

THE FOREIGN EXCHANGE REGULATION (AMENDMENT)
ACT, 1993

No. 29 OF 1993

[2nd April, 1993.]

An Act further to amend the Foreign Exchange Regulation Act, 1973.

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

1. (1) This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1993.

Short title and commencement.

(2) It shall be deemed to have come into force on the 8th day of January, 1993.

46 of 1973.

2. In the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as the principal Act), in the long title, the words "and bullion" shall be omitted.

Amendment of long title.

3. In section 2 of the principal Act, clauses (j) and (v) shall be omitted.

Amendment of section 2.

4. Sections 11 and 12 of the principal Act shall be omitted.

Omission of sections 11 and 12.

5. In section 13 of the principal Act,—

Amendment of section 13.

(a) in sub-section (1), the words "any gold or silver or" shall be omitted;

(b) in sub-section (2), the words "gold, jewellery or precious stones or" shall be omitted.

Omission of sections 15 and 17.

6. Sections 15 and 17 of the principal Act shall be omitted.

Insertion of new section 18A.

7. After section 13 of the principal Act, the following section shall be inserted, namely:—

Payment for lease, hire or other arrangement.

"18A. No person shall, except with the general or special permission of the Reserve Bank, take or send out by land, sea or air any goods from India to any place on lease or hire or under any arrangement other than sale or disposal in any other manner of such goods."

Amendment of section 19.

8. In section 19 of the principal Act,—

(a) in sub-section (1), clause (c) shall be omitted;

(b) in sub-section (4), clause (c) shall be omitted;

(c) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

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

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

Omission of sections 20 and 21.

9. Sections 20 and 21 of the principal Act shall be omitted.

Amendment of section 22.

10. In section 22 of the principal Act, the words "The Central Government may, by notification in the Official Gazette, order that" shall be omitted.

Omission of section 23.

11. Section 23 of the principal Act shall be omitted.

Amendment of section 25.

12. In section 25 of the principal Act,—

(a) in sub-section (1), for the words "permission of the Reserve Bank", the words "general or special permission of the Reserve Bank" shall be substituted;

(b) sub-section (3) shall be omitted.

13. For section 26 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 26.

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

Certain provisions as to guarantee in respect of debt or other obligation.

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

(ii) of a person resident outside India.”

14. Section 27 of the principal Act shall be omitted.

Omission of section 27.

15. In section 28 of the principal Act,—

Amendment of section 28.

(a) for sub-sections (1), (2) and (3), the following sub-sections shall be substituted, namely:—

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

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

(3) Where any such person or company (including its branch) as is referred to in sub-section (1) acts as, or holds the appointment of, any such agent as is referred to in that sub-section at the commencement of this Act, such person or company (including its branch) shall, within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to act as such agent.”;

(b) in sub-section (6), the words “or appointment or, as the case may be, from permitting the use of any such trade mark” shall be omitted;

1 of 1956.

(c) in sub-section (7), the words "appointment or permission, as the case may be," shall be omitted;

(d) in the *Explanation*, clause (d) shall be omitted.

Amend-
ment of
section
29.

16. In section 29 of the principal Act,—

(a) in sub-section (1), the words "or in which the non-resident interest is more than forty per cent." shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

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

(c) after sub-section (4), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this section,—

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

(ii) "non-resident interest" means participation in the share capital by or entitlement to the distributable profits of, any individual or company resident outside India, or any company not incorporated under any law in force in India, or any branch of such company whether resident outside India or not.

Amend-
ment of
section
30.

17. In section 30 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

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

Amend-
ment of
section
31.

18. In section 31 of the principal Act, in sub-section (1), the words "or in which the non-resident interest is more than forty per cent." shall be omitted.

Omis-
sion of
section 32.

19. Section 32 of the principal Act shall be omitted.

5 of 1898.
2 of 1974.

20. In sections 35, 37, 46 and 62 of the principal Act, for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

Amend-
ment of
sections
35, 37, 46
and 62.

21. In section 41 of the principal Act,—

(a) for the words "one year", wherever they occur before the *Explanation*, the words "six months" shall be substituted;

(b) in clause (ii), the following proviso shall be inserted at the end, namely:—

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

(c) in the *Explanation*, the words "of one year" shall be omitted.

Amend-
ment of
section
41.

22. In section 42 of the principal Act,—

(a) in sub-section (1), in clause (i), after the word and figures "section 18", the words, figures and letter "or section 18A" shall be inserted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) Where any foreign currency, being the subject-matter of any investigation or proceeding referred to in sub-section (1), is in the custody of an officer of Customs or of an officer of Enforcement or of a court, the Collector of Customs, the Director of Enforcement or, as the case may be, the court may, having regard to the security-risk involved in such custody, direct that the foreign currency be deposited in a bank in such manner as he or it may deem fit.

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

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

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

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

Amend-
ment of
section
42.

Amendment of section 43.

23. In section 43 of the principal Act, in sub-section (5), the words and figures "and to a person to whom a licence has been granted or deemed to have been granted under section 32" shall be omitted.

Amendment of section 45.

24. In section 45 of the principal Act,—

(a) in sub-section (1), for the words and figures "Code of Criminal Procedure, 1898, any police officer not below the rank of a Sub-Inspector of Police", the words and figures "Code of Criminal Procedure, 1973, any police officer not below the rank of a Deputy Superintendent of Police" shall be substituted;

5 of 1898.

2 of 1974.

(b) in sub-section (3), for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amendment of section 50.

25. In section 50 of the principal Act, for the word and figures "section 18", the words, figures and letter "section 18, section 18A" shall be substituted.

Amendment of section 52.

26. In section 52 of the principal Act,—

(a) in sub-section (2), after the words "Any person aggrieved by such order may,", the words "on payment of such fee as may be prescribed and" shall be inserted;

(b) in sub-section (6), in the second proviso, for the words "fifty thousand rupees", the words "two lakhs and fifty thousand rupees" shall be substituted.

Amendment of section 53.

27. In section 53 of the principal Act, in sub-section (2), for the words and figures "sections 480 and 482 of the Code of Criminal Procedure, 1898", the words and figures "sections 345 and 346 of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amendment of section 56.

28. In section 56 of the principal Act,—

(a) in sub-section (1), for the word and figures "section 18", the words, figures and letter "section 18, section 18A," shall be substituted;

(b) in sub-sections (2) and (3), for the word and figures "section 18", wherever they occur, the words, figures and letter "section 18 or section 18A" shall be substituted;

(c) in sub-section (6), for the words and figures "the first proviso to section 188 of the Code of Criminal Procedure, 1898", the words and figures "the proviso to section 188 of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898.

2 of 1974.

Amendment of section 58.

29. In section 58 of the principal Act,—

(a) in sub-section (1), for the words "be punishable with fine which may extend to two thousand rupees", the words "be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both" shall be substituted;

(b) in sub-section (2), for the words "two thousand rupees", the words "ten thousand rupees" shall be substituted.

Amendment of section 61.

30. In section 61 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

- 2 of 1974. “(1) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for any metropolitan magistrate and for any magistrate of the first class to pass a sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person convicted of an offence punishable under section 56.”
31. In section 64 of the principal Act, in sub-sections (1) and (2), for the word and figures “section 18”, the words, figures and letter “section 18, section 18A,” shall be substituted. Amendment of section 64.
- 5 of 1898. 32. In section 66 of the principal Act, in sub-section (1), for the words and figures “section 562 of the Code of Criminal Procedure, 1898”, the words and figures “section 360 of the Code of Criminal Procedure, 1973” shall be substituted. Amendment of section 66.
- 2 of 1974. 33. In section 67 of the principal Act, for the word and figures “section 18”, the words, figures and letter “section 18, section 18A” shall be substituted. Amendment of section 67.
34. In section 71 of the principal Act, in sub-section (3), for the words “two hundred and fifty rupees”, the words “fifteen thousand rupees” shall be substituted. Amendment of section 71.
35. In section 73 of the principal Act, in sub-section (3), the words, brackets and figures “persons referred to in sub-section (1) of section 52” shall be omitted. Amendment of section 73.
36. After section 73 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 73A.
- “73A. Without prejudice to the provisions of sections 50 and 51, where any authorised dealer contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving a reasonable opportunity of being heard impose on the authorised dealer a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.” Penalty for contravention of direction of Reserve Bank or for failure to file returns.
37. In section 74 of the principal Act, in clause (i), for the figures and word “9, 10 or 11”, the figures and word “9 or 10” shall be substituted. Amendment of section 74.
38. In section 79 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:— Amendment of section 79.
- “(dd) prescribe the fee payable by a person preferring appeal to the Appellate Board under sub-section (2) of section 52;”
- Ord. 9 of 1993. 39. (1) The Foreign Exchange Regulation (Amendment) Ordinance, 1993 is hereby repealed. Repeal and savings.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Act.