

FERA AND FEMA

FOREIGN EXCHANGE REGULATION ACT(1973)

Foreign Exchange

- Foreign exchange is the system or process of converting one national currency into another, and of transferring money from one country to another

FOREIGN CURRENCY

- Foreign currency means any currency other than Indian currency.

FOREIGN SECURITY

- Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrumental 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.

HISTORY

The 1973 law was created during the tenure of Prime Minister Indira Gandhi with the goal of conserving India's foreign exchange resources. The country was facing a trade deficit, which was followed by a devaluation of the currency and an increase in the price of imported oil. The act specified which foreign exchange transactions were permitted, including those between Indian residents and nonresidents.

AN INTRODUCTION TO FERA

- The **FERA (Foreign Exchange Regulation Act)** deals with laws which relate to foreign exchange in India
- The laws were made to manage foreign investments in India. The FERA has its origin at the time of Indian Independence.

- In the beginning, it was a temporary arrangement to **control the flow of foreign exchange**. In 1957 the act was made permanent. As the industrialization grew in India, there was an increase in the foreign exchange investments. As a result, there arose a need to protect it.

- . Accordingly, in 1973 the Foreign Exchange Regulation Act was amended.
- FERA consists 7 Chapter and 81 complex sections
- Under FERA, any offence was a criminal one which included imprisonment as per code of criminal procedure, 1973.

OBJECTIVE'S

- prevent the outflow of Indian currency
- To regulate dealings in foreign exchange and securities
- To regulate the transaction indirectly affecting foreign exchange
- To regulate import and export of currency and bullion

- To regulate employment of foreign nationals
- To regulate foreign companies
- To regulate acquisition, holding etc of immovable property in India by non-residents
- To regulate certain payments .
- To regulate dealings in foreign exchange and securities.
- To regulate the transactions indirectly affecting foreign exchange.

PROVISIONS

- Regulation of dealing in foreign exchange.
- Restrictions on payments.
- Restrictions regarding assets held by non residents and import & export of certain currency & bullion .
- Duty on persons entitled to receive foreign exchange and payment for exported goods.

- Restriction on appointment of certain persons and companies as agents or technical or management advisers in india
- Restriction on establishment of place of business in india
- Prior permission of Reserve Bank required for taking up employment in india by nationals of foreign state
- Restrictions on immovable property

AMENDMENTS TO THE ACT

- Government proposed to introduce comprehensive amendments in FERA due to changes in economic policy ,especially liberalization of industrial sector and most to open up the economy through changes in trade policy and encouragement of foreign investment .As a result ,the required changes were announced in budget speech of 1992-1993. The changes so introduced by issue of notification by RBI or Central Government.

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- The important changes are :-

Power of central government to direct payment in foreign currency in certain cases.

Export & transfer of securities.

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- Custody of securities by a depository or any other person.
 - Restrictions on the holding of immovable property outside India.
 - Restriction on persons resident in India associating themselves with or participating in concerns outside India.
 - Regulation on booking passages outside India & restriction on foreign travel.

FERA TO FEMA

- The main objective of FERA framed against the background of severe foreign exchange problem and controlled economic regime, was conservation and proper utilisation of the foreign exchange resources of the country.
- FERA created flourishing black market in foreign exchange. It brought into the economic lexicon the word “HAWALA”.
- There was a demand for a substantial modification of FERA in the light of ongoing Economic liberalization and improving foreign exchange reserves position. Accordingly, a new act, FEMA (Foreign Exchange Management Act) 1999 replaced the FERA.

Need for FEMA

The demand for new legislation was basically on two main counts

1. The FERA was introduced in 1974 when India's foreign exchange reserves position was not satisfactory. It required stringent controls to conserve foreign exchange and to utilize in the best interest of the country. Very strict restrictions have outlived their utility in the current changed scenario.
2. there was a need to remove the draconian provisions of FERA and have a forward-looking legislation covering foreign exchange matters.

Milder FEMA replaces FERA

- The older version had very strict laws (for example, a person was assumed guilty unless proven otherwise.) All the unnecessary restrictions were removed. The rules regarding foreign investments were simplified to **encourage more foreign investment** in India and consequently ensure better foreign cash flow. However, FERA was not in accordance with the pro-liberalization policies of the Indian Government. Finally, in 1999 the FEMA was passed which replaced the FERA, though certain provisions of FERA 1973 still exist under FEMA 1999.
- FEMA came into effect from 1st June, 2000. Some structural changes were made. The FEMA combines and improves the laws relating to foreign exchange. It makes the procedure for foreign investment easy and consequently encourages foreign exchange in India.

- Under FEMA, violation of foreign exchange rules has ceased to be a criminal offence and would now be treated as a civil offence and the ED would no longer have the power to arrest persons for such offences. Extreme cases of money laundering, drug trafficking and gun running would now be dealt with under the proposed new legislation aimed at curbing money laundering.

FOREIGN EXCHANGE MANAGEMENT ACT 1999

In the Lok Sabha on *august 4th, 1998*. the bill was referred to parliamentary standing committee. After incorporating creation modifications and suggestions of the standing committee, the central government introduced the foreign exchange management bill 1999. the bill was finally passed by Lok Sabha on *December 2nd 1999*.

The act may be called the foreign exchange management act 1999.

the FEMA came into force on June 1st 2000.

However the cases under FERA can be initiated with in 2 years from repeal of FERA i.e. up to may 31st 2002.

The FEMA replaced due to following reason:-

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- A) FERA was not suitable for liberalization policy. Though certain amendments were made in 1993 but they were not sufficient.
- B) after 1993, many important changes took place. Foreign exchange reserve also increased
- C) The provisions of FERA were not favorable for these changes.
- D) The objective of FERA was to conserve foreign exchange resources which badly affected the comfortable foreign exchange reserves. So the FEMA came into existence.

OBJECTIVE OF THE FEMA

- To facilitate the external trade and payment
- To promote of an orderly maintenance of the foreign exchange market In India.
- Regulation of foreign capital in India.
- To remove imbalance of payment.
- To make strong and developed foreign exchange market.

- Regulation of employment business and investment of non-residents .
- To regulate foreign payments.
- The new law is more transparent in its application. it has laid down the areas where special permission of the reserve bank/government of India is required.

SAILENT FEATURES OF THE ACT

- Full freedom to a person resident in India to hold or transfer any foreign securities or immovable property situated outside India.
- A person resident outside India is also permitted to hold shares, securities and property acquired by him while he was resident in India.

- the EEFC account holders and RFC account holders are permitted to freely use the funds held in EEFC\RFC accounts for payment of all permissible current account transactions .
- The limit for permitting overdraft against NRE accounts balance has been raised from 20,000 to 50,000.

Amendments to FEMA

- Automatic approval for external commercial borrowings.
- Amendment relating to inbound Investments.
- Amendment relating to Outbound Investments.
- Other Amendments.

Similarities between FERA and FEMA

- The RBI and central government would continue to be the regulatory bodies.
- Presumption of extra territorial jurisdiction as envisaged in section (1) of FERA has been retained.
- The Directorate of Enforcement continues to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

FERA

Points of Comparison

FEMA -2000

FERA -1973

1. Content	There are 49 sections out of which 12 sections relate to operational part and rest with penal provisions	There were 81 sections out of which 32 sections related to operational part and rest deals with penalty, appeals etc.
2. Nature	Basically it is a civil law	It was considered as a criminal law
3. Applicability	The Act applies to all branches, offices and branches outside India owned or controlled by a person resident in India	The Act applied to all citizens of India and to branches and agencies outside India and to branches and agencies outside India
4. New Terms	Capital account transactions, current account transactions, persons, services like new terms are introduced.	These terms were not defined.

5. Penalty	Limited to three times the sum involved if it is quantifiable .If it is not quantifiable .	Five times of the sum involved + imprisonment in most of the cases
6. Object	The object is to encourage external trade.	The object was to control, regulate and prohibits foreign exchange transactions
7. Legal Help	The complainant has full right to take legal help from a lawyer or a chartered accountant	There was no provision for legal assistance
8. Power of Police Authorities	The power to the police officers has restricts to great extent	Extensive powers had given to police officer
9. Definition of “authorized person”	It has been extended to include banks, money changes, off shore banking units etc	It was limited in case of FERA
10. Definition of “Resident”	The term has defined in accordance with income tax act	The term defined was not in accordance with income tax act