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**STANDING COMMITTEE  
ON FINANCE  
(1998-99)**

**TWELFTH LOK SABHA**

**MINISTRY OF FINANCE  
(DEPARTMENTS OF ECONOMIC  
AFFAIRS & REVENUE)**

**THE FOREIGN EXCHANGE  
MANAGEMENT BILL, 1998**

**ELEVENTH REPORT**



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**LOK SABHA SECRETARIAT  
NEW DELHI**

*December, 1998/Agrahayana, 1920 (Saka)*

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(1998-99)

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MINISTRY OF FINANCE  
(DEPARTMENTS OF ECONOMIC  
AFFAIRS & REVENUE)

THE FOREIGN EXCHANGE MANAGEMENT  
BILL, 1998

*Presented to Lok Sabha on 23.12.1998  
Laid in Rajya Sabha on 23.12.1998*



LOK SABHA SECRETARIAT  
NEW DELHI

*December, 1998/Agrahayana, 1920 (Saka)*

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COMPOSITION OF THE STANDING COMMITTEE  
ON FINANCE (1998-99)

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Dharendra Agarwal
3. Shri Mohanbhai Sanjibhai Delkar
4. Shri Haribhai Parathibhai Chaudhary
5. Shri Uttam Singh Pawar
6. Shri Girdhari Lal Bhargava
7. Shri Chetan Chauhan
8. Shri Bhagwan Shanker Rawat
9. Shri Rayapati Sambasiva Rao
10. Shri T. Subbarami Reddy
11. Shri Kavuru Sambasiva Rao
12. Shri Sandipan Bhagwan Thorat
13. Shri Praful Manoharbai Patel
14. Shri Prithviraj D. Chavan
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16. Shri Magunta Sreenivasulu Reddy
17. Shri Rupchand Pal
18. Shri Varkala Radhakrishnan
19. Shri Beni Prasad Verma
20. Shri S. Murugesan
21. Shri M. Sahabuddin
22. Dr. S. Venugopalachary
23. Shri Tathagata Satpathy

24. Kum. Kim Gangte
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*Rajya Sabha*

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42. Shri R. K. Kumar
43. Shri Gurudas Das Gupta
44. Shri Satishchandra Sitaram Pradhan
45. Shri Suresh A. Keswani

SECRETARIAT

- |                            |   |                             |
|----------------------------|---|-----------------------------|
| 1. Dr. A. K. Pandey        | — | <i>Additional Secretary</i> |
| 2. Dr. (Smt.) P. K. Sandhu | — | <i>Director</i>             |
| 3. Shri S.B. Arora         | — | <i>Under Secretary</i>      |
| 4. Shri Srinivasulu Gunda  | — | <i>Executive Officer</i>    |

## INTRODUCTION

1. The Chairman of Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Eleventh Report on the Foreign Exchange Management Bill, 1998.

2. The Bill was introduced in Lok Sabha on 4 August, 1998. The Hon'ble Speaker referred the Bill to the Standing Committee on Finance for examination and report thereon on 5 August, 1998.

3. The Committee at their first sitting held on 25 August, 1998 decided to issue press communique for inviting suggestions/views/memoranda from the Individuals, experts, Chambers of Commerce and Industry and interested organisations/parties on the Bill.

4. At their sitting held on 22 September, 1998, the Committee heard the views of representatives of Confederation of Indian Industry(CII), Federation of Indian Chambers of Commerce and Industry (FICCI), PHD Chambers of Commerce and Industry (PHDCCI) and Associated Chambers of Commerce and Industry (ASSOCHAM) on the provisions contained in the Bill.

5. The Committee at their sittings held on 22 September and 13 October, 1998 took the oral evidence of experts on various provisions contained in the Bill.

6. The Committee took the evidence of representatives of Reserve Bank of India, Ministry of Finance (Deptt. of Economic Affairs and Revenue) on 23 September, 1998 and also on 20 November, 1998 alongwith representatives of Legislative Deptt. under the Ministry of Law, Justice and Company Affairs.

7. The Committee at their sitting held on 9 December, 1998, after discussing the draft Report in detail, directed the Secretariat to prepare revised draft in the light of the suggestions made by them. The Committee considered and adopted the revised draft Report at their sitting held on 16 December, 1998.

8. The Committee wish to express their thanks to representatives of CII, FICCI, ASSOCHAM and PHDCCI, S/Shri S. Venkitaramanan, Ashok Desai, Bibek Debroy, B.K. Pal, R. Venkataraman, Prof. Prabhat Patnaik and Prof. Kamal Nayan Kabra and officers of Ministry of Finance (Deptts. of Economic Affairs and Revenue) and Ministry of Law, Justice and Company Affairs (Legislative Department) for cooperation extended in placing before them their considered views and perceptions on the subject and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

9. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;  
21 December, 1998  

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30 Agrahayana, 1920 (Saka)

MURLI DEORA,  
Chairman,  
Standing Committee on Finance.

## REPORT

### Background

1. The objective of the Foreign Exchange Regulation Act, (FERA), 1973 was to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and import and export of foreign currency. The FERA, 1973 was also aimed at the conservation of the foreign exchange resources of the country and proper utilisation thereof in the interest of economic development of the country.

2. Under the provisions of FERA, 1973 Reserve Bank was empowered to regulate activities in India of foreign companies, Indian companies having non-resident interests of not less than 40% known as FERA companies, foreign nationals resident in India, holding and acquisition of immovable properties in India by foreign companies/ FERA companies and foreign nationals. These provisions were aimed at regulating the outflow of foreign exchange by such companies in the form of dividend/profits etc.

3. In July, 1991 as a part of the structural programme, the Government of India announced its new industrial policy. The policy relating to Foreign Direct Investment was an important part of the new industrial policy. It was recognised that foreign equity investment had several advantages *vis-a-vis* debt even if it does not function as a vehicle of technology transfer. Foreign Direct Investment has been accorded an important role to bridge the balance of payment gap, to assist in the country's industrial development, to integrate domestic economy with the global economy, and to boost country's exports. The rules relating to Foreign Direct Investment were liberalised and powers were delegated by Government to the Reserve Bank to grant approval for such investments in certain industries under the Automatic Route. In this context, it was considered necessary to remove the restrictions imposed under certain provisions of Foreign Exchange Regulations Act, 1973 on the operations in India of companies with more than 40% foreign equity *i.e.* FERA companies so as to provide such companies a 'level playing field' *vis-a-vis* other Indian companies in order to improve investment climate. This was achieved through

exemptions granted by issue of notifications under the relevant provisions of the Act. It was also felt that over the years a very complex system of decision making was built up which made the transactions more expensive for those who require foreign exchange not only for business purposes but also for other economic activities. There were large number of cases where with suitable deregulation, transactions, could be made less expensive and quick without any significant loss of foreign exchange which would also result in mitigating the rigors of control. It was also recognised that when applying any system of control, efforts should be concentrated on those areas which would yield higher benefits. With these objectives in view, the exchange control regulations were liberalised with the introduction of Liberalised Exchange Rate Management System in March, 1992.

4. Though as indicated above, certain changes were introduced by issue of Notifications by the Reserve Bank, it was felt that comprehensive amendments to the Act were necessary with a view to—

- (a) incorporate all the changes which have been made by issue of notifications in the Act itself so as to create investor confidence,
- (b) delete the provisions which had lost their relevance over the time, and
- (c) rationalise other sections which are necessary but need to be amended to do away with rigors of control or irrationalities while administering the Act.

5. Accordingly, the FERA, 1973 was amended first by issue of an ordinance which was later replaced by the Foreign Exchange Regulation (Amendment) Act 1993. In terms of the 'Amendment' Act nine sections were deleted, nineteen sections were amended and two new sections were introduced. Marginal changes were made in eleven sections.

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

7. In view of the above and particularly because India had adopted Article VIII of IMF in respect of current account transactions, it was decided to replace FERA 1973 with a new legislation called Foreign Exchange Management Act, (FEMA) 1998. Accordingly, a Task Force was constituted by the Reserve Bank to undertake the exercise of defining the approach to the new legislation. The Task Force submitted its Report in January, 1994. The recommendations made by the Task Force were taken into account while drafting the Foreign Exchange Management Bill.

8. The FEMA Bill has been drafted to meet the above referred objectives which are reflected in its preamble which states that "A Bill to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting orderly development and maintenance of foreign exchange market in India."

9. The salient provisions of FEMA which are different from those of FERA, 1973, are that whereas under the provisions of FERA, both the Central Government as well as Reserve Bank had a role to play in administration of the Act, under FEMA, the administration of the provisions of the Act would now only rest with Reserve Bank of India, though the Government will continue to have power to issue directions to RBI. Besides some of the definitions in the FERA have been modified to suit the current requirements, for example, the term authorised dealer/authorised money changer has been replaced by the term authorised persons, so as to include dealers in foreign securities and off shore units. Likewise, the definition of currency has been widened to include various instruments and the new definitions of foreign exchange would also cover drafts drawn by persons/banks outside India payable in Indian currency. The definition of person resident in India has also been changed. Reserve Bank will now specify the permissible capital account transactions and the limits upto which foreign exchange would be made available for such transactions. Reserve Bank will also have powers to regulate other transactions of capital account nature. Certain exemptions from realisation and repatriation of foreign exchange for which the Government/Reserve Bank has earlier to issue notifications under FERA have been provided in the FEMA itself. The penalty for contravention has been reduced under FEMA as compared to FERA where it was five times the amount involved. The liability for contravention of an offence under FEMA has been made civil as compared to the criminal one under FERA.

The Enforcement Directorate has been entrusted with the same powers as are conferred on the Income Tax authorities under Chapter XIII of the Income Tax Act, 1961. Certain onerous provisions of FERA, 1973 *viz.* preparation/attempts to contravene any provisions which were deemed to be contraventions under Section 64 and provisions relating to burden of proof have been deleted. A new provision which is an improvement over FERA is with regard to the powers of compounding the contraventions. Further, under FEMA it will not be necessary any longer for the Reserve Bank to deal with individual applications for grant of foreign exchange facilities for current account transactions (except those on which restrictions are placed by Government) or for permissible capital account transactions as are notified by the Reserve Bank of India.

10. With a view to have expert opinion on the provisions of the Bill, the Committee sought Memoranda from several experts and Chambers of Commerce. In order to seek clarifications, the Committee also took evidence of the representatives of Chambers of Commerce and Industry on 22 September, 1998, experts on 22 September and 13 October, 1998 and representatives of the Reserve Bank of India, Ministry of Finance (Department of Economic Affairs and Department of Revenue) on 23 September and also on 20 November, 1998 alongwith the representatives of Legislative Department under the Ministry of Law, Justice and Company Affairs. The Committee examined the provisions of the Bill Clause-wise and after having been convinced of the need and the objectives of the Bill, the Committee approve the same for enactment by Parliament with certain modifications/recommendations which are detailed in the succeeding paragraphs of the Report.

### **Recommendations of the Committee**

11. The long title of the FEMA Bill reads as under—

“to consolidate and amend the law relating to foreign exchange with the objectives of facilitating external trade and payments and for promoting the orderly developments and maintenance of foreign exchange market in India.”

12. The Committee are of the view that the words “and conservation of foreign exchange” may be added after the words “market in India.”

## Clause 2 : Definitions

13. Clause 2(t) defines as to who will be a 'person resident in India' and it reads as under:

- “(i) a person residing in India for more than one hundred and eighty-two days during the course of a period of three hundred and sixty-five days immediately preceding the date on which such period is reckoned.
- (ii) any person or body corporate registered or incorporated in India.
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India.
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.”

14. The Committee are of the view that the above Clause 2(t)(i) is worded in an ambiguous language because neither it specifies whether a stay of 182 days will be continuous or otherwise, nor it is clear from the definition as to from which date the period of stay shall be reckoned. This definition will give rise to impractical situations in as much as the residential status of a person will be subject to frequent change. The Committee were also informed during evidence that under the existing Act *i.e.* FERA, 1973, the only part which was creating problem in interpretation of the definition was with regard to Clauses 2(p) (i) (c), 2 (p) (ii) (c), and 2(p) (iii) (d) under which the status of residents could be decided on the basis of intention of a person. It was due to this ambiguity that a number of FERA cases were made against individuals, MNCs and other corporate entities registered abroad.

15. The Committee are however of the view that though no definition can be fully exhaustive, yet, in order to remove some of the difficulties, which might arise in the implementation of the Act with regard to interpretation of “person resident in India” the following definition may be adopted—

‘ **“Person resident in India’ means—**

- (i) **a person residing in India for more than two hundred and forty days, in aggregate, during the preceding financial year.”**

The Committee further opine that it may also be considered if 'intention' can be made the basis for deciding the residential status of a person.

### **Clause 3 : Dealing in foreign exchange, etc.**

16. The Committee were apprised during evidence that Clause 3 of the Bill which provides that no person shall in any manner deal in or transfer any foreign exchange or foreign security to any person not being an authorised person, does not cover compensatory payments also known as Hawala Deals. The Committee are however of the view that since money is often transferred through illegal channels, a suitable provision should be incorporated in the Bill.

17. The Committee therefore recommend that a new clause be added under clause (3) which should read as follows and clause 3 of the Bill may be numbered as 3(1)

**“(2) No person resident in India shall except through an authorised person—**

- (a) make any payment to or for the credit of any person resident outside India in any manner;
- (b) receive otherwise than through an authorised person, any payments by order or on behalf of any person resident outside India in any manner.”

### **Clause 6 : Capital Account transactions**

18. The Committee note that under Clause 6(3) (i) the Reserve Bank of India may by regulation prohibit, restrict or regulate the acquisition or transfer of immovable property in India other than a lease not exceeding five years, by a person resident outside India. The Committee note that this Clause has been transplanted from the existing Section 31 of FERA 1973. They also note that under Section 31 of FERA, Indian nationals have been exempted. They therefore, hope that the Reserve Bank of India will exclude citizens of India from the restrictions imposed under this sub-clause.

### **Clause 8 : Realisation and Repatriation of Foreign Exchange**

19. Clause 8 of the Bill reads as under:

“Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India such person, shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.”

20. The Committee are of the view that the words “all reasonable” may be deleted from the above clause.

### **Clause 13 : Penalties**

21. Clause 13 which deals with the contraventions as civil offences and empowers the adjudicating authorities to impose penalties reads as under:

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

22. In view of the fact that the amount prescribed in the case of contraventions is on the lower side, the Committee recommend that this clause may be amended to read as under:

“If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction, or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a minimum penalty upto thrice the sum involved in such contraventions where such amount is quantifiable, or upto two lakh rupees where the amount is not quantifiable, and where

**such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues."**

23. The Committee are, however, surprised to note that under this Clause no mention of confiscation of foreign exchange/foreign security etc. has been made. Under the existing Act Section 63 provides for confiscation of currency and security etc. It is therefore suggested that the same Section be incorporated under this Clause and be numbered as Clause 13 (2) after incorporating suitable modifications. The earlier Clause 13 may be numbered as 13(1). The new Clause may read as under—

**"Any adjudicating officer adjudging any contravention under Clause 13 may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.**

*Explanation :* For the purposes of this 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;"

#### **Clause 15 : Power to compound contravention**

24. Clause 15 (1) of the Bill which proposes to vest the power of compounding of contraventions in the officers of the Directorate of Enforcement states as follows :

**"Any contravention under Section 13 May, on an application made by the person committing such contraventions be compounded**

by the Director of Enforcement or such other officers of the Directorate of Enforcement as may be authorised in this behalf by the Central Government in such manner as may be prescribed."

25. The Committee are of the view that since the Enforcement Directorate under Clause 36 of the Bill has been vested with the power of investigation of the contravention, the power of compounding of contraventions should not be vested in the same Authority. The Committee, therefore, recommend that the power of compounding should be given to the Reserve Bank of India. Accordingly, it is suggested that the proposed Clause 15(1) of the Bill should be amended as follows :

**"Any contravention under Section 13 may, on an application made by the person committing such contravention, be compounded by such officers of the Reserve Bank of India as may be authorised in this behalf by the Central Government and in such manner as may be prescribed."**

26. To do away with the possibility of inordinate delay in disposing of cases of compounding of contraventions, the Committee recommend that the following new sub-clause prescribing time limit for disposal of the cases should be added after clause 15(1):—

**"(i) 15(2) The application for compounding the contravention, made by the person committing such contravention shall be disposed of within 6 months from the date of receipt of the application.**

**(ii) Consequently, sub-clause (2) of clause 15 may be renumbered as clause 15 (3)".**

#### **Clause 16 : Appointment of Adjudicating Authority**

27. Sub-Clause 1 of Clause 16 which seeks to provide for appointment of Central Government officers as Adjudicating Authority for holding an inquiry for the purpose of imposing any penalty reads as under:

**"16 (1) For the purpose of adjudication under Section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as**

it may think fit, as Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the accused person a reasonable opportunity of being heard for the purpose of imposing any penalty.

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

29. The Committee note that under this Clause provision has been made for a separate Adjudicating Authority, however, no qualification or designation has been prescribed for the officers who can be appointed as adjudicating authorities. In order to ensure that the adjudicating authorities work in an independent manner, free from the control of the executive, it is suggested that this clause may be amended to read as under:

**"16(1) for the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many persons as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the accused person a reasonable opportunity of being heard for the purpose of imposing any penalty. A person shall, however, not be qualified for appointment as an Adjudicating Authority unless he—**

- (a) is or has been a judge of any District Court; or
- (b) has been a member of the Indian Legal Service and has held a post in Grade 1 of that service for at least three years."

30. The Committee observe that under Clause 16 no provision has been made in the case of a person concerned for taking the assistance of a legal practitioner who can be authorised to present the case on his behalf before the Adjudicating Authority. The Committee are of the view that the person accused may be allowed to take the assistance of the legal practitioner and/or Chartered Accountants to present his case before the Adjudicating Authority. They, therefore, recommend that a new sub-clause may be inserted after clause 16(2).

**"16(3) An accused person shall have the right to appear either in person or take the assistance of a legal practitioner or chartered accountant for presenting his case before the Adjudicating Authorities."**

31. The Committee also take note of the fact that Clause 16 does not prescribe any time limit for completion of the adjudicating proceedings. Keeping in view the inordinate delays which often take place while deciding the cases and also having taken into account the directions given by the Supreme Court of India in the latest case of Vineet Narain versus Union of India, the Committee are of the firm view that some definite time limit needs to be provided within which it shall be incumbent on the Adjudicating Authorities to complete the proceedings. They therefore, recommend that the following new sub-clause prescribing time limit for completion of the adjudicating proceedings may be inserted after the above mentioned new sub-clause *i.e.* 16(3).

**"16(4) the adjudication proceedings shall be completed within a period of twelve months from the date of receipt of the complaint."**

Consequently, Clause 16(3) of the Bill may be renumbered as Clause 16(5).

#### **Clause 18 : Appeal to Appellate Tribunal**

32. Clause 18 (5) of the Bill which prescribes time limit for disposal of appeals by the Appellate Tribunal reads as under:—

**"The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."**

33. The Committee are of the opinion that in the absence of any explicit provisions for specified period under which the appeal should be disposed of, the words 'as expeditiously as possible', 'endeavour' and 'finally' have little meaning. It is therefore suggested that this clause may be amended to read as follows:—

**"The appeal filed before the Appellate Tribunal under sub-section (1) shall be disposed of within a period of twelve months from the date of receipt of the appeal."**

**Clause 20 : Qualifications for appointment of Chairperson and Members**

34. Clause 20 of the Bill specifies qualifications for the Chairperson and members of the Appellate Tribunal. The Committee note that the same qualifications have been prescribed for the Chairperson as well as the members which in their opinion require to be changed. They are of the view that the qualifications prescribed for the Chairperson should be higher than those prescribed for the members. They therefore desire that this clause may be amended to read as under:—

**“A person shall not be qualified for appointment as the Chairperson or a member unless—**

- (a) in the case of a Chairperson, he is or has been or is qualified to be a judge of the High Court, and**
- (b) in the case of a member, he is or has been a District Judge or has been a member of the Indian Legal Service and has held a post in Grade-I of that service for atleast three years.**

**Clause 25 : Members to act as Chairperson in certain circumstances**

35. Clause 25 which explains certain circumstances in which a member may act as a Chairperson reads as follows:—

“25(1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation, or otherwise, such one of the Members as the Central Government may, by Notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancies, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.”

36. The Committee apprehend that enabling the Government to appoint the Members of the Tribunal as a Chairperson in the event of occurrence of a vacancy on account of any of the reasons mentioned

under sub-clause (1) and (2) might result in causing delays in making such appointments thereby affecting severely the functioning of the Appellate Tribunal. Hence, the Committee recommend that both the sub-sections may be amended to read as under:—

- “(1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson till the date on which a new Chairperson, appointed in accordance with the provisions of this Act, to fill the vacancy, enters upon his office.**
- (2) When the Chairperson is unable to discharge his functions owing to absence, illness, or any other cause, the seniormost Member shall discharge the functions of the Chairperson till the date on which the Chairperson resumes his duties.”**

**Clause 31 : Right of the Appellant to take assistance of legal practitioner and of Government etc. to appoint Presenting Officer**

37. In the light of the fact that Chartered Accountants are authorised to appear before the Income Tax Authorities as per Section 288 of the Income Tax Act 1961, Central Excise Authorities as per Section 350 of the Central Excise Act, 1944, Customs Authorities as per Section 146A of the Customs Act 1962, Company Law Board as per Clause 19 of the Company Law Board Regulation 1991, the Committee are of the opinion that the persons accused of contraventions of the provisions of FEMA may also be permitted to take the assistance of Chartered Accountants apart from the legal practitioners to present their case before the Appellate Tribunal. The Committee, therefore, recommend the following modifications in this Clause:

**“In Clause 31(1) after the word ‘legal practitioner’ add the words ‘chartered accountants’”**

**Clause 36 : Power of search, seizure, etc.**

38. Clause 36 seeks to vest the powers of investigation of the contraventions referred to in Clause 13 in the Director of Enforcement and other officers of Enforcement. As the expression ‘other officers of enforcement’ signifies that virtually every officer of the Directorate of Enforcement can exercise these powers, the Committee desire that the words “other officers of enforcement” should be qualified by adding

the words "not below the rank of Assistant Director" after the words "other officers of Enforcement". The Committee also note that the powers of investigation can be conferred on other officers in the Central Government, State Government or the Reserve Bank under Clause 38(1). In view of the fact that both clauses 36(1) and 38(1) refer to the authorities who can be entrusted with investigation, the Committee suggest that both these clauses may be merged and amended to read as under—

**"36(1) The Director of Enforcement and other officers of Enforcement not below the rank of Assistant Director shall take up for investigation the contravention referred to in Section 13, however, the Central Government may also, by notification authorise any officer or Class of officers in the Central Government, State Governments or the Reserve bank, not below the rank of Deputy Secretary or equivalent for the purpose of the investigation."**

In view of the change suggested above, clause 36(2) may be amended to read as under:—

**"36(2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act."**

The Committee suggest that the other clauses may be renumbered accordingly. Clause 38(2) may be mentioned under clause 37 and numbered as 37(2) and the existing clause 37 may be numbered as clause 37(1).

### **Clause 37 : Empowering other officers**

39. The Committee are of the view that the level of officers whom the Central Government may authorise to exercise the powers and to discharge the duties of the Directorate of Enforcement and the other officers of Enforcement should be specified in the Act itself. Hence, the Committee recommend the following modifications :

**"In clause 37 after the words 'a State Government' add the words 'not below the rank of Deputy Secretary or equivalent'"**

### **Clause 42 : Contravention by Companies**

40. Clause 42 stipulates that in the case of contravention by a Company, every person who was at the time the contravention was committed, was in charge of and was responsible to the Company for the conduct of the business of the Company shall be liable to be proceeded against. However, proviso to the clause provides that no such person can be punished if he proves that the contravention took place without his knowledge or that he exercised 'all' due diligence to prevent such contravention.

**41. The Committee are of the view that the word 'all' would increase the onus manifold. Therefore, they recommend that the word 'all' appearing in the proviso to the clause 42 should be omitted.**

### **Clause 43 : Death or insolvency in certain cases**

42. Clause 43 reads as under:—

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

43. In order to ensure that under Clause 43, the liability on the legal representative does not become unlimited, the Committee recommend that the following proviso may be added under this section:—

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

### **Clause 49 : Repeal and Saving**

44. The Committee note that under this Clause the dissolution of the Appellate Board also finds a mention. In order to give a better readability to the Bill, it is suggested that the dissolution of the Board may be mentioned in a separate Clause numbered as 49(1) which may read as under:—

**"49 (1) With effect from the appointed date, the Appellate Board constituted under sub-section (1) of Section 52 of the Foreign Exchange Regulation Act, 1973, shall stand dissolved."**

45. 49 (2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service."

46. The repeal and saving should be mentioned in a separate clause which could be number as 50. The Committee find that clause 49 (3) provides as follows:—

"(3) Notwithstanding such repeal,—

"(a) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed;"

47. The Committee are of the view that in the absence of any sunset clause the cases which are at different stages will continue to be governed under the provisions of the old Act and this in turn will give rise to an anomalous situation. Besides, even after the new Act comes into force any person is free to file a complaint for an offence which might have been committed when FERA 1973 was in operation. In order to put an end to such a situation, the Committee are of the firm view that the provisions of FERA, 1973 should not be made applicable in perpetuity and some sunset clause should be there in the proposed Bill which might take care of this aspect. They, therefore, recommend that 49(3) should be amended to read as follows:—

48. "50 (1) The Foreign Exchange Regulation Act, 1973 is hereby repealed.

(2) Notwithstanding such repeal—

(a) all offences committed under the repealed Act, in which prosecution proceedings have already been instituted in the court of law and where the investigations have been completed and the adjudication proceedings have commenced, shall continue to be governed under the provisions of the repealed Act."

49. Consequently, 49(3)(b) may be renumbered as 50(2)(b), and 49(3)(c) may be renumbered as 50(2)(c) and 49(3)(d) may be renumbered as 50(2)(d). 49(4) may be renumbered as 50(3).

50. The words "The Foreign Exchange Regulation Act, 1973 is hereby repealed" may be omitted from clause 49(1), in view of the change suggested above.

51. The Committee note that under the present Bill *i.e.* FEMA there is no provision in order to safeguard that the foreign exchange is only used for the specific purpose for which the permission to use the same was granted. Similarly, there is also no provision to check the over invoicing of imports. The Committee, however, note that under the existing Foreign Exchange Regulation Act, 1973 there was specific provision made with regard to both these aspects under sub-section (3) and (4) of Section 8. The Committee therefore, desire that similar provision may suitably be incorporated in FEMA also.

NEW DELHI;  
21 December, 1998  
30 Agrahayana, 1920 (Saka)

MURLI DEORA,  
Chairman,  
Standing Committee on Finance.

## NOTE OF DISSENT

*Shri Rupchand Pal, MP*

*Shri Varkala Radhakrishnan, MP*

Foreign Exchange Regulation Act, (FERA), 1973 is sought to be replaced by a new Bill called Foreign Exchange Management Act, (FEMA), 1998.

It has been said that in an atmosphere of liberalisation and economic reforms initiated since 1991 many of the provisions of Fera, '73 have become outdated and out of tune with the prevailing liberalised Foreign Exchange scenario.

The draft for the new Bill as prepared by the Task Force set up by RBI (Tarapore Committee) incorporates the Notifications issued by RBI at different times needed to adjust to the emerging situations following liberalisation.

Reforms is a fact of life and everyone rooted in the realities of changes has to accept and adjust to the growing compulsions but such adjustments need to be in consonance with the basic needs of the country and targetted socio-economic goals and the direction of reforms required to be fashioned accordingly.

Whatever requests, suggestions, advices are received from several quarters who might have been affected by certain provisions of the existing law at certain points of time need careful consideration to facilitate any move towards desired direction.

But prejudices and exaggerated representation of things by wrongdoers themselves to justify their offence and the pressure exerted in an atmosphere considered suitable and congenial to them can never benefit the country and serve the over all interests of the Nation as a whole.

Repeatedly the Fera, 1973 has been described as 'Draconian' by interested quarters. But no court of the country, be it Supreme Court, or any High Courts have ever described the FERA,'73 as 'draconian'.

From the Note received from the Enforcement Directorate it is seen that a negligible percentage (2.8%) from the total no. of accused could be prosecuted.

But why did a section of the Press continued its campaign against the existing Fera law? Only after certain individual related to the said Media Concern was booked in the "Hawala Case" sections of the Press took up cudgels against Fera, '73.

The Press Council made serious observations in connection with the campaign against ED in particular and Fera Law in general as given in Annexure to the Note submitted by the Enforcement Directorate to the Standing Committee on Finance.

In his submission the former governor of RBI - Shri S. Venkitaramanan has observed how the loopholes in Fera were misused by offenders and the 'Big sized' offenders could get out of the net of Fera.

But repeated and continuous campaign can fulfil the Goebblesian aim is well known to perpetrators of grave crimes who have been engaged in operations violative of laws aimed at protecting the overall economic and other interests of a developing country like India.

But for the offenders, it seems, so called liberalisation brooks no delay. So they demand that Fera, 73 must be replaced immediately by a toothless Fema, as it is the order of the day.

Paradoxically, such moves to cope up with Indian liberalisation is being "doubled up" at a time when the great mentors of market economy and liberalisation and globalisation had been seen to make U-turn to radically opposite positions. Mr. Paul Krugman, Lord Eatwell, George Soros and host of other champions of Neo-Capitalism are pronouncing caution regarding pace and sequencing of Reforms, particularly financial reforms in the light of the developments in East Asia and South East Asia who had gone the whole hog for full capital-convertibility.

Reforms-friendly countries like Malaysia, Thailand and others are reverting back to Capital Control Regime, may be for a short term, the dominant Indian political elites in order to demonstrate their market-friendliness are dismantling the existing structure and mechanism which could, at least partially check the offences related to

foreign exchange and unlawful transactions and operations through Hawala Route stashing and siphoning off parking corrupt money abroad by unscrupulous Industrial Houses and others through Hawala and through under invoicing of exports and over invoicing of imports etc.

I shall be failing in my duty as a representative of the people of the country if I do not record my Note of dissent to the move to legalise the malpractices in respect of FE transactions.

My objection to some of the provisions of Fema, '98 rests mainly on the following:—

1. Although merely 2.8% of the total number of offenders could be prosecuted under Fera, the conversion of the Fera,'73 law to a civil law and total removal of 'criminality' aspect is a retrograde step and prejudicial to the economic needs of the country.

Hence my suggestion is that Fema should contain the 'criminality' aspect.

2. Secondly, how the 'Hawala' operation will be dealt with has been left out of the purview of Fema. But 'Hawala' operations are the most dominant feature in the Indian situation today.

From various reports it can be seen that the amount involved in the Hawala operations is staggering and mindboggling.

Hence my suggestion is that section 8 of the Fera Act should be retained in-tact in the Fema.

3. Any law should be operative equally and uniformly irrespective of any other consideration. But the power given to Central Govt. and RBI to implement the various provisions of the Act selectively and at different points of time is bad in law and involves potentially prejudicial steps by the concerned authorities.

Hence no such power to act selectively and different points of time should rest either in the hands of Central Govt. or RBI.

The provisions of Fema should come into force at a time and uniformly.

4. In Fema, 1998 the role of ED has been diluted and authority has been concentrated on the RBI.

The existing infrastructure and mechanism available with ED should not be weakened in this manner. Their role should be allowed to be performed although in a modified manner on the basis of past experience and loopholes to be plugged effectively so that big offenders could not go out of the net as they could do earlier.

5. Fema, '98 also allows deals in some capital A/cs.

In the Fema, '98 current A/c transactions are so thoroughly liberalised that the misuse of the situation to enjoy the facilities of full capital convertibility cannot be wished away particularly in the light of the experience of the last several years.

Hence my suggestion is that the provisions of 6(2a) & 6(4) of the Fera Act should be retained in some form or other.

In Fema, '98 Bill the words "any class or classes of capital account transaction, which are permissible etc." to be deleted. (Because otherwise it will encourage back-door entry of capital account convertibility without the approval of Parliament.

6. On the question of acquisition of assets abroad the word "from or inherited from a person who was resident outside India" to be deleted (otherwise on the plea of inheritance from a person who was resident outside India the money parked abroad by unscrupulous Indians will be brought back but will not be subject to Income Tax. There are several concrete cases where individuals and groups have parked unaccounted money from India which was accumulated through evasion of several kinds tax of the country, including Income Tax, Excise duty, Sales Tax and irregular invoices.

7. As regards definition of 'Resident Indian' I have to say that the aggregate calculation of 240 days of stay during the previous financial year from the day of reckoning may create some confusion; so it must be mentioned that the 'resident Indian' as understood according to Income Tax Act, 1961.

8. The authority to search and seizure but not to arrest would only encourage the offenders and the law-enforcing authority will be helpless witness to offences being committed but offender scot free.

9. After accumulation of large amount of money and to pay a very negligible amount as penalty will only legalise unlawful foreign exchange transactions particularly offences like Hawala operations, irregularity in Invoicing. Clear provisions must be there against misutilisation of foreign exchange for purposes other than for which it was sanctioned etc.

10. Even in an atmosphere of liberalisation the Indian operators engaged in smuggling of Gold are seen to continue their activities unabated as such routes exempt even the consumer from payment of Sales Tax and put them beyond IT net.

11. The orderly development of FE market is a desired goal but management of foreign exchange market without any cognisance of the need to conserve FE at certain periods of crisis can lead the unprecedented crisis of FE. The toothless 'Fema' will be a helpless outlooker to such situation.

12. FERA is being replaced by FEMA and the contravention of FEMA is being considered as a civil offence. It should not be considered as a civil offence. So in the section 13 after words "be liable to" the word "imprisonment and" should be added. After "penalty upto" the words "five times" will be put in place of the word "twice" (as in the draft report) and "where such amount is not quantifiable the penalty will be 10 lacs of Rupees (because 1 lac of rupees is too meagre a penalty for the amount involved in the Act of contravention) and in Section 14 the words 'he shall be liable to Civil imprisonment' the word "civil" is to be deleted.

At the places of "civil prison" the word "civil" will have to be deleted.

13. There should be a specific provision for confiscation of the whole amount found during search and raid.

14. Section 9, 8(4), 8(3) of Fera,'73 covering the transactions through Hawala, irregular invoices and mis-utilisation of the foreign exchange granted for a specific purpose will have to be retained in the new law. The compounding of offences should be made transparent otherwise there is a possibility of misuse of the provision.

The sections 64, 71, 72 and 59 of FERA,'73 should also be retained to make the law effective.

15. The suggestion as made in the Draft Report of the Standing Committee in favour of sunset clause will be a bad recommendation to facilitate the proven offenders to get of the hook. Hence my suggestion in respect of 50(2a) will be "all offences committed under the Repealed Act and for which investigations and prosecution proceedings have already been instituted shall continue to be governed under the provision of the Repealed Act" and in respect of 50(2b) it will be written like this fresh case can be instituted by the enforcement directorate under the Repealed Act on the basis of any complaint or otherwise after two years from the date of commencement of FEMA 1998."

Nothing has been said regarding malpractices and unlawful foreign exchange transactions by Banks. Fema, '98 must incorporate necessary safeguards against the unlawful activities of Banks in respect of foreign exchange transactions.

I would request you to kindly incorporate this Dissent Note of mine alongwith the Report of the Standing Committee on the FEMA, 1998.

Sd/-  
Rupchand Pal

Sd/-  
Varkala Radhakrishnan

## NOTE OF DISSENT

*Dr. Biplab Dasgupta, MP*

The report has failed to provide clear and acceptable justifications for the conversion of FERA into FEMA. The main argument stated in the report is that it is a part of the globalisation process, but does not indicate how that objective, good or bad, right or wrong, has been achieved in FEMA. What was necessary was to provide a point-wise account clarifying the deviations from FERA and justifying each, rather than a highly generalised introduction of four pages. Some of us do not agree that globalisation on the terms of WTO, World Bank, IMF and USA, as also of the giant multinational conglomerates would be beneficial to India; in fact, evidence from all over the world points in the other direction.

2. One major departure, that has not been stated in the draft, has been the conversion of 'criminal offences' for violation of foreign exchange regulations into 'civil offences'. In view of the highly charged debate on Hawala and related offences only 2-3 years back, a very strong justification was needed for this departure. Otherwise there would be accusations of being soft towards criminals who squander nation's precious resources for personal benefit.

3. Omission of any reference to money-laundering bill is surprising in view of the repeated declaration by the Government that these two bills are complimentary. These two should have been finalised together so that we could check whether or not the weaknesses in FEMA were rectified by the money-laundering bill. In particular, it would have helped to verify whether the damage caused by making foreign exchange regulation violation a civil offence was to some extent mitigated by way of strong action against those indulging in money laundering. Though the money laundering bill, as proposed by the Government, is not comprehensive and does not cover some of the important types of money-laundering, I was surprised to find during preliminary discussion in the committee, that many members were keen on further dilution, that would reduce the bill to something innocuous and toothless. That was why I repeatedly requested you to examine and decide on the two bills together.

4. Nor is it proper to give the bill retrospective effect and to condone those against whom some investigation in some form had been initiated for violation of FERA by giving FEMA retrospective effect along with the repeal of FERA. I would prefer to retain clause 49(3)(a) as it was without further elaboration sought in page 22 of the report. Nor do I agree to 'any sunset clause' to allow the violators of foreign exchange regulations reprieve.

5. The issue of the definition of 'residence' has not been adequately handled and a great deal more of thinking and consultation with experts is necessary. Residence is not simply a matter of number of days spent in the country—whether 180 or 240—and there has to be some consideration of 'intention' as manifested in behaviour on various counts as well.

Sd/-  
Dr. Biplab Dasgupta

## NOTE OF DISSENT

*Suresh A. Keswani, MP*

Clause 49(3) of FEMA, 1998 provides that all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

This aspect was deliberated at length first with the representatives of the Ministry of Finance, RBI, Chambers of Commerce, experts etc. and then amongst the Members of the Committee.

After prolonged deliberations, the majority of the Members were of the view that FERA, 1973 should not be made applicable in perpetuity and some sunset clause should be there to end the situation which may arise with the continuance of old cases under FERA, 1973.

The cases were classified into the following five categories:—

- (i) cases where Directorate of Enforcement has already filed a complaint in the court of law;
- (ii) where investigations have been completed and show cause notices have already been issued for adjudication;
- (iii) cases where search and seizures have been conducted and foreign exchange or other incriminating documents have been seized;
- (iv) cases where summons under Section 40 of FERA have been issued; and
- (v) cases where under section 33 information has been called for.

I am of the firm view that the cases which fall under the first category *i.e.* where Directorate of Enforcement has already filed a complaint in the court of law should continue to be governed under FERA, 1973 and rest of the cases should be governed under the provisions of FEMA, 1998.

Sd/-  
Suresh A. Keswani

## NOTE OF DISSËNT

*Gurudas Dasgupta, MP*

I do not agree with the Report of the Finance Standing Committee on foreign Exchange Management Bill. The Bill seeks to dilute the offence of foreign exchange violation. It is not considered to be a criminal offence. Under the new provision, it is only a civil offence. The penalty is only payment of fine, that too in a limited way. The Bill proposes to give retrospective effect. In many cases, it will be difficult to counter foreign exchange violations, particularly Hawala crime under the proposed law.

Prior to full scale convertibility, particularly capital account convertibility, such a dilution shall make illegal outflow of funds easy and violation shall be allowed to be committed with impunity. Illegal transactions of funds are done not because incidence of tax is heavy, it is primarily done to protect assiduously illegal income arising out of tax evasion and avoidance of law. Decline in the value of Indian currency is also a significant factor that encourages stashing away of funds. In the name of liberalisation, such a dilution of the gravity of the crime and relaxation, effective measures are considered to be a retrograde step. Most ominous is the move to give retrospective effect of the law. Never before law passed by the Parliament was sought to be given retrospective effect. This move may be misunderstood as a step to condone the offence already committed by people in high position.

Illegal diversion of funds out of the country is an offence against the community and impinges upon the resource mobilisation to tackle basic human problem. Therefore, it is wrong to consider this as a civil offence. Liberalisation becomes unguarded if criminality is sought to be passed off as civil offence.

Sd/-  
Gurudas Dasgupta

## NOTE OF DISSENT

*Jaipal Reddy, MP*

"It is with a deep regret that I differ from a majority of my esteemed colleagues on the Committee in respect of the following important issues.

1. In sharp contrast to FERA, infraction of foreign exchange restrictions under the Bill would not entail any criminal liability, but only civil penalty. Such total discriminalisation at this stage is not warranted. I think that transactions of more than, say Rs. 1 crore ought to be subjected to both criminal and civil liability. The most untenable part of this decriminalisation is that even the professional operators of Hawala transactions will go scot-free, as there is no other law under which they can be prosecuted.

2. I do not see any strong reason to have a regular appellate authority when a specific provision has been made for appeal to the High Court. It would be unnecessarily adding one more layer of litigation and adding to the delays, which are being rightly deplored.

3. I am of the considered view that the definition of NRI contained in FERA should be continued in Foreign Exchange management Bill, instead of chasing after new-fangled and half-baked ideas.

4. My severest discomfort is, however, with the proposed amendments to clause 49. In the draft Bill, FERA has been made perpetually applicable, which represents the other extreme end of the spectrum. There has, therefore, been unanimous appreciation among the members of the Committee for the suggestion that there should be a sunset clause to bring FERA to a close in a reasonable time-frame. In the course of this sort of appreciation, the idea of even a brief time-limit has evaporated to yield place to instant termination of FERA. I have not protested too much against this dilution in my instinctive bid to be on the same wavelength as that of majority colleagues. But, I have been constrained to differ and differ strongly when such amendments have been proposed, though through an ingenious classification as to virtually repeal FERA with retrospective effect from 1973. I am afraid that this will amount to grant of general amnesty in

respect of FERA. This method of retrospective decriminalisation is not only bad in principle, but also without a precedent in the history of legislation. The rationale for replacing FERA by FEMA is that the economic environment has changed in the 1990's. I cannot see how the changes to be made in the statute on the basis of this rationale can be made applicable to the persons alleged to have violated FERA in the 1970's and 80's. I may recall that even Income Tax Amnesty Schemes, which have been made operative more than once, covered only unnoticed and unregistered cases. I may further point out that TADA, which is only a temporary law as contradistinct from FERA, simply lapsed and its lapsing has not provided any sort of relief to the victims from its draconian provisions. In view of the above, comprehensive relief sought to be provided by those against whom investigation proceedings have been initiated is not only unwarranted but also provides scope for avoidable criticism and speculation."

Sd/-  
Jaipal Reddy

## NOTE OF DISSENT

*Dr. Bikram Sarkar, MP*

As I have mentioned in the last meeting of the Committee on the 16th December, 1998 while discussing the revised draft report on the FEMA Bill, 1998, a sort of "Sunset clause" should be suitably incorporated in the proposed Bill to take care of the limited application on the provision of FERA, 1973 after its repeal by the present Bill.

2. The application of the proposed Bill should be *prospective*. In other words, the cases which are pending under FERA, 1973 at different stages of Investigation should continue to be under the purview of the FERA, 1973, and all those cases should be taken care of by a sunset clause which may be for one year or two years by which time all the pending cases under FERA shall have to be disposed of.

3. For the convenience of discussion and clear understanding, the pending FERA cases may be put into five Categories, as has been done in page 22 of the Revised Draft Report. I am of the opinion that only the instances falling in category (v) may be left out and all the rest of categories *i.e.* categories (i) to (iv) should continue to be governed by FERA 1973. The issuance of the summons under Section 40 of the FERA 1973 is, for all practical purposes, the starting point of FERA Investigation. And it should be so construed. The objectives of *prospective* application of FEMA, as unanimously agreed upon by the Standing Committee, would not permit any of the FERA cases falling in categories (i) to (iv) to be left out of purview of FERA 1973.

4. I would request you kindly to ensure that my views given above are suitably incorporated in the Final Report of the Standing Committee on Foreign Exchange Management Bill, 1998.

Sd/-  
Bikram Sarkar

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 25 AUGUST, 1998

The Committee sat on Tuesday, 25 August, 1998 from 1500 hrs.  
to 1645 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Girdhari Lal Bhargava
3. Shri Bhagwan Shanker Rawat
4. Shri Rayapati Sambasiva Rao
5. Shri Kavuru Sambasiva Rao
6. Shri Prithviraj D. Chavan
7. Shri Magunta Sreenivasulu Reddy
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Shri Tathagata Satpathy
11. Dr. Bikram Sarkar
12. Shri Joachim Baxla
13. Shri Buta Singh

*Rajya Sabha*

14. Dr. Manmohan Singh
15. Shri N.K.P. Salve
16. Shri M. Rajsekara Murthy
17. Shri O.P. Kohli
18. Shri Raghavji

19. Dr. Biplab Dasgupta
20. Shri C. Ramachandrai
21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Gurudas Das Gupta
24. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*
3. Shri N.S. Hooda — *Assistant Director*

2. At the outset the Chairman welcomed the Members to the sitting of the Committee and invited their suggestions with regard to the modalities to be adopted for examining the Bills referred to the Committee for detailed examination.....

3. The Committee after deliberations; desired that since each of the Bills referred to the Committee required in-depth examination, detailed preliminary/background material may be procured from the respective Ministries. With regard to the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 as well as the other two Bills *i.e.* (i) The Prevention of Money Laundering Bill, 1998 and (ii) The Foreign Exchange Management Bill, 1998; the Committee desired that the details of the legal provisions which are prevalent in different countries may also to be procured from the Ministry of Finance for the use of the Committee. They further desired that deliberations which have taken place from time to time in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances should also be made available to the Committee. In order to have the benefit of wide ranging views on various provisions of (i) The Foreign Exchange Management Bill, 1998, (ii) The Prevention of Money Laundering Bill. 1998 and (iii) The Securities Contracts (Regulation) Amendment Bill, 1998 the Committee decided to issue a Press Communique for inviting suggestions/views/memoranda from the public, experts, Chambers of Industry and Interested Organisations/ Parties/individuals on these Bills. It was also decided that in order to

save time the Members of the Committee desirous of giving their suggestions with regard to the provisions of the Bill may send the same to the Secretariat.

4. .... The Committee also decided to take oral evidence of the representatives of Chambers of Business and Commerce, professional bodies such as the Institute of Chartered Accountants of India, experts and representatives of Ministry of Finance, on (i) The Foreign Exchange Management Bill, 1998, (ii) The Prevention of Money Laundering Bill, 1998. It was decided to convene a meeting for examining these Bills on 22 and 23 September, 1998.

5. The Committee decided unanimously that so far as the examination of (i) Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998, (ii) The Foreign Exchange Management Bill, 1998, (iii) The Prevention of Money Laundering Bill, 1998 are concerned, these should be examined by the entire Committee. However, for the other two Bills they were of the view that Sub-Committees might be constituted. The Chairman, however, apprised the Members that in view of the shortage of the staff in the Secretariat which is assisting this Committee it will not be feasible to constitute the Sub-Committees.

6.	**	**	**	**	**
	**	**	**	**	**
7.	**	**	**	**	**
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*The Committee then adjourned.*

MINUTES OF THE SIXTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 22 SEPTEMBER, 1998

The Committee sat on Tuesday, 22 September, 1998 from 1100 hrs. to 1300 hrs. and again from 1500 hrs. to 1730 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Mohanbhai Sanjibhai Delkar
3. Shri Haribhai Parathibhai Chaudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Bhagwan Shanker Rawat
7. Shri T. Subbarami Reddy
8. Shri Kavuru Sambasiva Rao
9. Shri Sandipan Bhagwan Thorat
10. Shri Praful Manoharbai Patel
11. Shri Prithviraj D. Chavan
12. Shri R.L. Jalappa
13. Shri Magunta Sreenivasulu Reddy
14. Shri Varkala Radhakrishnan
15. Shri Beni Prasad Verma
16. Shri S. Murugesan
17. Shri S. Jaipal Reddy
18. Shri Joachim Baxla
19. Shri Buta Singh

*Rajya Sabha*

20. Dr. Manmohan Singh
21. Shri N.K.P. Salve
22. Shri Narender Mohan
23. Shri O.P. Kohli
24. Shri Raghavji
25. Dr. Biplab Dasgupta
26. Shri C. Ramachandraiah
27. Shri Amar Singh
28. Shri Prem Chand Gupta
29. Shri R.K. Kumar
30. Shri Satishchandra Sitaram Pradhan
31. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Dr. (Mrs.) P.K. Sandhu — *Director*
3. Shri S.B. Arora — *Under Secretary*

## WITNESSES

*Associated Chambers of Commerce and Industry (ASSOCHAM)*

1. Shri Anil K. Agarwal — **Member Managing Committee and Co-Chairman International Trade Committee**
2. Shri Mukesh M. Patel — **Member, Managing Committee and Chairman, Direct Taxes Committee**
3. Shri T.G. Keshwani — **Secretary**

*Federation of Indian Chambers of Commerce and Industry (FICCI)*

1. Shri K.K. Modi — President
2. Shri J.B. Dadachanji — Member
3. Shri B.A. Ranganathan — Member
4. Shri Vikram Kapoor — Co-Chairman, Banking & Finance Committee
5. Shri Y.P. Srivastava — Deputy Secretary General

*Confederation of Indian Industry (CII)*

1. Shri Rajesh Shah — President
2. Shri Arun Bharat Ram — Chairman, (NR)
3. Shri Bishwajit Bhattacharya — Advocate, Supreme Court
4. Mrs. M. Roy — Deputy Director General

*PHD Chamber of Commerce and Industry (PHDCCI)*

1. Shri O.P. Vaish — President,
2. Shri C.K. Hazari — Past President
3. Shri K.S. Mehta — Member, Managing Committee and Chairman Finance and Banking Committee
4. Shri S.K. Sarkar — Member, Finance and Banking Committee
5. Shri S. Kapoor — Secretary
6. Shri Ashwani Kumar — Special Invitee

## EXPERTS

1. Shri S. Venkitaramanan — Former Governor RBI
2. Shri Ashok Desai — Former Attorney General
3. Shri Bibek Debroy — Director-Research, Rajiv Gandhi Foundation
4. Shri B.K. Pal — Former Executive Director, RBI

2. At the outset, Chairman welcomed the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry (ASSOCHAM) and PHD Chambers of Commerce and Industry (PHDCCI) and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of FICCI, CII, ASSOCHAM and PHDCCI on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. The Committee, thereafter, asked the representatives of the above mentioned Chambers to send their clause-wise suggestions on the FEMA Bill, 1998 and the Prevention of Money Laundering Bill, 1998 in writing to the Committee for their consideration.

5. A verbatim record of proceedings has been kept.

*(The witnesses then withdrew).*

*The Committee then adjourned to meet at 1500 hours.*

## **Part II**

2. The Chairman welcomed S/Shri S. Venkitaramanan, former Governor, RBI, Ashok Desai, former Attorney General, B.K. Pal, former Executive Director, RBI and Bibek Debroy, Director-Research, Rajiv Gandhi Foundation and invited their attention to the provisions of Direction 55 of Directions by the Speaker.

3. The Committee then heard the views of the above mentioned experts on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill 1998.

4. The Committee, thereafter, requested the experts to furnish their views in writing to the Committee for their consideration.

5. A verbatim record of proceedings has been kept.

*(The witnesses then withdrew)*

*The Committee then adjourned to meet again on  
23 September, 1998*

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 23 SEPTEMBER, 1998

The Committee sat on Wednesday, 23 September, 1998 from 1030 hrs. to 1300 hrs. and again from 1430 hrs. to 1700 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Dharendra Agarwal
3. Shri Haribhai Prathibhai Choudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Chetan Chauhan
7. Shri Bhagwan Shanker Rawat
8. Shri Rayapati Sambasiva Rao
9. Shri Praful Manoharbai Patel
10. Shri Prithviraj D. Chavan
11. Shri R.L. Jalappa
12. Shri Magunta Sreenivasulu Reddy
13. Shri Varkala Radhakrishnan
14. Shri Beni Prasad Verma
15. Shri Tathagata Satpathy
16. Shri S. Jaipal Reddy
17. Shri Joachim Baxla

*Rajya Sabha*

18. Dr. Manmohan Singh
19. Shri N.K.P. Salve
20. Shri M. Rajsekara Murthy
21. Shri Narendra Mohan
22. Shri O.P. Kohli
23. Shri Raghavji
24. Shri Biplab Dasgupta
25. Shri C. Ramachandraiah
26. Shri Amar Singh
27. Shri Prem Chand Gupta
28. Shri Gurudas Das Gupta
29. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

## WITNESSES

*Representatives of Reserve Bank of India (RBI)*

1. Shri Jagdish Capoor — *Deputy Governor*
2. Shri Khizer Ahmed — *CGM*
3. Shri V.D. Pandse — *GM*
4. Shri S.R. Kolarkar — *GM*

*Representatives of Ministry of Finance**Department of Economic Affairs*

1. Shri Vijay Kelkar — *Finance Secretary*
2. Shri Shankar N. Acharya — *Chief Economic Adviser*

- |    |                      |   |                         |
|----|----------------------|---|-------------------------|
| 3. | Shri J.S. Mathur     | — | AS (Budget)             |
| 4. | Shri Arvind Virmani  | — | Senior Economic Adviser |
| 5. | Shri Gajendra Haldea | — | JS (ADB&I)              |
| 6. | Shri S.P. Singh      | — | Director (EC)           |

*Department of Revenue*

- |    |                         |   |                               |
|----|-------------------------|---|-------------------------------|
| 1. | Shri J.A. Choudhury     | — | Revenue Secretary             |
| 2. | Shri Ravi Kant          | — | Chairman, CBDT                |
| 3. | Shri A. Balasubramanian | — | Member (L)                    |
| 4. | Shri V.B. Srinivasan    | — | Member (Inv.)                 |
| 5. | Shri A.N. Prasad        | — | Joint Secretary (TPL-I)       |
| 6. | Shri. B.D. Vishnoi      | — | Deputy Secretary<br>(TPL-III) |
| 7. | Sh. M.S. Kaushik        | — | Deputy Secretary (Inv.)       |

*Enforcement Directorate*

- |    |                          |   |                      |
|----|--------------------------|---|----------------------|
| 1. | Shri M.K. Bezbruah       | — | Director             |
| 2. | Shri M. Joshi            | — | Special Director     |
| 3. | Shri Abhijit Chakravarty | — | Addl. Director       |
| 4. | Shri T.K. Gadoo          | — | Legal Advisor        |
| 5. | Dr. Shamshuddin          | — | Deputy Legal Advisor |
| 6. | Shri Arun Sharma         | — | Asstt. Director      |
| 7. | Shri. G.S. Sud           | — | Asstt. Director      |

2. At the outset, the Chairman welcomed the Deputy Governor, Reserve Bank of India and his colleagues and invited their attention to the provisions contained in the Directions 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of RBI on the provisions contained in the foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998. The Committee, thereafter, requested them to furnish a written note on certain points raised by the Members during the discussion.

4. The evidence was inconclusive.

**Part II**

2. The Chairman welcomed the Finance Secretary, Secretary, Deptt. of Revenue and their colleagues and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of Ministry of Finance (Deptts. of Economic Affairs and Revenue) and RBI on the provisions contained in the above mentioned two Bills. The Committee, thereafter requested the representatives of Ministry of Finance (Deptts. of Economic Affairs and Revenue) to furnish written notes on some of the points raised by the Members during the discussions.

4. A verbatim record of the proceedings has been kept.

*The evidence was inconclusive.*

*(The witnesses then withdrew)*

*The Committee then adjourned.*

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 13 OCTOBER, 1998

The Committee sat on Wednesday, 13 October, 1998 from  
1100 hrs. to 1300 hrs. and again from 1500 hrs. to 1700 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Dhiendra Agarwal
3. Shri Uttam Singh Pawar
4. Shri Girdhari Lal Bhargava
5. Shri Chetan Chauhan
6. Shri T. Subbarami Reddy
7. Shri Sandipan Bhagwan Thorat
8. Shri Praful Manoharbai Patel
9. Shri Prithviraj D. Chavan
10. Shri Magunta Sreenivasulu Reddy
11. Shri Rupchand Pal
12. Shri Varkala Radhakrishnan
13. Shri Beni Prasad Verma
14. Shri S. Murugesan
15. Shri Tathagata Satpathy
16. Dr. Bikram Sarkar
17. Shri Joachim Baxla
18. Shri P. Chidambaram
19. Shri Buta Singh

*Rajya Sabha*

20. Dr. Manmohan Singh
21. Shri Krishna Kumar Birla
22. Shri N.K.P. Salve
23. Shri M. Rajsekara Murthy
24. Shri Narendra Mohan
25. Shri O.P. Kohli
26. Shri C. Ramachandraiah
27. Shri Amar Singh
28. Shri Prem Chand Gupta
29. Shri R.K. Kumar
30. Shri Gurudas Das Gupta
31. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members of the Committee and invited their suggestions on the provisions contained in the Foreign Exchange Management Bill, 1998.

3. Thereafter Members discussed amongst themselves upto clause 16 of the Foreign Exchange Management Bill, 1998.

4. The discussion was inconclusive.

5. The Committee then adjourned to meet again in the afternoon for taking evidence of Experts on the Foreign Exchange Management Bill, 1998 and the prevention of Money Laundering Bill, 1998.

**Part II**

2. The Chairman welcomed Dr. Prabhat Patnaik, Professor of Economics, JNU, Dr. Kamal Nayan Kabra, Professor of Economics, Indian Institution of Public Administration, Delhi and Shri R. Venkataraman, Senior Advocate, Supreme Court of India to the sitting and invited their attention to the provisions contained in direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned experts on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. A verbatim record of proceedings was kept.

*The witnesses then withdrew.*

*The Committee then adjourned to meet again on  
6 November, 1998.*

MINUTES OF THE NINETEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 10 NOVEMBER, 1998

The Committee sat on Tuesday, 10 November, 1998 from 1100 hrs. to 1300 hrs. and again from 1500 hrs. to 1700 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Mohanbhai Sanjibhai Delkar
3. Shri Chetan Chauhan
4. Shri Bhagwan Shanker Rawat
5. Shri Rayapati Sambasiva Rao
6. Shri T. Subbarami Reddy
7. Shri Kavuru Sambasiva Rao
8. Shri Sandipan Bhagwan Thorat
9. Shri Prithviraj D. Chavan
10. Shri R.L. Jalappa
11. Shri Magunta Sreenivasulu Reddy
12. Shri Varkala Radhakrishnan
13. Shri Beni Prasad Verma
14. Kum. Kim Gangte
15. Dr. Bikram Sarkar
16. Shri S. Jaipal Reddy
17. Shri Joachim Baxla

*Rajya Sabha*

18. Dr. Manmohan Singh
19. Shri N.K.P. Salve
20. Shri M. Rajsekara Murthy
21. Shri Narendra Mohan
22. Shri O.P. Kohli
23. Shri C. Ramachandraiah
24. Shri Amar Singh
25. Shri Prem Chand Gupta
26. Shri R.K. Kumar
27. Shri Gurudas Das Gupta
28. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Sh. S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the members to the sitting of the Committee and invited their suggestions on the provisions contained in the Foreign Exchange Management Bill, 1998 which could not be covered in their earlier sitting.

3. The Members, thereafter, discussed the Bill clause-by-clause, beginning from clause 17 of the Foreign Exchange Management Bill, 1998.

4. The Committee then decided to take oral evidence of representatives of Ministry of Law, Justice and Company Affairs (Legislative Department) alongwith representatives of Ministry of Finance to seek legal clarifications in respect of causes 3, 4 and 16 to 19 of the Bill on 20 November, 1998.

5. A verbatim record of the proceedings has been kept.

*The Committee then adjourned.*

MINUTES OF THE TWENTIETH SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 20 NOVEMBER, 1998

The Committee sat on 20 November, 1998 from 1100 hrs. to  
1330 hrs.

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Uttam Singh Pawar
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Bhagwan Shanker Rawat
6. Shri Rayapati Sambasiva Rao
7. Shri Kavuru Sambasiva Rao
8. Shri Praful Manoharbai Patel
9. Shri Prithviraj D. Chavan
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri Beni Prasad Verma
13. Kum. Kim Gangte
14. Dr. Bikram Sarkar
15. Shri S. Jaipal Reddy
16. Shri Joachim Baxla

*Rajya Sabha*

17. Dr. Manmohan Singh
18. Shri N.K.P. Salve
19. Shri Narendra Mohan
20. Shri O.P. Kohli

21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — Director
2. Shri S.B. Arora — Under Secretary

## WITNESSES

*Representatives of Ministry of Finance**Department of Economic Affairs*

1. Shri Vijay Kelkar — Finance Secretary
2. Dr. S.N. Acharya — Chief Economic Adviser
3. Shri Inderjit Khanna — SS(EF)
4. Shri R.S. Sharma — Joint Secretary
5. Shri S.P. Singh — Director (AC&EC)

*Department of Revenue*

1. Shri J.A Chowdhury — Secretary
2. Shri Ravi Kant — Chairman, CBDT
3. Shri A. Balasubramanian — Member (L) CBDT
4. Shri V.B. Srinivasa — Member (Inv.), CBDT
5. Dr. G.C. Srivastava — Additional Secretary (Admn.)
6. Shri A.N. Prasad — Joint Secretary (TPL-I), CBDT
7. Smt. Deepa Krishnan — Director (TPL-I), CBDT

*Enforcement Directorate*

1. Shri M.K. Bezboruah — Director
2. Shri M.C. Joshi — Special Director
3. Shri Abhijit Chakraverthy — Additional Director

*Reserve Bank of India (RBI)*

- |                        |   |                    |
|------------------------|---|--------------------|
| 1. Shri Jagdish Capoor | — | Deputy Governor    |
| 2. Shri Khizer Ahmed   | — | Executive Director |
| 3. Shri V.D. Pendse    | — | General Manager    |

*Representatives of the Ministry of Law,  
Justice and Company Affairs*

*Legislative Department*

- |                          |   |                               |
|--------------------------|---|-------------------------------|
| 1. Dr. Raghbir Singh     | — | Law Secretary                 |
| 2. Shri T.K. Viswanathan | — | Additional Secretary          |
| 3. Shri S.R. Dhaleta     | — | Deputy Legislative<br>Counsel |
| 4. Dr. S.D. Singh        | — | Deputy Legislative<br>Counsel |

2. At the outset, the Chairman welcomed the Secretaries of Ministry of Finance (Depts. of Economic Affairs and Revenue), Secretary (Ministry of Law, Justice and Company Affairs (Legislative Department) and Deputy Governor, RBI and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of Ministry of Finance on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. Thereafter, the Committee sought clarifications from the Law Ministry officials on some of the provisions contained in the Foreign Exchange Management Bill, 1998.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

*The Committee then adjourned to meet again at 1530 hours.*

MINUTES OF THE TWENTY-SECOND SITTING OF  
THE STANDING COMMITTEE ON FINANCE  
HELD ON 9 DECEMBER, 1998

The Committee sat on Wednesday, 9 December, 1998 from  
1500 hrs. to 1900 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Haribhai Parathibhai Chaudhary
3. Shri Chetan Chauhan
4. Shri Bhagwan Shanker Rawat
5. Shri Rayapati Sambasiva Rao
6. Shri T. Subbarami Reddy
7. Shri Kavuru Sambasiva Rao
8. Shri Praful Manoharbhair Patel
9. Shri Prithviraj D. Chavan
10. Shri R.L. Jalappa
11. Shri Magunta Sreenivasulau Reddy
12. Shri Rupchand Pal
13. Shri S. Murugesan
14. Kum. Kim Gangte
15. Dr. Bikam Sarkar
16. Shri S. Jaipal Reddy
17. Shri P. Chindambaram
18. Shri Buta Singh
19. Shri Chennamaneni Vidyasagar Rao

*Rajya Sabha*

20. Dr. Manmohan Singh
21. Shri N.K.P. Salve
22. Shri M. Rajsekara Murthy
23. Shri O.P. Kohli
24. Shri Raghavji
25. Dr. Biplab Dasgupta
26. Shri Prem Chand Gupta
27. Shri R.K. Kumar
28. Shri Gurudas Das Gupta
29. Shri Satishchandra Sitaram Pradhan
30. Shri Suresh A. Keswani

## SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members and requested them to consider and adopt draft Report on the Foreign Exchange Management Bill, 1998.

3. In view of the fact that they had received the draft Report on the night of 8 December, 1998 and did not get sufficient time to go through the same, some Members expressed their inability to discuss the draft Report clause-wise. They, therefore, requested the Chairman to postpone the same by a couple of days. However, most of the Members felt that since the Committee had already deliberated on different clause of FEMA Bill in detail and moreover, since the Bill had been referred to the Committee way back in the month of August, 1998; they were of the view that it would not be prudent to postpone the adoption of the draft Report further. After some discussions, it was decided that the draft Report may be considered clause-wise and a different date could be fixed for its adoption.

4. The draft Report was, therefore, discussed at length and it was decided that a revised draft Report be prepared and circulated by the Secretariat after incorporating the suggestions, on which most of the Members had agreed. (Annexure).

5. The Committee then decided to meet again on Wednesday, 16 December, 1998 at 5 O'clock for adopting the draft Report.

It was suggested by some members that under the head 'Background', a separate para should be added under which it may be mentioned as to in what respects FEMA differs from FERA so that the purpose of replacing FERA with FEMA could be expressed in more clear terms.

*Long title of the Bill*

*Para Nos. 10 & 11*

It was suggested that para 10 and 11 containing recommendations regarding long title of FEMA Bill, 1998 may be suitably amended to include the conservation of foreign exchange also under it. It was, therefore, suggested that the long title may be amended to read as under:—

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

*Clause 1, Para No. 12*

It was suggested to delete this para from the draft Report.

*Para No. 13*

It was suggested to delete para 13 which contained a recommendation on clause 2(o) of the Bill defining the word 'import'.

*Clause 2(t), Para No. 16*

The Committee were of the view that the definition of a person resident in India should be concise under which too many options should not be mentioned so that there was a minimum scope of misinterpretation. After having deliberated on different alternatives, many Members suggested that though no definition can be fully

exhaustive yet the following definition could be considered for incorporation in the Bill:—

“(t) person resident in India means

- (i) a person residing in India for more than 240 days, in aggregate during the preceding financial year”.

*Clause 3, para 17*

It was suggested to delete the words “a suitable provision on the lines of Section 9 of FERA, 1973” after the words “illegal channels”.

*Clause 3, para 18*

It was suggested that—

- (i) For “(2) Save as may be provided in and in accordance with any general or special exemptions from the provisions of this sub-clause which may be granted conditionally or unconditionally by the Reserve Bank, no person in or resident in, India shall—”.

the following be substituted:

“No person resident in India shall except through an authorised person”.

Under sub-clause (a) & (b) of clause 2, it was suggested that the words “in any manner” may be added after the words “outside India”. It was also suggested that sub-clause 2(c) to (6) of clause 3 may be deleted.

*Clause 6(3) (i), Para 19*

It was suggested that the recommendation in respect of acquisition or transfer of immovable property in India other than a lease not exceeding 5 years by a person who is not a citizen of India and any other Company (other than banking company) may be deleted and instead it may be mentioned that the Committee expect that the Reserve Bank of India will exclude citizens of India from the restrictions imposed under this sub-clause while making Regulations.

*Clause 8, Para Nos. 20 & 21*

- (i) It was suggested to delete the words “all reasonable” after the word “take” in clause 8 of the Bill.

- (ii) It was also suggested to drop the recommendation as contained in para 21 of the draft Report.

*Clause 13, paras 22 and 23*

It was suggested that the provision as contained under clause 13 regarding the penalties does not require any further change except that the word "twice" may be substituted with the word "thrice" and the words "one lakh rupees" may be substituted with the words "two lakh rupees".

*Clause 15(2), para Nos. 27 & 28*

- (i) Add the words " for compounding the contravention" after the word "application".
- (ii) It was suggested that the recommendation as contained in the para 28 of the draft Report may be deleted.

*Clause 16(1), Paras 29 and 30*

It was suggested that in the case of the adjudicating authorities, in view of the fact that no qualifications have been mentioned under clause 16. Suitable qualifications may be mentioned. It was, therefore, suggested that the following qualifications may be prescribed for the adjudicating authorities:—

- (i) He is or has been a district judge; or
- (ii) has been a member of the Indian Legal Service and has held a post of Grade I of that service for atleast three years.

*Clause 16(3), para 33*

It was suggested that—

For "No accused person shall be denied".

following be  
*substituted*

"An accused person shall have".

*Clause 16(4), para 34*

It was also suggested that—

*For* "16(4) The adjudication proceedings shall be completed within a period of twelve months from the date of issue of showcause notice".

the following be  
*substituted*

"16(4) The adjudication proceedings shall be completed within period of twelve months from the date of receipt of complaint."

*Page 19, para 37*

It was further suggested that—

- (i) *For* "(a) in the case of a Chairperson, he is a judge of the High Court who is qualified to be appointed as a judge of the Supreme court of India, and".

the following be  
*substituted*

"(a) in the case of a Chairperson, he is or has been or is qualified to be a judge of High Court"; and

- (ii) *For* "(b) in the case of a member, he is a District judge who is qualified to be appointed as a judge of the High Court".

the following be  
*Substituted*

"(b) in the case of a member, he is or has been a judge of the District Court or has been a member of the Indian Legal Service and has held a post in Grade I of that service for atleast three-years".

*Clause 35, Para 41*

It was suggested to delete the recommendation in para 41 wherein composition of the Directorate of Enforcement was mentioned.

*Clause 36, Para No. 43*

It was suggested that the recommendation as contained in para no. 43 with regard to incorporation of powers of search and seizure under Chapter XIII of the Income Tax Act, 1961 in the Act itself should be deleted.

*Clause 36, Para No. 44*

It was suggested that sub-clause 36(1) and 38(1) may be merged suitably in view of the fact that both these clauses empower different officers with regard to investigations. Clause 36(2) may be mentioned under clause 37.

*Clause 49(3), Para No. 56*

The Members were in agreement that a sun set provision has to be incorporated because FERA, 1973 can not be continued for ever.

During the discussions, cases pending under FERA were classified into five categories:—

- (i) Cases where the Directorate of Enforcement has already filed a complaint in the Court of Law and the criminal proceedings have already been initiated.
- (ii) Cases where investigations have been completed and show-cause notices issued for departmental adjudication.
- (iii) Cases where search and seizure have been conducted and foreign exchange or other incriminating documents have been seized.
- (iv) Cases where summons under Section 40 of FERA have been issued in the course of investigation/inquiry.

- (v) Cases where only notices under Section 33 seeking information is issued.

Whereas by and large, the Members were in agreement that the cases falling under para (i) and (ii) should continue to be governed under the provisions of FERA, 1973 and cases under para (v) can be left out from the provisions of FERA, 1973. At the same time, however, some Members expressed reservations with regard to the continuance of cases falling under para (iii) and (iv) under the provisions of FERA.

MINUTES OF THE TWENTY THIRD SITTING OF THE STANDING  
COMMITTEE ON FINANCE HELD ON 16 DECEMBER, 1998

The Committee sat on Wednesday, 16 December, 1998 from 1700  
hrs. to 1840 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Haribhai Parathibhai Choudhary
3. Shri Girdhari Lal Bhargava
4. Shri Rayapati Sambasiva Rao
5. Shri T. Subbarami Reddy
6. Shri Kavuru Sambasiva Rao
7. Shri Sandipan Bhagwan Thorat
8. Shri Praful Manoharbhai Patel
9. Shri R.L. Jalappa
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri S. Murugesan
13. Dr. S. Venugopalachary
14. Dr. Bikram Sarkar
15. Shri S. Jaipal Reddy
16. Shri Buta Singh

*Rajya Sabha*

17. Dr. Manmohan Singh
18. Shri Krishna Kumar Birla

19. Shri N.K.P. Salve
20. Shri M. Rajsekara Murthy
21. Shri Narendra Mohan
22. Shri O.P. Kohli
23. Shri Raghavji
24. Shri Biplab Dasgupta
25. Shri Prem Chand Gupta
26. Shri R.K. Kumar
27. Shri Gurudas Das Gupta
28. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*
3. Shri N.S. Hooda — *Assistant Director*

2. At the outset, the Chairman welcomed the Members of the Committee and invited their suggestions/views on the revised draft report on the Foreign Exchange Management Bill, 1998.

3. The Committee, after deliberation, adopted the revised draft Report with amendments/modifications as shown in the Annexure.

4. Since some of the Members wanted to give a note of dissent, the Chairman informed the Members that they could send their notes of dissent, if any, to the Secretariat by 11 hours on Monday, 21 December, 1998.

5. The Committee authorised the Chairman to finalise the Report in the light of the aforesaid amendments as also to make verbal changes and present the same to the Parliament.

6. A verbatim record of proceedings has been kept.

*The Committee then adjourned to meet again  
in the first week of January, 1999.*

*Para 15, Page 7*

Add the following sub-para after first sub-para

“The Committee further opine that it may also be considered if ‘intention’ can be made the basis for deciding the residential status of a person.”

*Para 48, Page 21*

For “(a) all offences committed under the repealed Act and in which prosecution proceedings have already been instituted shall continue to be governed under the provisions of the repealed Act”.

Substitute “(a) all offences committed under the repealed Act in respect of which prosecution proceedings have already been instituted in the court of law and where investigations have been completed and the adjudication proceedings have commenced shall continue to be governed under the provisions of the repealed Act”.

*Para 48, Page 21*

Delete “(b) No fresh case shall be instituted by the Enforcement Directorate under the repealed Act on the basis of any complaint or otherwise after the commencement of the Foreign Exchange Management Act, 1998 except with the explicit permission of the Central Government”.

*Para 50, Page 22*

For “Consequently, 49(3)(b) may be renumbered as 50(2)(c), and 49(3)(c) may be renumbered as 50(2)(d) and 49(3)(d) may be renumbered as 50(2)(e). 49(4) may be renumbered as 50(3).”

Substitute “Consequently, 49(3) (b) may be renumbered as 50(2) (b), and 49(3)(c) may be renumbered as 50(2)(c) and 49(3)(d) may be renumbered as 50 (2)(d). 49(4) may be renumbered as 50(3).

## APPENDIX

AS INTRODUCED IN LOK SABHA

**Bill No. 93 of 1998**

### THE FOREIGN EXCHANGE MANAGEMENT BILL, 1998

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#### ARRANGEMENT OF CLAUSES

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##### CHAPTER I

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**THE FOREIGN EXCHANGE MANAGEMENT BILL, 1998**

**A**

**BILL**

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

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

**CHAPTER I**

**PRELIMINARY**

1. (1) This Act may be called the Foreign Exchange Management Act, 1998.

**Short title, extent, application and commencement.**

(2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India.

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

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

**Definitions.**

(a) "Adjudicating Authority" means an officer authorised under sub-section (1) of section 16;

(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange, established under section 17;

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

(d) "Bench" means a Bench of the Appellate Tribunal;

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

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(h) "currency notes" means and includes cash in the form of coins and bank notes;

(i) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—

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

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad; and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(j) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 35;

(k) "export", with its grammatical variations and cognate expressions, means—

(i) the taking out of India to a place outside India any goods;

(ii) provision of services from India to any person outside India;

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

(m) "foreign exchange" means foreign currency and includes,—

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques , letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(n) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(o) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;

(p) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;

2 of 1934

(q) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;

(r) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;

(s) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person

(t) "person resident in India" means—

(i) a person residing in India for more than one hundred and eighty-two days during the course of a period of the three hundred and sixty-five days immediately preceding the date on which such period is reckoned,

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India.

(iv) an office, branch or agency outside India owned or controlled by person resident in India;

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

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(n) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

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2 of 1934

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(i) a person residing in India for more than one hundred and eighty-two days during the course of a period of the three hundred and sixty-five days immediately preceding the date on which such period is reckoned,

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India.

(iv) an office, branch or agency outside India owned or controlled by person resident in India;

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

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

(w) "repatriate to India" means bringing into India the realised foreign exchange and—

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

(ii) the holding the realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank,

and includes use of realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

(x) "Reserve Bank" means the reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

2 of 1934

(y) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be

18 of 1944

46 of 1959

52 of 1963

notified by the Reserve Bank as security for the purposes of this Act;

(z) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service;

(za) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;

(zb) "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

## CHAPTER II

### REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

3. Save as otherwise provided in this Act, no person shall in any manner deal or transfer any foreign exchange or foreign security to any person not being an authorised person.

**Dealing in  
foreign  
exchange, etc.**

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

**Holding of  
foreign  
exchange, etc.**

**Current  
account  
transactions.**

5. Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that the central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed;

**Capital  
account  
transactions.**

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

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

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions:

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

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

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

(i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;

(j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred,—

(i) by a person resident in India and owed to a person resident outside India; or

(ii) by a person resident outside India.

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

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

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

**Export of  
goods and  
services.**

7. (1) Every exporter of goods shall—

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the 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 received on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

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

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

8. Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

**Realisation and repatriation of foreign exchange.**

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

**Exemption from realisation and repatriation in certain cases.**

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

### CHAPTER III

#### AUTHORISED PERSON

**Authorised  
person.**

10. (1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign

exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

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

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

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

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

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

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any

foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

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

**Reserve  
Bank's powers  
to issue  
directions to  
authorised  
person.**

**11. (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.**

**(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of**

any rule, regulation, notification, direction, or order made thereunder, direct any authorised person to furnish such information, in such manner as it deems fit.

(3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

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

**Power of Reserve Bank to inspect authorised person.**

(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;

(b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;

(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

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

## CHAPTER IV

### CONTRAVENTION AND PENALTIES

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

**Penalties.**

14. (1) Subject to the provisions of sub-section (2) of section 18, if any person fails to make full payment of the penalty imposed on him under

**Enforcement  
of the orders  
of  
adjudicating  
authority.**

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

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied—

(a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

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

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

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

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

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

*Explanation.*—For the purpose of this section, where the defaulter is a Hindu Undivided Family, the *karta* thereof shall be deemed to be the defaulter.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating authority shall give the

defaulter an opportunity showing cause why he should not be committed to the civil prison.

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

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

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

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

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

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

(b) in any other case—upto six months:

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

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

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

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**Power to  
compound  
contravention.**

15. (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded by the Director of Enforcement or such other officers of the Directorate of Enforcement as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

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

## CHAPTER V

## ADJUDICATION AND APPEAL

16. (1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the accused person a reasonable opportunity of being heard for the purpose of imposing any penalty:

Appointment  
of  
Adjudicating  
Authority.

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

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

(3) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 27 and—

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974

**Establishment  
of Appellate  
Tribunal.**

**17. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities under this Act.**

**Appeal to the  
Appellate  
Tribunal.**

**18. (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal:**

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

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

**(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the**

Adjudicating Authority is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

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

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

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority.

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

19. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.

**Composition  
of Appellate  
Tribunal.**

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

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

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

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

**Qualifications  
for  
appointment.**

20. A person shall not be qualified for appointment as the Chairperson or a Member unless he—

(a) is or has been or is qualified to be a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years;

(c) is qualified to be a member of the Central Administrative Tribunal.

21. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

**Term of office.**

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-five years;

(b) in the case of any other Member, the age of sixty-two years.

22. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

**Conditions of Service.**

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment.

23. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

**Vacancies.**

24. (1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

**Resignation and removal.**

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

**Member to  
act as  
Chairperson  
in certain  
circumstances.**

25. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of the members as the Central Government may, by notification,

authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

**26. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.**

**Staff of  
Appellate  
Tribunal.**

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

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

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

**Procedure and  
powers of  
Appellate  
Tribunal.**

5 of 1908

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

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

1 of 1872

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

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

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

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

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the

5 of 1860.

meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure. 1973.

2 of 1974.

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

**Distribution of business amongst Benches.**

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

**Power of Chairperson to transfer cases.**

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

**Decision to be by majority.**

**Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.**

31. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

**Members, etc., to be public servants.**

32. The Chairperson, Members and other officers and employees of the Appellate Tribunal and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

**Civil court not to have jurisdiction.**

33. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

**Appeal to High Court.**

34. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him

on any question of law arising out of such order:

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

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

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

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

## CHAPTER VI

### DIRECTORATE OF ENFORCEMENT

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

**Directorate of  
Enforcement.**

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

officer of Enforcement below the rank of an Assistant Director of Enforcement.

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

**Power of  
arrest, search,  
seizure, etc.**

36. (1) The Director of Enforcement and other officers of Enforcement shall take up for investigation the contravention referred to in section 13.

(2) The Director of Enforcement and other officers of Enforcement shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

43 of 1961.

**Empowering  
other officers.**

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

**Investigation  
of  
contravention  
by certain  
officers.**

38. (1) Notwithstanding anything contained in this Act, the Central Government may, by notification, authorise any officer or class of officers

in the Central Government, State Government or the Reserve Bank to investigate any contravention referred to in section 13.

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

43 of 1961.

## CHAPTER VII

### MISCELLANEOUS

39. Where any document—

(i) is produced or furnished by any person or have been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,

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

(a) presume, unless the contrary is proved, that the signature and every

**Presumption  
as to  
documents  
in certain  
cases.**

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.

**Suspension of  
operation of  
this Act.**

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

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

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

41. For the purpose 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.

**Power of  
Central  
Government  
to give  
directions.**

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

**Contravention  
by companies.**

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 purpose 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.

Death or  
insolvency  
in certain  
cases.

43. Any right, obligation, liability proceedings or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall

devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be.

44. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions of performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

**Bar of legal proceedings.**

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

**Removal of difficulties.**

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

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

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

**Power to make rules.**

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

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authorities under sub section (1) of section 16;

(d) the form of appeal and fee for filing such appeal under section 18;

(e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 22;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 26;

(g) the additional matters in respect of which the Administrative Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 27;

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be prescribed.

**Power to  
make  
regulations.**

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

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

(a) the permissible classes of capital account transactions, the limits of

admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempt under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

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

48. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any

**Rules and regulations to be laid before Parliament.**

modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Repeal and  
saving.

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

46 of 1973.

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

(3) Notwithstanding such repeal,—

(a) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed;

(b) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment,

confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(c) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(d) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

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

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

## STATEMENT OF OBJECTS AND REASONS

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

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

Keeping in view the changed environment, the Central Government has decided to introduce the Foreign Exchange Management Bill and repeal the Foreign Exchange Regulation Act, 1973. The provisions of the Bill aim at consolidating and amending the law relating to Foreign Exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

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

NEW DELHI;  
*The 27th July, 1998.*

YASHWANT SINHA.

## NOTES ON CLAUSES

*Clause 2* defines the various expressions used in the Bill.

*Clause 3* seeks to prohibit dealings in foreign exchange except through an authorised person.

*Clause 4* describes the provisions in relation to acquisition, holding, etc., of foreign exchange, foreign security or immovable property situated outside India.

*Clause 5* stipulates that sale or drawal for all current account transactions shall qualify for drawal of foreign exchange from authorised persons. It also empowers the Central Government to prescribe, in public interest and in consultation with the Reserve Bank, the restrictions for such transactions as may be considered reasonable.

Sub-Clause (1) of clause 6 provides that subject to certain conditions and limitations any person may sell or draw foreign exchange to or from any authorised person for capital account transaction. Sub-clause (2) thereof enables the Reserve Bank in consultation with the Central Government to specify the permissible class of such transactions and the limits upto which foreign exchange shall be admissible for such transactions. Sub-Clause (3) further enables the Reserve Bank to prohibit, restrict or regulate the specific transactions mentioned therein by regulations framed under the Act.

Sub-clauses (4) and (5) incorporate the existing policy with respect to the person resident in India acquiring, etc. foreign assets outside India and a non-resident acquiring, etc. assets in India while he was resident in India.

Sub-clause (6) empowers the Reserve Bank to regulate the setting up of branches or offices in India by foreign firms.

*Clause 7* provides for control over repatriation of sale proceeds of exported goods. The clause preserves the Reserve Bank's existing powers to direct and exporter to comply with the requirements as deemed fit for the purpose of ensuring that the export value of the goods is received without any delay.

*Clause 8* casts certain obligations on persons resident in India having any amount of foreign exchange due or accrued in his favour.

*Clause 9* seeks to provide for exemptions in respect of realisation and repatriation in the cases specified therein. Most of the transactions specified therein are at present exempted in terms of various notifications of the Reserve Bank.

*Clause 10* empowers the Reserve Bank to authorise persons to deal in foreign exchange or in foreign securities. The authorisation can also be granted for dealing in foreign securities besides foreign exchange. The Reserve Bank may specify the conditions in the authorisation and may also revoke the same in the public interest in the case of any contravention of the provisions of this Act or failure to comply with the conditions in the authorization.

*Clause 11* empowers the Reserve Bank to issue directions to authorised persons and impose penalty if the direction given by the Reserve Bank is contravened by any authorised person.

*Clause 12* empowers the Reserve Bank to inspect the authorised persons who shall have to produce such books, accounts and other documents, etc., as may be required by the officer making the inspection.

*Clause 13* deals with the contraventions as civil offences and the adjudicating officers are empowered to impose penalties.

*Clause 14* lays down the procedure for payment of penalty and the consequences of civil imprisonment for failure to make full payment of the penalty within the specified period. It provides that the detention order shall be executed like a warrant of arrest.

*Clause 15* seeks to vest in the Directorate of Enforcement the powers to compound offences. This power is to be exercised in accordance with the rules framed by the Central Government.

*Clause 16* provides for appointment of Central Government officers as Adjudicating Authorities for holding an inquiry for the purpose of imposing any penalty. It also provides for the procedure for taking cognizance by the Adjudicating Authority and confers powers of a civil court on the said Authority.

*Clause 17* provides for establishment of an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority.

*Clause 18* provides for preferring of appeal before the Appellate Tribunal against the order made by the Adjudicating Authority, period for filing the appeal, condonation of delay for sufficient cause and the period for disposal of appeal.

*Cluses 19 to 22* provide for the composition of the Appellate Tribunal, the qualifications for appointment of the Chairperson and other Members of the Appellate Tribunal, the term of office of the Chairperson and other Members and their salary and allowances and other conditions of service.

*Clause 23* deals with filling up of the casual vacancies.

*Clause 24* deals with resignation of the Chairperson or a Member.

*Clause 25* explains certain circumstances in which a Member may act as Chairperson.

*Clause 26* requires the Central Government to provide the Appellate Tribunal with officers and other employees.

*Clause 27* enables the Appellate Tribunal to adopt its own procedure. The proceedings of the Appellate Tribunal shall be deemed to be judicial proceedings.

*Clause 28* provides for distribution of business of the Appellate Tribunal amongst the Benches.

*Clause 29* empowers the Chairperson to transfer cases from one Bench to another Bench.

*Clause 30* provides that the decision of the Appellate Tribunal shall be by majority.

*Clause 31* provides that the appellant may take the assistance of a legal practitioner to present his case before the Appellate Tribunal.

*Clause 32* declares the Chairperson, Members, officers and other employees of the Appellate Tribunal and the Adjudicating Authority to be public servants within the meaning of Section 21 of the Indian Penal Code.

*Clause 33* bars the jurisdiction of the civil court in respect of matters to be dealt with by Adjudicating Authority or by the Appellate Tribunal.

*Clause 34* provides for filing an appeal to the High Court against the decision or order of the Appellate Tribunal on a question of law arising out of such decision or order.

*Clause 35* provides for establishment of a Directorate of Enforcement.

*Sub-clause (2)* of clause 36 provides that the Director of Enforcement and other officers of enforcement shall have the powers of investigation conferred on Income-tax authorities under the Income-tax Act, 1961.

*Clause 37* enables the Central Government to empower the officers of the Central Government or a State Government to exercise the powers and discharge the duties of the Director of Enforcement or other officers of the Enforcement.

*Clause 38* enables the Central Government to authorise any officer or class of officers in the Central Government, a State Government or the Reserve Bank to investigate the contravention.

*Sub-clause (1)* of clause 40 empowers the Central Government in the public interest and by notification to suspend or relax the provisions of the enactment in certain circumstances. *Sub-clause (3)* provides that notification issued thereunder shall be laid before each House of Parliament.

*Clause 41* empowers the Central Government to give general or special directions to the Reserve Bank.

*Clause 42* provides that where contravention of any of the provision of this enactment is committed by a Company, the person responsible for the conduct of its business shall be deemed to be guilty of the contravention.

*Clause 44* bars the prosecution or legal proceedings against the officers of the Central Government or the Reserve Bank or any other person exercising any powers or discharging any functions or performing any duties under the provisions of this enactment for anything done in good faith.

*Clause 45* empowers the Central Government to remove the difficulties in giving effect to the provisions of the Bill after its enactment.

*Clause 46* empowers the Central Government to frame the rules and *clause 47* empowers the Reserve Bank to make regulations to carry out the provisions of this enactment.

*Clause 48* provides for laying before Parliament the rules and the regulations made under this enactment.

*Clause 49* provides for repeal of the Foreign Exchange Regulation Act, 1973 and for dissolution of the Appellate Board constituted under section 52 of the said Act.

## FINANCIAL MEMORANDUM

Sub-clause (1) of clause 16 provides for appointment of Adjudicating Authorities. It is proposed to utilize some of the existing posts in the Directorate of Enforcement for this purpose. No additional expenditure is, therefore, contemplated at this stage for appointment of the Adjudicating Authorities on this account.

Clause (22) and sub-clauses (1) and (3) of clause 26 of the Bill provide for payment of the salaries and allowances of the Chairperson, Members, officers and employees of the Appellate Tribunal. At present the Appellate Board consists of a full-time Chairperson and other Members. For the present, the size of the Appellate Tribunal will be retained at the existing level. The actual recurring expenditure on Foreign Exchange Regulation Appellate Board for the year 1997-98 was rupees twelve lac and forty thousand approximately. No additional expenditure shall be involved on this account.

Sub-clause (1) of clause 35 of the Bill provides for the appointment of the Director of Enforcement and other officers. The Directorate of Enforcement as it exist now, is headed by a Director and consists of Special Director of Enforcement, Additional Director of Enforcement, Deputy Director of Enforcement and Assistant Directors of Enforcement besides other classes of officers of Enforcement.

The existing Foreign Exchange Regulation Act to which the proposed Bill seeks to replace, already provides for the Directorate of Enforcement. The expenditure connected with the pay and allowances, etc., of the Directorate of Enforcement is being regularly voted by the Parliament. While the Budget Estimate Figures for 1997-98 was rupees ten crore thirty seven lac, the Revised Estimate figures during 1997-98 was rupees twelve crores eighty-six lac. The actual expenditure incurred during 1997-98 was rupees ten crore eighty-seven lac. The budget estimate for the year 1998-99 is rupees fourteen crore. The Bill if enacted shall not involve any additional expenditure on this account.

The Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 46 of the Bill empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail under various items of sub-clause (2) of that clause and relate mainly to the form of appeal, fee for filing such appeal, the manner of holding an enquiry by the Adjudicating Authority, the manner of authentication of any document by any authority or a person.

Clause 47 of the Bill empowers the Reserve Bank to frame regulations for carrying out the provisions of the proposed enactment and the rules framed thereunder. The matters in relation to which such regulations may be made have been explained in detail under sub-clause (2) of clause 47. Such regulations may provide for the permissible classes of capital account transactions, the manner and the form in which the declaration is to be furnished by every exporter of goods, the period and manner of repatriation of foreign exchange and the permissible limits up to which foreign currency, foreign coins and foreign exchange may be acquired or retained.

These are matters of detail and essential for effective administration of the provisions of the Bill. It is difficult to provide for all the situations in the Bill itself and the delegation of these legislative powers is, therefore, of a normal character.

LOK SABHA

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BILL

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

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*(Shri Yashwant Sinha, Minister of Finance)*