
UNIT 8 FOREIGN EXCHANGE MANAGEMENT AND RELATED REGULATIONS

Objectives

After studying this unit you should be able to:

- understand by the term 'Foreign Exchange'
- Explain the objectives and background of Foreign Exchange Management Act (FEMA)
- Identify the prohibited transactions under the FEMA
- Describe the process of regulation and management of Foreign Exchange
- Distinguish between Person resident in India and Person Non-resident in India
- Differentiate between Capital account transactions and current transactions

Structure

- 8.1 Introduction
- 8.2 Objectives of FEMA
- 8.3 Background of FEMA
- 8.4 FEMA: An Overview
- 8.5 Important Definitions and Concepts
- 8.6 Regulation & Management of Foreign Exchange
- 8.7 Types of Transactions under FEMA
- 8.8 Capital Account Transactions
- 8.9 Current Account Transactions
- 8.10 Authorised Person
- 8.11 Contraventions & Penalties
- 8.12 Provision for Appeal
- 8.13 Directorate of Enforcement
- 8.14 Compounding of Offences under FEMA
- 8.15 Summary
- 8.16 Self Assessment Questions
- 8.17 Further Readings/References

8.1 INTRODUCTION

This Unit is designed to introduce the important regulations related to the foreign exchange management in India. It aims to provide the basic understanding of different concepts under the Foreign Exchange Management Act, 1999, and its related rules and regulations. It would also help the students to have a broad understanding of how foreign exchange is managed in India and what is the regulatory framework which govern the people who deal with foreign exchange.

8.2 OBJECTIVES OF FEMA

The Foreign Exchange Management Act (Act No 42 of 1999) has been formulated by the Central Government to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.¹

8.3 BACKGROUND OF FEMA

The Defence of India Act, 1939, was temporary yet the first legislative attempt to regulate and control the foreign exchange in India. With an aim to settle the foreign exchange crisis in the country, the Foreign Exchange Regulation Act was first enacted in 1947; however, it was further replaced by the FERA 1957. The immediate predecessor of FEMA was the Foreign Exchange Regulation Act, 1973. It was enacted with an objective to regulate the foreign exchange rather than managing it. FERA aimed to regulate the foreign exchange by preventing the outflow of Indian currency, regulating dealings in foreign exchange and securities, by imposing several kinds of restrictions on transactions involving foreign exchange and on persons dealing with foreign exchange. FERA also aimed to only conserve the foreign exchange and regulate the use of it. FERA provided for number of criminal offences with *mens rea* and had provision for easy arrest by the Enforcement Directorate, even without an arrest warrant.

In the light of the economic liberalisation policy adopted by the Government of India in 1991-92, and the changing economic and financial landscape in the country, there was a need to modify the foreign exchange regulation also. Hence, with an aim to modify the FERA and adopt more liberal policy and approach towards foreign exchange, the FERA was replaced by the Foreign Exchange Management Act, 1999. The FEMA 1999 was also formulated to encourage and attract more foreign investments in the country; hence the regulations related to the foreign investments were also simplified. Many provisions under FERA were liberalised or removed to facilitate foreign exchange; however, few others were still included under the FEMA.

The FEMA is more transparent in its approach and implementation than its predecessor. It marks and very clearly identifies those areas and situations which require specific approval by the RBI or the Central Government for acquiring or holding foreign exchange. The philosophical approach was shifted from that of conservation of foreign exchange to one of facilitating trade and payments as well as developing orderly foreign exchange market.

8.4 FEMA: AN OVERVIEW

The Foreign Exchange Management Act, 1999, provides the legal framework for the proper management and administration of the foreign exchange transactions in the country. The Act came into force from June 1, 2000 and since then, has been amended from time to time according to the changing economic policies and objectives of the government. There are approximately six Rules framed by the Central Government and twenty three Regulations notified by the Reserve Bank of India (RBI) under the FEMA Act.

The Act extends to the whole of India and also applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

The statutory power under this Act empowers the RBI as well as the Central Government to frame and pass regulations and the rules from time to time, which are consistent with the foreign trade policy of the country. The Act provides for a legislative and regulatory framework, for inbound and outbound investments, and facilitates trade and business opportunity between Indian and other countries. FEMA lays down provisions for current account and capital account transactions. The RBI is the regulatory body and plays a controlling role in the management of the foreign exchange. The Act also makes provisions for enforcement, penalties, adjudication and appeal. FEMA along with the various rules and regulation applies to different practical aspects of the management of foreign exchange in India.

Structure of FEMA-

The Act is divided into 7 chapters, which are further divided into 49 sections. The following is the scheme of chapters under FEMA-

CHAPTER I – Preliminary (Section 1&2)

CHAPTER II- Regulation and Management of Foreign Exchange (Section 3 –9)

CHAPTER III – Authorised Person (Section 10 –12)

CHAPTER IV – Contravention and Penalties (Section 13-15)

CHAPTER V – Adjudication and Appeal (Section 16- 35)

CHAPTER VI – Directorate of Enforcement (Section 36-38)

CHAPTER VII- Miscellaneous (Section 39 – 49)

It also includes-

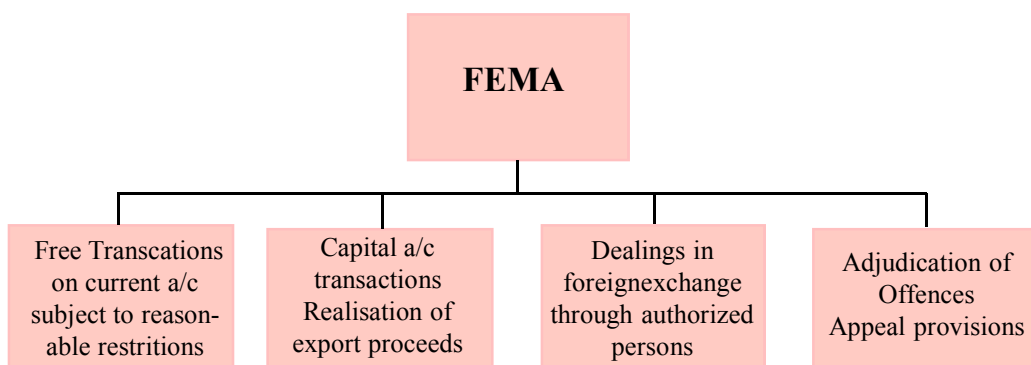
- Rules made by Ministry of Finance under Section 46 of FEMA (Subordinate or delegated Legislations)
- Regulations made by RBI under Section 47 of FEMA (Subordinate or delegated Legislations)
- Master Direction issued by RBI every year
- Foreign Direct Investment policy issued by the Department for Promotion of Industry and Internal Trade (DPIIT).
- Notifications and Circulars issued by Reserve Bank of India

Rules made under FEMA:

- 1) FEM (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000
- 2) FEM (Authentication of Documents) Rules, 2000
- 3) FEM (Current Account Transaction) Rules, 2000
- 4) FEM (Adjudication Proceedings and Appeal) Rules, 2000
- 5) FEM (Compounding Proceedings) Rules, 2000
- 6) The Appellate Tribunal for Foreign Exchange (Recruitment, Salary and Allowances and Other Conditions of Service of Chairperson and Members) Rules, 2000.

Regulations made under FEMA-

- 1) FEM (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015
- 2) FEM (Borrowing and Lending in Rupees) Regulations, 2000
- 3) FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000
- 4) FEM (Deposit) Regulations, 2016
- 5) FEM (Export and Import of Currency) Regulations, 2015
- 6) FEM (Guarantees) Regulations, 2000
- 7) FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
- 8) FEM (Establishment in India of Branch office or a Project office or any other Place of Business) Regulations, 2016
- 9) FEM (Export of Goods and Services) Regulations, 2015
- 10) FEM (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015
- 11) FEM (Insurance) Regulations, 2015
- 12) FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000
- 13) FEM (Manner of Receipt and Payment) Regulations, 2016
- 14) FEM (Permissible Capital Account Transactions) Regulations, 2000
- 15) FEM (Possession and Retention of Foreign Currency) Regulations, 2015
- 16) FEM (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015
- 17) FEM (Remittance of Assets) Regulations, 2016
- 18) FEM (Transfer or Issue of Security by a person Resident outside India) Regulations, 2017
- 19) FEM (Foreign Exchange Derivative Contracts) Regulations, 2000
- 20) FEM (Transfer or Issue of any Foreign Security) Regulations, 2004
- 21) FEM (Crystallization of inoperative Foreign Currency Deposits) Regulations, 2014
- 22) F.E.M (Transfer or Issue of any foreign Security) Regulations, 2004
- 23) FEM (International Financial Services Centre) Regulations, 2015
- 24) FEM (Regularization of Assets Held Abroad by a Person Resident in India) Regulations, 2015.



8.5 IMPORTANT DEFINITIONS AND CONCEPTS

Persons Resident in India² means:

- i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—
 - A) a person who has gone out of India or who stays outside India, in either case:
 - a) for or on taking up employment outside India, or
 - b) for carrying on outside India a business or vocation outside India, or
 - c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - B) a person who has come to or stays in India, in either case, otherwise than—
 - a) for or on taking up employment in India, or
 - b) for carrying on in India a business or vocation in India, or
 - c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- ii) any person or body corporate registered or incorporated in India,
- iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- iv) an office, branch or agency outside India owned or controlled by a person resident in India;

Person resident outside India³ means a person who is not resident in India.

Mr. X landed in India on 1st August 2019 to take up employment.

For the Financial Year 2018-19, he was not in India. So for the financial year 2018-19 he is not resident of India.

For the Financial Year 2019-20, he was in India for more than 182 days, so for the financial year 2019-20 days, he is resident of India.

Authorized persons⁴ means an authorised dealer, money changer, off-shore banking unit or any other person who are authorized to deal in foreign exchange or foreign securities.

Capital Account Transaction⁵ means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 of the Act.

Current account transaction⁶ means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes;

- i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- ii) payments due as interest on loans and as net income from investments,
- iii) remittances for living expenses of parents, spouse and children residing abroad, and
- iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

Foreign currency⁷ means any currency other than Indian currency.

Foreign exchange⁸ means foreign currency and includes;

- i) deposits, credits and balances payable in any foreign currency,
- ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency

8.6 REGULATION & MANAGEMENT OF FOREIGN EXCHANGE

Chapter II of the FEMA Act, 1999, provides for the provisions related to the regulation and management of foreign exchange in India. There can be no dealing in foreign exchange without the general or special permission of the Reserve Bank of India. The Act also does not empower the RBI or any other person to directly handle the foreign exchange. For this, the RBI can authorize the “Authorized persons” and issue directions to such authorized persons from time to time.⁹ Other than the ordinary or special permission of the RBI under the Act, or other than the manner provided under the Act, its rules or regulations, no person is allowed to:

- a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- b) make any payment to or for the credit of any person resident outside India in any manner;
- c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.¹⁰
- d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

A financial transaction means making any payment to or for the credit of any person or receiving any payment for, by order or on behalf of any person. Financial transaction also includes drawing, issuing or negotiating any bill of exchange or promissory note or transferring any security or acknowledging any debt.

Situation 1) Whether Mr. X, a resident of USA, asks his uncle staying in Delhi to make a payment of Rs 20000 to Mr. Y?

Ans: No. Such payment is not permitted under clause (b) of section 3 of the Act.

Situation 2) Mr. X, a resident of Germany asks his Company Secretary in India to form a Company in India and proposes to reimburse all the expenses after the formation of the company. Whether, the Indian Company Secretary, can spend for the above purpose on behalf of Mr. X?

Ans: No. Such payment is not permitted under clause (b) of section 3 of the Act.

There is a blanket prohibition on a person resident in India to acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India, except as permitted under the Act, Rules or Regulations thereunder.¹¹

8.7 TYPES OF TRANSACTIONS UNDER FEMA

The Act recognises two types of transactions. They are; 1. Capital Account Transactions and, 2. Current Account Transactions. Each type of the transaction is governed by a relevant regulation. Let us discuss these in detail.

8.8 CAPITAL ACCOUNT TRANSACTIONS¹²

The capital account transactions are governed by the Act and the FEMA (Permissible Capital Account Transactions) Regulations 2000. Such transactions which alter the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India are called as capital account transactions.¹³ The Act allows any person to sell or draw foreign exchange to or from an authorised person for a capital account transaction subject to the condition that the RBI may, in consultation with the Central Government, specify¹⁴-

- i) The permissible classes or classes of capital account transactions
- ii) The limit upto which foreign exchange shall be admissible for such transactions
- iii) Any condition which may be placed on such transactions

However, the Reserve Bank cannot impose any restriction on the drawal of foreign exchange for payments which are due on account of amortization of loans or not depreciation of direct investments in the ordinary course of business.

Similarly, the Central Government, in consultation with the RBI can also prescribe¹⁵—

- a) the permissible class or classes of capital account transactions, not involving debt instruments;
- b) the limit up to which foreign exchange shall be admissible for such transactions; and
- c) any conditions which may be placed on such transactions.

Powers of RBI to regulate the foreign exchange¹⁶

The Act empowers the RBI to prohibit, restrict or regulate the following-

- a) transfer or issue of any foreign security by a person resident in India;
- b) transfer or issue of any security by a person resident outside India;
- c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- f) deposits between persons resident in India and persons resident outside India;
- g) export, import or holding of currency or currency notes;
- h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—
 - i) by a person resident in India and owed to a person resident outside India; or
 - ii) by a person resident outside India.

Modes of Acquiring Property in and Outside India-

The FEMA Act 1999 lays down the mechanism for acquiring property in India by a non-resident and outside India by a resident. The Act provides the following-

D) Modes of acquiring property outside India by a resident-

A person resident in India can hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.¹⁷In this regard, the provisions laid down under the Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 state that the following-

- 1) A resident can acquire immovable property outside India by way of gift or inheritance from:
 - a) a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4; or
 - b) a person resident in India who had acquired such property on or before July 8, 1947 and continued to be held by him with the permission of the Reserve Bank.
 - c) a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.¹⁸

- 2) A resident can acquire immovable property outside India by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
- 3) A resident can acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

II) Modes of acquiring property in India by a non-resident

A person resident outside India is also permitted to hold, own, transfer or invest in Indian currency, security, or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.¹⁹ The provisions related to acquisition of immovable property by a non-resident or Overseas Citizen of India (OCI) have been laid down in Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015.

Acquisition of Immovable Property by a non-resident or OCI²⁰

Other than agricultural land, plantation property and farm house, an NRI or OCI can-

- acquire by way of purchase any immovable property in India²¹.
- acquire by way of gift any immovable property in India from person resident in India or from an NRI or an OCI who in any case is a relative as defined in section 2(77) of the Companies Act, 2013.²²
- acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.²³
- acquire any immovable property in India by way of inheritance from a person resident in India.²⁴

Similarly a non-resident or OCI can also transfer any immovable property to a person resident in India under the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015.

Although, the Act as well as the Regulations facilitate the acquisition of immovable property, the Reserve Bank of India has wide powers to regulate, prohibit, restrict establishment in India of a branch, office or other place of business by a person resident outside India for carrying on any activity relating to such branch, office or other place of business.²⁵

Classes of Capital Account Transactions

There are two main classes of capital account transactions which are permissible as per the Schedule I & II to Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000;²⁶ viz-

1) Classes of capital account transactions of Persons resident in India

- Investment by a person resident in India in foreign securities

- Foreign currency loans raised in India and abroad by a person resident in India
- Transfer of immovable property outside India by person resident in India
- Guarantees issued by a person resident in India in favour of a person resident outside India
- Export, import and holding of currency/currency notes
- Remittance outside India of capital assets of a person resident in India
- Loans and overdrafts by a person resident in India to a person resident outside India
- Maintenance of foreign currency accounts in India and outside India by a person resident in India
- Taking out of insurance policy by a person resident in India from an insurance company outside India
- Loans and overdrafts by a person resident in India to a person resident outside India
- Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India

Examples of capital account transaction would include making equity investment in any other country, transfer including sale of immovable property situated outside India by a person resident in India.

2) Classes of capital account transactions of persons resident outside India

- Investment in India by a person resident outside India, that is to say:
 - o issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - o investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- Acquisition and transfer of immovable property in India by a person resident outside India
- Guarantee by a person resident outside India in favour of, or on behalf of a person resident in India
- Import and export of currency/currency notes into/from India by a person resident outside India.
- Deposits between a person resident in India and a person resident outside India
- Foreign Currency accounts in India of a person resident outside India
- Remittance outside India of capital assets in India of a person resident outside India.

Subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.²⁷

The FEMA (Permissible Capital Account Transactions) Regulations 2000²⁸ also envisage that save as otherwise provided in the Act, rules or regulations made thereunder, no person is allowed to undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction.²⁹ Similarly, no person resident outside India can make investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in the³⁰-

- Business of chit fund, or
- As Nidhi company, or
- In agriculture or plantation activities, or
- In real estate business or construction of farm houses, or
- In trading of Transferable Development Rights (TDRs)

For this purpose, the payment for investment can be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.³¹ However, every person selling or drawing foreign exchange to or from an authorised person for a capital account transaction is required to furnish a declaration to the RBI in the form and within the time specified in the regulations relevant to the transaction.³²

8.9 CURRENT ACCOUNT TRANSACTIONS

Transactions other than a capital account transaction are current account transaction. They include the following transactions³³—

- i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- ii) payments due as interest on loans and as net income from investments,
- iii) remittances for living expenses of parents, spouse and children residing abroad, and
- iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children.

The Act allows any person to sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction. However, the Central Government may, in public interest and in consultation with the Reserve Bank, impose reasonable restrictions for current account transactions.³⁴

The Foreign Exchange Management (Current Account Transactions) Rules, 2000 defines the term “Drawal” to mean drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card or any other thing by whatever name called which has the effect of creating foreign exchange liability.³⁵

Rule 3 imposes prohibition on drawal of foreign exchange by any person for the following purpose³⁶:

- a) a transaction specified in the Schedule I; or

- b) a travel to Nepal and/or Bhutan; or
- c) a transaction with a person resident in Nepal or Bhutan. This prohibition may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order.

Rule 4 requires prior approval of the Government of India for the transactions as specified in Schedule II. However, this does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter.

Rule 5 governs every drawal of foreign exchange for transactions included in Schedule III. However, it does not apply to those cases where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

Schedule I- Transactions which are prohibited

- 1) Remittance out of lottery winnings.
- 2) Remittance of income from racing/riding etc. or any other hobby.
- 3) Remittance for purchase of lottery tickets, banned/proscribed magazines, football pools, sweepstakes, etc.
- 4) Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies.
- 5) Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- 6) Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco.
- 7) Payment related to “Call Back Services” of telephones. 8. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

Schedule II- Transactions which require prior approval of the Central Government

S.No.	Purpose of Remittance	Approval of
1.	Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
2.	Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its PSUs	Ministry of Finance (Department of Economic Affairs)
3.	Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
4.	Payment of import through ocean transport by a government department or a PSU on CIF basis	Ministry of Surface Transport, (Chartering Wing)

5.	Multi-modal transport operators making remittance to their agents abroad.	Registration Certificate from the Director General of Shipping
6.	Remittance of hiring charges of transponders by: <ul style="list-style-type: none"> • TV Channels • Internet Service Providers 	Ministry of Information and Broadcasting (Ministry of Communication and Information Technology)
7.	Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
8.	Remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State Level sports bodies, if the amount involved exceeds USD 100,000	Ministry of Human Resources Development
9.	Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

However, if the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter, prior approval of Government of India will not be required.

Schedule III- Transactions which require prior approval of the Reserve Bank of India

- A) **Facilities for individuals**— Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess thereof requires prior approval of the Reserve Bank of India.
- 1) Private visits to any country (except Nepal and Bhutan)
 - 2) Gift or donation exceeding USD 5,000 per remitter/donor per annum
 - 3) Exchange facility or going abroad for employment exceeding USD 100,000 or amount prescribed by country of emigration
 - 4) Emigration
 - 5) Maintenance of close relatives abroad
 - i) exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and –
 - a) is a citizen of a foreign State other than Pakistan; or
 - b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company.
 - ii) exceeding USD 100,000 per year, per recipient, in all other cases.
 - 6) Release of foreign exchange, exceeding USD 25,000 to a person irrespective of period of stay, for business travel, or attending a

conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.

- 7) Expenses in connection with medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
- 8) Studies abroad exceeding the estimate from the institution abroad or USD 100,000, per academic year, whichever is higher.
- 9) Any other current account transaction

The FEM (Current Account Transaction) Rules, 2000, also provides that a person who is resident but not permanently resident in India and-

- a) is a citizen of a foreign State other than Pakistan; or
- b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance upto his net salary (after deduction of taxes, contribution to provident fund and other deductions).

A person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident: It is to be noted that a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

B) Facilities for Persons Other than Individuals-

The following remittances by persons other than individuals require prior approval of the Reserve Bank of India.

- i) Donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for-
 - a) creation of Chairs in reputed educational institutes,
 - b) contribution to funds (not being an investment fund) promoted by educational institutes; and
 - c) contribution to a technical institution or body or association in the field of activity of the donor Company.
- ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
- iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
- iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

8.10 AUTHORISED PERSON

The authorized persons are the authorized dealers, money changers, off-shore banking units or may be called by any other name; who are authorized on behalf of the RBI to deal in foreign exchange or foreign securities.³⁷ The RBI shall authorize such person in writing and shall be subject to the conditions laid down by the RBI.³⁸ The RBI can also revoke the authorization at any time if the revocation is required to be done in public interest or the authorized dealer fails to comply with the condition subject to which authorisation was granted.³⁹ However, before revocation, the authorized dealer has to be given a reasonable opportunity of being heard.

Duties of Authorised Person

- 1) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with general or special directions/or orders of the Reserve Bank. Without the prior permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation.⁴⁰
- 2) Before undertaking any transaction in foreign exchange on behalf of any person, the Authorised Person shall require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder. Where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.⁴¹
- 3) The Reserve Bank may give any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security to the authorised persons.⁴²
- 4) The Reserve Bank may also direct any authorised person to furnish such information, in such manner, as it deems fit.⁴³ However, where any authorised person 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 reasonable opportunity of being heard, impose on the authorised person 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.⁴⁴

The Reserve Bank also has the power to inspect the authorised persons by authorizing an officer on its behalf, for the purpose of –

- a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
- b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;

- c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

Every authorised person is under a duty to produce such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such personas may be required.⁴⁵

8.11 CONTRAVENTIONS & PENALTIES⁴⁶

If any person contravenes with the provisions of the Act, Rules, Regulations, notification, direction or order thereunder or contravenes any condition subject to which an authorization is issued by the RBI, the following penalties have been provided for under the Act:

- 1) Such a person shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.⁴⁷
- 2) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty upto three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the foreign exchange, foreign security or immovable property.⁴⁸

If the Adjudicating Authority, deems fits, he may, after recording the reasons in writing, recommend for the initiation of prosecution. If the Director of Enforcement is satisfied, he may, after recording the reasons in writing, direct prosecution by filing a Criminal Complaint against the guilty person by an officer not below the rank of Assistant Director.⁴⁹

- 3) In addition to the penalty, such a person shall also be punishable with imprisonment for a term which may extend to five years and with fine.⁵⁰

The court cannot take cognizance of an offence under section 13 except as on complaint in writing by an officer not below the rank of Assistant Director.

- 4) An Adjudicating Authority, in addition to any for contravention, may also direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.⁵¹

Enforcement of the Order of the AA

Any person who fails to make full payment of the penalty imposed on him under the Act within a period of ninety days from the date on which the notice for payment of such penalty is served on him, is liable to civil imprisonment.⁵²

The Adjudicating Authority has been vested with the powers of issuing warrant of arrest and detention in the following circumstances-

- 1) An order for the arrest and detention in civil prison of a defaulter can be made⁵³-
 - i) When the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison., and
 - ii) When the Adjudicating Authority, for reasons in writing, is satisfied—
 - a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has, after the issue of notice, dishonestly transferred, concealed, or removed any part of his property, or
 - b) that the defaulter has, or has had since the issuing of notice, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.
- 2) A warrant for the arrest of the defaulter may be issued by the Adjudicating Authority, upon satisfaction by affidavit or otherwise, that the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.⁵⁴
- 3) Where appearance is not made pursuant to a notice issued and served, the Adjudicating Authority may issue a warrant for the arrest of the defaulter.⁵⁵
- 4) A warrant of arrest issued by the Adjudicating Authority may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.⁵⁶

The following provisions are also needed to be complied with:

- a) Every arrested person shall be brought before the Adjudicating Authority as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey). Provided that the defaulter shall be released at once, if he pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him.⁵⁷
- b) When a defaulter appears before the Adjudicating Authority, he shall be given an opportunity by the Adjudicating Authority showing cause why he should not be committed to the civil prison.
- c) Pending the conclusion of the inquiry, the defaulter can also be detained in the custody of such officer as the Adjudicating Authority may think fit. He can also be released on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.
- d) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest. Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his

furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

- e) The detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973.⁵⁸
- f) The Adjudicating Authority may, by order in writing, authorise an officer of Enforcement not below the rank of Assistant Director to recover any arrears of penalty from any person who fails to make full payment of penalty imposed on him within the period of ninety days from the date on which the notice for payment of such penalty is served on him.⁵⁹
- g) Any contravention may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government. Where a contravention is compounded, no proceeding or further proceeding, shall be initiated or continued, against the person committing such contravention under that section, in respect of the contravention so compounded.⁶⁰

8.12 PROVISION FOR APPEAL

The Act provides the provision for appeal in three stages-

- i) Appeal before the Special Director(Appeals) against the order of the Adjudicating Officer
- ii) Appeal before the Appellate Tribunal Against the Order of the Special Director
- iii) Appeal before the High Court

Appeal to the Special Director (Appeals)⁶¹

An appeal against the order of the Adjudicating Authority may be made to the Special Director (Appeals) appointed by the Central Government.⁶² Every appeal should be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person. The Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.⁶³

Appeal before the Appellate Tribunal⁶⁴

The Central Government or any person aggrieved by an order made by an Adjudicating Authority, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal. Any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, is required while filing the appeal, to deposit the amount of such penalty with such authority as may be notified by the Central Government. However, if the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit

subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

Every appeal before the Appellate Tribunal must be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government. The Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Appeal before the High Court⁶⁵

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. The High Court may allow an appeal after the expiry of the said period for a further period not exceeding sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period., allow it to be filed within a further period not exceeding sixty days.

8.13 DIRECTORATE OF ENFORCEMENT

The Directorate of Enforcement is established under the Act by the Central Government. The Government appoints the Director and other officers who are together called the Officers of Enforcement.⁶⁶

Powers of Directorate of Enforcement-

The following powers are being vested in the Directorate of Enforcement and its officers:

- 1) *Power of search & Seizure⁶⁷*- The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, can do investigation of the contraventions under the Act. The Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention under the Act. The officers are also vested with the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961.
- 2) *Special provisions relating to assets held outside India in contravention of section 4-⁶⁸* If the Authorised Officer has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property. No such seizure can be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the prescribed value.

8.14 COMPOUNDING OF OFFENCES UNDER FEMA

The Act allows for compounding for contraventions under section 15 of the Act. However, in this regard, the RBI has issued a Master Direction on Compounding of Contraventions under the FEMA 1999. According to the notification issued dated May 3, 2000 and FEMA 20(R)/2017-RB dated November 07, 2017, the power to compound contraventions has been delegated to the Regional offices/sub-offices of the Reserve Bank. In exercise of the powers conferred by section 46 read with sub-section (1) of section 15 of the Foreign Exchange Management Act, 1999, the relevant rules are the Foreign Exchange (Compounding Proceedings) Rules, 2000 made by the Central Government in this behalf. In terms of these Rules, the Reserve Bank is empowered to compound contraventions relating to Section 7, 8 and 9 and the third schedule to FEMCAT Rules. RBI was empowered to compound all the contraventions of FEMA 1999 except Section 3(a) of the Act.⁶⁹

The following contraventions can be compounded by the RBI where the sum involved in such contravention is:

- a) ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;
- b) more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;
- c) rupees forty lakhs or more but less than rupees hundred lakhs by the General Manager of Reserve Bank of India;
- d) rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India;

No contravention shall be compounded unless the amount involved in such contravention is quantifiable.

8.15 SUMMARY

The objective of formulating the FEMA Act 1999 was to consolidate the laws related to foreign exchange, facilitate the external trade & payments and to promote the orderly development and maintenance of foreign exchange market in India. It can be said that the Central Government and the RBI have been able to fulfil the broad objectives of FEMA. FEMA has been a reformative legislation which has also been successful in eliminating the ills of its predecessor.

8.16 SELF ASSESSMENT QUESTIONS

- 1) Discuss the rights relating to immovable property of persons who are not resident in India.
- 2) What are the prohibited transactions under the FEMA?
- 3) What are the rights of persons who are alleged to have contravened provisions of the FEMA?
- 4) What do you understand by the term 'foreign exchange'?

- 5) Distinguish between the following:
 - a) Person resident in India and Person Non-resident in India
 - b) Capital account transactions and current transactions

8.17 FURTHER READINGS/REFERENCES

Books:

- 1) R. Sridhar. R., 2019, FEMA Ready Reckoner with Commentary, Bloomsbury
- 2) Taxmann's Foreign Exchange Management (FEMA) Manual (2021)

References:

- 1 The FEMA 1999
- 2 Sec 2(v) FEMA Act 1999
- 3 Sec 2(w) FEMA Act 1999
- 4 Sec 2 (c) FEMA Act 1999
- 5 Sec 2(e), FEMA Act 1999
- 6 Sec 2(j), FEMA Act 1999
- 7 Sec 2(m), FEMA Act 1999
- 8 Sec 2 (n), FEMA Act 1999
- 9 Sec 11, FEMA Act 1999
- 10 Sec 3, FEMA Act 1999
- 11 Sec 4, FEMA 1999
- 12 Sec 6, FEMA 1999
- 13 Sec 2(e) FEMA 1999
- 14 Sec 6(2) FEMA 1999
- 15 Sec 6(2A) FEMA 1999
- 16 Sec 6(3) FEMA 1999
- 17 Sec 6(4)
- 18 Inserted by FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 with effect from January 21, 2016.
- 19 Sec 6(5)
- 20 Inserted by FEM (Acquisition and transfer of Immovable Property in India) Regulations, 2018 with effect from March 26, 2018 through FEMA 21(R), dated 26.03.2018
- 21 ibid
- 22 ibid
- 23 ibid
- 24 ibid
- 25 Sec 6(6)
- 26 Reg 3(1) FEMA (Permissible Capital Account Transactions) Regulations 2000
- 27 Regulation 3(2) FEMA (Permissible Capital Account Transactions) Regulations 2000
- 28 Annexure
- 29 Reg 4 FEMA (Permissible Capital Account Transactions) Regulations 2000

- 30 *ibid*
- 31 Reg 5 FEMA (Permissible Capital Account Transactions) Regulations 2000
- 32 Reg 6 FEMA (Permissible Capital Account Transactions) Regulations 2000
- 33 Sect 2(j) FEMA 1999
- 34 Sec 5, FEMA 1999
- 35 Rule 2(b) Foreign Exchange Management (Current Account Transactions)
Rules, 2000
- 36 Rule 3 Foreign Exchange Management (Current Account Transactions) Rules,
2000
- 37 Sec 10 (1)
- 38 Sec 10(2)
- 39 Sec 10(3)
- 40 Sec 10(4)
- 41 Sec 10(5)
- 42 Sec 11(1)
- 43 Sec 11(2)
- 44 Sec 11(3)
- 45 Sec 12 (2)
- 46 Chapter IV FEMA 1999
- 47 Sec 13 (1)
- 48 Sec 13(1A)
- 49 Sec 13(1 B)
- 50 Sec 13(1 C)
- 51 Sec 13(2)
- 52 Sec 14
- 53 Sec 14(2)
- 54 Sec 14(3)
- 55 Sec 14(4)
- 56 Sec 14 (5)
- 57 Sec 14(6)
- 58 Sec 13(13)
- 59 Sec 14
- 60 Sec 15
- 61 Sec 17
- 62 Sec 17(1)
- 63 Sec 17(3)
- 64 Sec 19
- 65 Sec 35
- 66 Sec 36 (1)
- 67 Sec 37
- 68 Sec 37 A
- 69 Vide GSR 609 (E) dated 13-09-2004