

---

---

## **CHAPTER 1**

### **INTRODUCTION**

---

1.1	Statutory Basis for Exchange Control	1.16	Marking of Documents
1.2	Rules, Notifications and Orders issued under the Act	1.17	Organisation of Exchange Control Department
1.3	Transactions Regulated by Exchange Control	1.18	Publicity to Regulations
1.4	Authorised Dealers in Foreign Exchange	1.19	Authorised Dealers' Responsibility
1.5	Authorised Co-operative/Commercial Banks	1.20	Evasion or Attempts of Evasion
1.6	Authorised Money-Changers	1.21	Restrictions on Dealings in Foreign Exchange
1.7	Revocation of Licence/Authorisation granted by Reserve Bank	1.22	Breach of Regulations by Non-resident Branches/Correspondents of Authorised Dealers
1.8	Object of the Manual	1.23	Exchange Rates
1.9	Scheme of the Manual	1.24	Employment of Brokers
1.10	Supplement on Nepal and Bhutan	1.25	Compliance with Laws
1.11	Instructions issued by Reserve Bank in certain Operative Areas	1.26	Penalties
1.12	A.D. Circulars	1.27	Restrictions on Transactions with certain countries
1.13	Authorised Dealers' Powers	1.28	Definitions
1.14	Reference to Reserve Bank		<b>ANNEXURE</b>
1.15	Attestation of Applications		List of Authorised Dealers

## **1**

### **INTRODUCTION**

#### **Statutory Basis for Exchange Control**

**1.1** The Foreign Exchange Regulation Act, 1973 (FERA 1973), as amended by the Foreign Exchange Regulation (Amendment) Act, 1993, forms the statutory basis for Exchange Control in India. The FERA 1973 as amended, is reproduced in Volume II at Appendix I.

### **Rules, Notifications and Orders issued under the Act**

**1.2** Rules, Notifications and Orders issued by the Central Government and Notifications and Orders issued by Reserve Bank of India under FERA 1973 which are in force are reproduced in Volume II at Appendix II and Appendix III respectively, classified Section-wise.

### **Transactions Regulated by Exchange Control**

**1.3** The types of transactions which are affected by the Foreign Exchange Regulation Act are, in general, all those having international financial implications. In particular, the following matters are regulated by Exchange Control:

- (a) Purchase and sale of and other dealings in foreign exchange and maintenance of balances at foreign centres
- (b) Procedure for realisation of proceeds of exports
- (c) Payments to non-residents or to their accounts in India
- (d) Transfer of securities between residents and non-residents and acquisition and holding of foreign securities
- (e) Foreign travel with exchange
- (f) Export and import of currency, cheques, drafts, travellers cheques and other financial instruments, securities, etc.
- (g) Activities in India of branches of foreign firms and companies and foreign nationals
- (h) Foreign direct investment and portfolio investment in India including investment by non-resident Indian nationals/persons of Indian origin and corporate bodies predominantly owned by such persons
- (i) Appointment of non-residents and foreign nationals and foreign companies as agents in India

- (j) Setting up of joint ventures/subsidiaries outside India by Indian companies
- (k) Acquisition, holding and disposal of immovable property in India by foreign nationals and foreign companies
- (l) Acquisition, holding and disposal of immovable property outside India by Indian nationals resident in India.

### **Authorised Dealers in Foreign Exchange**

**1.4** Authorisations in the form of licences to deal in foreign exchange are granted to banks which are well equipped to undertake foreign exchange transactions in India. Authorisations have also been granted to certain financial institutions to undertake specific types of foreign exchange transactions incidental to their main business. A list of such banks and institutions is given in the Annexure to this Chapter.

### **Authorised Co-operative/Commercial Banks**

**1.5** Authorisations have also been issued to certain State Co-operative/Urban Co-operative banks and Scheduled Commercial banks to open and maintain Ordinary Non-Resident Rupee Accounts (NRO Accounts) and Non-Resident (External) Rupee Accounts (NRE Accounts), on behalf of non-resident individuals of Indian nationality/origin.

### **Authorised Money-Changers**

**1.6** In order to provide facilities for encashment of foreign currency to visitors from abroad, especially foreign tourists, Reserve Bank has granted licences to certain established firms, hotels and other organisations permitting them to deal in foreign currency notes, coins and travellers cheques subject to directions issued to them from time to time. These firms and organisations who are generally known as 'authorised money-changers' fall into two categories, viz. 'Full-fledged money-changers' who are authorised to undertake both purchase and sale transactions with the public and 'Restricted money-changers' who are authorised only to purchase foreign currency notes, coins and travellers cheques, subject to the condition that all such collections are surrendered by them in turn to an authorised dealer in foreign exchange/full-fledged money-changer.

### **Revocation of Licence/Authorisation granted by Reserve Bank**

**1.7** Reserve Bank may revoke the licence/authorisation granted by it to an authorised dealer, co-operative/commercial bank or money-changer at any time if the holder of the licence/authorisation is found to have failed to comply with any condition subject to which it was granted or to have contravened any provision of FERA 1973 or of any Rule, Notification, Direction or Order made thereunder.

## **Object of the Manual**

**1.8** This Manual is a compendium of various statutory directions, administrative instructions, explanatory notes, etc. issued by Reserve Bank from time to time in connection with the administration of Exchange Control. It also embodies the directions of a standing nature issued by Reserve Bank to authorised dealers under the Foreign Exchange Regulation Act, 1973, setting forth their authority to buy and sell foreign exchange and to do other things incidental to foreign exchange and also procedures to be followed by them while dealing with matters relating to Exchange Control. The directions to full-fledged money-changers, restricted money-changers, Life Insurance Corporation, General Insurance Corporation and its subsidiaries, etc. in the matter of their respective business activities have been incorporated in separate Memoranda.

## **Scheme of the Manual**

**1.9** For convenience of handling, the Manual has been divided into two volumes as under:

**Volume I:** comprising directions and procedural instructions issued to authorised dealers and others relating to foreign exchange transactions.

**Volume II:** comprising (i) text of the Foreign Exchange Regulation Act, 1973 and Notifications etc. issued thereunder, and (ii) specimens of all forms of applications and declarations to be made to Reserve Bank/authorised dealers and statements/certificates to be furnished by authorised dealers and others.

## **Supplement on Nepal and Bhutan**

**1.10** Exchange Control regulations applicable to Nepal and Bhutan have been given in appropriate Chapters of the Manual. For facility of quick reference, these regulations have been brought together and amplified, wherever necessary, in the Supplement on 'Exchange Control Regulations applicable to Nepal and Bhutan' which is given at the end of this Volume.

## **Instructions issued by Reserve Bank in certain Operative Areas**

**1.11** Instructions issued by Reserve Bank to authorised dealers in certain operative areas such as imports under foreign loans/credits, exports and imports under Special Trade Agreements with certain foreign countries, exports against Government of India credits to foreign Governments etc. have not been incorporated in detail in the Manual. In these areas, authorised dealers should be guided by the provisions contained in the relative circulars as amended from time to time and Public Notices issued on the subject.

## **A.D. Circulars**

**1.12** All amendments to the Manual and other operative instructions to authorised dealers will be communicated in the form of A.D. Circulars.

## **Authorised Dealers' Powers**

**1.13** (i) Authorised dealers may exercise powers within the parameters laid down in this Manual and in circulars issued from time to time by Reserve Bank, subject to fulfilment of the conditions, if any, indicated therein.

(ii) With effect from August 20, 1994 India has accepted the obligations under Article VIII of the Articles of Agreement of the International Monetary Fund in regard to current account transactions. Accordingly, all bona fide current account transactions would qualify for release of foreign exchange either under the authority delegated to authorised dealers or after obtaining the necessary approval from Reserve Bank. [Also see paragraphs 1.14 and 3B.3(iv)].

## **Reference to Reserve Bank**

**1.14** Authorised dealers should refer to Reserve Bank any application for foreign exchange or other transaction which they are called upon to undertake and which does not fall within the scope of the powers delegated to them. They should, however, avoid referring to Reserve Bank any matter which is clearly covered by the provisions in the Manual and which they are empowered to dispose of. While referring applications to Reserve Bank, reasons for making the reference should be indicated citing, wherever necessary, the relevant provision in the Manual without which the applications will be returned to them. If a branch of an authorised dealer has any doubt regarding the interpretation of any regulation or whether any application for remittance etc. stands covered by the delegated authority or not, it should consult its controlling office. Authorised dealers should ensure that applications are made on the prescribed forms, wherever such forms have been prescribed, and are supported by appropriate documentary evidence.

## **Attestation of Applications**

**1.15** The stamp and signature of an authorised dealer on a form prescribed in the Manual or in any Rules under FERA 1973, will be regarded as indicating that the authorised dealer is satisfied as to (a) the correctness of the statements made on the form and (b) the bona fides of the application.

## **Marking of Documents**

**1.16** Authorised dealers should mark all documents submitted by their constituents in support of applications made to them for any purpose such as remittances to non-residents etc. under their stamp as evidence of the documents having passed through their medium. Authorised dealers must ensure, before returning any documents to their constituents, that they have been marked in this manner.

## **Organisation of Exchange Control Department**

**1.17** (i) Powers conferred upon Reserve Bank by FERA 1973 and Central Government Notifications issued under the Act are exercised by the Exchange Control Department of Reserve Bank. The Department has its Central Office at Mumbai and Offices at other centres with jurisdiction as indicated below:

<b>Office</b>	<b>Jurisdiction</b>
Ahmedabad	State of Gujarat
Bangalore	State of Karnataka
Bhopal	State of Madhya Pradesh
Bhubaneswar	State of Orissa
Calcutta	States of Sikkim and West Bengal and Union Territory of Andaman and Nicobar Islands
Chandigarh	States of Haryana (excluding the districts of Faridabad, Gurgaon and Sonapat), Himachal Pradesh and Punjab and Union Territory of Chandigarh
Chennai	State of Tamil Nadu and Union Territory of Pondicherry
Kochi	State of Kerala and Union Territory of Lakshadweep
Guwahati	States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura
Hyderabad	State of Andhra Pradesh
Jaipur	State of Rajasthan
Kanpur	State of Uttar Pradesh excluding New Okhla Industrial Development Area (NOIDA) in Ghaziabad district
Mumbai	State of Maharashtra, Union Territory of Dadra and Nagar Haveli and Union Territory of Daman and Diu
New Delhi	Union Territory of Delhi, the districts of Faridabad, Gurgaon and Sonapat of State of Haryana and New Okhla Industrial Development Area (NOIDA) in Ghaziabad district of State of Uttar Pradesh

Panaji	State of Goa
Patna	State of Bihar
Jammu/Srinagar	State of Jammu and Kashmir

(ii) Nagpur Office of Reserve Bank will deal with applications from persons, firms and companies resident in the districts of Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Nagpur, Wardha and Yeotmal of the State of Maharashtra, for travel and sundry remittances outlined in Annexure I to Chapter 8 which are beyond the powers delegated to authorised dealers.

(iii) Reference to Reserve Bank should be made to the office of Exchange Control Department within whose jurisdiction the applicant person, firm or company resides or functions unless otherwise indicated. If for any particular reason, a firm or a company desires to deal with a different office of ECD, it may approach the office within whose jurisdiction it functions for necessary approval.

## **Publicity to Regulations**

**1.18** Authorised dealers should bring the Exchange Control regulations and changes made therein from time to time through A.D. Circulars to the notice of their customers. They may also advise their customers that copies of this Manual are available with Reserve Bank for sale to the public.

## **Authorised Dealers' Responsibility**

**1.19** Reserve Bank trusts that authorised dealers will ensure that the Exchange Control regulations are observed by themselves and their constituents both in letter and in spirit. Their responsibility has considerably increased with the delegation of large powers. It will also welcome any comments likely to facilitate administration of Exchange Control so that it may serve better its purpose of conserving and increasing the foreign exchange resources of India with the least obstruction to trade and its financing.

## **Evasion or Attempts of Evasion**

**1.20** Authorised dealers should report to Reserve Bank cases which may come to their, notice of evasion of, or of attempts, either direct or indirect, to evade the provisions of the Foreign Exchange Regulation Act or any Rule, Notification, Order, Direction or Regulation issued thereunder.

## **Restrictions on Dealings in Foreign Exchange**

**1.21** Except for transactions involving purchase or sale of foreign currency between any person and an authorised money changer, no person, firm or company, other than an authorised dealer, is permitted to enter into transactions involving the buying, acquiring or borrowing from, or selling, transferring or lending to, or exchanging with a person not being an authorised dealer, any foreign exchange except with the general or special permission of Reserve Bank. Anyone dealing in foreign exchange in any form, except to the extent indicated above, will be deemed to be contravening the provisions of the Act.

## **Breach of Regulations by Non-resident Branches/ Correspondents of Authorised Dealers**

**1.22** If any non-resident branch or correspondent of an authorised dealer is found to have contravened or attempted to contravene any of the Exchange Control regulations in force in India, all rupee transfers on its account may be made subject to prior permission of Reserve Bank or totally prohibited.

## **Exchange Rates**

**1.23** Section 8(2) of FERA 1973 lays down that all transactions in foreign exchange shall be done at rates for the time being authorised by Reserve Bank. In pursuance

of this provision, Reserve Bank has authorised that the rates of exchange for inter-bank as well as merchant transactions in all currencies (including currency notes and travellers cheques) may be fixed by authorised dealers on the basis of prevailing market conditions subject to the guidelines that may be framed by the Foreign Exchange Dealers' Association of India (FEDAI) from time to time. The terms and conditions laid down by FEDAI for transacting foreign exchange business will govern all business transacted by authorised dealers.

### **Employment of Brokers**

**1.24** There is no objection to employment of brokers, but in all cases their principals as well as the brokers must comply with the requirements of the Exchange Control. Exchange brokers are, however, not authorised to deal in foreign exchange and hence they should not purchase or sell foreign exchange from/to public.

### **Compliance with Laws**

**1.25** Nothing in this Manual authorises any transaction which is contrary to any of the provisions of any statute (including the Foreign Exchange Regulation Act, 1973) or any Rule, Notification, Order, Direction or Regulation issued thereunder. Similarly, any approval granted by the Exchange Control Department of Reserve Bank will be deemed to be its approval only under the Foreign Exchange Regulation Act and/or Rules, Notifications and Orders issued thereunder. Approvals required under any other statute should be obtained separately from the concerned authority.

### **Penalties**

**1.26** Adjudications and prosecutions for infringement of the provisions of FERA 1973 are made by the Enforcement Directorate set up by the Government of India under the Act. In terms of Section 73A of FERA 1973, Reserve Bank can also impose penalty on an authorised dealer without prejudice to the powers of the Enforcement Directorate.

### **Restrictions on Transactions with certain countries**

**1.27** Export-Import Policy (1997-2002) prohibits exports to / imports from Fiji\* and Iraq. No remittances should be made to these countries or on account of their Governments or any of their agencies or nationals except to the extent generally or specially authorised by Reserve Bank from time to time. However, there shall be no ban on the export of items to Iraq in cases where the prior approval of the concerned Sanctions Committee of the United Nations' Security Council has been obtained. Remittances and other facilities available to foreign nationals (Chapter 11) are not available to Pakistani nationals. Personal remittances to Pakistan should also not be allowed.

\* This prohibition is currently on Iraq only vide DGFT's Public Notice No.73(PN)/97-02 dated 24th February 1998.

## Definitions

1.28 (i) The following terms have been defined in Section 2 of FERA 1973:

"Appellate Board"  
"authorised dealer"  
"bearer certificate"  
"certificate of title to a security"  
"coupon"  
"currency"  
"foreign currency"  
"foreign exchange"  
"foreign security"  
"Indian currency"  
"Indian customs waters"  
"money-changer"  
"overseas market"  
"owner"  
"person resident in India"  
"person resident outside India"  
"precious stone"  
"prescribed"  
"Reserve Bank"  
"security"  
"transfer"

(ii) The following further clarifications are given in respect of certain terms for a better understanding -

### **"Person resident in India"**

- A. Indian citizens who proceed abroad for business visit, medical treatment, study and such other purposes which do not indicate their intention to stay outside India for an indefinite period will be considered as "person resident in India" during their temporary absence from India.
- B. By virtue of clauses (c) and (d) of sub-section (1) of Section 73 of the Act, an office or branch situated in India, of any business whether carried on by a body corporate or otherwise i.e. companies, firms, banks or any other organisations, whether Indian or foreign, is treated for all purposes of the Act as 'person resident in India'.

C. Wherever there is doubt as to the residential status of a person, authorised dealers should make a reference to Reserve Bank with full facts of the case for consideration.

D. In terms of Reserve Bank Notification No. FERA.7/74-RB dated 1st January 1974, for the purpose of transactions in Indian rupees, Indians, Nepalese and Bhutanese resident in Nepal and Bhutan as well as offices and branches of Indian, Nepalese and Bhutanese firms, companies or other organisations in these two countries are treated as 'person resident in India'.

**'Person resident outside India'**

A. The implication of the Reserve Bank Notification referred to in D above is that persons resident in Nepal and Bhutan other than those indicated therein for the purpose of transactions in Indian rupees and all persons resident in Nepal and Bhutan for the purpose of transactions in foreign exchange, are treated as 'person resident outside India'.

B. The term 'non-resident' used in this Manual is synonymous with the term 'person resident outside India'.

**'Security'**

For purposes of Sections 9 and 19 of the Act, 'security' includes coupons or warrants representing dividend or interest and life/endowment insurance policies.

**'Foreign company'**

'Foreign company' refers to a firm, company or any other organisation incorporated/registered outside India.

**'FERA company'**

'FERA company' refers to a firm, company or any other organisation incorporated/registered in India in which non-resident interest exceeds forty per cent.

## **ANNEXURE**

### **List of banks and other institutions to whom licences have been issued to deal in foreign exchange (paragraph 1.4)**

#### **A. Banks and others holding full-fledged licences**

ABN AMRO Bank N.V.

Abu Dhabi Commercial Bank Ltd.

Allahabad Bank

American Express Bank Ltd.

Andhra Bank

ANZ Grindlays Bank Ltd.

Arab Bangladesh Bank Ltd.

Bank Internasional Indonesia

Bank of America National Trust and Savings Association

Bank of Bahrain and Kuwait B.S.C.

Bank of Baroda

Bank of Ceylon

Bank of India

Bank of Madura Ltd.

Bank of Maharashtra

Bank of Nova Scotia

Bank of Punjab Ltd.

Bank of Rajasthan Ltd.

Bank of Tokyo-Mitsubishi Ltd.

Banque Nationale De Paris

Barclays Bank p.l.c.

Benares State Bank Ltd.

Bharat Overseas Bank Ltd.

Bombay Mercantile Co-operative Bank Ltd.

The British Bank of the Middle East

Canara Bank

Catholic Syrian Bank Ltd.

Central Bank of India

Centurion Bank Ltd.

The Chase Manhattan Bank

Chinatrust Commercial Bank

Cho Hung Bank

Citibank N.A.

City Union Bank Ltd.

The Commercial Bank of Korea Ltd.

Commerzbank A.G.

Corporation Bank

Credit Agricole Indosuez

Credit Lyonnais

Dena Bank

Deutsche Bank Aktiengesellschaft

The Development Bank of Singapore Ltd.

Development Credit Bank Ltd.

Dhanalakshmi Bank Ltd.

Dresdner Bank A.G.

Federal Bank Ltd.

The Fuji Bank Ltd.

Global Trust Bank Ltd.

Hanil Bank

HDFC Bank Ltd.

The Hongkong and Shanghai Banking Corporation Ltd.

ICICI Banking Corporation Ltd.

IDBI Bank Ltd.

Indian Bank

Indian Overseas Bank

IndusInd Bank Ltd.

Internationale Nederlanden Bank (ING Bank)

Jammu and Kashmir Bank Ltd.

Karnataka Bank Ltd.

Karur Vysya Bank Ltd.

Krung Thai Bank Public Company Ltd.

Lakshmi Vilas Bank Ltd.

Maharashtra State Co-operative Bank Ltd.

Mashreq Bank p.s.c.

Nedungadi Bank Ltd.

Oman International Bank S.A.O.G.

Oriental Bank of Commerce

Oversea-Chinese Banking Corporation Ltd.

Punjab National Bank

Punjab and Sind Bank

The Sakura Bank Ltd.

Sangli Bank Ltd.

Sanwa Bank Ltd.

Saraswat Co-operative Bank Ltd.

SBI Commercial and International Bank Ltd.

The Siam Commercial Bank Ltd.

Societe Generale

Sonali Bank

South Indian Bank Ltd.

Standard Chartered Bank

State Bank of Bikaner and Jaipur

State Bank of Hyderabad

State Bank of India

State Bank of Indore

State Bank of Mauritius Ltd.

State Bank of Mysore

State Bank of Patiala

State Bank of Saurashtra

State Bank of Travancore

The Sumitomo Bank Ltd.

Syndicate Bank

Tamilnad Mercantile Bank Ltd.

Thomas Cook (India) Ltd.

Times Bank Ltd.

The Toronto Dominion Bank

UCO Bank

Union Bank of India

United Bank of India

United Western Bank Ltd.

UTI Bank Ltd.

Vijaya Bank

Vysya Bank Ltd.

**B. Institutions holding restricted authorisation to deal in foreign exchange**

Export-Import Bank of India

Industrial Credit & Investment Corporation of India Ltd.

Industrial Development Bank of India

Industrial Finance Corporation of India

SBI Factors and Commercial Services Pvt. Ltd.

Small Industries Development Bank of India