# UNIT 5

## FOREIGN EXCHANGE MANAGEMENT ACT 1999

# INTRODUCTION TO FERA

The Foreign Exchange Regulation Act (FERA) is legislation that was passed by the Indian Parliament in 1973 and came into effect on January 1, 1974.

FERA was an act to regulate dealings in foreign exchange and foreign securities with the objective of conservation of foreign exchange resources of India and its proper utilization in the economic development of India. It extended to whole of India and applied to all the citizens of India, outside India as well as in India and to branches and agencies of Indian companies or body corporates, outside India.

FERA imposed strict regulations on transactions involving foreign exchange and controlled the import and export of currency. *Unlike other laws where everything is permitted unless specifically prohibited, under FERA nothing is permitted unless specifically permitted.* Hence the tenor and tone of the Act was very drastic. It provided for imprisonment for violation of even a very minor offense. *Under this act, a person was presumed guilty unless he proved himself innocent whereas under other laws, a person is presumed innocent unless he is proven guilty.* Therefore one had to be very careful while dealing in foreign exchange and ensure that all legal compliances were carried out.

Eventually the government realized that FERA rules were perhaps a hindrance to economic liberalization. A draft of the Foreign Exchange Management Bill (FEMA) was prepared by the Government of India to replace FERA keeping in view the liberal spirit of the Indian economy. However, until FEMA was enacted, the provisions of FERA were applicable.

FERA was finally repealed by the government in 1999 by the Foreign Exchange Management Act (FEMA), which liberalized foreign exchange controls and removed many restrictions on foreign investment. The need for replacing FERA with FEMA was felt with the introduction of economic reforms in the country, there was a need to remove the drastic and rigorous measures of FERA and replace it with a set of liberal foreign exchange management regulations.

FEMA came into existence on June 1, 2000 but FERA was provided a sunset clause of two years to enable the Enforcement Directorate (ED) to complete investigations into cases already detected by it for FERA violations before May 31, 2000.

# SIMILARITIES

The similarities between FERA and FEMA are as follows:

- The Reserve Bank of India and Central Government continued to be the regulatory bodies
- Presumption of extra territorial jurisdiction as conceived in FERA was retained
- The Directorate of Enforcement continued to be the agency for enforcement of the provisions of the law such as conducting search and seizure

# Differences between FERA and FEMA

| DIFFERENCES | FERA | FEMA |
|---|---|---|
| PROVISIONS | FERA consisted of 81 sections, and was more complex | FEMA is much simple, and consist of only 49 sections. |
| FEATURES | Presumption of negative intention (Mens Rea) and joining hands in offence (abatement) existed in FERA | These presumptions of Mens Rea and abatement have been excluded in FEMA |
| NEW TERMS IN FEMA | Terms like Capital Account Transaction, Current Account Transaction, Person, Service etc. were not defined in FERA. | Terms like Capital Account Transaction, Current Account Transaction Person, Service etc., have been defined in detail in FEMA |
| DEFINITION OF AUTHORIZED PERSON | Definition of "Authorized Person" in FERA was a narrow one (2(b)) | The definition of "Authorized Person" has been widened to include banks, money changes, off shore banking units etc. (2(c)) |

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|---|---|---|
| MEANING OF "RESIDENT" AS COMPARED WITH INCOME TAX ACT. | There was a big difference in the definition of "Resident", under FERA, and Income Tax Act | The provision of FEMA, are consistent with income Tax Act, in respect to the definition of term "Resident". Now the criteria of "In India for 182 days" to make a person resident has been brought under FEMA. Therefore a person who qualifies to be a non-resident under the Income Tax Act, 1961 will also be considered a non-resident for the purposes of application of FEMA, but a person who is considered to be non-resident under FEMA may not necessarily be a non-resident under the Income Tax Act. |
| PUNISHMENT | Any offence under FERA, was a criminal offence , punishable with imprisonment as per code of criminal procedure, 1973 | Here, the offence is considered to be a civil offence only punishable with some amount of money as a penalty. Imprisonment is prescribed only when one fails to pay the penalty |

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|---|---|---|
| QUANTUM OF PENALTY | The monetary penalty payable under FERA, was nearly the five times the amount involved. | Under FEMA the quantum of penalty has been considerably decreased to three times the amount involved. |
| APPEAL | An appeal against the order of “Adjudicating office", before " Foreign Exchange Regulation Appellate Board went before High Court | The appeals against the order of Adjudicating Authority and Special Director are passed over to the Appellate Tribunal and then later on to High Court. |
| RIGHT OF ASSISTANCE DURING LEGAL PROCEEDINGS | FERA did not contain any express provision on the defaulter to seek any legal assistance | FEMA expressly recognizes the right of appellant to take assistance of legal practitioner or chartered accountant |
| POWER OF SEARCH AND SEIZE | FERA conferred wide powers on a police officer not below the rank of a Deputy Superintendent of Police to make a search | The scope and power of search and seizure has been curtailed to a great extent and have been confined to officers of Enforcement |
| COMPOUNDING OF OFFENCES | FERA did not permit such compounding | FEMA permits compounding of offences |
| TRANSACTIONS | All foreign exchange dealings required permission from RBI or Central Government | FEMA made current account transactions free from permissions and certain Capital Account transactions required special permission from RBI. |

When a business enterprise imports goods from other countries, exports its products to them or makes investments abroad, it deals in foreign exchange.

Foreign exchange means 'foreign currency' and includes deposits, credits and balances payable in any foreign currency; drafts, travellers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency; and drafts, travellers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency. The management of foreign exchange is very important in the present day business.

FEMA facilitates external trade and payments and promotes the orderly development and maintenance of foreign exchange market. The Act has assigned an important role to the Reserve Bank of India (RBI) in the administration of FEMA. The rules, regulations and norms pertaining to several sections of the Act are laid down by the Reserve Bank of India, in consultation with the Central Government.

# Foreign Exchange Management Act (FEMA)

FEMA came into effect on the 1st of June, 2000, replacing the Foreign Exchange Regulation Act (FERA). *The intentions of the Foreign Exchange Management Act are to perhaps, revise and unite laws that relate to transactions of foreign exchange and encourage an orderly maintenance and development, of the foreign exchange markets in India.* FEMA is not as restrictive as some of the FERA regulations, and in line with India's economic liberalization policies.

FEMA

- consolidate and amend the law relating to foreign exchange
- facilitating external trade and payments
- promoting the orderly development and maintenance of foreign exchange market in India
- 49 sections (with sub sections) divided into 7 chapters in the Act

# HIGHLIGHTS OF FEMA 1999

- FEMA is transparent in its applicability. Only capital account transactions are regulated by RBI. While current account transactions under FEMA are permissible freely subject to certain restrictions. The exceptions for current account transactions include:
  - Remittance out of lottery winnings.
  - Remittance of income from racing/riding etc. or any other hobby
  - Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
  - Payment of commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian companies.
  - Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
  - Payment related to ‘call back services’ of telephones.
  - Remittance of interest income on funds held in non-resident account.
- Certain current account transactions need permission of appropriate Government authority irrespective of the amount. While some other transactions would require RBI permission, if they exceed a certain celling.

# Definitions and concepts

# ADJUDICATING AUTHORITY [SECTION 2(A)]

According to clause (a) of Section 2 ‘Adjudicating Authority’ means an officer authorised for the purposes of adjudication in respect of penalties under Section 13. Section 16 empowers the Central Government, to appoint, by an order published in the Official Gazette, as many officers as it may think fit as the adjudicating authorities for holding an enquiry in the manner prescribed after giving the person alleged to have committed any contravention, an opportunity of being heard.

# APPELLATE TRIBUNAL [SECTION 2(B)]

‘Appellate Tribunal’ means Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the adjudicating authorities and Special Directors (Appeals) under the Act.

# AUTHORISED PERSON SEC 2(C)

- RBI cannot do all transactions in foreign exchange by itself. Therefore, the powers are delegated to authorized persons with suitable guidelines, to deal in foreign exchange and foreign securities.
- Sec. 3 of FEMA 1999 require all dealing in FE through Authorized Person only.
- ***Sec 2 (c) of FEMA 1999 define Authorized Person means an Authorized Dealer, Money Changer , Offshore Banking Unit or any other person authorized under sub-section 1 of section 10 (written as u/s 10(1)) to deal in Foreign Exchange or Foreign Securities.***
- Under Sec 10 (1) of FEMA 1999 empowers RBI to authorize person to deal in Foreign Exchange or Foreign Securities.

# Authorized Persons can be broadly categorized in the following categories:

AUTHORISED DEALERS:

a) Category I: Who can take all current and capital account transactions. e.g. commercial banks, State Co-op Banks, Urban Co-op Banks

b) Category II: Upgraded FFMC with a minimum net owned funds of INR 10 crore and functioning for last 2 years. Regional Rural Banks (RRBs) can undertake non trade related current a/c transactions

c) Category III: Transactions incidental to the foreign exchange activities undertaken by select financial institutions and other institutions authorized dealers

Authorised Money Changers (AMCs) are entities, authorised by the Reserve Bank under Section 10 of the Foreign Exchange Management Act, 1999.

An AMC is a Full Fledged Money Changer (FFMC) authorised by the Reserve Bank to deal in foreign exchange for specified purposes. They are authorized to issue and en-cash foreign currency travellers cheques and currency notes.

# Duties of an Authorized Person/ Responsibility of authorized dealers maintaining foreign currency accounts

- To comply with directions issued by RBI from time to time [Sec10(4)]
- Submit periodic return or statement, if any, as may be stipulated by the Reserve Bank
- To make declaration [Sec10(5)]
- To produce books of accounts and documents [Sec12(2)]

# Capital account transactions sec 2(e)

'Capital account transaction' has been defined to mean any **transaction which alters the assets or liabilities including contingent liabilities**, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

# Currency Notes [Section 2(i)]

'Currency Notes' includes **cash in the form of coins and bank notes**. In fact, it means money and such bank notes or other paper money as are authorised by law and circulate from hand to hand as a medium of exchange.

# Current Account Transactions Sec2(j)

The term current account transaction has been defined to mean a **transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business**; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Under the Act freedom has been granted for selling and drawing of foreign exchange to or from an authorized person for undertaking current account transactions. However, the Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions.

## FOREIGN EXCHANGE SEC 2(N)

The term ‘foreign exchange has been defined to mean **foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travellers cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency**. Any draft, travellers cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

## PERSON [SECTION 2(U)]

The definition of the term ‘person **includes, an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not; any agency, office or branch owned or controlled by such persons**. Even every artificial juridical person* not falling within the above definition has been treated as person as per clause (u) of Section 2.

*A juridical person is a legal entity created by the law which is not a natural person, such as a corporation

# PERSON RESIDENT IN INDIA [SECTION 2(V)]

The residential status of a person is *determined to check the flow of foreign exchange between persons enjoying different residential status*. A person cannot transfer/transmit more than a limit specified in the Foreign Exchange Management Act (FEMA),1999 for different purpose.

As per Section 2(v) of FEMA,1999 Person Resident in India includes:-

1. A person residing in India for more than 182 days during the course of the preceding financial year **but does not include following two categories of persons from the purview of definition.**

A. A person who has **gone out** of India or who stays outside India, in either case-

- for or on taking up employment outside India, or
- for carrying on outside India a business or vocation outside India, or
- for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

B. A person who has **come to** or stays in India, in either case, otherwise than-

- ❖ for or on taking up employment in India, or
- ❖ for carrying on in India a business or vocation in India, or
- ❖ for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

2. Any person or body corporate registered or incorporated in India.

3. An office, branch or agency **in** India owned or controlled by a person resident **outside India**.

4. An office, branch or agency **outside** India owned or controlled by a person resident **in India.**

# REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

## DEALING IN FOREIGN EXCHANGE SECTION 3

No person shall engage in the under specified actions unless given special sanction from RBI:

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

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

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner

(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person

# HOLDING OF FOREIGN EXCHANGE SECTION 4

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

Sub-section (4) allows a person resident in India to 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.*

Similarly, a person resident outside India is permitted to hold, own, transfer or invest in Indian currency, security, or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

# Current and Capital Account Transactions Section 5,6

Section 5 of the Act allows any person to sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction as defined under Section 2(j) of the Act. However, the Central Government may, in the public interest and in consultation with the *Reserve Bank impose reasonable restrictions for current account transactions*.

Foreign Exchange Management (Current Account Transactions) Rules, 2000 defines the term 'Drawal as to mean drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability.'

Section 6 allows capital account transactions subject however to certain conditions. This section empowers the Reserve Bank of India to specify, in consultation with the Central Government, any class or classes of capital account transactions permissible and 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 drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

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.

RBI has also been empowered to prohibit or regulate giving of guarantee or surety in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India or by a person resident outside India.

Reserve Bank of India under Sub-section (6) has been empowered to regulate, prohibit, restrict 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 section 7

(1) Every exporter of goods shall -
   (1) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
   (2) 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, 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.

# Realisation and Repatriation of Foreign Exchange (Section 8)

Section 8 of the Act requires
The person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange due as per the directions of the Reserve Bank.
Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take reasonable steps to realize and repatriate to India such foreign exchange within stipulated time and manner as may be specified by the Reserve Bank.
It requires a person resident in India to whom any foreign exchange is due or has accrued, to take all reasonable steps to realise and repatriate to India such foreign exchange unless an exemption has been granted under the Act and rules made thereunder the general or special permission of Reserve Bank.
Regulation 3 also requires a person resident in India, to refrain from doing anything/taking any action, resulting in delay in receipt of foreign exchange in whole or part, or ceasing in whole or part the foreign exchange receivable by him.
**Example:** If A Ltd. sold goods to Mr. X, a person resident outside India and later Mr. X refused to make such payment and was untraceable. Now, this will be the duty of A Ltd. to take all reasonable steps to recover the amount from Mr. X or otherwise report the matter to RBI.

# Exceptions/Exemption from Realisation or Repatriation

Section 9 contains exemptions from the application of provisions relating to holding of foreign currency and realisation and repatriation in certain circumstances, as provided under Sections 4 and 8 of the Act respectively.

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

(b) Foreign currency account held 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 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 who is resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (C), including any income arising there from;

(e) Foreign exchange acquired from employment, business, trade, vacation, services or any other legitimate means up to such limit as the Reserve Bank may specify;

(f) Such other receipts as the Reserve Bank may specify.

The Reserve Bank of India (RBI), the nodal body for managing foreign exchange, has prescribed limits up to which a resident individual can remit or spend foreign exchange freely i.e. without any approval requirement.

- Holidaying abroad an individual is allowed to draw foreign exchange up to $10,000 in a year for one or more private visits abroad.
- Business trip you can apply to your bank for release of foreign exchange up to $25,000.
- Employment: RBI has allowed drawing foreign exchange up to $100,000 for taking up employment abroad.
- Education: You can draw up to $100,000 equivalent per academic year for studying abroad.
- Medical treatment: An individual willing to travel abroad for getting medical treatment is allowed to withdraw foreign exchange up to $100,000 based on self-declaration of essential details without providing any estimate from a doctor or hospital.

# AUTHORISED PERSON

Chapter III of the Act containing Sections 10-12 deals with the provisions relating to authorised person. Section 10 deals with the procedure of appointing authorised person by the Reserve Bank, Section 11 specifies the powers of the RBI to issue directions to authorised person and Section 12 prescribes the power of the RBI to inspect authorised person.

Under Section 10, any person who has made an application to the RBI may be authorised by it to act as an authorised person to deal in foreign exchange or in foreign securities as an authorised dealer, money changer or offshore banking unit or in any other manner as the RBI deem fit. This authorisation is in writing and subject to the conditions laid down by the RBI.

Normally, nationalised banks, leading non nationalized banks and foreign banks are appointed as authorized persons.

Authorised persons are required to comply with the directions of the Reserve Bank with regard to his dealing in foreign exchange or foreign security receipt with the previous permission of the Reserve Bank. However authorised person are required not to engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation.

Reserve Bank of India has been *empowered to revoke the authorisation granted to any person at any time in the public interest*. It may also revoke the authorisation after giving an opportunity, if the authorised person failed to comply with the conditions subject to which the authorisation was granted or contravened any of the provisions of the Act, rules, notifications or directions.

An authorised person, before undertaking any transaction on behalf of any person shall, *require that person to make such declaration and give such information as will reasonably satisfy the authorised person that the transaction will not involve or is not intended to violate or contravene any provisions of the Act, rules, notification or directions*. In case, the person refuses to comply with such requirements or makes only unsatisfactory compliances, the authorised person is duty bound to refuse in writing to act on behalf of such person in such transaction and report the matter to Reserve Bank. Any person, other than an authorised person who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to the authorised person does not use it for such purpose, or does not surrender it to authorised person within the specified period, or uses the foreign exchange for any other purpose, which is not permitted under the provisions of the Act, such person shall be deemed to have committed contravention of the provisions of the Act.

# Power of the Reserve Bank to issue directions to authorised person

Section 11 of the Act empowers the RBI to issue directions to the authorised person in regard to making of payment relating to foreign exchange or foreign security.

Reserve Bank has also been empowered to issue directions to the authorised persons to furnish such information in such manner as it deems fit.

If any authorised person contravenes any direction given by the RBI or fails to file the return as directed by RBI, he may be liable to a fine not exceeding INR 10,000/- and in the case of continuing contravention, with an additional penalty which may extend to INR 2,000 for every day during which such contravention continues.

# Power of Reserve Bank to Inspect authorised person

Section 12 of the Act empowers RBI to inspect the business of any authorised person *for the purpose of verifying the correctness of any statement furnished*.

In case authorised person fails to furnish the information sought, the RBI can initiate inspection of the authorised person for obtaining such information.

RBI may also inspect the business of an authorised person for securing compliance with the provisions of the Foreign Exchange Management Act or any of the Rules, Regulations or directions. The Reserve Bank may make an order in writing authorising any of its officer for this purpose. When an inspection is initiated by the Reserve Bank, it shall be the duty of every authorised person (where the authorised person is a company or firm, every director partner or officer of such a company or firm), to produce before the inspecting officer, such books, accounts and other documents in his custody and to furnish any statement or information relating to the affairs of such authorised person within the time limit and the manner in which such inspecting officer may direct.

# Contravention and Penalties

Chapter IV of the Act containing Sections 13 to 15 deals with contravention and penalties. Section 13 deals with penalties, Section 14 provides for enforcement of the orders of Adjudicating Authority and Section 15 deals with compounding of contraventions.

1. **Penalties [Section13(1)]**

A person failing or contravening the provisions of RBI shall be imposed a penalty up to *thrice the sum involved in such contravention where such amount is quantifiable or up to INR 2 lakhs where the amount is not quantifiable.*

If contravention is of continuing nature, *further penalty up to INR 5000 per day during which the contravention continues* can be imposed.

The adjudicating authority handling the matter may impose additional penalty over and above existing penalty by confiscating currency, security or property involved.

2. **Confiscation of Money or Property [Section 13 (2)]**

- In case the Adjudicating Authority finds contravention to Section 13 in connection with any currency or security or any other money or property, then that currency, security or any other money or property on which the contravention has taken place, *shall be confiscated by the Central Government.*
- The adjudging authority may *direct the defaulting person that such property shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.*

## 3. Enforcement of the Orders of Adjudicating Authority [Section 14]

- If any person fails to make full payment of the penalty imposed on him under section 13 *within a period of ninety days* from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.
- However, 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 specified date and to show cause why he should not be detained in the civil prison.

# Important Provisions [Section 14]

**1. Obstruction in recovery of Penalty:**

The defaulter shall be arrested-

(a) if he has obstructed the recovery of penalty, or dishonestly transferred, concealed, or removed any part of his property;

(b) if he has or has had means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

**2. Intend to Abscond:**

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

**3. Non-Compliance of Served Notice:**

Where appearance is not made pursuant to a notice issued and served, the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

**4. Presenting Arrested Person before the Authority:**

Every person arrested in pursuance of a warrant of arrest shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest. But, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

## 5. Opportunity of being heard:

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

## 6. Detention in the Custody:

The defaulter to be detained in the custody till the conclusion of inquiry is pending under the officer as per direction of Adjudicating Authority. However, such defaulter may be released on furnishing the security amount to him but on the satisfaction of the Adjudicating Authority that such person shall appear as and when required. Upon the conclusion of inquiry, defaulter will be released by giving an opportunity to satisfy the arrears of penalty for a 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.

## 7. Release of defaulter :

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

**8. Execution of Certificate :**

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

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

(b) in any other case, up to six months: Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

**9.Release does not Amount to Discharge of Liability :**

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.

**10.Power to Compound Contravention :**

Any contravention may be compounded with 180 days from the date of receipt of application by the Director of Enforcement or other authorised officers by the Central Government. No proceeding shall be initiated or continued, as the case may be, against committing such contravention under that section, in respect of the contravention so compounded.

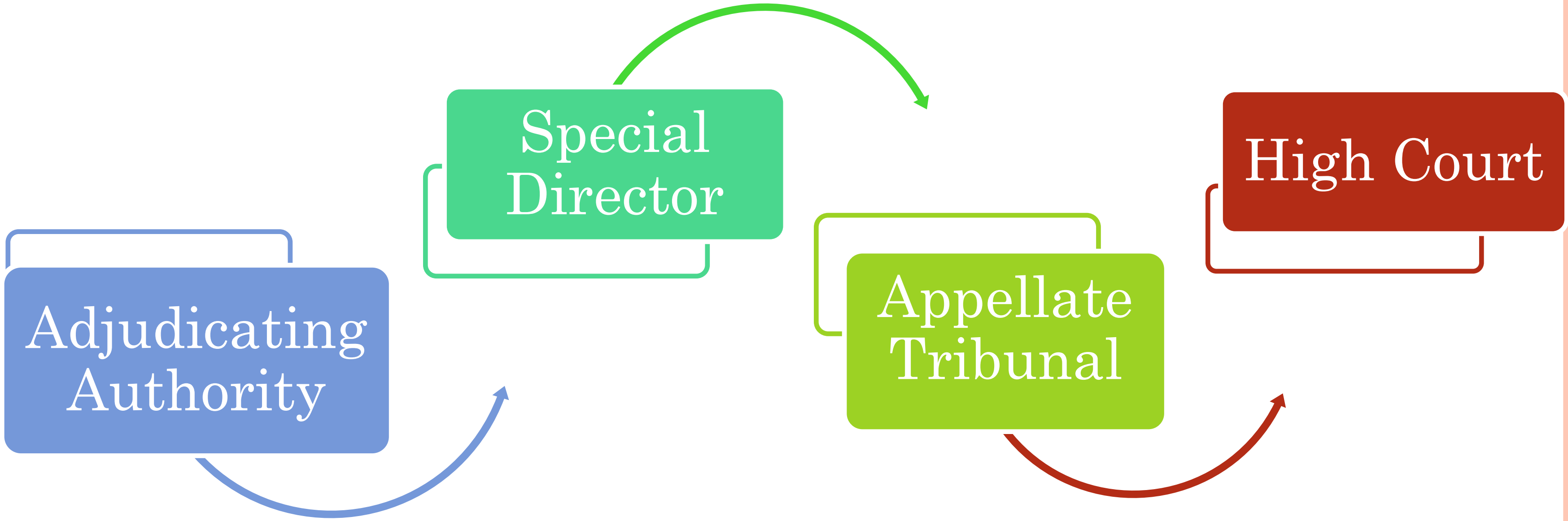
# Compounding of Contraventions Sec 15

Compounding of contraventions *may take place within 180 days from the receipt of application by the Enforcement Director or officers of Enforcement Directorate and RBI.*

Separate proceedings need not be initiated in case of compounding offences.

Exceptions to compounding may arise if in case the amount is non quantifiable, appeal has been filed, act of contravention has been repeated within a span of 3 years or if fee has been deported with the authority within 15 days from the date of order.

# Adjudication and Appeal Sec 15



# *Adjudicating Authority*

- **Appointment** of Adjudicating Authority: 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 a reasonable opportunity of being heard to the person alleged to have committed contravention under section 13 for the purpose of imposing any penalty.
- **Filing of Complaint** and Holding an Enquiry: No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorized by a general or special order by the Central Government.
- **Right to take Legal Assistance**: The said person, who has contravened the provisions of the act, may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

- **Powers**: Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 .
- **Time Limit** to dispose of a complaint: Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose of the complaint finally within one year from the date of receipt of the complain

# *Special Director*

- **Appeal** to Special Director: The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities. The Special Director shall have the same powers of a civil court and all proceedings before him shall be deemed to be judicial proceedings.
- **Time Limit** to file an appeal: Every appeal under sub-section (1) shall be filed within 45 days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person. However, the Special Director may entertain an appeal after the expiry of the said period of 45 days, if he is satisfied that there was sufficient cause for not filing it within that period.
- **Adjudication** of Appeal: On receipt of an appeal, the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against. The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.

- **Establishment**: 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 and the special Director (Appeals) under this Act.
- **Appeal** to Appellate Tribunal: Any party aggrieved by an order made by an Adjudicating Authority or the Special Directors may file an appeal to the Appellate Tribunal within a period of 45 days from the date of receipt of order.
- **Adjudication** of Appeal: 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.
- **Time Limit** of Adjudication: The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously to dispose of the appeal finally within 180 days from the date of receipt of the appeal. Provided that where any appeal could not be disposed of within the said period, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

  Any person aggrieved with the decision of Appellate Tribunal may file an appeal to the **High Court** within 60 days from the date of communication of the decision or order of the Tribunal on any question of law arising out of such order.