

FEMA Act (with background of FERA)

Introduction

Foreign Exchange

“Foreign exchange is the system or process of converting one national currency into another, and of transferring money from one country to another.”

Foreign currency

Foreign currency means any currency other than Indian currency.

Foreign security

Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrumental denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividends is payable in Indian currency.

Inception of Law

The 1973 law was created during the tenure of Prime Minister Indira Gandhi with the goal of conserving India's foreign exchange resources. The country was facing a trade deficit, which was followed by a devaluation of the currency and an increase in the price of imported oil. The act specified which foreign exchange transactions were permitted, including those between Indian residents and non-residents

Introduction to FERA (Foreign Exchange Regulation Act)

The FERA (Foreign Exchange Regulation Act) deals with laws which relate to foreign exchange in India. The laws were made to manage foreign investments in India. The FERA has its origin at the time of Indian Independence. In the beginning, it was a temporary arrangement to control the flow of foreign exchange. In 1957 the act was made permanent. As the industrialization grew in India, there was an increase in the foreign exchange investments. As a result, there arose a need to protect it.

Accordingly, in 1973 the Foreign Exchange Regulation Act was amended. FERA consists of 81 complex sections. Under FERA, any offence was a criminal one which included imprisonment as per code of criminal procedure, 1973.

Objectives of FERA

- To prevent the outflow of Indian currency
- To regulate dealings in foreign exchange and securities
- To regulate the transaction indirectly affecting foreign exchange
- To regulate import and export of currency and bullion
- To regulate employment of foreign nationals
- To regulate foreign companies
- To regulate acquisition, holding etc of immovable property in India by non-residents
- To regulate certain payments .
- To regulate dealings in foreign exchange and securities.
- To regulate the transactions indirectly affecting foreign exchange.

Provisions of FERA

- Regulation of dealing in foreign exchange.
- Restrictions on payments.
- Restrictions regarding assets held by non-residents and import & export of certain currency & bullion.
- Duty on persons entitled to receive foreign exchange and payment for exported goods.
- Restriction on appointment of certain persons and companies as agents or technical or management advisers in India
- Restriction on establishment of place of business in India
- Prior permission of Reserve Bank required for taking up employment in India by nationals of foreign state
- Restrictions on immovable property

Amendment in the Act

Government proposed to introduce comprehensive amendments in FERA due to changes in economic policy, especially liberalization of industrial sector and most to open up the economy through changes in trade policy and encouragement of foreign investment. As a result, the required changes were announced in budget speech of 1992-1993. The changes so introduced by issue of notification by RBI or Central Government.

Transition from FERA to FEMA

- The main objective of FERA framed against the background of severe foreign exchange problem and controlled economic regime, was conservation and proper utilisation of the foreign exchange resources of the country.
- FERA created flourishing black market in foreign exchange. It brought into the economic lexicon the word “HAWALA”.
- There was a demand for a substantial modification of FERA in the light of ongoing Economic liberalization and improving foreign exchange reserves position. Accordingly, a new act, FEMA (Foreign Exchange Management Act) 1999 replaced the FERA.

FEMA Replaced FERA

The older version had very strict laws (for example, a person was assumed guilty unless proven otherwise.) All the unnecessary restrictions were removed. The rules regarding foreign investments were simplified to encourage more foreign investment in India and consequently ensure better foreign cash flow. However, FERA was not in accordance with the pro-liberalization policies of the Indian Government. Finally, in 1999 the FEMA was passed which replaced the FERA, though certain provisions of FERA 1973 still exist under FEMA 1999.

Objective of the FEMA

- To facilitate the external trade and payment
- To promote of an orderly maintenance of the foreign exchange market In India.
- Regulation of foreign capital in India.
- To remove imbalance of payment.
- To make strong and developed foreign exchange market.
- Regulation of employment business and investment of non-residents .
- To regulate foreign payments.
- The new law is more transparent in its application. it has laid down the areas where special permission of the reserve bank/government of India is required.

Salient Features of the Act

- Full freedom to a person resident in India to hold or transfer any foreign securities or immovable property situated outside India.
- A person resident outside India is also permitted to hold shares, securities and property acquired by him while he was resident in India.
- The EEFC account holders and RFC account holders are permitted to freely use the funds held in EEFC\RFC accounts for payment of all permissible current account transactions .
- The limit for permitting overdraft against NRI accounts balance has been raised from 20,000 to 50,000.

Similarities between FERA and FEMA

- The RBI and central government would continue to be the regulatory bodies.
- Presumption of extra territorial jurisdiction as envisaged in section (1) of FERA has been retained.
- The Directorate of Enforcement continues to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

Difference between FEMA and FERA

BASIS FOR COMPARISON	FERA	FEMA
Meaning	An act promulgated, to regulate payments and foreign exchange in India, is FERA.	FEMA an act initiated to facilitate external trade and payments and to promote orderly management of the forex market in the country.
Enactment	Old	New
Number of sections	81	49
Introduced when	Foreign exchange reserves were low.	Foreign exchange position was satisfactory.
Approach towards forex transactions	Rigid	Flexible
Basis for determining residential status	Citizenship	More than 6 months stay in India
Violation	Criminal offence	Civil offence
Punishment for contravention	Imprisonment	Fine or imprisonment (if fine not paid in the stipulated time)

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