

# Foreign Exchange Management Act

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## The Foreign Exchange Management Act, 1999



सत्यमेव जयते

An Act 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.

**Citation** Act No. 42 of 1999

([http://www.dor.gov.in/sites/upload\\_files/revenue/files/Foreign%20Exchange%20Management%20Act%201999.pdf](http://www.dor.gov.in/sites/upload_files/revenue/files/Foreign%20Exchange%20Management%20Act%201999.pdf))

**Enacted** Parliament of India

**by**

**Date** 29 December 1999

**enacted**

### Repeals

Foreign Exchange Regulation Act

The **Foreign Exchange Management Act** (FEMA) was an act passed in the winter session of Parliament in 1999 which replaced Foreign Exchange Regulation Act. This act seeks to make offenses related to foreign exchange civil offenses. It extends to the whole of India.<sup>[1]</sup>

FEMA, which replaced Foreign Exchange Regulation Act(FERA), had become the need of the hour since FERA had become incompatible with the pro-liberalisation policies of the Government of India. FEMA has brought a new management regime of Foreign Exchange consistent with the emerging framework of the World Trade Organisation (WTO). It is another matter that the enactment of FEMA also brought with it the Prevention of Money Laundering Act 2002, which came into effect from 1 July 2005.

Unlike other laws where everything is permitted unless specifically prohibited, under this act everything was prohibited unless specifically permitted. Hence the tenor and tone of the Act was very drastic. It required imprisonment even for minor offences. Under FERA a person was presumed guilty unless he proved himself innocent, whereas under other laws a person is presumed innocent unless he is proven guilty.

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## Switch from FERA

The done in 1974, a period when India's foreign exchange reserve position wasn't at its best. A new control in place to improve this position was the need of the hour. FERA did not succeed in restricting activities, especially the expansion of TNCs (Transnational Corporations). The concessions made to FERA in 1991-1993 showed that FERA was on the verge of becoming redundant.<sup>[2]</sup> After the amendment of FERA in 1993, it was decided that the act would become the FEMA. This was done in order to relax the controls on foreign exchange in India, as a result of economic liberalization. FEMA served to make transactions for external trade (exports and imports) easier – transactions involving current account for external trade no longer required RBI's permission. The deals in Foreign Exchange were to be 'managed' instead of 'regulated'. The switch to FEMA shows the change on the part of the government in terms of foreign capital.<sup>[3]</sup>

## Need for its management

The buying and selling of foreign currency and other debt instruments by businesses, individuals and governments happens in the foreign exchange market. Apart from being very competitive, this market is also the largest and most liquid market in the world as well as in India.<sup>[4]</sup> It constantly undergoes changes and innovations, which can either be beneficial to a country or expose them to greater risks. The management of foreign exchange market becomes necessary in order to mitigate and avoid the risks. Central banks would work towards an orderly functioning of the transactions which can also develop their foreign exchange market.<sup>[5]</sup>

Whether under FERA or FEMA's control, the need for the management of foreign exchange is important. It is necessary to keep adequate amount of foreign exchange reserves, especially when India has to go in for imports of certain goods. By maintaining sufficient reserves, India's foreign exchange policy marked a shift from Import Substitution to Export Promotion.<sup>[6]</sup>

## Main Features

- 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. It is FEMA that gives the central government the power to impose the restrictions.
- Restrictions are imposed on people living in India who carry out transactions in foreign exchange, foreign security or who own or hold immovable property abroad.
- Without general or specific permission of the Reserve Bank of India, FEMA restricts the transactions involving foreign exchange or foreign security and payments from outside the country to India – the transactions should be made only through an authorised person.
- Deals in foreign exchange under the current account by an authorised person can be restricted by the Central Government, based on public interest.
- Although selling or drawing of foreign exchange is done through an authorised person, the RBI is empowered by this Act to subject the capital account transactions to a number of restrictions.
- People living in 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 to him/her by someone living outside India.
- Exporters are needed to furnish their export details to RBI. To ensure that the transactions are carried out properly, RBI may ask the exporters to comply to its necessary requirements.<sup>[7]</sup>

## References

1. ^ "FEMA, 1999" (<http://www.webcitation.org/6AXmYchwr>) . Dept of Revenue, Govt of India. Archived from the original ([http://www.dor.gov.in/sites/upload\\_files/revenue/files/Foreign%20Exchange%20Management%20Act%201999.pdf](http://www.dor.gov.in/sites/upload_files/revenue/files/Foreign%20Exchange%20Management%20Act%201999.pdf)) on 9 September 2012. <http://www.webcitation.org/6AXmYchwr>. Retrieved 9 September 2012.
2. ^ Dutt and Sundaram. Indian Economy. pp. 541.
3. ^ "FEMA: A Closer Look" ([http://beta.epw.in/static\\_media/PDF/archives\\_pdf/000049\\_EPW\\_3\\_10\\_1998\\_Vol\\_XXXIII\\_No\\_40/COMMENTARY\\_%20FEMA%20A%20Closer%20Look.pdf](http://beta.epw.in/static_media/PDF/archives_pdf/000049_EPW_3_10_1998_Vol_XXXIII_No_40/COMMENTARY_%20FEMA%20A%20Closer%20Look.pdf)) . [http://beta.epw.in/static\\_media/PDF/archives\\_pdf/000049\\_EPW\\_3\\_10\\_1998\\_Vol\\_XXXIII\\_No\\_40/COMMENTARY\\_%20FEMA%20A%20Closer%20Look.pdf](http://beta.epw.in/static_media/PDF/archives_pdf/000049_EPW_3_10_1998_Vol_XXXIII_No_40/COMMENTARY_%20FEMA%20A%20Closer%20Look.pdf).
4. ^ Raj Kumar. International Economics. pp. 307.
5. ^ "Foreign Exchange Market" (<http://rbidocs.rbi.org.in/rdocs/publicationreport/pdfs/77577.pdf>) . <http://rbidocs.rbi.org.in/rdocs/publicationreport/pdfs/77577.pdf>.
6. ^ "Foreign Exchange Management Policy in India" (<http://slidesandnotes.blogspot.com/2011/02/foreign-exchange-management-policy-in.html>) . <http://slidesandnotes.blogspot.com/2011/02/foreign-exchange-management-policy-in.html>.
7. ^ Francis Cherunilam (5th edition). International Economics. pp. 456.

## External links

- Reserve Bank of India FEMA website (<http://fema.rbi.org.in/>)
- FEMA from the Finance Ministry ([http://finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/america\\_canada/fema\\_acts/index.htm](http://finmin.nic.in/the_ministry/dept_eco_affairs/america_canada/fema_acts/index.htm))
- FEMA for NRIs/ PIOs (<http://www.nrirealtynews.com/nri-banking/fema-rules.php>)
- NRIs can now open joint accounts with resident Indian ([http://articles.timesofindia.indiatimes.com/2011-09-16/us-canada-news/30164405\\_1\\_resident-individuals-account-eefc](http://articles.timesofindia.indiatimes.com/2011-09-16/us-canada-news/30164405_1_resident-individuals-account-eefc))

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