FEMA Act

The FEMA full form is the “Foreign Exchange Management Act.” It was passed in parliament on December 29, 1999, to substitute the Foreign Exchange Regulation Act (FERA). Offenses involving foreign exchange are now classified as civil misdemeanors under the FEMA Act.

What is FEMA Act 1999?

The FEMA Act 1999 was passed in the Parliament of India "to consolidate and amend the law relating to foreign exchange to facilitate external trade and payments and promote the orderly development and maintenance of foreign exchange market in India."

FEMA Act PDF

- It is different from other laws as it allows everything unless strictly forbidden; the Foreign Exchange Regulation Act (FERA) of 1973 (the predecessor to FEMA) prohibited everything unless particularly permitted.
- As a result, the inflection of FEMA 1999 was rather intense. Even minor offenses were punishable by prison time.
- FERA presumed a person guilty until proven otherwise. On the other hand, other laws assume a person innocent unless he is found guilty in court.
- FEMA is a supervisory system that allows the Reserve Bank of India to issue regulatory requirements and the Central Government to issue rules concerning foreign exchange per India's Foreign Trade Policy.

Foreign Exchange Management Act Overview

While the Foreign Exchange Regulation Act was enacted during severe foreign exchange shortages, the FEMA Act provides a more liberalized approach, facilitating global trade and transactions.

The enactment of FEMA signifies the complete integration of Indian trade and commerce with the global economy. The liberalized approach to foreign exchange management helped further improve the country's position in Ease of Doing Business, along with other leading indexes and parameters.

Under other laws that permit everything unless prohibited, the Foreign Exchange Regulation Act seemed to prohibit everything unless permitted, resulting in an enormous drain on the private sector. This made the tone and tenor of the FEMA Act quite impractical and involved punishment even for minor offenses. Under this law, a person remains guilty unless proven innocent.

Features of FEMA

Payments to or receipts from persons outside India and transactions in foreign exchange and foreign security are restricted under the FEMA Act.

- FEMA is the agency that grants the central government the authority to enforce the limitations.
- MA restricts bank transactions involving foreign exchange and transfer of funds abroad to India without general or specific approval from FEMA - the transactions should be processed only through authorized personnel.
- Current account transactions are free, with reasonable limitations.
- Indian residents will be allowed to conduct transactions in foreign exchange and securities or own or retain immovable property overseas.
- This would be done only if the currency, protection, or property was owned or procured while he/she was residing outside India or passed down through generations from somebody living outside India.
- The Central Government might restrict authorized individuals' transactions in foreign exchange underlying the ongoing account based on the public's interest overall.

Objectives of FEMA Act

The primary goal of introducing FEMA in India was supposed to facilitate external trade flows and payments.

- Furthermore, FEMA was formulated to catalyze the orderly growth and operation of the forex market of India.
- FEMA indicates the formalities and operations for all the number of foreign exchange transactions taking place in India.
- FEMA was essentially introduced to de-regularize and liberalize the Indian economy.
- According to the FEMA Act, the payment balance accounts for transactions amongst citizens of different countries in terms of goods,

services, and assets. These transactions in foreign exchange have been categorized into two sections: the capital account transactions and the current account transactions.

- Capital Account refers to all capital transactions. On the other hand, the current account comprises all the merchandise trade.
- The current account transactions involve the influx and outpour of money between and within a country or countries over the period of a year as an outcome of commodity, service, and income trading.
- The current account is particularly a measure of a nation's economy's health.
- As stated before, the balance of payment is composed of the current and capital accounts; the remaining portion of the payment balance is formed by the flow of capital in the nation's economy as a consequence of capital expenditure and receipts.
- Capital account acknowledges domestic investment in foreign assets and overseas investment in domestic.

Provisions of FEMA Act 1999

FEMA is applied to the following situations:

- Foreign exchange.
- Foreign security.
- Any type of purchase, sale, or exchange (i.e. Transfer).
- Banking, insurance, and finance are all examples of financial services.
- Any overseas company in which an NRI (Non-Resident Indian) owns 60% or more.
- Any Indian citizen, whether residing in India or elsewhere (NRI).
- Any commodity and/or service exported from India to a country other than India.
- Importation of any product or service from a country other than India.
- Securities under the Public Debt Act of 1994.

FEMA Regulation - Foreign Exchange Drawal Route

Under the FEMA Act, foreign exchange can be obtained from any authorized dealer via the Prior Approval Route or the General Permission Route, as per the guidelines of the Reserve Bank of India.

S.No.	Particulars	Limitations under FEMA

1	Private visit to any country (except Bhutan and Nepal)	10,000 US dollars or its equivalents for one or more private visits in one year.
2	Donations/Gift per donor	Remittance should not exceed 1,25,000 US dollars duri a Financial Year
3	Corporate Donations	1 percent of the forex earnings during the preceding thr Financial Years or 5 million US dollars, whichever is le for a specified purpose
4	Migrating from India for employment	1,00,000 US dollars one time only
5	Remittance facility for emigration	1,00,000 US dollars or the prescribed amount by the emigration country does not exceed 1,00,000 US dollar one time.
6	Remittance for supporting of relatives (only close relatives) outside India	salary (after deducting income tax, Provident Fund, and other deductions) of a person not being a permanent resident in India and a citizen of a foreign state other th Pakistan. Or 1,00,000 US dollars a year per recipient in all other cas
7	Business Travel Abroad	25000 US dollars per trip respective of stay
8	To attend specialized training or conference	25000 US Dollar
9	For Medical treatment	1,00,000 US Dollar
10	Medical treatment abroad	25000 US Dollar
11	To Study Abroad	1,00,000 US Dollars per academic Year or the Institution's estimation, whichever is higher.
12	To meet the expenses of a person accompanying as attendance to a patient visiting abroad for a medical check-up or for medical treatment	25000 US Dollar
13	Commission payment to an agent outside of India for selling of commercial or residential plots or flats in India	25000 US Dollars or 5 % of inward remittance per transaction whichever is higher
14	For consultancy services from abroad	1 million US Dollars per project to 10 million US Dolla per project (for infrastructure project) 1 million US Dollar In all other cases.
15	Reimbursement of pre-incorporations' expenses	100,000 US Dollars or 5 percent of the investment brought into India, whichever is higher,
16	Remittance for purchase and/or use of Trademark	Allowed without any approval of the Reserve Bank of India
17	Remittance from a foreign company for secure Health Insurance	Freely allow
18	Payment of a lump sum fee and remittance of royalties under the technical collaboration agreement	Freely allowed without any prior approval from RBI

19	Release of exchange for medical treatment outside of India when a person becomes ill after traveling abroad	The extent of USD 1,00,000 without any hassles and an loss of time-based on self-declarations
20	Remittance of Small Value	Up to USD 25000 (form A2)

Transactions requiring prior approval from the Central Government for the drawl of foreign exchange -

1. Cultural excursions.
2. Advertisement in an overseas country's print media for any intention other than tourism promotion, international auctioning, and foreign investments (over $10,000 USD) by a state government and its public sector units.
3. Remuneration of importation on a c.i.f. basis by a Public Sector Unit or a Department of Government for importation via ocean transport.
4. Freight remittance from chartered vessels
5. Remission of container detention fees that exceed the DGS's (Director General of Shipping) prescribed rate.
6. Remittance of award money/sponsorship of any sports activity outside India by a person other than national/international/street level sports bodies if the prize money/sponsorship exceeds $1,000,000 USD.
7. Remission of transponder rental fees.
8. Internet Service Providers (ISPs).
9. Channels on television
10. Reimbursement for P&I Club ministry membership.
11. Multi-model transport operators remit funds to their overseas agents.

When is Foreign Exchange Drawal Prohibited?

Below we have mentioned when the Foreign Exchange Drawla is prohibited.

1. Any type of wire transfer resulting from a lottery win.
2. Any form of remittance from racing/riding earnings, etc.
3. Any payment for purchasing a lottery ticket, football pool, sweepstakes, banned/prescribed magazines, etc.
4. Payment of export commissions to Indian companies for equity investment in joint ventures/wholly owned subsidiaries abroad.
5. Any company can pay a dividend. This clause, however, is only applicable if the dividend balancing requirement is met.
6. Except for commissions up to 10% of the amount payable of tea and tobacco exports under Rupees State Credit Routes.

7. Payment for "Call back Services" on telephones.
8. A trip to Bhutan or Nepal.
9. Interest income on funds held in an NRSR Account, also known as a Non-resident Special Rupees Scheme account, is remitted.
10. A transaction with a Bhutanese or Nepalese resident.

Penalty Under FEMA Act

Suppose anyone violates the provisions of FEMA or any rule, direction, regulatory framework, order, or notification authorized under FEMA. In that case, they will be fined up to three times the amount involved in the violation or Rs.2 lakh. If the breach of the rules continues, he will be subject to a further penalty of Rs.5,000 for each day the contravention continues.