

सत्यमेव जयते

Ministry of Finance
Government of India

Foreign Direct Investment

FEMA **Foreign Exchange** **Management Act**

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FEMA

Foreign Exchange Management Act

- The Foreign Exchange Management Act, 1999 (FEMA), is an Act of the Parliament of India "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".
- It was passed in the 29th December 1999 in parliament, replacing "The Foreign Exchange Regulation Act (FERA)".
- It enabled a new foreign exchange management regime consistent with the emerging framework of the World Trade Organization (WTO).
- It also make it easier for introduction of the Prevention of Money Laundering Act, 2002, which came into effect from 1 July 2005.

NEED FOR THE ACT

The change in the economic scenario, globalization of capital, free trade across the globe, the need for managing foreign exchange in the country was essential. To facilitate cross border trade and cross border capital flows. A efficient exchange control law was required.

HISTORY:

Foreign exchange control led to introduction of Exchange control law through Defense of India rules by the Britishers in 1939. Subsequently, Foreign Exchange Regulation Act (FERA) was enacted in 1947 which was later replaced with 'The Foreign Exchange Regulation Act, 1973' (FERA).

Government as part of its agenda of liberalisation of the Indian economy in 1991, permitted free movement of foreign exchange in connection trade related receipts and payments as well as Foreign Investment in various sectors. This increased the flow of foreign exchange to India and consequently foreign exchange reserves increased substantially. The Act has been made effective from 1st June, 2000. This Act enables management of foreign exchange reserves for the country.

SALIENT FEATURES OF THE ACT

- I. Regulation of transactions between residents and non-residents
- II. Investments in India by non-residents and overseas Indian.
- III. Freely permissible transactions on current account (Import-Export)
- IV. RBI and Central Government control over capital account transactions (Investment)
- V. Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/Money Changer/Off-shore banking unit
- VI. Adjudication and Compounding of Offences (Law related to any offences, legal proceeding, ruling or judgment)

ENFORCEMENT OF FEMA

Though **RBI** exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate '**Directorate of Enforcement**' formed for this purpose.

The **Directorate of Enforcement** is a domestic law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crimes in India. It is part of the **Department of Revenue, Ministry of Finance, Government Of India**.

The Enforcement Directorate focuses on investigating and prosecuting cases related to **money laundering, foreign exchange violations, Corruption** and economic offenses.

The head office of FEMA/ED is situated in **New Delhi**.



APPLICABILITY OF FEMA ACT

FEMA (Foreign Exchange Management Act) is applicable to the whole of India and equally applicable to the agencies and offices located outside India (which are owned or managed by an Indian Citizen).

FEMA IS APPLICABLE TO:

- Foreign exchange.
- Foreign security.
- Exportation of any commodity and/or service from India to a country outside India.
- Importation of any commodity and/or services from outside India.
- Securities as defined under Public Debt Act 1994.
- Purchase, sale and exchange of any kind (i.e. Transfer).
- Banking, financial and insurance services.
- Any overseas company owned by an NRI (Non-Resident Indian) & owner is 60% or more.
- Any citizen of India, residing in the country or outside (NRI).

The Current Account transactions under the FEMA Act has been categorized into three parts which, namely-

- Transactions prohibited by FEMA,
- The transaction requires Central Government's permission,
- The transaction requires RBI's permission.

PROHIBITION ON WITHDRAWAL OF FOREIGN EXCHANGE

1. Any kind of remittance out of winning the lottery.
2. Any kind of remittance from the income on racing/riding etc.
3. Any remittance for buying of a lottery ticket, football pools, sweepstakes, banned/prescribed magazines etc.,
4. A travel to Bhutan and/or Nepal.
5. Remittance of interest income on funds held in NRSR Account i.e. Non-resident Special Rupees Scheme account.
6. A transaction with a resident of Bhutan or Nepal.

- Commission payment on exports towards equity investment of Indian Companies in Joint ventures/wholly owned subsidiaries abroad.
- Remittance of dividend by any company. However, this clause is applicable only if the requirement of dividend balancing is applicable.
- Commission payment on exportation under Rupees State Credit Routes except commission up to 10% of invoice value of export of tea and tobacco.
- Payment regarding “ Call back Services” of telephones.

TRANSACTIONS FOR WHICH **CENTRAL GOVERNMENT PRIOR APPROVAL IS REQUIRED** FOR DRAWL OF FOREIGN EXCHANGE —

1. Cultural tours.
2. Advertisement in print media of a foreign country for any purpose other than promoting tourism, international bidding and foreign investments (exceeding 10000 US Dollar) by a State Government and its Public Sector Units.
3. Payment of importation by a Public Sector Unit or a government department on c.i.f. basis only for importation through ocean transport.
4. Remittance of freight of vessels chartered. (Ship chartering is the hiring out the use of a ship by a vessel owner to another company)
5. Remittance of detention charges of container exceeding the DGS's (Director General of Shipping) prescribed rate.

TRANSACTIONS FOR WHICH **CENTRAL GOVERNMENT PRIOR APPROVAL IS REQUIRED** FOR DRAWL OF FOREIGN EXCHANGE —

6. Remittance of Prize money/sponsorship of any activity of sport outside India by a person other than national/ international/street level sports bodies, if the amount of the prize money/sponsorship exceeds 1,00,000 US Dollars.
7. Remittance of hiring charges of transponders (a device for receiving a radio signal and automatically transmitting a different signal - Transponders make it easier for tolling agencies to charge the correct toll to the appropriate vehicle automatically.)
8. Internet Service Providers. (Eg: Starlink)
9. TV channels.
10. Remittance for P&I Club ministry's membership.
 - Who are the members of the P&I Club?
 - Originally, P&I club members were typically shipowners, ship operators or demise charterers, but more recently freight forwarders and warehouse operators have been able to join.
11. Remittance by Multi-model transport operators to their agents in abroad.
 - A multimodal transport operator is a person or an organization who engages in the transportation of goods using multiple modes of transportation under the multimodal transport contract.

IS THERE ANY CATEGORY OF VISIT WHICH REQUIRES **PRIOR APPROVAL** FROM THE **RESERVE BANK** OR THE **GOVERNMENT OF INDIA** ?

Dance troupes, artistes, etc., who wish to undertake cultural tours abroad -

should obtain prior approval from the **Ministry of Human Resources Development (Department of Education and Culture)**, Government of India, New Delhi.



ROUTE FOR DRAWAL OF FOREIGN EXCHANGE

According to the **Reserve Bank of India**, Foreign Exchange can be drawn from any authorized dealer by the **Prior Approval Route or General Permission Route**.

S.No.	Particulars	Limitations
1	Visiting privately to any country (except Bhutan and Nepal)	10,000 US dollars or its equivalents for one or more private visits in one year.
2	Donations/Gift per donor	Remittance should not exceed 1,25,000 US dollar during a Financial Year
3	Corporate Donations	1 percent of the forex earnings during the preceding three Financial Year or 5 million US dollar, whichever is less, for a specified purpose
4	Going out of India for the purpose of employment	1,00,000 US dollar one time only

S.No.	Particulars	Limitations
5	Remittance facility for emigrations	1,00,000 US dollar or the prescribed amount by country of emigration not exceeding 1,00,000 US dollar one time only.
6	Remittance for maintenance of relatives (only close relative) outside India	Salary (after the deduction of income tax, Provident Fund and other deduction) of a person not being a permanent resident in India and a citizen of foreign state other than Pakistan. Or 1,00,000 US dollar a year per recipient in all other cases
7	Business Travel Abroad	25000 US dollar per trip respective of stay
8	Attending specialized training or conference	25000 US Dollar

S.No.	Particulars	Limitations
9	For Medical treatment Expense (Abroad)	1,00,000 US Dollar
10	Maintenance of a patient going for medical check-up or medical treatment abroad	25000 US Dollar
11	For Studying in Abroad	1,00,000 US Dollar per academic Year or the Institution's estimation whichever is higher
12	Meeting the expenses of a person accompanying as attendance to a patient going medical check-up or for medical treatment abroad	25000 US Dollar

S.No.	Particulars	Limitations
13	Payment of commission to an agent outside India for selling of commercial or residential plot or flats in India	25000 US Dollar or 5 % of inward remittance per transactions whichever is higher
14	Consultancy services from abroad	1 million US Dollar per project to 10 million US Dollar per project (for infrastructure project) 1 million US Dollar In all other cases.
15	Pre-incorporation's expenses reimbursement	100,000 US Dollar or 5 percent of the investment brought into India whichever is higher,
16	Remittance for purchase and/or use of Trade mark	Allowed without any approval of Reserve Bank of India

S.No.	Particulars	Limitations
17	Remittance for securing Health Insurance for from a foreign company	Freely allow
18	Remittance of royalty and payment of lump sum fee under the technical collaboration agreement	Freely allow without any prior approval of RBI
19	Release of exchange for medical treatment outside India when a person has fallen sick after proceeding abroad	Extent of USD 1,00,000 without any hassles and any loss of time on the basis of self declarations
20	Small Value Remittance	Up to USD 25000 for a FY

PENALTIES UNDER FEMA

- If any person contravenes the provisions of FEMA or any rule, direction, regulation, order or notification issued under FEMA, he shall be liable to pay a **penalty up to 3 times the sum involved** in such contravention or **up to Rs.2 lakh**.

Where such contravention is a **continuing one**, he shall be liable to pay a further penalty which may extend to **Rs.5,000 for every day** during which the contravention continues (From the very first day).

- 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 u/s. 37A (at present the limit prescribed is **₹ one crore**), then such person is liable to:
 - a) Penalty up to **3 times the sum involved**.
 - b) **Confiscation of the value equivalent situated in India.**
 - c) **Imprisonment** for a term which may extend to **5 year + fine**.

DEFINITIONS - AUTHORISED PERSON

Section 2(c) of the Foreign Exchange Management Act or FEMA states that 'authorized person' means -

- Money Changer,
- an Authorised Dealer (AD),
- off-shore (SEZ) Banking unit or
- any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities

Note: Any transactions that involve Foreign Currency should be made only through an authorized person.



WHO IS AN AUTHORIZED DEALER

Authorized Dealers are typically established banks that have received formal **authorization from the Reserve Bank of India (RBI)** to engage in a wide spectrum of foreign exchange transactions. Their pivotal role encompasses facilitating foreign exchange-related activities for both individuals and businesses.

An Authorised Dealer (AD) is any person specifically authorized by the Reserve Bank under **Section 10(1) of FEMA, 1999**, to deal in foreign exchange or foreign securities (**the list of ADs is available on www.rbi.org.in**) and normally includes banks.

There is **two type of AD.**



WHO ARE AUTHORIZED BY **THE RESERVE BANK** TO **SELL** FOREIGN EXCHANGE FOR TRAVEL PURPOSES?

Foreign exchange can be purchased from any authorised person, such as an -

AD Category-I - Banks

and

AD Category-II - Full-Fledged Money Changers (**FFMCs**)



FFMC

VS.

RMC (RESTRICTED)

- The Reserve Bank of India under Section 10 of the Foreign Exchange Management Act, 1999 may provide license to work as Authorised Money Changers (AMCs).
- An AMC may either be a Full Fledged Money Changer (FFMC) or a Restricted Money Changer (RMC).
- FFMCs are authorised to purchase foreign exchange from residents and non-residents visiting India, and to sell foreign exchange for certain approved purposes
- RMCs are authorised only to purchase foreign exchange from residents and non-residents.

HOW MUCH FOREIGN EXCHANGE CAN BE BROUGHT IN WHILE VISITING INDIA?



A person coming into India from abroad can bring with him foreign exchange **without any limit**.

However, if the aggregate value of the foreign exchange in the form of **currency notes**, **bank notes** or **travellers cheques** brought in exceeds **USD 10,000** or its equivalent

and/or

the value of **foreign currency alone exceeds USD 5,000** or its equivalent, -

It should be **declared** to the Customs Authorities at the Airport in the **Currency Declaration Form (CDF)**, on arrival in India.

IS THERE ANY **TIME-FRAME** FOR A TRAVELER WHO HAS RETURNED TO INDIA TO **SURRENDER FOREIGN EXCHANGE**?

On return from a foreign trip, travellers are required to surrender unspent foreign exchange held in the form of currency notes and travellers cheques **within 180 days** of return.

However, they are **free to retain** foreign exchange **up to USD 2,000**, in the form of foreign currency notes or TCs for future use or credit to their Resident Foreign Currency (Domestic) Accounts.



SHOULD FOREIGN COINS BE SURRENDERED TO AN AUTHORISED DEALER ON RETURN FROM ABROAD?

The residents can hold **foreign coins**
without any limit.



HOW MUCH **JEWELLERY** CAN BE **CARRIED** WHILE **GOING ABROAD**?

- Taking personal jewellery out of India is as per the **Baggage Rules**, governed and administered by Customs Department, Government of India.
- While no approval of the Reserve Bank is required in this case, approvals, if any, required from Customs Authorities may be obtained.



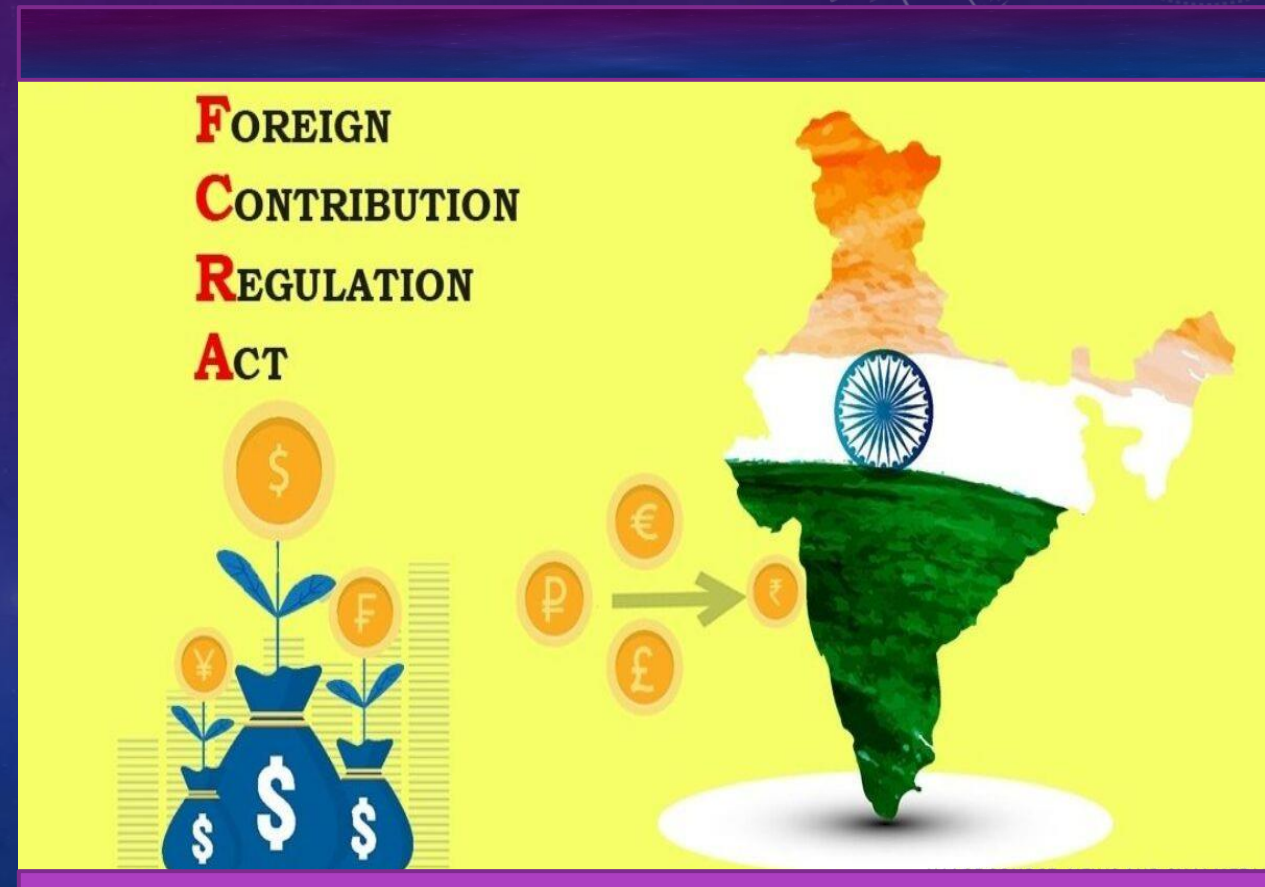
CAN A RESIDENT EXTEND LOCAL HOSPITALITY TO A NON-RESIDENT?

A person resident in India is free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related to travel to and from and within India, of a person resident outside India, who is on a visit to India.



WHETHER PERMISSION IS REQUIRED FOR RECEIVING **GRANT/DONATION FROM ABROAD** UNDER THE FOREIGN CONTRIBUTION REGULATION ACT, 1976?

- The Foreign Contribution Regulation Act, 1976 is administered and monitored by the **Ministry of Home Affairs** whose address is given below:
- Ministry of Home Affairs, FCRA Wing, 1st Floor, Major Dhyan Chand National Stadium, Near Pragati Maidan, New Delhi-110001
- No specific approval from the Reserve Bank is required in this regard



CAN RESIDENTS PURCHASE AIR TICKETS IN INDIA FOR THEIR TRAVEL NOT TOUCHING INDIA?

- Residents may book their tickets in India for their visit to any third country. For instance, residents can book their tickets for travel from London to New York, through domestic/foreign airlines in India.
- However, the same (air tickets) would be a part of the traveller's overall LRS entitlement of USD 250,000.

Liberalized Remittance Scheme (LRS) facilitates resident individuals to remit up to USD 2,50,000 or its equivalent abroad per Financial Year (April-March) for permitted current or capital account transactions or combination of both.



CAN A RESIDENT INDIVIDUAL SEND REMITTANCES AND PURCHASE PROPERTY OUTSIDE INDIA?

- A resident individual can send remittances under the **Liberalised Remittance Scheme (LRS)** for purchasing immovable property outside India.
- The Liberalised Remittance Scheme (LRS) is part of the Foreign Exchange Management Act (FEMA) 1999 which lays down the guidelines for outward remittance from India. Under LRS, all resident individuals, including minors, are allowed to freely remit up to USD250,000 per financial year (April – March).
- In case members of a family pool their remittances to purchase a property, then the **said property should be in the name of all the members who make the remittances.**



CAN A PERSON **RESIDENT** IN INDIA **HOLD ASSETS OUTSIDE INDIA?**

- In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to 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.
- Further, a resident individual can also acquire property and other assets overseas **under LRS**.



TO WHOM DO THE RESTRICTIONS OF TRANSFERRING PROPERTY OUTSIDE INDIA **NOT APPLY?**

The prohibition of a resident acquiring property outside India is not applicable if:

- i. The resident is a **foreign national**; or
- ii. The property was acquired **before July 8, 1947** and continued to be held after obtaining permission; or
- iii. If it is acquired on a **lease not exceeding five years**



WHAT ARE THE ACCEPTED MODES OF PAYMENT FOR PROPERTY ACQUIRED IN INDIA?

- Payment for immovable property has to be received in India **through banking channels**

and

- is subject to payment of all **taxes and other duties**/ levies in India.
- The payment can also be made out of **funds held in NRE/ FCNR(B)/ NRO** accounts of the NRIs/ OCIs.
- **Payments should not** be made through travellers' cheque and foreign currency notes.



CAN FOREIGN EMBASSIES/ DIPLOMATS/ CONSULATE GENERALS ACQUIRE PROPERTY IN INDIA?

- Foreign Embassy/ Diplomat/ Consulate General, can purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –
 - ✓ Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
 - ✓ The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.



CAN FOREIGN NATIONALS ACQUIRE PROPERTY IN INDIA?

Citizens of Pakistan,

Bangladesh,

Sri Lanka,

Afghanistan,

China,

Iran,

Nepal,

Bhutan,

Macau,

Hong Kong or

Democratic People's Republic of Korea (North Korea),

irrespective of their residential status, cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. This prohibition shall not be applicable to an OCI.

CAN FOREIGN NATIONALS ACQUIRE PROPERTY IN INDIA?



Foreign nationals of non-Indian origin but **resident in India** (except 11 countries listed at (a) above) **can acquire immovable property in India**.

Foreign nationals of non-Indian origin and **resident outside India** can acquire/ transfer immovable property in India, **on lease not exceeding five years** and **can acquire immovable property in India by way of inheritance** from a resident.

All other acquisitions/ transfers by foreign nationals will require the **prior permission of RBI**

HOW MUCH INDIAN CURRENCY CAN BE BROUGHT IN WHILE COMING INTO INDIA?

A resident of India, who has gone out of India on a temporary visit may bring into India at the time of his return from any place outside India (other than Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000.

A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes, in denomination not exceeding Rs.100.

Any person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000 while entering only through an airport.

MANDATORY COMPLIANCES UNDER FEMA

The mandatory compliances under the provisions of FEMA are as follows:

Annual Return on Foreign Liabilities and Assets

Every Indian Resident company that has made a Foreign Direct Investment (FDI) in the preceding year, including the current year, must submit the Foreign Liabilities and Assets (FLA) Return. If no such investment is made, then the company is not under any obligation to submit the FLA. Such a return must be submitted every year.

Annual Performance Report

This report is to be submitted by a Resident individual who has made an Overseas Direct Investment (ODI). It is to be provided in Form ODI Part II to the AD (Authorised Dealer) bank regarding Joint Venture or Wholly Owned Subsidiaries outside India on or before 31st December every year.

External Commercial Borrowings (ECB)

All borrowers must report all ECB transactions to the RBI through an AD Category – I Bank every month in the Form 'ECB 2 Return'.

SINGLE MASTER FORM (W.E.F.30.06.2018)

Under the Single Master Form, the following forms are to be filled and submitted.

- FC- GPR (Foreign Currency-Gross Provisional Return)
- FC-TRS (Foreign Currency Transfer of Shares)
- LLP-I (Limited Liability Partnership)
- CN (Convertible Notes)
- ESOP (Employee Stock Options Plan)
- DI (Downstream Investment)
- DRR (Depository Receipts)
- InVi (Investment Vehicle that has issued its units to a person resident outside India)

The RBI has made efforts to integrate the existing reporting norms and set out a procedure for filing a single master form.



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