enforcement;

(c) Deputy Directors of Enforcement;

(d) Assistant Directors of Enforcement; and

(e) such other class of officers of Enforcement as may be appointed for the purposes of this Act.

### **4. Appointment and powers of officers of Enforcement :-**

(1) The Central Government may appoint such persons as it thinks fit to be officers of Enforcement.

(2) Without prejudice to the provisions of sub-section (1), the

Central Government may authorise a Director of Enforcement or an Additional Director of Enforcement or a Deputy Director of Enforcement or an Assistant Director

(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.

#### **5. Entrustment of functions of Director or other officer of Enforcement :-**

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 specified in the order.

#### **6. Authorised dealers in foreign exchange :-**

(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign exchange.

(2) An authorisation under this section shall be in writing and-

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts;

(iv) may be granted subject to such conditions as may be specified therein.

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

(i) it is in the public interest to do so; or

(ii) the authorised dealer has not complied with the conditions

subject to which the authorisation was granted or has contravened any of the provisions of this Act or of any rule, notification, direction or order-made thereunder: Provided that no such authorisation shall be revoked on the ground specified in clause (ii) unless the authorised dealer has been given a reasonable opportunity for making a representation in the matter.

(4) An authorised dealer shall, in all his dealings in foreign exchange and in the exercise and discharge of the powers and of the functions delegated to him under section 74, comply with such general or special directions or instructions 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 dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

(5) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations 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, 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 dealer shall refuse 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.

## **7. Money-changers :-**

(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign currency.

(2) An authorisation under this section shall be in writing and-

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted with respect to a particular place where alone the money-changer shall carry on his business;

(iv) maybe granted to be effective for a specified period, or within specified amounts;

(v) may be granted subject to such conditions as may be specified therein.

(3) Any authorisation granted under sub-section (1) may berevoked by the Reserve Bank at any time if the Reserve Bank is satisfied that-

(i) it is in the public interest to do so; or

(ii) the money-changer has not complied with the conditions subject to which the authorisation was granted or has contravened any of the provisions of this Act or of any rule, notification, direction or order made thereunder: Provided that no such authorisation shall be revoked on the ground specified in clause (ii) unless the money-changer has been given a reasonable opportunity for making a representation in the matter.

(4) The provisions of sub-sections (4) and (5) of section 6 shall, insofar as they are applicable, apply in relation to a money-changer as they apply in relation to an authorised dealer. Explanation: In this section, "foreign currency" means foreign currency in the form of notes, coins or traveller's cheques and "dealing" means purchasing foreign currency in the form of notes, coins or traveller's cheques or selling foreign currency in the form of notes or coins.

## **8. Restrictions on dealing in foreign exchange :-**

(1) Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange: Provided that nothing in this sub-section shall apply to any purchase or sale of foreign currency effected in India between any person and a money- changer. Explanation : For the purposes of this sub-section, a .person, who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such

other person.

(2) Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer or a money-changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank.

(3) Where any foreign exchange is acquired by any person, other than an authorised dealer or a money-changer, for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or the conditions cannot be complied with, the said person shall, within a period of thirty days from the date on which he comes to know that such foreign exchange cannot be so used or the conditions cannot be complied with, sell the foreign exchange to an authorised dealer or to a money-changer.

(4) For the avoidance of doubt, it is hereby declared that where a person acquires foreign exchange for sending or bringing into India any goods but sends or brings no such goods or does not send or bring goods of a value representing the foreign exchange acquired, within a reasonable time or sends or brings any goods of a kind, quality or quantity different from that specified by him at the time of acquisition of the foreign exchange, such person shall, unless the contrary is proved, be presumed not to have been able to use the foreign exchange for the purpose for which he acquired it or, as the case may be, to have used the foreign exchange so acquired otherwise than for the purposes for which it was acquired.

(5) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

## **9. Restrictions on payments :-**

(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve

Bank, no person in, or resident in, India shall-

(a) make any payment to or for the credit of any person resident outside India;

(b) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India. Explanation: For the purposes 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 dealer) 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 dealer;

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;

(d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;

(e) place any sum to the credit of any person resident outside India;

(f) make any payment to, or for the credit of, any person or receive any payment for, or by order or on behalf of, any person as consideration for or in association with,-

(i) the receipt by any person of a payment or the acquisition by any person of property outside India,

(ii) the creation or transfer in favour of any person of a right (whether actual or contingent) to receive payment or acquire property outside India;

(g) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (f).

(2) Nothing in sub-section (1) shall render unlawful-

(a) the making of any payment already authorised either with foreign exchange obtained from an authorised dealer or a money-

changer under section 8 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Reserve Bank;

(b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from any business in, or anything done while in, India.

(3) Save as may be provided in, and in accordance with, any general or special exemption from the provisions of this subsection, which may be granted conditionally or unconditionally by the Reserve Bank, no person shall remit or cause to be remitted any amount from any foreign country into India except in such a way that the remittance is received in India only through an authorised dealer.

(4) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(5) For the purposes of this section and section 19, "security" includes coupons or warrants representing dividends or interests and life or endowment insurance policies.

#### **10. Blocked accounts :-**

(1) Where an exemption from the provisions of section 9 is granted by the Reserve Bank in respect of payment of any sum to any person resident outside India and the exemption is made subject to the condition that the payment is made to a blocked account-

(a) the payment shall be made to a blocked account in the name of that person in such manner as the Reserve Bank may by general or special order direct;

(b) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(2) No sum standing at the credit of a blocked account shall be drawn on except in accordance with any general or special permission which may be granted conditionally or otherwise by the Reserve Bank.

(3) In this section "blocked account" means an account opened, whether before or after the commencement of this Act, as a

blocked account at any office or branch in India of a bank authorised in this behalf by the Reserve Bank, or an account blocked, whether before or after such commencement, by order of the Reserve Bank.

### **11. Restrictions regarding assets held by non-residents :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993}

1. Prior to omission, section I I read as under : "Where the Reserve Bank considers it necessary or expedient in the public interest so to do in respect of any asset in India held by or accruing to or transferred to or to be transferred to, either a person resident outside India or a person intending to become resident outside India, it may impose a condition that the said asset shall not be transferred, assigned, pledged, charged or dealt with in any manner whatsoever except in accordance with any general or special permission, which may be granted conditionally or otherwise, by the Reserve Bank.'

### **12. Special accounts :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

1. Prior to omission, section 12 read as under: "(1) Where in the opinion of the Central Government it is necessary or expedient to regulate payments due to persons resident in any territory, the Central Government may, by notification in the Official Gazette, direct that such payments or any class of such payments shall be made only into an account (hereafter in this section referred to as a special account) to be maintained for the purpose by the Reserve Bank or an authorised dealer specially authorised by the Reserve Bank in this behalf. (2) The credit of a sum to a special account shall, to the extent of the sum credited, be a good discharge to the person making the payment : Provided that where the liability of the person making the payment is to make the payment in foreign currency, the extent of the discharge shall be ascertained by converting the amount paid into that currency at such rate of exchange as is for the time being authorised by the Reserve Bank. (3) The sum standing to the credit of any special account shall, from time to time, be applied (a) where any agreement is entered into between the Central Government and the Government of the territory to which the aforesaid notification relates, for the regulation of payments between persons resident in India and in that territory, in such manner as the Reserve Bank, having regard to the provisions of such agreement, may direct, or (b) where no such agreement is entered into, for the purpose of paying wholly or partly, and in such order of preference and -at such times as the Central Government may direct, debts due from the persons

resident in the said territory to persons resident in India or in such other territories as the Central Government may by order specify in this behalf."

### **13. Restrictions on import and export of certain currency and bullion :-**

(1) The Central Government may, by notification in the Official Gazette, order that, subject to such exemption, if any, as may be specified in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into India <sup>1</sup>[\* \* \*] any foreign exchange or any Indian currency. Explanation: For the purposes of this sub-section, the bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or, as the case may be, sending, into India of that article.

(2) No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank, take or send out of India any <sup>2</sup> [\* \* \*] Indian currency or foreign exchange other than foreign exchange obtained by him from an authorised dealer or from a money-changer.

1. Words "any gold or silver or' omitted by the Foreign Exchange Regulation (Amendment) Act,1993, w.r.e.f. 8-1-1993.

2. Words "gold, jewellery or precious stones or' omitted, the Foreign Exchange Regulation (Amendment) Act,1993

### **14. Acquisition by Central Government of foreign exchange**

:-

The Central Government may, by notification in the Official Gazette, order every person in, or resident in, India-

(a) who owns or holds such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered, for sale to the Reserve Bank on behalf of the Central Government or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which is not less than the price calculated at the rate of exchange for the time being authorised by the Reserve Bank;

(b) who is entitled to assign any right to receive such foreign

exchange as may be specified in the notification, to transfer that right to the Reserve Bank on behalf of the Central Government on 'payment of such consideration therefor as the Central Government may fix having regard to the rate for the time being authorised by the Reserve Bank in pursuance of sub-section (2) of section 8 for conversion into Indian currency of the foreign currency in which such foreign exchange is expressed: Provided that the Central Government may, by the said notification or by a separate order, exempt any person or class of persons from the operation of the order made in the said notification: Provided further that nothing in this section shall apply to any foreign exchange acquired by a person from an authorised dealer or from a money-changer and retained by him with the permission of the Reserve Bank for any purpose.

**15. Power of Central Government to direct payment In foreign currency In certain cases :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

1. Prior to omission, section 15 read as under: (1) Notwithstanding anything contained in the Indian Coinage Act, 1906 (3 of 1906), or in the Reserve Bank of India Act, 1934 (2 of 1934), or in any other law for the time being in force, the Central Government may, by notification in the Official Gazette, direct that every person resident outside India and who is on a visit to India shall, for discharging such of his liabilities as may be specified in the notification, make payments only in such foreign currencies as may be specified therein. (2) Where payment is required to be made under sub-section (1) in any foreign currency, the person to whom such payment is made shall receive the payment only in such foreign currency. (3) The Central Government may, if it is of opinion that it is necessary or expedient in the public interest so to do, by notification in the Official Gazette, exempt any person or class of persons from the operation of the provisions of sub-section (1)

**16. Duty of persons entitled to receive foreign exchange, etc :-**

(1) No person who has a right to receive any foreign exchange or to receive from a person resident outside India a payment in rupees shall, except with the general or special permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing-

(a) that the receipt by him of the whole or part of that foreign

exchange or payment is delayed, or

(b) that the foreign exchange or payment ceases in whole or in part to be receivable by him.

(2) Where a person has failed to comply with the requirements of sub-section (1) in relation to any foreign exchange or payment in rupees, the Reserve Bank may give to him such directions as appear to be expedient for the purpose of securing the receipt of the foreign exchange or payment, as the case may be.

### **17. Power to regulate the uses, etc., of imported gold and silver :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

1. Prior to omission, section 17 read as under: "The Central Government may, by notification in the Official Gazette, impose such conditions as it thinks necessary or expedient on the use or disposal of, or dealings in, gold and silver prior to, or at the time of, import into India.

### **18. Payment for exported goods :-**

(I)

(a) The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing-

(i) the full export value of the goods; or

(ii) 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 the overseas market, and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.

(b) If the Central Government is of opinion that it is necessary or

expedient in the public interest so to do, it may, by notification in the Official Gazette, specify any goods, from among those goods to which a notification under clause (a) applies, and direct that in respect of the goods so specified, where

(2) Where any export of goods, to which a notification under clause (a) of sub-section (1) applies, has been made, no person shall, except with the permission of the Reserve Bank, do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing-

(A) in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1),-

(a) that payment for the goods-

(i) is made otherwise than in the prescribed manner, or

(ii) is delayed beyond the period prescribed under clause (a) of sub-section (1), or

(b) that the proceeds of sale of the goods exported do not represent the full export value of the goods subject to such deductions, if any, as may be allowed by the Reserve Bank; and

(B) in a case falling under sub-clause (ii) of clause (a) of sub-section (1), also that the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade : Provided that no proceedings in respect of any contravention of the provisions of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full export value has not been made in the prescribed manner within the prescribed period.

(3) Where in relation to any goods to which a notification under clause (a) of sub-section (1) applies the prescribed period has expired and payment therefor has not been made as aforesaid, it shall be presumed, unless the contrary is proved by the person who has sold or is entitled to sell the goods or to procure the sale thereof, that such person has not taken all reasonable steps to receive or recover the payment for the goods as aforesaid and he shall accordingly be presumed to have contravened the provisions of sub-section (2).

(4) Where in relation to any goods to which a notification under clause (a) of sub-section (1) applies the prescribed period has

expired and payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or who is entitled to sell the goods or procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing-

(i) if the goods have been sold, the payment therefor, or

(ii) if the goods have not been sold, either the sale of the goods and payment therefor as aforesaid, or the re-import of the goods into India as the circumstances permit,

(5) Where any goods or a right to receive payment or any other right to enforce such payment, are or is transferred or assigned in accordance with sub-section (4), the Central Government shall pay to the person transferring or assigning the same, the amount recovered by or on behalf of the Central Government in respect of the goods, after deducting all costs, charges and expenses incurred by the Central Government in selling the goods or in recovering or realising the amount in respect of such goods.

(6) Without prejudice to the provisions of sub-section (1), where the value of the goods specified in the declaration furnished under that sub-section is less than the amount which in the opinion of the Reserve Bank, in a case falling under sub-clause (i) of clause (a) of that sub-section, represents the full export value of those goods, or in a case falling under sub-clause (ii) of that clause, the value which the exporter can, having regard to the prevailing market conditions, expect to receive on the sale of the goods in the overseas market, the Reserve Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of. an amount which in the opinion of the Reserve Bank represents the full export value of such goods or the value which the exporter, having regard to the prevailing market conditions, can be expected to receive on the sale of the goods in the overseas market.

(7) For the purpose of ensuring compliance with the provisions of this section and any order or direction made thereunder, the Reserve Bank or the prescribed authority referred to in sub-section (1) may require any person making any export of goods to which a

notification under clause (a) of that sub-section applies to exhibit contracts with his foreign buyer or other evidence to show that the full export value of the goods, or, as the case may be, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, has been, or will within the prescribed period be, paid in the prescribed manner.

(8) Without prejudice to the provisions of sub-section (1), where the Reserve Bank has permitted any authorised dealer to accept for negotiation or collection of shipping documents covering exports from his constituent [not being a person who has signed the declaration in terms of sub-section (10)], such authorised dealer shall, before accepting such documents for negotiation or collection, require the constituent concerned also to sign such declaration and thereupon such constituent shall be bound to comply with such requisition and the original declarant and such constituent signing the declaration shall each be considered to be the exporter for the purposes of this section, and shall be governed by the provisions thereof accordingly.

(9) Without prejudice to the provisions of sub-section (1), in relation to export of goods to which a notification under clause (a) of that sub-section applies, the Reserve Bank may, for the purpose of ensuring that the full export value of the goods or, as the case may be, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the overseas market, is received in proper time or without delay, by general or special order, direct from time to time, that in respect of export of goods to any destination or any class of export transactions or any class of goods, or class of exporters, the exporter shall, prior to the export of the goods, comply with any or all of the following conditions as may be specified in the order, namely:-

(a) that any contract or other arrangement for the sale of the goods shall be registered in such manner and with such authority or organisation as may be specified in the order;

(b) that the payment for the goods is covered by an irrevocable letter of credit or by such other arrangement or document as may be specified in the order ;

(c) that a copy of the declaration to be furnished to the prescribed

authority under sub-section (1) shall be submitted to such authority or organisation as may be specified in the order for certifying that the value of the goods specified in such declaration represents the proper value thereof;

(d) that any declaration to be furnished to the prescribed authority under sub-section (1) shall be submitted to the Reserve Bank for its prior approval, which may, having regard to the circumstances, be given or withheld or may be given subject to such conditions as the Reserve Bank may deem fit to impose : Provided that no approval shall be withheld by the Reserve Bank under this clause unless the exporter has been given a reasonable opportunity for making a representation in the matter.

(10) Where the Central Government is of opinion that, in respect of any goods or class of goods or class of exporters, or in respect of export to any destination, the practice of exporting goods in accordance with any term to the effect that the goods will be sold on account of the exporter and the account of such sales rendered to the exporter has resulted or is likely to result in the full export value of the goods not being brought into India in the prescribed manner or within the prescribed period, it may, by general or special order, prohibit the export, in accordance with such term, of such goods or class of goods or by such exporters or to such destination.

**18A. Payment for lease, hire or other arrangement :-**

No person shall, except with the general or special permission of the Reserve Bank, take or send out by land, sea or air any goods from India to any place on lease or hire or under any arrangement other than sale or disposal in any other manner of such goods.]

**19. Regulation of export and transfer of securities :-**

(1) Notwithstanding anything contained in S.81 OF THE Companies Act, 1956, no person shall, except with the general or special permission of the Reserve Bank, -

(a) take or send any security to any place outside India ;

(b) transfer any security, or create or transfer any interest in a security, to or in favour of a person resident outside India ;

(c) <sup>1</sup>[\* \* \*]

(d) issue, whether in India or elsewhere, any security which is

registered or to be registered in India, to a person resident outside India ;

(e) acquire, hold or dispose of any foreign security.

(2) Where the holder of a security is a nominee, neither he nor any person through whose agency the exercise of all or any of the holder's rights in respect of the security is controlled shall, except with the general or special permission of the Reserve Bank, do any act, whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives

(3) The Reserve Bank may, for the purpose of securing that the provisions of this section are not evaded, require that the person transferring any security and the person to whom such security is transferred shall subscribe to a declaration that the transferee is not resident outside India.

(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Reserve Bank,-

(a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

(b) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of the security or otherwise, an address outside India except by way of substitution, for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address, or

(c) <sup>2</sup>[\* \* \*]

**3**

[(5) Notwithstanding anything contained in any other law, no transfer of any share, bond or debenture of a company registered in India made by a person resident outside India or by a national of a foreign State to another person resident in India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee.

(6) If the Reserve Bank is of opinion that it is necessary or

expedient in the public interest so to do, it may, by general or special permission, exempt any transfer referred to in sub-section (5) or any class of such transfers from the operation of the provisions of that sub-section, subject to such conditions, if any, as may be specified in such permission.]

(7) For the purposes of this section,-

(a) "holder", in relation to a bearer security, means the person having physical custody of the security; provided that, where a bearer security is deposited with any person in a locked or sealed receptacle from which the person with whom it is deposited is not entitled to remove it without the authority of some other person, that other person shall be deemed to be the holder of the security;

(b) "nominee" means a holder of any security (including a bearer security) or any coupon representing dividends or interest who, as respects the exercise of any rights in respect of the security or coupon, is not entitled to exercise those rights except in accordance with the instructions given by some other person, and a person holding a security or coupon as a nominee shall be deemed to act as nominee for the person who is entitled to give instructions either directly or through the agency of one or more persons, as to the exercise by the holder of the security or coupon of any rights in respect thereof and is not, in so doing, himself under a duty to comply with instructions given by some other person.

1. Omitted, the Foreign Exchange Regulation (Amendment) Act, 1993. Prior to omission, clause (c) reads as under: (c) transfer any security from a register in India to a register outside India or do any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in, or registered in, India, of any security which is either outside, or registered outside, India ;

2. Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, W.r.e.f. 8-1 -1993. Prior to omission, clause (c) reads as under : (c) transfer any share from a register outside India to a register in India.

3. Substituted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to substitution, sub-sections (5) and (6) read as under: (5) Notwithstanding anything contained in any other law, no transfer of any share of a company registered in India made by a person resident outside India or by a national of a foreign State to another person whether resident in India or outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transferee. (6) If the Central Government is of opinion that it is

necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt any transfer referred to in sub-section (5) or class of such transfers from the- operation of the provisions of that sub-section, subject to such conditions, if any, as may be specified in the notification.'

## **20. Restrictions on payment in respect of certain securities**

:-

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993,w.r.e.f. 8-1-1993.]

1. Prior to omission, section 20 reads as under : Restrictions on payment in respect of certain securities.-Notwithstanding anything contained in any other law or in any contract, agreement or other instrument, the holder of any Government security, as defined in the Public Debt Act, 1944 (18 of 1944), created and issued for the purpose of raising a public loan before the 15th day of August, 1947, in respect of which the principal or interest or both are for the time being payable outside India in any country or place notified in this behalf by the Central Government, shall not be entitled, except with the general or special permission of the Reserve Bank, to have any such payment made at anyplace in India. Explanation : In this section, "holder" shall have the same meaning as in clause (a) of sub- section (7) of section 19.

## **21. Custody of securities :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993,w.r.e.f. 8-1-1993.]

1. Prior to omission, section 21 reads as under: Custody of securities.-(1) The Central Government may, by notification in' the Official Gazette, order every person by whom or on whose behalf a security or certificate of title to a security specified in the order is held in India to cause the said security or certificate of title to be kept in the custody of an authorised depository named in the order : Provided that the Reserve Bank may, by order in writing, permit any such security to be withdrawn from the custody of the authorised depository subject to such conditions as may be specified in the order. (2) No authorised depository may part with any security covered by an order under sub-section (1) without the general or special permission of the Reserve Bank except to, or to the order of, another authorised depository. (Canid. on p. 9631 (Contd. from p. 962) (3) Except with the general or special permission of the Reserve Bank, no authorised depository shall- (a) accept or part with any security covered by an order under sub-section (1) whereby the security is transferred to the name of a person resident outside India, or (b) do any act whereby he recognises, or gives effect to the substitution of another person as the person from whom he directly receives instructions relating to such security unless the person previously so instructing him and

the person substituted for that person were, immediately before the substitution, resident in India. (4) Except with the general or special permission of the Reserve Bank, no person shall purchase, sell or transfer any security, or certificate of title to a security, covered by an order under sub-section (1) unless such security or certificate of title has been deposited in accordance with the order under sub-section (1). (5) Except with the general, or special permission of the Reserve Bank, no capital moneys, interest or dividends in respect of any security covered by an order under sub-section ( 1 ) shall be paid in India except to or to the order of the authorised depository having the custody of the security. (6) For the purposes of this section- (a) 'authorised depository' means a person notified by the Central Government to be entitled to accept the custody of securities and certificates of title to securities, and (b) "security" includes coupons.

## **22. Restrictions on issue of bearer securities :-**

**1** [\* \* \*] Except with the general or special permission of the Reserve Bank no person shall, in India, and no person resident in India shall, outside India, create or issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.

1. Words "The Central Government may, by notification in the Official Gazette, order that' omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

## **23. Acquisition by Central Government of foreign securities**

:-

**1** [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993,w.r.e.f. 8-1-1993.]

1. Prior to omission, section 23 reads as under : "23. Acquisition by Central Government of foreign securities. - (1) Subject to any exemptions that may be contained in the notification, the Central Government may, if it is of opinion that it is expedient so to do for the purpose of strengthening its foreign exchange position, by notification in the Official Gazette- (a) order the transfer to itself of any foreign securities specified in the notification at a price so specified, being a price which, in the opinion of the Central Government, is not less than the market value of the securities on the date of the notification, or (b) direct the owner of any foreign securities specified in the notification to sell or procure the sale of the securities and, thereafter, to offer or cause to be offered the net foreign exchange proceeds of the sale to the Reserve Bank on behalf of the Central Government or to such person as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price, which is not less than the price calculated at the rate of exchange for the time being authorised by

the Reserve Bank. (2) On the issue of a notification under clause (a) of sub-section (1),- (a) the securities to which the notification relates shall forthwith vest in the Central Government free from any mortgage, pledge or charge, and the Central Government may deal with them in such manner as it thinks fit ; (Contd on p. 964) (Contd. from p. 963) (b) the owner of any of the securities to which the notification relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Central Government or the Reserve Bank may order to be done, for the purpose of securing that- (i) the securities and any certificates of title relating thereto are delivered to the Central Government and, in the case of registered or inscribed securities, that the securities are registered or inscribed in the name of the Central Government or of such nominee of the Central Government as it may specify, and (ii) any dividends or interest on those securities becoming payable on or after the date of the issue of the notification are paid to the Central Government or its nominee as aforesaid and where in the case of any security payable to bearer which is delivered in pursuance of the said notification, any coupons representing any such dividends or interest are not delivered With the security, such reduction in the price payable therefor shall be made as the Central Government think fit: Provided that where the price specified in the notification in relation to any security is ex-dividend or ex-interest, this sub-clause shall not apply to that dividend or interest or to any coupon representing it. (3) A certificate signed by any person authorised in this behalf by the Central Government that any specified securities are securities transferred to the Central Government under this section shall be treated by all persons concerned as conclusive evidence that the securities have been so transferred.

#### **24. Restriction on settlement, etc :-**

No person resident in India shall, except with the general or special permission of the Reserve Bank, settle, or make a gift of, any property so that a person who at the time of the settlement or the making of the gift is resident outside India, elsewhere than in the territories notified in this behalf by the Reserve Bank, will have an interest in the property, or exercise any power for payment in favour of a person who at the time of the exercise of the power is resident outside India elsewhere than in such notified territories: Provided that any settlement or gift made or any power exercised as aforesaid without the permission of the Reserve Bank shall not be invalid merely on the ground that such permission has not been obtained.

**25. Restriction on holding of immovable property outside India :-**

(1) No person resident in India shall, except with the <sup>1</sup>[general or special permission of the Reserve Bank], acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise, any immovable property situate outside India: Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.

(2) Any person resident in India and holding any immovable property outside India at the commencement of this Act shall, before the expiry of a period of three months from such commencement or such further period as the Reserve Bank may allow in this behalf, declare such holding to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank.

(3) <sup>2</sup> [\* \* \*]

(4) Nothing in this section shall apply to a national of a foreign State.

1. Substituted for "permission of the Reserve Bank" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

2. Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1 -1993. Prior to omission, sub-section (3) reads as under : "(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, if the Central Government is satisfied that it is necessary or expedient in the public interest so to do, it may, by order, direct any person holding any immovable property outside India to sell the whole or any part of such property, subject to such terms and conditions as it may deem fit, and require the proceeds of such sale to be received in India through an authorised dealer.

**26. Certain provisions as to guarantee in respect of debt or other obligation :-**

Except with the general or special permission of the Central Government or the Reserve Bank, no person resident in India shall give a guarantee in respect of any debt or other obligation or liability-

(i) of a person resident in India, and due or owing to a person resident outside India, or

(ii) of a person resident outside India.]

**27. Restrictions on persons resident in India associating themselves with or participating in concerns outside India**

:-

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

1. Prior to omission, section 27 reads as under: Restrictions on persons resident in India associating themselves with or participating in concerns outside India.-(1) Without prejudice to the provisions of clause (e) of sub-section (1) of section 19, no person resident in India shall, without the previous permission of the Central Government, associate himself with, or participate in, whether as promoter or otherwise, any concern outside India engaged in, or intending to engage in, any activity of a trading, commercial or industrial nature, whether such concern is a body corporate or not. (2) Any person desiring to get permission under sub-section (1) may make an application to the Central Government in such form, in such manner and containing such particulars as may be prescribed. (3) On receipt of an application under sub-section (2), the Central Government may, after making such inquiry as it deems fit, allow the application subject to such conditions, if any, as it may think fit to impose or reject the application : Provided that no application shall be rejected under this sub-section unless the applicant has been given a reasonable opportunity for making a representation in the matter. (4) Any permission granted under this section shall also be subject to the condition that the person to whom such permission has been granted shall comply with such requirements as the Reserve Bank may, from time to time, direct. (5) If any person to whom a permission has been granted under this section does not comply with any condition imposed by the Central Government under sub-section (3) or any requirement directed by the Reserve Bank under sub-section (4) to be complied with, then, without prejudice, to any other action that may be taken against him under this Act, the Central Government may, by order, revoke the permission granted to him under this section: Provided that no order under this sub-section shall be made unless the person to be affected thereby has been given a reasonable opportunity for making a representation in the matter. (6) (a) Every person resident in India who, at the commencement of this Act, is associating himself with, or participating in, whether as promoter or otherwise, any concern referred to in sub-section (1) shall, within a period of ninety days of such commencement or such further period as the Central Government may allow in this behalf, make an application to the Central Government in such form, in such manner and containing such particulars as may be prescribed for permission to continue such association or participation. (b) The provisions of sub-sections

(3) to (5) (both inclusive) shall apply in relation to any application made under this sub-section as they apply in relation to an application made under sub-section (2). (7) Nothing in this section shall apply to a national of a foreign State. Explanation : For the purposes of this section, a person shall not be deemed to be associating himself with, or participating in, whether as promoter or otherwise, in a concern referred to in sub-section (1) merely by reason of the fact that he is an employee in such concern.'

**28. Restrictions on the appointment of certain persons and companies as agents or technical or management advisers in India :-**

<sup>1</sup>[(1) Without prejudice to the provisions of section 47 and notwithstanding anything contained in any other provision of this Act or Companies Act, 1956, a person resident outside India. (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or any branch of such company, shall not, except with the general or special permission of the Reserve Bank, act, or accept appointment, as agent in India of any person or company, in the trading or commercial transactions of such person or company.

(2) Where any such person or company (including its branch) as is referred to in sub-section (1) acts or accepts appointment as such agent without the permission of the Reserve Bank, such acting or appointment shall be void.

(3) Where any such person or company (including its branch) as is referred to in sub-section (1) acts as, or holds the appointment of, any such agent as is referred to in that sub-section at the commencement of this Act, such person or company (including its branch) shall, within a period of six months

(4) On receipt of an application under sub-section (3), the Reserve Bank may, after making such inquiry as it deems fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose, or reject the application: Provided that no application shall be rejected under this sub-section unless the parties who may be affected by such rejection have been given a reasonable opportunity for making a representation in the matter.

(5) Where any application has been rejected under sub-section (4), the acting, appointment or permission, as the case may be, shall be void on the expiry of a period of ninety days, or such other later

date as may be specified by the Reserve Bank, from the date of receipt by the person or company (including its branch) concerned of the communication conveying such rejection.

(6) Where no application has been made under sub-section (3) by any such person or company (including its branch) as is referred to in sub-section (1), the Reserve Bank may, by order, direct such person or company (including its branch) to desist from such acting <sup>2</sup>[\* \* \*] on the expiry of such period as may be specified in the direction: Provided that no direction shall be made under this sub-section unless the parties who may be affected by such direction have been given a reasonable opportunity for making a representation in the matter.

(7) Where any direction made under sub-section (6) has not been complied with by any person or company (including its branch), then, without prejudice to any action that may be taken under this Act, the acting <sup>3</sup>[\* \* \*] shall be void with effect from the expiry of the period specified in the direction. Explanation: For the purposes of this section.-

(a) "agent" includes any person or company (including its branch) who or which buys any goods with a view to sell such goods before any processing thereof;

(b) "company" means any body corporate and includes a firm or other association of individuals;

(c) "processing" means any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation but does not include any process incidental or ancillary to the completion of a manufactured

(d) <sup>4</sup> [\* \* \*]

1. Substituted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to substitution, sub-sections (1), (2) and (3), read as under : "(1) Without prejudice to the provisions of section 47 and notwithstanding anything contained in any other provision of this Act or the Companies Act, 1956 (1 of 1956), a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent, or any branch of such

company, shall not, except with the general or special permission of the Reserve Bank,- (a) act, or accept appointment, as agent in India of any person or company, in the trading or commercial transactions of such person or company; or (b) act, or accept appointment, as technical or management adviser in India of any person or company: or (c) permit any trade mark, which he or it is entitled to use, to be used by any person or company for any direct or indirect consideration. (2) Where any such person or company (including its branch) as is referred to in sub-section (1) acts or accepts appointment as such agent, or technical management adviser, or permits the use of any such trade mark, without the permission of the Reserve Bank, such acting, appointment or permission, as the case may be, shall be void. (3) Where any such person or company (including its branch) as is referred to in sub-section (1) acts as, or holds the appointment of, any such agent or technical or management adviser as is referred to in that sub-section at the commencement of this Act, or where a permission for the use of any such trade mark granted by such person or company (including its branch) continues to be valid at such commencement, such person or company (including its branch) shall, within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to act, or to hold the appointment, as such or, as the case may be, to continue to permit the use of any such trade mark."

2. Words "or appointment or, as the case may be, from permitting the use of any such trade mark" omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

3. Words ", appointment or permission, as the case may be," omitted, the Foreign Exchange Regulation (Amendment) Act, 1993.

4. Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to omission, clause (d) read as under : (d) "technical or management adviser" includes any person or company (including its branch) required to tender any technical or management advice, even though the tendering of such advice is incidental to any other services required to be rendered by such person or company.

## **29. Restrictions on establishment of place of business In India :-**

(1) Without prejudice to the provisions of section 28 and section 47 and notwithstanding anything contained in any other provision of this Act or the provisions of Companies Act, 1956, a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India <sup>1</sup>[\* \* \*] or any branch of such company, shall not,

except with the general or special permission of the Reserve Bank,-

(a) carry on in India, or establish in India a branch, office or other place of business for carrying on any activity of a trading, commercial or industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained under section 28; or

( b) acquire the whole or any part of any undertaking in India of any person or company carrying on any trade, commerce or industry or purchase the shares in India of any such company.

<sup>2</sup>[(1A) A company (other than a banking company) in which the non-resident interest is more than forty per cent, shall not, except with the general or special permission of the Reserve Bank, carry on in India any activity relating to agriculture or plantation or acquire the whole or any part of any undertaking in India of any person or company carrying on any activity relating to agriculture or plantation or purchase the shares in such company.]

(2)

(a) Where any person or company (including its branch) referred to in sub-section (1) carries on any activity referred to in clause (a) of that sub- section at the commencement of this Act or has established a branch, office or other place of business for the carrying on of such activity at such commencement, then, such person or company (including its branch) may make an application to the Reserve Bank within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf for permission to continue to carry on such activity or to continue

(b) Every application made under clause (a) shall be in such form and contain such particulars as may be specified by the Reserve Bank.

(c) Where any application has been made under clause (a), the Reserve Bank may, after making such inquiry as it may deem fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application: Provided that no application shall be rejected under this clause unless the parties who may be affected by such rejection have been given a reasonable opportunity for making a representation in the matter.

(d) Where an application is rejected by the Reserve Bank under clause (c), the person or company (including its branch) concerned shall discontinue such activity or close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of a period of ninety days or such other later date as may be specified by the Reserve Bank from the date of receipt by such person or company (including its branch) of the communication conveying such rejection.

(e) Where no application has been made under clause (a) by any person or company (including its branch), the Reserve Bank may, by order, direct such person or company (including its branch) to discontinue such activity or to close down the branch, office or other place of business established for the carrying on of such activity, as the case may be, on the expiry of such period as may be specified in the direction: Provided that no direction shall be made under this clause unless the parties who may be affected by such direction have been given a reasonable opportunity for making a representation in the matter.

(3) Notwithstanding anything contained in sub-section (2), the Reserve Bank may, having regard to -

(i) the fact that any person or company (including its branch), referred to in sub-section (1), is carrying on any activity referred to in clause (a) of that sub-section at the commencement of this Act or has established a branch, office or other place of business for the carrying on of such activity at such commencement, in either case, in pursuance of any permission or licence granted by the Central Government ; and

( ii) the nature of the activity which is being, or intended to be, carried on by such person or company (including its branch), by order, exempt -

(a) such person or company (including its branch); or

(b) any class of such persons or companies (including their branches),

(4)

(a) Where at the commencement of this Act any person or company (including its branch) referred to in sub-section (1) holds any

shares in India of any company referred to in clause (b) of that sub-section, then, such person or company (including its branch) shall not be entitled to continue to hold such shares unless before the expiry of a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf such person or company (including its branch) has made an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to hold such shares.

(b) Where an application has been made under clause (a), the Reserve Bank may, after making such inquiry as it may deem fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application: Provided that no application shall be rejected under this clause unless the parties who may be affected by such rejection have been given a reasonable opportunity for making a representation in the matter.

(c) Where an application has been rejected under clause (b), or where no application has been made under clause (a), the Reserve Bank may, if it is of opinion that it is expedient so to do for the purpose of conserving the foreign exchange, direct such person or company (including its branch) to sell or procure the sale of such shares : Provided that no direction shall be made under this clause unless notice of such direction for a period of not less than ninety days has been given to the person or company (including its branch) to be affected by such direction. <sup>3</sup> [Explanation: For the purposes of this section,-

(i) "company" has the same meaning as in clause (b) of the Explanation to section 28;

1. Words "or in which the non-resident interest is more than forty per cent" omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f.. 8-1-1993.

2. Inserted, the Foreign Exchange Regulation (Amendment) Act,1993.

3. Substituted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to substitution. Explanation read as under: Explanation: For the purposes of this section, "company" has the same meaning as in clause (b) of the Explanation to section 28.

**30. Prior permission of Reserve Bank required for taking up employment,etc., in India by nationals of foreign States :-**

<sup>1</sup> [( 1 ) No national of a foreign State shall, without the previous permission of the Reserve Bank, practise any profession or carry on any occupation, trade or business in India in a case where such national desires to acquire any foreign exchange (such foreign exchange being intended for remittance out side India) out of any moneys received by him in India by reason of the practising of such profession or the carrying on of such occupation, trade or business, as the case may be.]

(2) Where any national of a foreign State desires to obtain the permission of the Reserve Bank under sub-section (1), he may make an application to the Reserve Bank in such form, in such manner and containing such particulars as may be prescribed.

(3) On receipt of an application under sub-section (2), the Reserve Bank may, after making such inquiry as it deems fit, allow the application subject to such conditions, if any, as it may think fit to impose or reject the application : Provided that no application shall be rejected under this sub-section unless the applicant has been given a reasonable opportunity for making a representation in the matter.

1. Substituted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to substitution, sub-section (1) reads as under: "(1) No national of a foreign State shall, without the previous permission of the Reserve Bank- (i) take up any employment in India, or (ii) practise any profession or carry on any occupation, trade or business in India, in a case where such national desires to acquire any foreign exchange (such foreign exchange being intended for remittance outside India) out of any moneys received by him in India by reason of such employment or the practising of such profession or the carrying on of such occupation, trade or business, as the case may be."

### **31. Restriction on acquisition, holding, etc., of immovable property in India :-**

(1) No person who is not a citizen of India and no company (other than a banking company) which is not incorporated under any law in force in India <sup>1</sup> [ \* \*] shall, except with the previous general or special permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India: Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.

(2) Any person or company referred to in sub-section (1) and requiring a special permission under that sub-section for acquiring, or holding, or

(3) On receipt of an application under sub-section (2), the Reserve Bank may, after making such inquiry as it deems fit, either grant or refuse to grant the permission applied for: Provided that no permission shall be refused unless the applicant has been given a reasonable opportunity for making a representation in the matter: Provided further that if before the expiry of a period of ninety days from the date on which the application was received by the Reserve Bank, the Reserve Bank does not communicate to the applicant that the permission applied for has been refused, it shall be presumed that the Reserve Bank has granted such permission. Explanation : In computing the period of ninety days for the purposes of the second proviso, the period, if any, taken by the Reserve Bank for giving an opportunity to the applicant for making a representation under the first proviso shall be excluded.

(4) Every person and company referred to in sub-section (1) holding at the commencement of this Act any immovable property situate in India shall, before the expiry of a period of ninety days from such commencement or such further period's the Reserve Bank may allow in this behalf, make a declaration in such form as may be specified by the Reserve Bank regarding the immovable property or properties held by such person or company.

1. Words "or in which the non-resident interest is more than forty per cent" omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

## **32. Regulation of booking of passages outside India and restrictions on foreign travels :-**

<sup>1</sup> [Omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.]

1. Prior to omission, section 32 reads as under: 32. Regulation of booking of passages outside India and restrictions on foreign travels. - (1) No airline, shipping company, travel agent or other person shall carry on in India the business of booking passages for foreign travel unless such airline, shipping company, travel agent or other person, as the case may be, holds a valid licence granted in that behalf by the Reserve Bank. (2) Any airline, shipping company, travel agent or other person desiring to carry on the business of booking passages for foreign travel may, before the commencement of such business, make an application to the

Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank. (3) On receipt of an application under sub-section (2), the Reserve Bank may, having regard to the standing of the applicant in booking passages for foreign travel and such other factors as the Reserve Bank may consider fit in the circumstances of the case, grant, or refuse to grant, a licence: Provided that no licence shall be refused under this sub-section unless the person affected thereby is given a reasonable opportunity for making a representation in the matter. (Contd. on p. 9751) (Contd. from p. 974) (4) Every licence granted under sub-section (3) shall be for such period, and be subject to such conditions, as the Reserve Bank may specify in this behalf. (5) Any licence granted under sub-section (3) or deemed to be granted under sub-section (6) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that the licensee has not complied with the conditions of the licence or has contravened any of the provisions of this Act or of any rule, notification, order or direction made thereunder: Provided that no licence shall be revoked under this sub-section unless the person affected thereby is given a reasonable opportunity for making a representation in the matter. (6) Notwithstanding anything contained in sub-sections (1) to (4), where any permission has been granted under section 18B of the Foreign Exchange Regulation Act, 1947 (7 of 1947), by the Reserve Bank to any airline, shipping company or travel agent to book passage for any person for a journey, the whole or part of which is outside India, and such permission is valid at the commencement of this Act, then, such permission shall be deemed to be a licence granted under sub-section (3) in favour of such airline, shipping company or travel agent, as the case may be, for the unexpired portion of the period for which such permission has been granted or, where while granting such permission no period has been specified, for a period of three years from such commencement and thereafter, in either case, the provisions of sub-sections (1) to (4) shall apply to such airline, shipping company or travel agent accordingly. (7) No airline, shipping company, travel agent or other person shall book a passage for any person for foreign travel unless the booking of such passage has been approved by the Reserve Bank on an application made to it in this behalf in such form and containing such particulars as may be specified by the Reserve Bank and signed by both the persons intending to undertake such travel and the person intending to book the passage : Provided that where the Reserve Bank is satisfied that there are good and sufficient reasons for dispensing with the signature in such application of the person intending to undertake such travel, it may dispense with such signature. (8) On receipt of an application under sub-section (7), the Reserve Bank may, after making such inquiry as it deems fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application: Provided that no application shall be rejected under this sub-section unless the

Reserve Bank is satisfied- (i) that the foreign travel intended to be undertaken by such person involves or is likely to involve the meeting or defraying, in whole or in part, the cost or expenses of his stay outside India, otherwise than out of the foreign exchange acquired by him from an authorised dealer, or (ii) that such travel involves or affects, or is likely to involve or affect, whether directly or indirectly, the accrual or expenditure of foreign exchange. (9) No person shall, without the permission of the Reserve Bank,- (i) remain outside India beyond the date or-period; or (ii) travel to any place outside India other than such place or places, specified by the Reserve Bank in this behalf in his passport or on the permit for foreign exchange granted to him or on his application for booking the passage, as the case may be. (10) Where any person acts in contravention of the provisions of sub-section (9), the Reserve Bank may, on an application made to it. in this behalf by such person, if it is satisfied that the contravention was due to unforeseen circumstances or. due to circumstances beyond his control, by order, condone such act. (11) If the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may, by general or special order,- (Contd. on p. 976)(Contd. from p. 975) (i) direct that nothing in sub-section (7) shall apply, or the provisions thereof shall apply, subject to such restrictions and conditions, if any, as may be specified in the order, to any foreign travel or class of foreign travels, as may be so specified; (ii) exempt any person or class of persons from the operation of the provisions of sub-section (9), subject to such restrictions and conditions, if any, as may be specified in the order. Explanation: For the purposes of this section, 'foreign travel' means a travel, the whole or any part of which is outside India.'

### **33. Power to call for Information :-**

(1) The Central Government may, at any time by notification in the Official Gazette, direct the owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities or immovable properties held outside India as may be so specified, to submit a return, or from time to time returns, thereof to the Reserve Bank within such period, and giving such particulars, as may be so specified.

(2) Where for the purposes of this Act the Central Government or the Reserve Bank or any officer of Enforcement, not below the rank of a Chief Enforcement Officer, considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank or such officer it is possible for such person to obtain and furnish, the Central Government or the Reserve Bank or, as the case may be, such officer may, by order in

writing, require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or such officer or any person specified in the order with such information, book or other document and thereupon such person shall be bound to comply with such requisition. Explanation : For the purpose of this section, section 34 and sections 36 to 41 (both inclusive), "document" includes Indian currency, foreign exchange and books of account.

**34. Power to search suspected persons and to seize documents :-**

(1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control any documents which will be useful for, or relevant to, any investigation or proceeding under this Act, he may search that person or such thing and seize such documents.

(2) When any officer of Enforcement is about to search any person under the provisions of this section, the officer of Enforcement shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of Enforcement superior in rank to him or a magistrate.

(3) If such requisition is made, the officer of Enforcement may detain the person making it until he can bring him before the Gazetted Officer of Enforcement or the magistrate referred to in sub-section (2).

(4) The Gazetted Officer of Enforcement or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(5) Before making a search under the provisions of this section, the officer of Enforcement shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all documents seized in the course of such search shall be prepared by such officer and signed by such witnesses.

(6) No female shall be searched by any one excepting a female.

### **35. Power to arrest :-**

(1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a Magistrate.

(3) Where any officer of Enforcement has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the <sup>1</sup> [Code of Criminal Procedure, 1973].

1. Substituted for 'Code of Criminal Procedure, 1898 (5 of 1898)' by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **36. Power to stop and search conveyances :-**

If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any document which will be useful for, or relevant to, any investigation or proceeding under this Act is secreted in any aircraft or vehicle or on any animal in India or in any vessel in India or within the Indian customs waters, he may at any time stop any such vehicle or animal or vessel or, in the case of an aircraft, compel it to stop or land, and-

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) seize any such document as is referred to above;

(d) break open the lock of any door or package for exercising the powers conferred by clauses (a), (b) and (c), if the keys are withheld.

### **37. Power to search premises :-**

(1) If any officer of Enforcement, not below the rank of an

Assistant Director of Enforcement, has reason to believe that any documents which, in his opinion, will be useful for, or relevant to, any investigation or proceeding under this Act, are secreted in any place, he may authorise any officer of Enforcement to search for and seize or may himself search for and seize such documents.

(2) The provisions of the <sup>1</sup> [Code of Criminal Procedure, 1973], relating to searches, shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Director of Enforcement or other officer exercising his powers" were substituted.

1. Substituted for "Code of Criminal Procedure, 1898 (5 of 1898)" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993

**38. Power to seize documents, etc :-**

Without prejudice to the provisions of section 34 or section 36 or section 37, if any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any document or thing will be useful for,-or relevant to, any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has taken place, he may seize such document or thing.

**39. Power to examine persons :-**

The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government, by general or special order, may, during the course of any investigation or proceeding under this Act-

(a) require any person to produce or deliver any document relevant to the investigation of proceeding;

(b) examine any person acquainted with the facts and circumstances of the case.

**40. Power to summon persons to give evidence and produce documents :-**

(1) Any Gazetted Officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course

of any investigation or proceeding under this Act.

(2) A summons to produce documents may be for the production of certain specified documents or for the production of all documents of a certain description in the possession or under the control of the persons summoned.

(3) All persons so summoned shall be bound to attend either in person or by authorised agents, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required: Provided that the exemption under S.132 of the Code of Civil Procedure, 1908, shall be applicable to any requisition for attendance under this section.

(4) Every such investigation or proceeding as aforesaid shall be deemed to be a judicial proceeding within the meaning of S.193 of the Indian Penal Code, 1860 , S.228 of the Indian Penal Code, 1860.

**41. Custody of documents, etc :-**

Where in pursuance of an order made under sub-section (2) of section 33 or of the provisions of section 34 or section 36 or section 37 or of a requisition or summons under section 39 or section 40, any document is furnished or seized and any officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act. or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding <sup>1</sup>[six months] or if, before the expiry of the said period of <sup>2</sup>[six months], any proceedings-

(i) under section 51 have been commenced, until the disposal of those proceedings including the proceedings, if any, before the Appellate Board and the High Court, or

(ii) under section 56 have been commenced before a court, until the document has been filed in the Court :

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[Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a further period not exceeding six months.]

Explanation : In computing the period <sup>3</sup> [\*\*\*] during which a document (hereafter in this Explanation referred to as the said

document) may be retained under this section, in any case where by reason of an injunction or order of any court (whether such injunction or order is in relation to the said document or is in relation to any other document reference to which would be necessary for examining or using the said document)-

(a) the said document could not be examined fully for the purpose of determining whether it would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, or

(b) the said document could not be used for commencing any proceedings under section 51 or section 56, or

(c) the proceedings under section 51 or section 56 could not be commenced, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

1. Substituted for "one year" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

2. Inserted, the Foreign Exchange Regulation (Amendment) Act, 1993.

3. Words "of one year" omitted, the Foreign Exchange Regulation (Amendment) Act, 1993.

#### **42. Encashment of cheque, draft, etc :-**

(1) Where-

(i) an investigation is being made into- any alleged contravention of the provisions of section 13 or clause (a) of sub-section (1) of section 18<sup>1</sup>[or section 18A] or clause (a) of sub-section (1) of section 19, read with section 67; or

(ii) an investigation is being made into any alleged contravention of any other provision of this Act or of any rule, direction or order made thereunder; or

(iii) any proceeding in respect of any such contravention as is referred to in clause (i) or clause (ii) is pending before an officer of Customs or an officer of Enforcement or a Court, and any draft, cheque (including traveller's cheque) or other instrument being the subject-matter of such investigation or proceeding is in the custody of an officer of Customs or of an officer of Enforcement or of a Court, then,-

(a) where such draft, cheque (including traveller's cheque) or other

instrument is in the custody of an officer of Customs, the <sup>2</sup>[Commissioner of Customs]; or

(b) where such draft, cheque (including traveller's cheque) or other instrument is in the custody of an officer of Enforcement, the Director of Enforcement; or

(c) where such draft, cheque (including traveller's cheque) or other instrument is in the custody of a Court, the Court, on an application made to it in this behalf by the <sup>2</sup>[Commissioner of Customs] or, as the case may be, by the Director of Enforcement, may, by order, direct that the sum due under such draft, cheque (including traveller's cheque) or other instrument be encashed either through the Reserve Bank or such other agency as the <sup>37a</sup>[Commissioner of Customs] or the Director of Enforcement or the Court, as the case may be, deems fit.

(2) Any proceeds realised in pursuance of a direction under sub-section (1) shall be kept in a separate account to be maintained by the prescribed authority in the prescribed manner.

(3) Where a direction is made under section 63, or an order has been made under Customs Act, 1962, to confiscate any draft, cheque (including traveller's cheque) or other instrument the proceeds of which have been realised under sub-section (1), such proceeds shall vest in the Central Government and in all other cases such proceeds shall be paid to such person as may appear to the officer or the court, who or which made the direction under sub-section (1), to be entitled thereto in such currency and in such manner as he or it deems just together with interest at the rate of six per cent per annum from the date on which such draft, cheque (including traveller's cheque) or other instrument came into his or its custody till the date of payment: Provided that nothing in this sub-section shall affect the liability of any person, who may receive the whole or any part of the proceeds, to pay the same to the person lawfully entitled thereto.

<sup>4</sup>[(4) Where any foreign currency, being the subject-matter of any investigation or proceeding referred to in sub-section (1), is in the custody of an officer of Customs or of an officer of Enforcement or of a court, the <sup>5</sup>[Commissioner of Customs], the Director of Enforcement or, as the case may be, the court may, having regard to the security-risk involved in such custody, direct that the foreign currency be deposited in a bank in such manner as he or it may

deem fit.

(5) Where any draft, cheque (including traveller's cheque) or other instrument is to be encashed under sub-section (1) or any foreign currency is to be deposited in a bank under sub-section (4), the <sup>4</sup>[Commissioner of Customs], the Director of Enforcement or, as the case may be, the court, may prepare or cause to be prepared an inventory of such draft, cheque or other instrument or foreign currency containing such details relating to its description, mark, numbers, country of origin and other particulars as may appear to be relevant to its identity in any proceeding under this Act and where the inventory is prepared or cause to be prepared by the <sup>7</sup>[Commissioner of Customs] or the Director, the <sup>5</sup> [Commissioner of Customs] or, as the case may be, the Director shall make an application to a Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate photographs of such draft, cheque, other instrument or foreign currency, and certifying such photographs as true.

(6) Where an application is made under sub-section (5), the Magistrate shall, as soon as may be, allow the application.]

1. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

2. Substituted for "Collector of Customs" by the Finance Act, 1995.

4. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

5. Substituted for "Collector of Customs" by the Finance Act, 1995.

7. Substituted for "Collector", by the Finance Act, 1995.

### **43. Inspection :-**

( 1 ) Any officer of Enforcement not below the rank of an Assistant Director of Enforcement specially authorised in writing by the Director of Enforce

(2) It shall be the duty of every authorised dealer and, where the authorised dealer is a company or a firm, every director, partner or other officer of the authorised dealer to produce to any officer making an inspection under subsection (1) all such books, accounts and other documents in his custody or power and to furnish him with any statement or information relating to the affairs of the authorised dealer as the said officer may require of him within such

time as the said officer may specify.

(3) Any officer making an inspection under sub-section (1) may examine on oath any authorised dealer or his agent or, where the authorised dealer is a company or a firm, any director, partner or other officer of the authorised dealer in relation to its business.

(4) If any person fails to produce any book, account or other document or to furnish any statement or information relating to the authorised dealer which, under sub-section (2), it is his duty to produce or furnish, or to answer any question relating to the business of the authorised dealer which he is asked by an officer making an inspection under this section, he shall be deemed to have contravened the provisions of this Act.

(5) The provisions of this section shall, so far as may be, apply in relation to a money-changer <sup>1</sup> [\*\*\*] as they apply in relation to an authorised dealer.

1. Words "and to a person to whom a licence has been granted or deemed to have been granted under section 32" omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f.8-1-1993.

#### **44. Prohibition of disclosure of documents or information except in certain cases :-**

(1) If the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement is of the opinion that the contents of any documents which have come into his possession or control during the course of any investigation or proceeding under this Act would be useful for, or relevant to, any proceeding which is in progress or maybe started under any other law for the time being in force, he may disclose such document or any information contained therein as he thinks fit to an officer duly authorised by or under such other law.

(2) If any officer of Enforcement, except in the discharge in good faith of his duty as such officer in accordance with sub-section (1), or in compliance with any requisition made under any law for the time being in force, discloses any document or information obtained by him in his official capacity, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### **45. Power of police officers and other officers to enter,**

## **search, etc :-**

(1) Notwithstanding anything contained in the <sup>1</sup>[Code of Criminal Procedure, 1973, any police officer not below the rank of a Deputy Superintendent of Police], or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit a contravention of the provisions of sub-section (1) of section 8. Explanation : For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to, the public.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

(3) The provisions of the <sup>2</sup> [Code of Criminal Procedure, 1973], shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

(4) The provisions of this section shall have effect notwithstanding anything inconsistent therewith contained in any other provision of this Act.

1. Substituted for "Code of Criminal Procedure, 1898(5 of 1898), any police officer not below the rank of a Sub-Inspector of Police", by the Foreign Exchange Regulation (Amendment)Act. 1993, w.r.e.f. 8-1-1993.

2. Substituted for "Code of Criminal Procedure, 1898 (5 of 1898)", the Foreign Exchange Regulation (Amendment)Act. 1993.

## **46. Procedure In respect of foreign exchange or any other goods seized by police officers :-**

(1) Where any police officer seizes any foreign exchange or any other goods which is alleged or suspected to have been stolen, or which is found, in either case, under circumstances which create suspicion of the commission of an offence under this Act, such police officer shall forthwith report the seizure of-

(i) such foreign exchange to the nearest officer of Enforcement, not below the rank of an Assistant Director of Enforcement; and

(ii) such other goods to the nearest officer of Customs, not below the rank of an Assistant <sup>1</sup>[Commissioner of Customs].

(2) Notwithstanding anything contained in the 40a[Code of Criminal Procedure, 1973], in every case refer to in sub-section (1), the police officer shall, immediately after the dismissal of the complaint or the conclusion of the inquiry or trial, as the case may be, cause-

(i) such foreign exchange to be delivered to an officer of Enforcement, not below the rank of an Assistant Director of Enforcement; and

(ii) such other goods to be conveyed to an officer of Customs, not below the rank of an Assistant <sup>2</sup> [Commissioner of Customs].

1. Substituted for "Collector of Customs" by the Finance Act, 1995.

2. Substituted for "Collector of Customs" by the Finance Act, 1995.

#### **47. Contracts in evasion of the Act :-**

(1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provision of, or having effect under, this Act that a thing shall not be done without the permission of the Central Government or the Reserve Bank, shall not render invalid any agreement by any person to do that thing, if it is a term of the agreement that that thing shall not be done unless permission is granted by the Central Government or the Reserve Bank, as the case may be; and it shall be an implied term of every contract governed by the law of any part of India that anything agreed to be done by any term of that contract which is prohibited to be done by or under any of the provisions of this Act except with the permission of the Central Government or the Reserve Bank, shall not be done unless such permission is granted.

(3) Neither the provisions of this Act nor any term (whether expressed or implied) contained in any contract that anything for which the permission of the Central Government or the Reserve Bank is required by the said provisions shall not be done without that permission, shall prevent legal proceedings being brought in

India to recover any sum which, apart from the said provisions and any such term, would be due, whether as debt; damages or otherwise, but-

(a) the said provisions shall apply to sums required to be paid by any judgment or order of any court as they apply in relation to other sums;

(b) no steps shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply except as respects so much thereof as the Central Government or the Reserve Bank, as the case may be, may permit to be paid; and

(c) for the purpose of considering whether or not to grant such permission, the Central Government or the Reserve Bank, as the case may be, may require the person entitled to the benefit of the judgment or order and the debtor under the judgment or order, to produce such documents and to give such information as may be specified in the requisition.

(4) Notwithstanding anything contained in Negotiable Instruments Act, 1881, neither the provisions of this Act or of any rule, direction or order made thereunder, nor any condition whether expressed or to be implied having regard to those provisions, that any payment shall not be made without permission under this Act, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

**48. False statements :-**

No person shall, when complying with any direction or order under section 33 or with any requirement under section 43 or when making any application or declaration to any authority or person for any purpose under this Act, give any information or make any statement which he knows or has reasonable cause to believe to be false, or not true, in any material particular.

**49. Failure to comply with conditions subject to which permissions or licences have been given or granted under the Act to be contravention of the provisions of the Act :-**

Whereunder any provision of this Act any permission or licence has been given or granted to any person subject to any conditions and-

(i) such person fails to comply with all or any of such conditions ; or

(ii) any other person abets such person in not complying with all or any of such conditions, then, for the purposes of this Act,-

(a) in a case referred to in clause (i), such person shall be deemed to have contravened such provision; and

(b) in a case referred to in clause (ii), such other person shall be deemed to have abetted the contravention of such provision.

**50. Penalty :-**

If any person contravenes any of the provisions of this Act [other than section 13, clause (a) of sub-section (1) of section 18<sup>1</sup> [,section 18A] and clause (a) of sub-section (1) of section 19] or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five times the amount or value involved in any such contravention or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer).

1. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

**51. Power to adjudicate :-**

For the purpose of adjudging under section 50 whether any person has committed a contravention of any of the provisions of this Act (other than those referred to in that section) or of any rule, direction or order made thereunder, the adjudicating officer shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity for making a representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section.

**52. Appeal to Appellate Board :-**

(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Board to be called the Foreign Exchange Regulation Appellate Board consisting of a Chairman [being a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade 1) for at least three years or who has been in practice as an advocate for at least ten years] and such number of other

members, not exceeding four, to be appointed by the Central Government for hearing appeals against the orders of the adjudicating officer made under section 51.

(2) Any person aggrieved by such order may, <sup>1</sup>[on payment of such fee as may be prescribed and] after depositing the sum imposed by way of penalty under section 50 and within forty-five days from the date on which the order is served on the person committing the contravention, prefer an appeal to the Appellate Board: Provided that the Appellate Board may entertain any appeal after the expiry of the said period of forty-five days, but not after ninety days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time : Provided further that where the Appellate Board is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, in its own discretion, dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit.

(3) On receipt of an appeal under sub-section (2), the Appellate Board may, after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall, subject to the provisions of section 54, be final and if the sum deposited by way of penalty under sub-section (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.

(4) The Appellate Board may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer under section 50 read with section 51 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceeding, and make such order in the case as it thinks fit.

(5) No order of the adjudicating officer made under section 50 read with section 51 shall be varied by the Appellate Board so as to prejudicially affect any person without giving such person a reasonable opportunity for making a representation in the matter; and subject thereto, the Appellate Board shall follow such procedure, in respect of the proceedings before it, as may be prescribed.

(6) The powers and functions of the Appellate Board may be exercised and discharged by Benches consisting of two members and constituted by the Chairman of the Appellate Board : Provided

that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member: Provided further that it shall be competent for the Chairman or any other member of the Appellate Board authorised by the Chairman in this behalf to exercise the powers and discharge the functions of the Appellate Board in respect of any appeal against an order imposing a penalty of an amount not exceeding <sup>2</sup> [two lakhs and fifty thousand rupees].

1. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

2. Substituted for "fifty thousand rupees" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **53. Powers of the adjudicating officer and the Appellate Board to summon witnesses, etc :-**

(1) Without prejudice to any other provision contained in this Act, the adjudicating officer and the Appellate Board shall have all the powers of 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 witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) The adjudicating officer or the Appellate Board while exercising any powers under this Act shall be deemed to be a civil court for the purposes of <sup>1</sup> [S.345 of Code of Criminal Procedure, 1973 , S.346 of Code of Criminal Procedure, 1973].

1. Substituted for "sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)", the Foreign Exchange Regulation (Amendment) Act. 1993.

### **54. Appeal to High Court :-**

An appeal shall lie to the High Court only on questions of law from

any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 : Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Explanation : In this section and in section 55, "High Court" means-

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) 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.

**55. Continuance of proceeding in the event of death or insolvency :-**

(1) Where-

(i) a penalty has been imposed under section 50 read with section 51 by the adjudicating officer on any person and no appeal against the order imposing such penalty has been preferred to the Appellate Board, or

(ii) any such appeal has been preferred to the Appellate Board, and-

(a) in a case referred to in clause (i), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Board; or

(b) in a case referred to in clause (ii), such person dies or is adjudicated an insolvent during the pendency of the appeal, then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Board, or as the case may be, to continue the appeal before the Appellate Board, in place of such person and the provisions of section 52 shall, so far as may be, apply or continue to apply to such appeal.

(2) Where-

(i) after the passing of a decision or order by the Appellate Board, no appeal has been preferred to the High Court under section 54; or

(ii) any such appeal has been preferred to the High Court, and-

(a) in a case referred to in clause ( i), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court; or

(b) in a case referred to in clause (ii), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court, then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 54 shall, so far as may be, apply or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section ( 1 ) or sub-section (2) shall be exercised by him subject to the provisions of Presidency Towns Insolvency Act, 1909, or Provincial Insolvency Act, 1920, as the case may be.

## **56. Offences and prosecutions :-**

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act [other than section 13, clause (a) of sub-section (1) of section 18, <sup>1</sup>[section 18A,] clause (a) of sub-section (1) of section 19, sub-section (2) of section 44 and section 57 and Section 58], or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable,-

( i) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine : Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with bot.

(2) If any person convicted of an offence under this Act [not being an offence under section 13 or clause (a) of sub-section (1) of

section 18<sup>1</sup>[or section 18A] or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58], is again convicted of an offence under this Act [not being an offence under section 13 or clause (a) of sub-section (1) of section 18<sup>3</sup>[or section 18A] or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58], he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine : Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(3) Where a person having been convicted of an offence under this Act [not being an offence under section 13 or clause (a) of sub-section (1) of section 18<sup>2</sup>[or section 18A] or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58], is again convicted of an offence under this Act [not being an offence under section 13 or clause (a) of sub-section (1) of section 18<sup>2</sup>[or section 18A] or clause (a) of sub-section (1) of section 19 or sub-section (2) of section 44 or section 57 or section 58], the court by which such person is convicted may, in addition to any sentence which may be imposed on him under this section, by order, direct that that person shall not carry on such business as the court may specify, being a business which is likely to facilitate the commission of such offence, for such period not exceeding three years, as may be specified by the court in the order.

(4) For the purposes of sub-sections (1) and (2), the following shall not be considered as adequate and special reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-

(i) the fact that the accused has been convicted for the first time of an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other penal action has been taken against him for the same offence;

(iii) the fact that the accused was not the principal offender and

was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused.

(5) For the purposes of sub-sections (1) and (2), the fact that an offence under this Act has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than six months.

(6) Nothing in <sup>6</sup> [the proviso to S.188 of Code of Criminal Procedure, 1973], shall apply to any offence punishable under this section.

1. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

3. Inserted, the Foreign Exchange Regulation (Amendment) Act, 1993.

6. Substituted for "the first proviso to section 188 of the Code of Criminal Procedure, 1898 (5 of 1898)" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

**57. Penalty for contravention of order made by adjudicating officer. Appellate Board and High Court :-**

If any person fails to pay the penalty imposed by the adjudicating officer or the Appellate Board or the High Court or fails to comply with any of his or its directions or orders, he shall, upon conviction by a court, be punishable with imprisonment for a term which may extend to two years or with fine or with both.

**58. Vexatious search, etc., by officers of Enforcement :-**

(1) Any officer of Enforcement exercising powers under this Act or any rule made thereunder who,-

(a) without reasonable ground of suspicion, searches or causes to be searched any place, premises, aircraft, vehicle or vessel; or

(b) vexatiously detains or searches or arrests any person, shall, for every such offence, upon conviction by a court, <sup>1</sup>[be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both].

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall, upon conviction by <sup>2</sup> [ten] thousand rupees or with both.

1. Substituted for "be punishable with fine which may extend to two thousand rupees",
2. Substituted for "two" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

**59. Presumption of culpable mental state :-**

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation: In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

(3) The provisions of this section shall, so far as may be, apply in relation to any proceeding before an adjudicating officer as they apply in relation to any prosecution for an offence under this Act.

**60. Power to tender immunity from prosecution :-**

(1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under Indian Penal Code, 1860, or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been

### **61. Cognizance of offences :-**

<sup>1</sup> [(1) Notwithstanding anything contained in S.29 of Code of Criminal Procedure, 1973 it shall be lawful for any metropolitan magistrate and for any magistrate of the first class to pass a sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person convicted of an offence punishable under section 56.]

(2) No court shall take cognizance-

(i) of any offence punishable under sub-section (2) of section 44 or sub-section (1) of section 58,-

(a) where the offence is alleged to have been committed by an officer of Enforcement not lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of Enforcement lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Director of Enforcement; or

(ii) of any offence punishable under section 56 or section 57, except upon a complaint in writing made by-

(a) the Director of Enforcement; or

(b) any officer authorised in writing in this behalf by the Director of Enforcement or the Central Government; or

(c) any officer of the Reserve Bank authorised by the Reserve Bank by a general or special order: Provided that where any such offence is the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits the doing

of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

1. Substituted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993. Prior to substitution, sub-section (1) reads as under: "Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (5 of 1898), it shall be lawful for any magistrate of the first class and for any presidency magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under section 56."

**62. Certain offences to be non-cognizable :-**

Subject to the provisions of section 45 and notwithstanding anything contained in the <sup>1</sup> [Code of Criminal Procedure, 1973], an offence punishable under section 56 shall be deemed to be non-cognizable within the meaning of that Code.

1. Substituted for "Code of Criminal Procedure, 1898 (5 of 1898)" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

**63. Confiscation of currency, security, etc :-**

Any court trying a contravention under section 56 and the adjudicating officer adjudging any contravention under section 51 may, if it or he thinks fit and in addition to any sentence or penalty which it or he may impose for such contravention, direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the person committing the contravention 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 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;

(c) any other property which has resulted out of the conversion of that property.

**64. Preparation, attempt, etc :-**

(1) Whoever makes preparation to contravene any of the provisions of this Act [other than section 13, clause (a) of sub-section (1) of section 18, <sup>1</sup>[section 18A,] clause (a) of sub-section (1) of section 19, sub-section (2) of section 44 and section 57 and Section 58] or of any rule, direction or order made thereunder and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, the contravention as aforesaid would have taken place, shall, for the purposes of section 56, be deemed to have contravened that provision, rule, direction or order, as the case may be.

(2) Whoever attempts to contravene, or abets any contravention of, any of the provisions of this Act [other than section 13, clause (a) of sub-section (1) of section 18, <sup>1</sup> [section 18A,] clause (a) of sub-section (1) of section 19, sub- section (2) of section 44 and section 57 and Section 58] or of any rule, direction or order made thereunder, shall, for the purposes of this Act, be deemed to have contravened that provision, rule, direction or order, as the case may be.

1. Inserted, the Foreign Exchange Regulation (Amendment) Act. 1993.

**65. Correction of clerical errors, etc :-**

Clerical or arithmetical mistakes in any decision or order passed by the Appellate Board or the adjudicating officer under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Appellate Board or the adjudicating officer or his successor in office, as the case may be : Provided that where any correction proposed to be made under this section will have the result of prejudicially affecting any person no such correction shall be made-

(i) after the expiry of a period of two years from the date of such decision or order; and

(ii) unless the person affected thereby is given a reasonable opportunity for making a representation in the matter.

**66. Application of 53[ section 360 of the Code of Criminal Procedure, 1973 (2 of 1974)], and of the Probation of Offenders Act, 1958 :-**

( 1 ) Nothing contained in <sup>1</sup> [S.360 of Code of Criminal Procedure, 1973], or in Probation of Offenders Act, 1958, shall apply to a

person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (4) of section 56.

1. Substituted for "section 562 of the Code of Criminal Procedure, 1898 (5 of 1898)" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **67. Application of the Customs Act, 1962 :-**

The restrictions imposed by or under section 13, clause (a) of sub-section (1) of section 18<sup>1</sup> [,section 18A] and clause (a) of sub-section (1) of section 19 shall be deemed to have been imposed under S.11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly.

1. Inserted, the Foreign Exchange Regulation (Amendment) Act, 1993.

### **68. Offences 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 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 all 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.

**69. Power of court to publish name, place of business, etc., of companies convicted under the Act :-**

(1) Where any company is convicted under this Act for contravention of any of the provisions thereof or of any rule, direction or order made thereunder, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the court. Explanation: For the purposes of this section, "company" has the same meaning as in clause (i) of the Explanation to section 68.

**70. Recovery of sums due to Government :-**

( 1 ) Where any penalty imposed on any person under this Act is not paid,-

(i) the adjudicating officer may deduct the amount so payable from any money owing to such person which may be under the control of any officer of Enforcement ; or

( ii) the adjudicating officer may recover the amount so payable by detaining or selling any goods belonging to such person which are under the control of any officer of Enforcement ; or

(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the adjudicating officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business

and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified thereunder as if it were an arrear of land revenue.

(2) Where the terms of any bond or other instrument executed under this Act or any rule made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) The several modes of recovery specified in this section shall not affect in any way-

( i) any other law for the time being in force relating to the recovery of debts due to the Government ; or

(ii) the right of the Government to institute a suit for the recovery of the penalty due to the Government, and it shall be lawful for the Central Government to have recourse to any such law or suit notwithstanding that the amount is to be recovered by any mode specified in this section.

### **71. Burden of proof In certain cases :-**

(1) Where any person is prosecuted or proceeded against for contraven- ing any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him.

(2) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (3) of section 8, the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which permission to acquire it was granted shall be on him.

(3) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value <sup>1</sup> [fifteen thousand rupees], the burden of proving that the foreign exchange came into his possession lawfully shall be on him.

1. Substituted for "two hundred and fifty rupees" by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **72. 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 offence under this Act alleged to have been committed by any person,

and such document is tendered in any proceedings 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 officer, 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.

### **73. Supplemental provisions :-**

(1) For the purposes of this Act and of any rules, directions or orders made thereunder-

(a) in the case of any person who, having been resident in India, ceases to be such, the Reserve Bank may, by order, declare the territory in which such person shall be treated as being resident;

(b) in the case of any person resident in India who leaves India, the Reserve Bank may give a direction to any bank that until the direction is revoked, any sum, from time to time, standing to the credit of that person and any security held on his behalf at any office or branch of that bank in India specified in the direction shall not be dealt with except with the permission of the Reserve Bank;

(c) a firm or the branch of a firm shall be treated in all respects as

if such firm or branch were a body corporate resident where it is situated ;

(d) subject to the provisions of clause (c), a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;

(e) the making of any book entry or other statement regarding a debit against a branch of any business in favour of the head office or any other branch of that business shall be treated as the acknowledgement of a debt whereby a right is created in favour of a person resident where the head office or other branch is situated.

(2) Nothing in this Act relating to the payment of any price or sum by the Central Government shall be construed as requiring the Central Government to pay that price or sum otherwise than in Indian currency or otherwise than in India.

(3) The Reserve Bank may give directions in regard to the making of payment and the doing of other acts by bankers, authorised dealers, money-changers, stock-brokers, <sup>1</sup> [\*\*\*] or other persons who are authorised by the Reserve Bank to do anything in pursuance of this Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of this Act and of any rules, directions or orders made thereunder.

(4) Subject to any other express provision in this behalf contained in this Act, where any provision of this Act requires the permission of the Reserve Bank for doing anything under such provision, the Reserve Bank may specify the form in which an application for such permission shall be made and the particulars which such application shall contain: Provided that different forms and different particulars may be specified in respect of applications for permission under different provisions of this Act.

1. Words "persons referred to in sub-section (1) of section 32" omitted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **73A. Penalty for contravention of direction of Reserve Bank or for failure to file returns :-**

Without prejudice to the provisions of section 50 and Section 51, where any authorised dealer 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 a reasonable opportunity of being heard impose on the authorised dealer 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.]

#### **74. Delegation :-**

The Reserve Bank may, with the previous approval of the Central Government, by order, delegate any of its powers or functions-

(i) under section 8, <sup>1</sup> [9 or 10] or sub-clause (b) of clause (A) of sub-section (2) of section 18 or sub-section (7) of section 18 to any authorised dealer ;or

(ii) under section 8 or Section 9 to any money-changer, subject to such restrictions, conditions and limitations as may be specified in the order.

1. Substituted for "9, 10 or 11", the Foreign Exchange Regulation (Amendment)Act. 1993.

#### **75. 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.

#### **76. Factors to be taken into account by the Central Government and the Reserve Bank while giving or granting permissions or licences under the Act :-**

Save as otherwise expressly provided in this Act, the Central Government or the Reserve Bank, as the case may be, shall, while giving or granting any permission or licence .under this Act, have regard to all or any of the following factors, namely:-

(i) conservation of the foreign exchange resources of the country ;

(

ii) all foreign exchange accruing to the country is properly accounted for ;

(iii) the foreign exchange resources of the country are utilised as best to subserve the common good ; and

( iv) such other relevant factors as the circumstances of the case may require.

**77. Certain officers to assist officers of Enforcement :-**

The following officers are hereby empowered and required to assist the officers of Enforcement in the enforcement of this Act, namely :-

- (a) officers of the Customs Department ;
- (b) officers of the Central Excise Department ;
- (c) officers of Police ;
- (d) officers of the Central or State Government employed at any port or airport;
- (e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

**78. 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 Government or of the Reserve Bank or any other person exercising any powers 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, direction or order made thereunder.

**79. Power to make rules :-**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may-
  - (a) prescribe the forms and the circumstances of their use for the purposes of this Act;
  - (b) prescribe the procedure to be followed by the authorised dealers and money-changers and by persons applying for permission to do anything for the doing of which permission is necessary under this Act ;
  - (c) prescribe the manner in which inquiries may be held, and orders may be served, under this Act and the procedure to be followed in

respect of the proceedings before the adjudicating officer of the Appellate Board;

(d) provide, subject to such conditions as may be specified therein, for the publication of names and other particulars of persons who have been found guilty of any contravention of the provisions of this Act, or of any rule, direction or order made thereunder ;

<sup>1</sup> [(dd) prescribe the fee payable by a person preferring appeal to the Appellate Board under sub-section (2) of section 52;]

(e) provide for any other matter which is to be or may be prescribed under this Act.

(3) Every rule 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 both Houses agree that the rule should not be made, the rule 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.

1. Inserted by the Foreign Exchange Regulation (Amendment) Act, 1993, w.r.e.f. 8-1-1993.

### **80. Power to remove difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty : Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

### **81. Repeal and saving :-**

(1) Foreign Exchange Regulation Act, 1947, is hereby repealed.

(2) 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, authorisation or exemption granted or any document or instrument executed or

any direction given or any proceedings taken or any confiscation adjudged or any penalty or fine imposed) under the Act hereby repealed shall, insofar 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) the provisions of section 60 of this Act shall apply in relation to the contravention of any of the provisions of the Act hereby repealed or of any rule, direction or order made thereunder;

(c) any appeal preferred to the Foreign Exchange Regulation Appellate Board under sub-section (2) of section 23E of the Act hereby repealed but not disposed of before the commencement of this Act and any appeal that may be preferred to the said Board against any order made or to be made under section 23 of the Act hereby repealed may be disposed of by any member of the Appellate Board constituted under this Act in accordance with the provisions of sub-section (6) of section 52 of this Act ;

(d) every appeal from any decision or order of the Foreign Exchange Regulation Appellate Board under sub-section (3) or sub-section (4) of section 23E of the Act hereby repealed 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 any 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.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of S.6 of the General Clauses Act. 1897, with regard to the effect of repeal.