

NATIONAL SEMINAR
ON
FOREIGN EXCHANGE MANAGEMENT
(FEMA) ACT 1999

The Foreign Exchange
Management Act, 1999



सत्यमेव जयते

Author: Vidhya S

	D.G.Vaishnav College Arumbakkam, Chennai – 600106.
	9500064715

Introduction:

Foreign exchange regulation act 1973 was replaced by foreign exchange management act came into force on 1st day of June 2000 enacted by parliament of India. Its head office is known as enforcement directorate is situated in New Delhi and headed by a director.

It is applicable whole of India, branches, offices and agencies outside India owned or controlled by a person who is a resident of India.

FEMA is a regulatory mechanism that enables the central government and RBI to pass rules and regulations relating to foreign exchange in tune related to foreign trade policy of India.

Objectives:

1. To facilitate external trade (easier exports / imports and payments)
2. To develop foreign market in India.
3. To define the procedures, formalities, dealings of all exchange transaction in India.
4. Utilize foreign exchange resource in India.
5. Promoting and maintenance of foreign exchange in India

Main Features of FEMA:

- Activities such as payments made to any person outside India or receipts from them, along with the deals in foreign exchange and foreign security is restricted. FEMA gives the central government the power to enforce the restrictions.
- Without general or specific permission, the transactions involving foreign exchange or foreign security and payments from outside the country to India are restricted– the transactions should be made only through an authorized person.
- Deals in foreign exchange under the current account by an authorized person can be restricted by the Central Government, based on public interest.
- Although selling or drawing of foreign exchange is done through an authorized person, the RBI is empowered by this Act to subject the capital account transactions to a number of restrictions.
- Residents of India will be permitted to carry out transactions in foreign exchange, foreign security or to own or hold immovable property abroad if the currency, security or property was owned or acquired when he/she was living outside India, or when it was inherited by him/her from someone living outside India.

FERA vs FEMA:

FERA	FEMA
FERA was approved by the parliament in 1973 currently it is not in force and it had 81 sections	FEMA was approved by the parliament in 1999 currently in force and it has only 49 sections
Violation of FERA was considered a criminal offence.	Violation of FEMA was considered a civil offence.
It was rigid law	It is flexible and liberal law
A person has to obtain permission of RBI with regards to transfer of funds related to external operations	There is no pre-approval from RBI related to remittances of external trade.
Objectives	
To regulate foreign payments	To regular the external trade
To ensure optimum use of foreign currency in India	To develop and maintenance of foreign exchange market in India

FERA did not succeed in restricting activities such as the expansion of Multinational Corporations. The concessions made to FERA in 1991-1993 showed that FERA was on the verge of becoming terminated. After the amendment of FERA in 1993, it was decided that the act would become the FEMA. This was done in order to lessen the controls on foreign exchange in India

Regulation / Rules related to FEMA:

1. Current account and capital account transaction should be maintained.
2. Transfer / Issue of any foreign securities.
3. Person resident in India should have foreign currency account.
4. FEMA can do acquisition and transfer of immovable properties in India.
5. Maintain of receipts and payments - mandatory.
6. Exports of goods and services.
7. Foreign exchange of adjudication procedures and appeals rules.
8. FEMA possession and retention of foreign currency.
9. Realization, Repatriation and surrender of foreign exchange.

FEMA covers three different types of categories

- Person
 - Person resident in India
 - Person resident outside India.

- **Person includes :**
 - a. An individual
 - b. A HUF
 - c. A Company
 - d. A firm
 - e. An associate of person
 - f. Artificial juridical person

- **Person Resident in India includes:**
 - a. A person stays more than 182 days during proceeding financial year.
 - b. Office / branch / agency is owned in India or controlled in India by person resident outside India.
 - c. Office, branch, agency outside India owned or controlled by a person resident in India.

- **Person resident outside India includes:**

A person born and brought up outside India is known as person who is not resident in India.

Penalties for contravention under FEMA

- I. The penalty can be up to thrice the sum involved in such contravention where such amount is measurable.
- II. If the amount is not measurable, penalty would be up to two lakh rupees.
- III. If the contravention is continuous, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Important rules under FEMA every NRI should know:

1. Maintenance of bank account
2. Financial investment options
3. Acquisition and transfer of immovable properties.
4. Repatriation of current and immovable assets.
5. Income for Students

Important terms under FEMA:**Authorized person under FEMA:**

An "Authorized Person" under FEMA, is a person who is authorized by Reserve Bank to deal in Foreign Exchange. In order to be registered as an "Authorized Person", required application along with related documents has to be supplied to Reserve Bank of India

Capital / Current account transaction:

Capital account transaction is defined as a transaction which Alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India .Account other than a capital account transaction are without prejudice to the generality of the foregoing such transaction is current account

Currency Notes:

Cash in form of Coins & Bank notes.

Indian Currency:

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.

Exports / Imports:

Exports are goods that are sold in a foreign market, while imports are foreign goods that are purchased in a domestic market.

Foreign currency:

Currency other than the Indian currency.

Foreign Exchange:

Foreign currency includes deposits, travelers cheque, letters of credit or Bills of exchange which are exchanged.

Foreign Securities:

Security expressed in terms of shares, stock, bonds in foreign currency.

Security:

Shares, Debenture, Stock, etc. are defined in the Public Debt Act of 1994.

Conclusion:

- ✓ FEMA accepts only authorized person like authorized dealers, money changer, off-shore banking units, or any other person authorized by RBI to deal in foreign exchange.
- ✓ FEMA strictly enforce law effectively.
- ✓ FEMA prohibits unauthorized person.

References:

www.consumer-voice.org

www.rashminsanghvi.com

https://en.wikipedia.org/wiki/Foreign_Exchange_Management_Act

