

Foreign Exchange Management Act— Opportunities for Budding Professionals



Foreign Exchange Management Act, 1999, law in India, as part of exchange control regulations, is a successor of the erstwhile Foreign Exchange Regulation Act. Being more investor-friendly than its predecessor, the FEMA is more to manage and encourage the cross border economic activities, rather than to regulate it. Further, in the recent past various provisions under FEMA have been rationalised and liberalised to bring the law to international standards, among others. The author in this article attempts to provide a basic understanding and guide on how to start, especially who are new to this space. Read on...



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Foreign Exchange Management Act, 1999 (“FEMA”), the law in India as part of the exchange control regulations, succeeds the erstwhile *Foreign Exchange Regulation Act*. FEMA is more investor-friendly than its predecessor and is more about managing and encouraging cross-border economic activities, rather than about regulating them and orderly

development and maintenance of foreign exchange market in India.

In the recent past, various provisions under the FEMA have been rationalised and liberalised, of which a few changes have been made to bring the law to international standards as required in the contemporary economic environment. As another notable change in the recent past in this regard, various processes/ approval requirements have been delegated to the authorised dealer banks and few are dispensed with.

FEMA Structure

FEMA is a simple law in comparison to others such as taxation laws and civil laws. However, one may find it very complex to comprehend, because of the way it is structured and the way it has evolved over the time. Generally, a law is composed of an Act and related set of Rules, but, in case of FEMA, following are its essential elements:

- Foreign Exchange Management Act, 1999
- Notifications—which are self-contained set of regulations, with definitions and other provisions
- Regulations (there are various regulations for different kinds of transactions) made under FEMA
- Circulars issued by RBI, consisting of amendments to the notifications/ regulations above
- FDI Policy—applicable for investments into Indian companies
- Press Notes issued by DIPP
- Master Directions (earlier Master Circulars) for different types of transactions—these provide the summary of all the above segments of law in relation to particular type of transactions, e.g. exports, overseas investments, etc.

Interpretation

In case of every taxation or other laws, judgments of tribunals and courts form a very significant part in the interpretation of provisions of law. However, in case of FEMA, there being no appeal procedures, there shall not be any judgment to rely upon. The only recourse in case of any interpretation issues is to seek approval for the respective transaction from the RBI/ the Central Government.

As discussed above, to arrive at any conclusions on any transaction, one needs to look at all the above

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sources of law and observe the way current law has evolved over the time.

Applicability

In bare terms, the FEMA is applicable on any transaction which involves exchange of Indian Rupees into other currencies or vice-versa. Following are a few examples:

- An investment/divestment made by an Indian Company abroad (Overseas Direct Investment in Joint Venture/Wholly Owned Subsidiary)
- An investment/divestment made by a foreign company in India (in the form of FDI/FII/other Portfolio Investments)
- Loan taken by an Indian Company from sources abroad (External Commercial Borrowings)
- Loan extended by an Indian Company to a person abroad (Overseas Direct investment in Joint Venture/Wholly Owned Subsidiary)
- Exports of Indian company to overseas customers
- Imports of Indian company from overseas suppliers
- Import of technology from overseas
- Acquiring shares in overseas companies by individuals
- Acquiring immovable properties overseas by individuals
- Lending/borrowing by individuals to/from foreign residents
- And many more kinds of transaction involving foreign exchange

For each of the above transactions different regulations to be looked into and each regulation does not depend on others and is almost a holistic law by itself.

How to Start

How to start, how to understand and explore FEMA?

- Firstly one needs to understand the Act and the basic terminologies such as, Foreign Exchange, Residential Status, Capital and Current Account

OPPORTUNITIES

Transactions, FDI, ECB, LRS, Greenfield, Brownfield investments, etc.

- Know all the Master Circulars/Directions which exists and know areas of its coverage and on high level what is allowed or otherwise under such Master Circulars/Directions
- Read the relevant notifications/regulations and preamble to that in relation to a specific topic in question
- Know the Golden Rules:
 - All Current Account transactions are permitted unless otherwise prohibited
 - All Capital Account transactions are prohibited unless otherwise permitted
 - In case any provision is not clear, confusing or controversial – then seek for a specific approval from RBI
- Attend the seminars or read articles on the topic with a specific attention of understanding the way a particular topic in FEMA has evolved and the genesis for the same (other things are nothing but, what is written in law)
- In case when stuck, one may contact Reserve Bank or any known contacts in the forex department of Authorised Dealer Banks (of course not in relation to elementary provisions of law)

Professional Opportunities

There are various kinds of opportunities available for Chartered Accountants in each variety of transactions explained above and few are listed below:

- Annual compliances under FEMA: there are certain compliances to be followed by the corporates which has overseas funding or which has made overseas investments such as FLA Returns, ODI forms filings, etc.
- Valuation exercise in relation to allotment or transfer of shares of an India Company to non-

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resident or in relation to acquisition of shares in a foreign company by Indian residents

- Assistance to clients in preparation and filing of documentation to be submitted to RBI during the overseas investments by Indian company or investment in India by foreign companies
- Assistance to clients in filing documentation with RBI for their cross border loan transactions (ECB)
- Assistance to clients in structuring their cross-border deals in compliance with FEMA provisions, amongst others
- Documentation during export and import transactions
- Assisting clients in applying for compounding of offenses committed under FEMA
- And many more like these...

Closing Remarks

FEMA in itself is a wide area of practice and very attractive too, as there is a visible requirement for professionals who understand this law fundamentally and can provide clear, simpler and easily executable solutions. On the flipside, it is very difficult to start with for the reasons discussed above, but, after putting patient efforts during the initial period, one would enjoy the practice in the near term, though as much challenging it could be to start. ■