



## Fathoming FEMA {Overview of Provisions of Foreign Exchange Management Act, 1999 (FEMA) and Rules and Regulations there under}

Rajkumar S Adukia, ACS, Mumbai.

*e-mail :*

*rajkumarfca@gmail.com*

**The complicated Foreign Exchange Regulation Act, 1973 has been repealed and replaced by a much simplified Foreign Exchange Management Act, 1999. The emphasis has been shifted from ‘regulation’ to ‘management’. This article provides an overview of the FEMA and the Rules and Regulations made thereunder.**

### HISTORICAL BACKGROUND TO INTRODUCTION OF FEMA

The Parliament had enacted the Foreign Exchange Management Act, 1999 (FEMA) to replace the Foreign Exchange Regulation Act, 1973. FEMA came into force on the 1st day of June, 2000.

Exchange Control in India dates back to 1939 when for the first time it was introduced as a war measure under the Defense of India Rules. During the World War II September 1939, there was a shortage of foreign exchange resources. A system of exchange control was first time introduced through a series of rules under the Defense of India Act, 1939 on temporary basis. The foreign crisis persisted for a long time and finally it got enacted in the statute under the title “Foreign Exchange Regulation Act, 1947.” This was meant to last for 10 years. However, 10 years of economic development did not ease the foreign exchange constraint, it only made things worse. Thus, FERA permanently entered the statute book in 1957.

Subsequently, this Act was replaced by the Foreign Exchange Regulation Act, 1973 (FERA, 1973), which came into force with effect from January 1, 1974. In 1974, FERA was completely overhauled with all offences being considered as criminal offences with mens rea. The Enforcement Directorate could arrest any person without even arrest warrant.

In the 1990s, consistent with the general philosophy of economic reforms a sea change relating to the broad approach to reform in the external sector took place. In 1991 government of India initiated the policy of economic liberalization. Foreign investments in many sectors were

permitted. This resulted in increased flow of foreign exchange in India and foreign exchange reserves increased substantially.

In 1997, the Tarapore Committee on Capital Account Convertibility (CAC), constituted by the Reserve Bank, had indicated the preconditions for Capital Account Convertibility. The three crucial preconditions were fiscal consolidation, a mandated inflation target and, strengthening of the financial system. The Tarapore Committee had also recommended change in the legislative framework governing foreign exchange transactions.

A Bill based on the recommendations of the Task Force, was introduced in the Lok Sabha on 4 August, 98. The Bill was referred to the standing committee on Finance which submitted its report to the House on 23 December '98 with suggestion and modifications. The 12th Lok Sabha was dissolved before any decision could be taken on the bill. The Bill subsequently lapsed. The bill was again introduced in the 13th Lok Sabha on 25th Oct '99 and was passed in the winter session of Parliament in 1999. The Presidential Assent was received on 29th December, 1999. Finally FEMA came into operation w.e.f. 1st June 2000 vide G.S.R 371 (E), dated 1st May, 2000.

Accordingly, the Foreign Exchange Regulation Act (FERA) was repealed and replaced by the new Foreign Exchange Management Act (FEMA) with effect from June 2000. 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.

### DIFFERENCE BETWEEN FERA AND FEMA

The basic differences between FERA and FEMA were:



1. Under FERA the emphasis was on regulation of foreign exchange whereas under FEMA the emphasis was on management of foreign exchange.
2. All foreign exchange dealings (whether current account or capital account transactions) required general or special permission of the Reserve Bank of India (RBI) under FERA. Whereas under FEMA, permission for current account transactions had already been granted in the law itself (section 5), and for capital account transactions permission of RBI is required (section 6).

In 1997, the Tarapore Committee recommended that India is geared up to bring capital account convertibility.

In India, the foreign exchange transactions are broadly classified into two accounts: current account transactions and capital account transactions. If an Indian citizen needs foreign exchange of smaller amounts, for travelling abroad or for educational purposes, she/he can obtain the same from a bank or a money-changer. This is a “current account transaction”. But, if someone wants to import plant and machinery or invest abroad, and needs a large amount of foreign exchange, the importer will have to first obtain the permission of the Reserve Bank of India (RBI). If approved, this becomes a “capital account transaction”. This means that any domestic or foreign investor has to seek the permission from a regulatory authority, like the RBI, before carrying out any financial transactions or change of ownership of assets that comes under the capital account. Of course there are a whole range of financial transactions on the capital account that may be freed from such restrictions, as is the case in India today. But this is still not the same as full capital account convertibility.

By “Capital Account Convertibility” (or CAC in short), we mean “the freedom to convert the local financial assets into foreign financial assets and vice-versa at market determined rates of exchange. It is associated with the changes of ownership in foreign/domestic financial assets and liabilities and embodies the creation and liquidation of claims on, or by the rest of the world. ...” (Report of the Committee on Capital Account Convertibility, RBI, 1997) Thus, in simpler terms, it means that irrespective of whether one is a resident or non-resident of India one’s assets and liabilities can be freely (i.e. without permission of any regulatory authority) denominated (or cashed) in any currency and easily interchanged between that currency and the Rupee.

3. Under FERA all violations would attract prosecutions. FEMA diluted the rigorous enforcement provisions which were the hallmark of the erstwhile legislation. Violation of FERA was a criminal offence whereas violation of FEMA is a civil offence.

The categorization of offences under FEMA as civil and not criminal constitutes one of the most important differences between the two statutes. Contravention of FEMA provisions are dealt with under civil law procedures, for which there is a separate administrative procedure and mechanism in the form of Compounding Rules, Adjudicating Authority, Special Director (Appeals) and Appellate Tribunal.

4. Offences under FERA were not compoundable whereas offences under FEMA are compoundable.
5. Citizenship was a criteria to determine residential status of a person under FERA, while stay of More than 182 days in India is the criteria to decide residential status under FEMA.
6. Provisions in respect of Basic Travel Quota (BTQ), business travel, export commission, gifts, donations etc. have been considerably liberalised in FEMA.
7. FEMA is a civil law, while FERA was a draconian police law.

## OVERVIEW OF FEMA

The Foreign Exchange Management Act, 1999 was enacted 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. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

The FEMA provides:

- Free transactions on current account subject to reasonable restrictions that may be imposed
- RBI control over Capital Account Transactions
- Control over realization of export proceeds
- Dealings in Foreign Exchange through Authorised Person (e.g Authorised Dealer/ Money Changer/ Off-shore Banking Unit)
- Adjudication of Offences
- Appeal provisions including Special Director (Appeals) and Appellate Tribunal
- Directorate of Enforcement

## APPLICABILITY

Foreign Exchange Management Act, 1999 extends to the whole of India. The Act also applies to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention there under committed outside India by any person to whom this Act applies.



FEMA has considerably liberalised provisions in respect of foreign exchange. However, sometimes an extraordinary situation may arise. In such cases, Central Government can suspend operation of any or all provisions of FEMA in public interest, by issuing a notification. The suspension can be relaxed by issuing a notification. Copy of Notification shall be placed before Parliament for 30 days. (Section 40)

### OVERALL SCHEME

- FEMA makes provisions for dealings in foreign exchange
- Broadly, all Current Account Transactions are free. However Central Government can impose reasonable restrictions by issuing rules (section 3 FEMA)
- Capital account transactions are permitted to the extent specified by RBI by issuing Regulations (Section 6 FEMA)
- FEMA envisages that RBI shall have a controlling role in management of foreign exchange. Since RBI cannot directly handle foreign exchange transactions, it authorizes “Authorised Persons” to deal in foreign exchange as per directions issued by RBI. (Section 10 FEMA)
- RBI is empowered to issue directions to such “Authorised Persons” u/s 11. These Directions are issued through AP(DIR) circulars. (AP stands for Authorised Person and DIR stands for Directions)
- FEMA also makes provisions for enforcement, penalties, adjudication and appeal.
- Provisions of FEMA cannot be found at one place but are spread over at different places.
- The FEMA 1999 contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.
- Industrial Policy announced by Ministry of Industry, contains provisions in respect of FDI, foreign technical collaboration, royalty payments, joint ventures abroad, etc. which are directly relevant to understanding the provisions of FEMA.
- Policy in respect of External Commercial Borrowings (ECB) and FCCB/ADR/GDR is announced and controlled by Ministry of Finance.
- Instructions/Guidelines etc. of Securities and Exchange Board of India (SEBI) become relevant when capital market is involved.

### STRUCTURE

The legislations, rules and regulations, regulating Foreign Exchange Management can be divided into the following:

- FEMA Bare Act of 49 sections (Supreme Legislation)

- 5 Sets of Rules made by Ministry under section 46 of FEMA (Subordinate or delegated Legislations)
- 23 sets of Regulations made by RBI under section 47 of FEMA (Subordinate or delegated Legislations)
- Master circulars issued by RBI on 1st July of every year
- Foreign Direct Investment policy issued by Department of Industrial Policy and Promotion
- Reserve Bank of India notifications and circulars
- Enforcement Directorate

FEMA contains 7 Chapters divided into 49 sections of which 12 sections cover operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc.

As far as transactions on account of trade in goods and services are concerned, FEMA has by and large removed the restrictions except for the enabling provision for the Central Government to impose reasonable restrictions in public interest.

The capital account transactions will be regulated by RBI / Central Government for which necessary circulars / notifications will have to be issued under FEMA.

CHAPTER I – Preliminary (Sec 1&2)

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

CHAPTER III – Authorised Person (Sec 10 –12)

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

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

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

CHAPTER VII- Miscellaneous (Sec 39 – 49)

Besides the FEMA, there are 5 rules and 23 regulations under the Act which help in implementation of the Act.

#### The Rules under FEMA are:

1. F.E.M.(Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000
2. F.E.M. (Authentication of Documents) Rules, 2000
3. F.E.M. (Current Account Transaction) Rules, 2000
4. F.E.M. (Adjudication Proceedings and Appeal) Rules, 2000
5. F.E.M. (Compounding Proceedings) Rules, 2000

#### The Regulations under FEMA are:

1. F.E.M. (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000
2. F.E.M. (Borrowing and Lending in Rupees) Regulations, 2000
3. F.E.M. (Borrowing or Lending in Foreign Exchange) Regulations, 2000



4. F.E.M. (Deposit) Regulations, 2000
5. F.E.M. (Export and Import of Currency) Regulations, 2000
6. F.E.M. (Guarantees) Regulations, 2000
7. F.E.M. (Issue of Security in India by a Branch, Office or Agency of a Person Resident Outside India) Regulations, 2000
8. F.E.M. (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
9. F.E.M. (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000
10. F.E.M. (Export of Goods and Service) Regulations, 2000
11. F.E.M. (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000
12. F.E.M. (Insurance) Regulations, 2000
13. F.E.M. (Investment in Firm or Proprietary Concern in India) Regulations, 2000
14. F.E.M. (Manner of Receipt and Payment) Regulations, 2000
15. F.E.M. (Permissible Capital Account Transactions) Regulations, 2000
16. F.E.M. (Possession and Retention of Foreign Currency) Regulations, 2000
17. F.E.M. (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2000
18. F.E.M. (Remittance of Assets) Regulations, 2000
19. F.E.M. (Transfer or Issue of Security by a person Resident outside India) Regulations, 2000
20. F.E.M. (Foreign Exchange Derivative Contracts) Regulations, 2000
21. F.E.M. (Transfer or Issue of any Foreign Security) Regulations, 2004
22. F.E.M. (Offshore Banking Unit) Regulations, 2002
23. F.E.M. (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs) Regulations, 2003

#### Master circulars issued by RBI

1. Direct Investment by Residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) abroad
2. Foreign Investments in India
3. Non-Resident Ordinary Rupee (NRO) Account
4. Remittance facilities for Non-Resident Indians/Persons of Indian Origin/Foreign Nationals
5. Miscellaneous Remittances from India –Facilities for Residents

6. Risk Management and Inter-Bank Dealings
7. External Commercial Borrowings and Trade Credits
8. Import of Goods and Services
9. Export of Goods and Services
10. Instructions relating to deposits held in FCNR(B) Accounts
11. Interest Rates on Rupee Deposits held in Domestic, Ordinary Non-Resident (NRO) and Non-Resident (External) (NRE) Accounts
12. Foreign Contribution ( Regulation ) Act, 1976- Obligations of banks in regulating receipt of foreign contributions by associations/ organizations in India
13. Rupee/ Foreign Currency Export Credit and Customer service to exporters

#### Important Forms under FEMA

Sr. No.	Form No.	Form Title
1.	Form FC - GPR	Report by Indian Companies issuing shares or convertible debentures are issued to foreign investors
2.	Form A1	Application for Remittance in Foreign Currency
3.	Form A2	Application for Drawal of Foreign Exchange
4.	FORM BEF	Statement showing details of remittances affected towards import in respect of which documentary evidence of import has not been submitted by the importers despite reminders
5.	FORM CD	Fcurrency Declaration Form (CDF)
6.	Form ECB	Annex-1 Application for Raising External Commercial Borrowings under Approval Route
7.	FORM ECB	Annex 3 Reporting of Actual Transactions of ECB under Foreign Exchange Management Act, 1999
8.	Form ETX	Application for permission to extend the period for realisation of export proceeds
9.	Form FC- TRS	Declaration regarding transfer of shares of by way of sale from resident to non resident/ non-resident to resident
10.	Form	Establishment in India of a branch or office



	FNC 1	or other place of business by a person resident outside India	25. Form PP	Exchange Control (Exporter's Declaration) (Duplicate)
11.	Form GR-DUP	Exchange Control Declaration (GR) Form No.	26. Form R - Supplementary Return	Supplementary statement of Non-Export Receipts equivalent of Rs. 1,00,000/- and above
12.	Form GR-ORG	Exchange Control Declaration (GR) Form No.	27. Form R-Return (NOSTRO)	Return of transactions for the fortnight ended
13.	Form IPI	Declaration of immovable property acquired in India by a person resident outside India	28. Form R-Return (VOSTRO)	Return of operation of VOSTRO Accounts for the fortnight ended
14.	Form LEC (FIIs)	Statement showing company-wise details of total purchases and sale of equity share/convertible debentures made by designated branch of.... on ..... on behalf of Foreign Institutional Investors through stock exchanges in India and out of issues directly made	29. Form RBM 1	Offer for spot sale of U.S. dollars to the Reserve Bank of India
15.	Form LEC (NRIs)	Statement showing company-wise details of total purchases and sales of equity shares/convertible debentures made through designated branches of ADs under Portfolio Investment Scheme on behalf of their NRI/OCB clients	30. Form RBM 2	Offer for purchase of U.S. dollars from Reserve Bank of India
16.	Form LEG	Application for remittance of legacies, bequests or inheritances to beneficiaries resident outside India	31. Form REC	Statement showing position of unreconciled entries in Nostro Accounts as on 31 March/30 September .....
17.	Form NRSR	Application-cum-Undertaking form for opening of Non-Resident (Special) Rupee (NRSR) Account	32. Form RFC	Application for Opening an RFC Account
18.	Form OAC	Proforma of Overseas Auditor/Chartered Accountant/Certified Public Accountant's Certificate	33. Form RFN	Application for transfer of assets by foreigners retiring from India
19.	Form OAC 1	Proforma of Overseas Auditor/Chartered Accountant/ Certified Public Accountant's Certificate	34. Form RMC - FRE	Stricted Money Changer
20.	Form OBR	Application for permission to post a representative/establishoffice/branch overseas	35. Form RRD	Special report on rupee dealings with overseas banks for the month of.....
21.	Form ODA	Direct Investment in Joint Venture (JV)/wholly owned subsidiary (WOS) abroad under Automatic Route	36. Form SCH 1	Schedule of remittances effected for/credits afforded to Vostro A/c towards payments of imports [Item I.A. of R-Return (NOSTRO)/Col. 3(a) of R-Return (VOSTRO)]
22.	FORM ODI	Form Overseas Direct Investment (ODI)	37. Form SCH 2	Schedule of remittances effected for purposes other than imports [Item I.C. of R-Return (NOSTRO)/Col. 4 of R-Return (VOSTRO)]
23.	Form POS	Statement of Positions for the week ended .....20.....	38. Form SCH 3	Schedule giving particulars of GR/PP/SOFTEX forms where full payment has been received [Item IIA of R-Return (NOSTRO)/Column 7 of R-Return (VOSTRO)]
24.	Form PP	Exchange Control (Exporter's Declaration) (Original)	39. Form SCH 4	Schedule giving details of GR/PP/SOFTEX forms where part payment has been received [Item IIA of R-Return (NOSTRO)/Column 7 of R-Return (VOSTRO)]



40.	Form SCH 5	Schedule giving details of full export proceeds received in advance [Item IIA of R-Return (NOSTRO)/Column 7 of R-Return (VOSTRO)]
41.	Form SCH 6	Schedule giving details of part export proceeds received in advance [Item IIA of R-Return (NOSTRO)/Column 7 of R-Return (VOSTRO)]
42.	Form SDF	Declaration by Exporter
43.	Form STAT 10	Statement showing inflow/outflow of deposits under Resident Foreign Currency (RFC) Accounts Scheme for the month of..
44.	Form STAT 5	Statement showing inflow/outflow of deposits under Foreign Currency (Non-Resident) Accounts (Banks) Scheme for the month of
45.	Form STAT 6	Statement showing purchase of exchange in the form of travelers cheques, currency notes and coins and drawings under inward travelers letters of credit during the quarter ended
46.	Form STAT 8	Statement showing inflow/outflow of deposits under Non-Resident (External) Rupee (NRE) Accounts Scheme for the month of .....
47.	Form STAT 9	Statement showing inflow/outflow of deposits under Non-resident (Non-repatriable) Rupee Deposit (NRNR) Scheme for the month of.....
48.	Form TC	Approvals of Trade Credit granted by all branches during the (Month / Year).....
49.	Form TCD	Foreign Collaboration Agreement - Return for the year ended 31st December.....
50.	Form TCK	Certificate for Payment of Technical know-how fee under Foreign Technical collaboration
51.	Form TCR	Certificate for payment of royalty under foreign technical collaboration
52.	Form TRA	Statement of sale of foreign currency for travel purposes
53.	Form TS 1	Application for Transfer of shares of a company registered in India by a non-resident to a person resident in India
54.	Form XOS	Statement of particulars of export bills outstanding beyond the prescribed period/ due date of realisation as at 30th June/31st December 20

### Related Legislations

Certain other Legislations have a bearing on FEMA. Such allied acts include:

- Foreign Trade (Development and Regulation) Act, 1992
- Foreign Trade (Regulation) Rules 1993
- Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
- Smugglers and Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977
- Smugglers and Foreign Exchange Manipulators (Receipt, Management and Disposal of Forfeited Property) Rules, 2006
- Appellate Tribunal for Forfeited property (Fees) Rules, 1987
- Appellate Tribunal for Forfeited property (Procedure) Rules, 1986
- Prevention of Money Laundering Act, 2002
- Set of 7 rules under PML Act, 2002
- Foreign Contribution (Regulation) Act, 1976
- The Foreign Contribution (Regulation) Rules, 1976
- The Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Regulations, 1978
- The Foreign Contribution (Regulation) Act, 2010 (in force from May 1, 2011)
- Foreign Contribution (Regulation) Rules, 2011 (in force from May 1, 2011)
- Guidelines issued by the Reserve Bank.
- Foreign Trade Policy 2009-14.
- Uniform Customs and Practice for Documentary Credits (UCPDC ICC 500).
- Foreign Exchange Dealer's Association of India (FEDAI) Rules
- Securities and Exchange Board of India (SEBI) guidelines

### AUTHORITIES AND ENFORCEMENT MACHINERY UNDER FEMA

FEMA in itself is not an independent and isolated law. The provisions of FEMA are spread at different places and so are there regulatory bodies. Reserve Bank of India (RBI) makes regulations for FEMA and the rules are made by Central Government.



Though RBI is the overall controlling authority in respect of FEMA, enforcement of FEMA has been entrusted to a separate "Directorate of Enforcement" formed for this purpose. (Section 36)

**Authorities governing the enforcement of FEMA:**

- Foreign Exchange Department of Reserve Bank of India (RBI) - [www.fema.rbi.org.in](http://www.fema.rbi.org.in)
- Directorate of Enforcement, Department of Revenue, Ministry of Finance - <http://directorateofenforcement.gov.in>
- Capital Markets Division, Department of Economic Affairs, Ministry of Finance – [http://finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/](http://finmin.nic.in/the_ministry/dept_eco_affairs/)
- Foreign Trade Division, Department of Economic Affairs, Ministry of Finance – [http://finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/](http://finmin.nic.in/the_ministry/dept_eco_affairs/)

**Machinery responsible for various aspects of FEMA is:**

1. Enforcement Directorate - To investigate provisions of the Act, the Central Govt. have established the Directorate of Enforcement with Director and other officers as officers of the Enforcement.
2. Adjudicating Authority - The adjudicating authority will issue a notice to the person who has contravened the provisions of the Foreign Exchange Management Act, Rules, Regulations, Notifications or any directions issued by the RBI.
3. Special Director (Appeals) - Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement can prefer an appeal to the Special Director (Appeals).
4. Appellate Tribunal - Any person aggrieved by an order made by the Adjudicating Authority, or the Special Director (Appeals) can prefer an appeal to the Appellate Tribunal
5. Foreign Exchange Department of RBI (Earlier till 31.1.04, known as Exchange Control Department)
6. Foreign Investment Implementation Authority (FIIA)
7. Foreign Investment Promotion Board
7. The Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents submitted in the prescribed form following prescribed procedure and such rulings are binding both on the applicant and the income-tax department

Though FEMA does not treat violation of FEMA provisions as a criminal offence, prevention detention under COFEPOSA for violation of FEMA is permissible, as FEMA and COFEPOSA occupy different fields. – *UOI v. Venkateshan* 2002 AIR SCW 1978 = 38 SCL 669 (SC).

**Besides RBI, following other regulators are involved in FEMA:**

- Ministry of Industry, Government of India which announces Industrial Policy which contains provisions in respect of Foreign Direct Investment, foreign technical collaboration, joint ventures, royalty payments etc.
- Ministry of Finance, Government of India which controls External Commercial Borrowings, FCCB, ADRs, and GDRs
- Directorate of Enforcement which is directly involved in enforcement of FEMA.
- Besides this SEBI, Income Tax, Custom Laws, FCRA, SAFEMA, COFEPOSA are some acts whose provisions are relevant in FEMA.

**ENFORCEMENT DIRECTORATE**

(Website of the Directorate - <http://www.directorateofenforcement.gov.in/>)

The Directorate of Enforcement is mainly concerned with the enforcement of the provisions of the Foreign Exchange Management Act to prevent leakage of foreign exchange which occurs through malpractices. Directorate has to detect cases of violation and also perform substantial adjudicatory functions to curb malpractices.

**Organization Set-Up**

The Enforcement Directorate is an attached office of the Ministry of Finance, Department of Revenue.

Prior to 1st May, 1956, the responsibility for enforcement of exchange control laws under FERA 1947 was discharged by the Investigation and Enforcement Section in the Exchange Control Department of the R.B.I. This system had a number of handicaps, the main being that enforcement action under FERA was incompatible with the role of RBI as the country's central banker. As such, with effect from 1.5.1956, a separate Enforcement Unit was set up under the Ministry of Finance. Subsequent to the passing of FERA (Amendment) Act, 1957, the name of the Enforcement Unit was changed to Enforcement Directorate, in October, 1957. FERA was again amended in 1973 and was made effective from 1.1.1974.

The Directorate of Enforcement is under the administrative control of the Department of Revenue for operational purposes; the policy aspect of the Act and its legislation and its amendments are however within the purview of the Department of Economic Affairs. The background of keeping the policy aspects relating to the Act in the Department of Economic Affairs is that -

- (i) the Department of Economic Affairs is more closely



involved in the formulation of policy responses at the macro level to the changing economic scenario; and

- (ii) the Department of Economic Affairs coordinates with RBI in respect of trade and invisible transactions and banking aspects of the Act.

### **Headquarters – New Delhi - The Directorate of Enforcement - headed by its Director**

The Directorate of Enforcement is under administrative control of Department of Revenue, Ministry of Finance, Govt. of India. It has Headquarters at New Delhi and has ten zones at Mumbai, Kolkata, Delhi, Chandigarh, Chennai, Ahmedabad, Bangalore, Lucknow, Cochin and Hyderabad.

The Headquarters are located at :

Directorate of Enforcement  
6th Floor, Lok Nayak Bhawan  
Khan Market, New Delhi – 110 003  
Ph : 011-24693577, 24690682, 24690625

The Directorate is headed by its Director - a post which is of the rank of Secretary to the Government of India. Besides, there are three Special Directors of Enforcement and one Additional Director of Enforcement and two Deputy Director at Head Office.

### **Three Special Directors of Enforcement**

Below the level of Director, there are three Special Directors. Two of them are posted at Delhi while the third post is for Mumbai.

### **Zonal Offices- headed by the Deputy Directors**

The Enforcement Directorate, with its Headquarters at New Delhi has seven zonal offices at Mumbai, Kolkata, Delhi, Jalandhar, Chennai, Ahmedabad and Bangalore. The zonal offices are headed by the Deputy Directors.

### **Sub-Zonal Offices – headed by Assistant Directors**

The Directorate has nine sub-zonal offices at Agra, Srinagar, Jaipur, Varanasi, Trivandrum, Calicut, Hyderabad, Guwahati and Goa, which are headed by the Assistant Directors.

### **Special Unit at Madurai**

The Directorate has also a Unit at Madurai, which is headed by a Chief Enforcement Officer.

### **Functions**

The main functions of the Directorate are as under:

1. To enforce Foreign Exchange Management Act 1999 and Prevention of money Laundering Act 2002.

2. To collect and develop intelligence relating to violation of the provisions of Foreign Exchange Management Act and Prevention of money Laundering Act 2002.
3. To conduct searches of suspected persons, conveyances and premises and seize incriminating materials (including Indian and foreign currencies involved)
4. To enquire into and investigate suspected violations of provisions of Foreign Exchange Management Act, 1999 and Prevention of money Laundering Act 2002.
5. To adjudicate cases of violations of Foreign Exchange Management Act penalties departmentally and also for confiscating the amounts involved in violations.
6. To realize the penalties imposed in departmental adjudication;
7. To attach and confiscate properties involved in the act of Money laundering.
8. To arrest the person suspected to be involved in the act of money laundering.
9. To prosecute the person involved in the act of money laundering.

In addition to the above functions relating to the Foreign Exchange Management Act. Directorate also processes and recommends cases for detention of habitual offender under the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) 1974 (52 of 1974), which provides interalia for detention of a person with a intention of preventing him from acting in a manner prejudicial to the conservation and augmentation of exchange.

### **APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE**

The Appellate Tribunal for Foreign Exchange is a successor to the Foreign Exchange Regulation Appellate Board, which ceased to exist with the repealing of the Foreign Exchange Regulation Act, 1973, with effect from May 31, 2000. Accordingly, all appeals which were pending before the FERA Board stood transferred under Section 49, sub-section (5), clause (b) of the Foreign Exchange Management Act with effect from June 1, 2000.

The Appellate Tribunal hears appeals from the orders of Enforcement Directorate under the defunct FERA with a sunset clause valid until May 31, 2002 and its successor enactment titled the Foreign Exchange Management Act, 1999.

The Appellate Tribunal for Foreign Exchange was established on 1st June, 2000, vide Government of India Notification No.





S.O. 53(E) dated 1.6.2000 issued under section 18 of Foreign Exchange Management Act (FEMA), 1999. Under section 19 of FEMA, the Central Government or any person aggrieved by an order made by Special Director (Appeals), or made by an Adjudicating Authority other than referred to in sub-Section (1) of Section 17, may prefer an appeal to the Appellate Tribunal that may be filed within 45 days from the date of receiving the order by the aggrieved person or the Central Government.

Section 20 of FEMA, provides that the Appellate Tribunal shall consist of a Chairperson and such number of members as the Central Government may deem fit. The jurisdiction of the Appellate Tribunal may be exercised by the Benches. The Bench may be constituted by the Chairperson, with one or more Members as the Chairperson deems fit. The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify and the Chairperson may transfer a Member from one Bench to another Bench. If at any stage it appears that the matter should be heard by a Bench of two Members the Chairperson may transfer the matter to such Bench as he deems fit.

A person who is qualified to be a Judge of a High Court or is or has been a Judge of High Court can be appointed as Chairperson of the Tribunal and person who has been or is qualified to be a District Judge can be appointed as a Member of the Tribunal.

## RESERVE BANK OF INDIA

The Foreign Exchange Department of the Reserve Bank (Till 31.1.2004, the Department was known as Exchange Control Department) administers Foreign Exchange Management Act, 1999, (FEMA) which has replaced the earlier Act, FERA, with effect from June 1, 2000.

For purchase of foreign exchange for most of the current account transaction, with exception of those listed in Schedule III to the Government of India Notification G.S.R. No 381(E) dated May 3, 2000; no permission from the Reserve Bank is required. Extensive powers are available to banks authorised to deal in foreign exchange, known as authorised dealers. As a result, foreign exchange can be purchased for practically all transactions which are of current account nature.

## UNDERSTANDING SOME KEY TERMS

Residential status is the most important factor for determining the applicability of the Act. The types of persons that are covered under the Act are –

- Persons resident in India
- Non-resident Indian (NRI)
- Persons resident outside India
- Overseas Corporate Body (OCB)
- Persons of Indian Origin (PIO)

## Persons

Person may be natural person, legal person or others. A natural person is any human being, with legal capacity commencing from the time of birth. A legal or artificial person is an association of people that is recognized by law as having legal personality. Others include firms and association of persons that are not incorporated.

As per Section 2 (u) of FEMA, “Person” includes-

- (i) An individual,
- (ii) A Hindu undivided family,
- (iii) A company,
- (iv) A firm,
- (v) An association of persons or a body of individuals, whether incorporated or not,
- (vi) Every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) Any agency, office or branch owned or controlled by such person;

## Person resident in India

For applicability of FEMA residential status of the persons plays an important role. The FEMA get triggered only when there is a transaction between a resident Indian and a non-resident. However, the criteria for determination of residential status are different in case of FEMA than in the case of Income Tax Act.

As per Section 2 (v) of FEMA “Person resident in India” 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;

*Note:* To become a resident under the Act, it is necessary that a person should have resided in India for at least 183 days during the previous financial year i.e. 1<sup>st</sup> April to 31<sup>st</sup> Mar and the calendar year has no importance

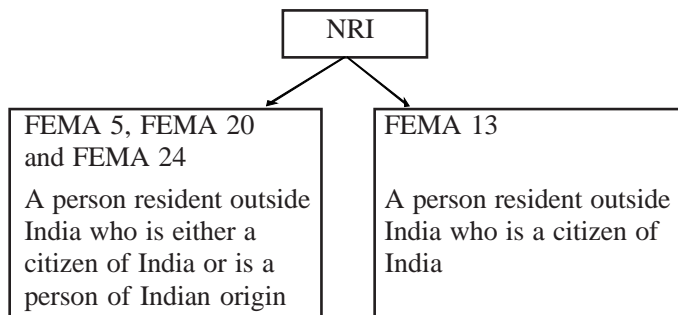
As per sec 2 (w) of FEMA “Person resident outside India” means a person who is not resident in India;

**Non-Resident Indian**

A non-resident Indian (NRI) means a person resident outside India who is a citizen of India or is a person of Indian origin. (Regulation 2(vi) of Foreign Exchange Management (Deposit) Regulations, 2000)

Although FEMA, 1999 defines a person resident in India and a person resident outside India it does not define the term non-resident nor does it define the term Non Resident Indian (NRI).

However, the term “Non- resident Indian” is defined in the Regulations as hereunder:



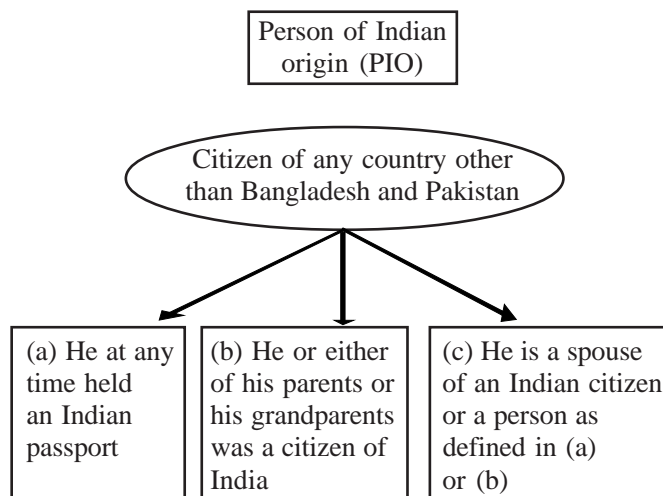
**Person of Indian origin**

A “Person of Indian Origin” is defined under Clause 2 (xii) of Foreign Exchange Management (Deposit) Regulations, 2000 as follows:

‘Person of Indian Origin’ means a citizen of any country other than Bangladesh or Pakistan, if

- (a) He at any time held Indian passport; or
- (b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) The person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

Thus,



**Definitions of “Persons of Indian origin” in the Regulations**

FEMA 5 and FEMA 13	FEMA 21	FEMA 24
A citizen of any country other than Bangladesh or Pakistan, if (a) he at any time held Indian passport; Or	An individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who	‘Person of Indian Origin’ means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if



<p>(b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); Or (c) The person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);</p>	<p>(a) at any time, held Indian passport; or (b) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);</p>	<p>(a) he at any time held Indian passport; Or (b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); Or (c) the person is a spouse of an Indian citizen or a person referred to in subclause (a) or (b);</p>
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### Overseas Corporate Body

Overseas Corporate Body means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably. (Regulation 2(xi) of Foreign Exchange Management (Deposit) Regulations, 2000)

Further, Regulation 2(vi) of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 states that ‘Overseas Corporate Body (OCB) ‘ means and includes an entity defined in Clause (xi) of Regulation 2 of the Foreign Exchange Management (Deposit) Regulations, 2000 and which was in existence on the date of commencement of these Regulations and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations

### REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Foreign Exchange refers to money denominated in the currency of another nation or group of nations like Euro.

Foreign exchange can be cash, funds available on credit cards and debit cards, traveler’s checks, bank deposits, or other short-term claims

Section 2(n) of FEMA states that “foreign exchange” means foreign currency and includes,-

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

### Currency

In economics, the term currency can refer to a particular currency, for example Pound Sterling, or to the coins and banknotes of a particular currency, which comprise the physical aspects of a nation’s money supply.

Some currency is freely convertible i.e one can exchange these currencies with any other currency without any restriction. E.g Dollars (USA), pound Sterling (UK), Euro (European Common Currency), Swiss Franc, Yen (Japan) etc. This is often called “Hard Currency”. Indian Rupee is not fully convertible.

As per Regulation 2(v) of FEM (Manner of Receipt and Payment) Regulations, 2000 , “permitted currency” means a foreign currency which is freely convertible.

By currency, we normally understand coins and notes, but definition in FEMA is quite wide and includes cheques, Letter of Credit etc.

Section 2(h) of FEMA defines “currency” as – ‘currency’ includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Vide Notification No. FEMA 15/2000/RB dated 3rd May,2000, RBI has notified ‘debit cards’, ATM cards or any other instrument by whatever name called that can be used to create a ‘financial liability’, as ‘currency’.

“Currency notes” means and includes cash in the form of coins and bank notes. (Section 2(i) FEMA).

“Indian currency” means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of Reserve Bank of India Act, 1934 (these are issued on special occasions like Gandhi centenary etc.). (Section 2(q) FEMA)

“Foreign currency” means any currency other than Indian currency. (Section 2(m) FEMA).



## Regulation and Management of Foreign Exchange

Section 3 of FEMA prohibits dealings in foreign exchange except through an authorised person.

No person can, without general or special permission of the RBI-

- (a) Deal in or transfer any foreign exchange or foreign securities 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
- (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

Section 4 of FEMA restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act. The terms “foreign exchange” and “foreign security” are defined in sections 2(n) and 2(o) respectively of the Act.

Important provisions in this regard are:

- (a) The Act allows a person resident in India to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if the same was transacted when he was resident outside India or inherited from a person who was resident outside India.
- (b) The Act also allows a person resident outside India to hold, own, transfer or invest in Indian currency, etc. situated in India if the same was transacted by him when he was resident in India or inherited from a person who was resident in India.
- (c) The Act fixes a responsibility on persons resident in India who have any amount of foreign exchange due or accrued in their favour to get the same realized and repatriated to India within the period and manner specified by RBI.
- (d) Any person can sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may impose reasonable restrictions in public interest.
- (e) Any person can draw or sell foreign exchange from or to an authorized person for a capital account transaction however subject to the provision that the capital account transactions will be regulated by RBI / Central Govt. for which necessary circulars / notifications will have to be issued under FEMA.

## TRANSACTIONS COVERED UNDER FEMA

As stated earlier all transactions between a resident and a non resident is covered in FEMA, these transaction can be broadly classified in two groups current account transactions and capital account transactions.

### Capital account transaction

As per sec 2 (e) “Capital account transaction” 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 subsection (3) of section 6.

The following transactions are therefore regarded as Capital Account Transaction

- (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.

Though the norms of Capital Account Transactions have been considerably relaxed, as a general rule all capital account are prohibited unless specifically allowed. Permissible capital account transactions are governed by the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 (Notification FEMA 1/2000-RB).

This Regulation lists the permissible capital account



transactions in two schedules. It deals with drawal of foreign exchange for certain capital account transactions by a person resident in India and by a person resident outside India. Any person can sell or draw foreign exchange to or from authorized persons for activities prescribed in these schedules to limits prescribed in relevant regulations.

No person should undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction but a resident individual can draw from an authorised person foreign exchange not exceeding USD 2,00,000 per financial year for a capital account transaction specified in Schedule I.

### Schedule I - Capital Account transactions of a person resident In India

(a)	Investment by a person resident in India in foreign securities (Notification No. FEMA 19 /2000-RB)
(b)	Foreign currency loans raised in India and abroad by a person resident in India (Notification No. FEMA 03 /2000-RB)
(c)	Transfer of immovable property outside India by a person resident in India (Notification No. FEMA 07 /2000-RB)
(d)	Guarantees issued by a person resident in India in favour of a person resident outside India (Notification No. FEMA 08 /2000-RB)
(e)	Export, import and holding of currency/currency notes (Notification No. FEMA 6 /2000-RB)
(f)	Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India (Notification No. FEMA 03 & 04 /2000-RB)
(g)	Maintenance of foreign currency accounts in India and outside India by a person resident in India (Notification No. FEMA 10 /2000-RB)
(h)	Taking out of insurance policy by a person resident in India from an insurance company outside India (Notification No. FEMA 12 /2000-RB)
(i)	Loans and overdrafts by a person resident in India to a person resident outside India (Notification No. FEMA 3 & 4 /2000-RB)
(j)	Remittance outside India of capital assets of a person resident in India (USD 100,000 per financial year (April- March) vide RBI/2006-2007/379 A. P. (DIR Series) Circular No. 51 dated 08.05.2007)
(k)	Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India. (Notification No. FEMA 25 /2000-RB)

### Schedule II - Capital Account transactions of a person resident outside India

(a)	Investment in India by a person resident outside India, that is to say, I Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and (Notification No. FEMA 20 /2000-RB) II 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. (Notification No. FEMA 24 /2000-RB)
(b)	Acquisition and transfer of immovable property in India by a person resident outside India. (Notification No. FEMA 21 /2000-RB)
(c)	Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India. (Notification No. FEMA 8 /2000-RB)
(d)	Import and export of currency/currency notes into/from India by a person resident outside India. (Notification No. FEMA 6 /2000-RB)
(e)	Deposits between a person resident in India and a person resident outside India. (Notification No. FEMA 5 /2000-RB)
(f)	Foreign currency accounts in India of a person resident outside India. (Notification No. FEMA 5 /2000-RB)
(g)	Remittance outside India of capital assets in India of a person resident outside India. (Notification No. FEMA 13/2000-RB)

### Current account transaction

Section 2 (j) of FEMA defines "Current account transaction" as 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;

As per the provisions laid down in Section 5, a person may



sell or draw foreign exchange freely for his current account transactions, except in a few cases where limits have been prescribed. The Central Government has the power to regulate current account transactions. Unless the transaction is restricted, Foreign exchange can be drawn for the same.

Current Account transactions are governed by the Foreign Exchange Management (Current Account Transactions) Rules, 2000 (Notification No.GSR.381(E), dated 03/05/2000).

Drawal of foreign exchange for the following purposes are prohibited:

- A transaction specified in Schedule I.
- Travel to Nepal and/or Bhutan.
- Transaction with a person resident in Nepal or Bhutan.

Drawal means drawal of foreign exchange from an authorized 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.

Current Account Transactions are covered under the following:

- Transactions prohibited under Schedule I.
- Transactions that require prior approval of Government of India, mentioned in Schedule II
- Transactions that require prior approval of Reserve Bank of India, mentioned in Schedule III

The schedule I list the following 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/prescribed magazines, football pools, sweepstakes, etc.
4. Payments 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 of exports under Rupee State Credit Route, except commission up to 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 Scheme Account.

### **SCHEDULE II contains transactions which require prior approval of the Government of India.**

Given below is the Purpose of Remittance and the concerned Ministry/Department of Government of India whose approval is required

1. Cultural Tours – Ministry of Human Resource 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 US\$ 10,000) by a State Government and its Public Sector Undertakings - 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 c.i.f. basis (i.e., other than f.o.b. and f.a.s. 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
  - (a) TV Channels - Ministry of Information and Broadcasting
  - (b) Internet service providers - 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 US\$ 100,000 - Ministry of Human Resource Development, (Department of Youth Affairs and Sports)
9. Remittance for membership of P&I Club - Ministry of Finance (Insurance Division)

### **SCHEDULE III contains transactions which require prior approval of the Reserve Bank of India**

- Release of exchange exceeding US \$ 10,000 or its equivalent in one financial year, for one or more private visits to any country (except Nepal and Bhutan).
- Gift remittance exceeding US\$ 5,000 per financial year per remitter/donor other than resident individual.



- Donation exceeding US\$ 5,000 per financial year per remitter/donor other than resident individual.
  - Donations by corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for,-
    - creation of Chairs in reputed educational institutes;
    - to funds (not being an investment fund) promoted by educational institutes; and
    - to a technical institution or body or association in the field of activity of the donor company.
- Exchange facilities exceeding US \$ 100,000 for persons going abroad for employment.
- Exchange facilities for emigration exceeding US \$ 100,000 or amount prescribed by country or emigration.
- Remittance for maintenance of close relatives abroad,
  - 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 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.
  - Exceeding US \$ 100,000 per year per recipient, in all other cases.
- Release of foreign exchange, exceeding US\$ 25,000 to a person, irrespective of period of stay, for business travel, or attending a conference or specialized training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.
- Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
- Release of exchange for studies abroad exceeding the estimates from the institution abroad or US \$ 100,000 per academic year, whichever is higher.
- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.
- Remittances exceeding five percent of the investment

brought into India or US \$1,00,000, whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

- Remittances exceeding US\$ 10,00,000, per project, for any consultancy service in respect of infrastructure projects and US\$ 1,000,000 per project for other consultancy services procured from outside India.

#### **Release of foreign exchange for medical treatment**

To enable residents to avail foreign exchange for medical treatment abroad without any hassles and any loss of time, Authorised Dealers are allowed to release foreign exchange up to an amount of USD 100,000 or its equivalent, on the basis of self declaration that the applicant is buying exchange for medical treatment outside India, without insisting on any estimate from a hospital / doctor.

#### **Release of foreign exchange for Cultural Tours**

Dance troupes, artistes, etc., who wish to undertake tours abroad for cultural purposes should apply to the Ministry of Human Resources Development (Department of Education and Culture), Government of India, for their foreign exchange requirements.

Authorised Dealers will thereon release foreign exchange based on the strength of the sanction from the concerned Ministry.

#### **Remittances for tour arrangements**

Authorised Dealers can remit foreign exchange up to a reasonable limit, at the request of a traveler towards his hotel accommodation, tour arrangements, etc., in the countries proposed to be visited by him;

Authorised Dealers can effect remittances at the request of agents in India who have tie-up arrangements with hotels/agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travellers from India;

Authorised Dealer can open foreign currency accounts in the name of agents in India who have tie up arrangements with hotels/agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travelers from India

#### **Payment in Rupees**

Authorised dealers can accept payment in cash up to Rs. 50,000 (Rupees fifty thousand only) against sale of foreign exchange for travel abroad (for private visit or for any other purpose). Wherever the sale of foreign exchange exceeds the amount equivalent to Rs.50,000, the payment must be received only by a



- Crossed cheque drawn on the applicant's bank account, or
- Crossed cheque drawn on the bank account of the firm/company sponsoring the visit of the applicant, or
- Banker's Cheque/Pay Order/ Demand Draft or
- Debit / credit / prepaid cards.

### **Advance Remittance for Import of services**

Authorised dealers can allow advance remittance for providing services under current account transaction for which the release of foreign exchange is admissible.

However, where the amount exceeds USD 500,000 or its equivalent, a guarantee from a bank of International repute situated outside India or a guarantee from an authorised dealer in India, if such a guarantee is issued against the counter-guarantee of a bank of International repute situated outside India, should be obtained from the overseas beneficiary.

### **Release of foreign exchange on the basis of self-declaration**

Authorised Dealers can release foreign exchange up to USD 100,000 each for employment, emigration, maintenance of close relatives, education and medical treatment abroad without insisting on any supporting documents but on the basis of self declaration incorporating certain basic details of the transactions and submission of Form A2.

### **Acquisition of foreign securities under Employees Stock Option Plan (ESOP)**

Resident individuals who are either employees or director of an Indian office or branch of a foreign company in which foreign holding is not less than 51% are permitted to acquire foreign securities under ESOP Scheme without any monetary limit.

They are also permitted to freely sell the shares provided the proceeds thereof are repatriated to India.

### **International Credit Cards**

Prior approval of Reserve Bank of India is not required for use of International Credit Cards by residents for making payment towards expenses, while on a visit outside India.

Residents can use International Credit Cards on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase

of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).

International Credit Cards cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities. There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

Use of International Credit Cards for payment in foreign exchange in Nepal and Bhutan is not permitted.

### **International Debit Cards**

Banks authorised to deal in foreign exchange issue International Debit Cards which can be used by a resident for drawing cash or making payment to a merchant establishment overseas during his visit abroad. International Debit Cards can be used only for permissible current account transactions.

International Debit Cards cannot be used on internet for purchase of prohibited items like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., i.e. for such items/activities for which drawal of foreign exchange is not permitted.

### **PROFESSIONAL OPPORTUNITIES FOR COMPANY SECRETARIES**

- Compliances under FEMA rules and regulations and RBI circulars etc.
- Consultancy in realization and repatriation of foreign exchange
- Representation before Authorities
- Taxation
- Applications to RBI
- Foreign exchange derivative contracts
- Obtaining Government Approval wherever required
- Adherence to compliances in matters of borrowings and lendings in foreign exchange, if permitted by RBI
- Consultancy on Issue of Foreign Currency Convertible Bonds, American Depository Receipt, Global Depository Receipt etc
- Valuation of Shares in certain cases. □