



COURSE MANUAL

Name of the Elective Course:

Foreign Exchange Management and Regulation in India: FEMA & FERA

Course Code:

Name of the responsible Faculty Instructor:

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**FALL 2026
(AY2026-27)**

This document is prepared by the course instructor and contains basic information relevant to the execution of the course. It is the official record for all intends and purposes as far the elective course, '**Foreign Exchange Management and Regulation in India: FEMA & FERA**' is concerned.

This course manual can be used as a general guide to the subject. However, the instructor can modify, extend or supplement the course (without tampering its basic framework and objectives) for the effective and efficient delivery of the course. The instructor will provide students with reasons for such changes.

Part I

Course Title: **Foreign Exchange Management and Regulation in India: FEMA & FERA**

Course Code:

Course Duration: **One Semester (14 Weeks)**

No. of Credit Units: **4 Credits**

Level: **Both**

Medium of Instruction: **English**

Pre-requisites (if applicable): **Understanding of company law, basics of economics, corporate laws.**

Equivalent Courses: N/A

Part II

1. Acknowledgement of Course Ideators

This course would not be ideated if not for my esteemed colleagues at the School of Banking and Finance, my law firm partners who taught me the nuances of this field in practice, Prof Dr.Dipika Jain for allowing me to teach this course.

2. Course Description

This elective course provides a comprehensive understanding of the legal and regulatory framework governing foreign exchange transactions in India. The course curriculum follows the development of foreign exchange law from the Foreign Exchange Regulation Act (FERA), 1973 to the Foreign Exchange Management Act (FEMA), 1999. The history and trajectory of foreign exchange regulations and the reasoning for these changes shall be traced in the course. It will start with an introduction to the historical and economic background of foreign exchange regulation in India, navigating the change from a control-based economy to a liberalized foreign exchange system. It will also cover the main objectives, and important provisions of FERA, emphasizing on its regulatory and eventual removal. The course will also cover FEMA, which highlights the shift in India's foreign exchange policy. The objective of FEMA towards external trade as well as maintenance of the foreign exchange market is covered. It is also essential to cover the roles and responsibilities of Reserve Bank of India (RBI), the Directorate of Enforcement, SEBI and the Ministry of Finance, which teaches students about the authority controlling the foreign exchange market. It also teaches key concepts Foreign Direct Investment (FDI), External Commercial Borrowings (ECB), and Overseas Direct Investments (ODI).The course is also devoted to the practical aspects of compliance and a hands-on approach towards statutory requirements, penalties and adjudication provisions. This includes due diligence in cross border transactions. The concept of structuring a transaction around the sectoral caps under FDI shall be taught especially for mergers or even foreign collaborations. The regulations around FEMA regarding currency, import export, mergers, debt and non-debt instruments, reporting regulations, remittance, shall be covered and discussed.

It covers a variety of case studies and judicial decisions that explain the application of FEMA and FERA provisions in real-life scenarios, such as major enforcement actions by the Directorate of Enforcement and other landmark judgements that shape foreign policy. Therefore, this course studies the complete mechanism of

foreign exchange reserves in India and the evolution of governance towards foreign policy.

3. Course Aims

This course aims to teach students about foreign exchange policy and provide insight into management by RBI. It teaches about financial fraud, regulation and control of foreign exchange and maintain forex reserves. Capital and current account transactions are taught along with foreign investments and capital.

4. Teaching Methodology

The course will be taught across the semester using slides as a teaching aid and not as a source of study materials. Bare acts and handouts will be provided along with readings. The methodology shall be a combination of the Socratic method placing emphasis on interaction between students, pre readings for class as well as lectures.

5. Intended Learning Outcomes

Course Intended Learning Outcomes	Weightage in %	Teaching and Learning Activities	Assessment Tasks/Activities
The objective of is learn about foreign exchange transactions in India.	25%	Learning through audio visual mediums, readings, bare acts and landmark judgements/precedents	Research paper- 25 marks
Role of governance and administration towards forex transactions	25%		Midterm- 20 marks
Learn how the legal system for forex works in India with important case laws.	25%		Simulation exercise- 20 marks
Appreciating and understanding the different laws towards foreign policy shaping in India	25%		Class participation- 5 marks

6. Grading of Student Achievement

To pass this course, students shall obtain a minimum of 40% in the cumulative aspects of coursework, i.e., internal assessments (including moot court, mid-term exam, presentations, research paper) and the end term examination. Internal assessments shall carry a total of 70 marks. **End of semester exam shall carry 30 marks out of**

which students have to obtain a minimum of 30% marks to fulfil the requirement of passing the course.

The details of the grades as well as the criteria for awarding such grades are provided below:

PERCENTAGE OF MARKS	GRADE	GRADE VALUE	GRADE DESCRIPTION
80 and above	O	8	Outstanding – Exceptional knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and extraordinary critical and analytical ability
75 – 79	A+	7.5	Excellent - Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize ideas, rules and principles and critical and analytical ability
70 – 74	A	7	Very Good - Sound knowledge of the subject matter, excellent organizational capacity, ability to synthesize ideas, rules and principles, critically analyze existing materials and originality in thinking and presentation
65 – 69	A-	6	Good - Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills
60 – 64	B+	5	Fair – Average understanding of the subject matter, limited ability to identify issues and provide solutions to problems and reasonable critical and analytical skills
55 – 59	B	4	Acceptable - Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
50 – 54	B-	3	Marginal - Limited knowledge of the subject matter and irrelevant use of

PERCENTAGE OF MARKS	GRADE	GRADE VALUE	GRADE DESCRIPTION
			materials and, poor critical and analytical skills
45 – 49	P1	2	Pass 1 – Pass with basic understanding of the subject matter
40 – 44	P2	1	Pass 2 – Pass with rudimentary understanding of the subject matter
Below 40	F	0	Fail - Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course
Incomplete	I	0	Incomplete - “Extenuating circumstances” preventing the student from taking the end-semester, or re-sit, examination as the case may be; the Vice Dean (Examinations) at their discretion assign the “I” grade. If an "I" grade is assigned, the student would appear for the end-semester, or re-sit examination, as the case may be, as and when the subsequent opportunity is provided by the University.

7. Criteria for Student Assessments

Assessment of the participants will be based on the following criteria.

Assessment	Weightage	Remarks
Research paper	25 marks	Students are assessed on creativity, originality, cohesive arguments, analysis and structure. Proper format, flow of ideas with evidence. Uniform citation and non-AI based writing.
Simulation exercise	20 marks	Teaching students how real-world scenarios work and test their analytical skills and presence of mind.

Assessment	Weightage	Remarks
MID TERM	20 marks	Decision taken on date of exam after consultation with students.
Class participation	5 marks	Assessed throughout the semester on attendance, readings, overall demeanor, participation, conduct and activeness in class.
End Semester Examination	30 marks	In class open book examination. There will be a compulsory end-semester examination/component for all participants of the course who have successfully met the requisite attendance as per the governing JGU policies.

Part III

Course/Class Policies

Cell Phones, Laptops and Similar Gadgets

Students are not allowed to use their cell phones in class. Laptops are not necessary since most teachings will be lecture or discussion based. **Recording lectures is not allowed.** Students are expected to take notes and participate in class thoroughly. We understand that note taking can be done better on gadgets but that may distract from the class.

Academic Integrity and Plagiarism

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All form of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

Disability Support and Accommodation Requirements

JGU endeavours to make all its courses inclusive and accessible to students with different abilities. In accordance with the Rights of Persons with Disabilities Act (2016), the JGU Disability Support Committee (DSC) has identified conditions that could hinder a student's overall well-being. These include physical and mobility related difficulties, visual and hearing impairment, mental health conditions and intellectual/learning difficulties e.g., dyslexia, dyscalculia. Students with any known disability needing academic and other support are required to register with the Disability Support Committee (DSC) by following the procedure specified at <https://jgu.edu.in/disability-support-committee/>

Students who need support may register before the deadline for registration ends, as communicated by the DSC via email each semester. Those students who wish to continue receiving support from the previous semester, must re-register every semester prior to the deadline for re-registration as communicated by the DSC via email. Last minute registrations and support are discouraged and might not be possible as sufficient time is required to make the arrangements for support.

The DSC maintains strict confidentiality about the identity of the student and the nature of their disability and the same is requested from faculty members and staff as well. The DSC takes a strong stance against in-class and out-of-class references made about a student's disability without their consent and disrespectful comments referring to a student's disability. With due respect for confidentiality, faculty and students are encouraged to have honest conversations about the needs of students with disabilities and to discuss how a course may be better tailored to cater to a student with disability.

All general queries are to be addressed to disabilitysupportcommittee@jgu.edu.in

Safe Space Pledge

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.

Keywords Syllabus

Indian foreign exchange law, Exchange control, Capital account transactions, Current account transactions, BI regulations, Directorate of Enforcement (ED), Repatriation of foreign exchange, Liberalized Remittance Scheme (LRS), Foreign Direct Investment (FDI), Overseas Direct Investment (ODI), External Commercial Borrowings (ECB), Non-Resident Indian (NRI) investment.

Course Design and Overview (Weekly Plan)

Week	Topic and Description
(1-2)	Module 1: Introduction to Foreign Exchange Laws: <ul style="list-style-type: none">• Evolution of foreign exchange controls in India• Objectives of foreign exchange laws• Overview of capital and current account transactions• Difference between exchange control and exchange management• Comparison with international standards (e.g., OECD guidelines) and comparison between US, UK and India.• Balance of payment concept, supply demand and the foreign exchange rate calculation.
(week 3)	Module 2: FERA – Foreign Exchange Regulation Act, 1973 <ul style="list-style-type: none">• Historical context and economic environment• Objectives and scope of FERA• Key provisions: restrictions, penalties, enforcement• Criticisms of FERA: control-oriented approach• Important case laws under FERA• Why FERA was repealed
(4-5)	Module 3: FEMA – Foreign Exchange Management Act, 1999 <ul style="list-style-type: none">• Rationale for replacing FERA with FEMA• Structure and salient features of FEMA• Liberalization and facilitation focus• Key definitions under FEMA: person resident in India, capital account transaction, etc.• Master directions of RBI.
(5-10)	Module 4: Regulatory Authorities and Their Roles under FEMA

- Role of RBI as the primary regulator
- Role of Directorate of Enforcement (ED)
- Role of SEBI
- Ministry of Finance
- Administrative mechanism under FEMA

Module 5: Capital and Current Account Transactions under FEMA

- Rules governing current account transactions (Rule 5 of FEMA)
- Capital account transactions: inbound and outbound investments
- ECB (External Commercial Borrowing) Guidelines
- Currency regulations
- Guarantees obligations
- Borrowing lending of foreign exchange
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Module 6: Foreign Exchange Transactions

- Import and export of goods and services
- Remittance and repatriation
- Indian investments abroad and foreign investments in India
- NRI,PIO and foreign investment under FEMA,
- NRO, NRE accounts
- Foreign Direct Investment (FDI) policy and FEMA compliance
- Direct equity in Companies, LLP,FII,FPI, Downstream Investments,
- FCRA
- Structuring under FDI sectoral caps- how to structure a transaction with foreign companies/ foreign investors under FDI and FPI under FEMA and M&A
- Reporting Regulations 2019, Reporting requirements (FC-GPR, FLA, ECB returns)

(10-12)	<p>Module 7: Adjudication, Penalties and Appeals</p> <ul style="list-style-type: none"> • Enforcement mechanism under FEMA- civil and criminal • PMLA and FEMA • Power of compounding of offences • Appeal mechanisms: Appellate Tribunal and High Courts <hr/> <p>Module 8: Case Studies and Judicial Pronouncements</p> <ul style="list-style-type: none"> • Enforcement Directorate investigations • FEMA in corporate compliance and business transactions
(12-13)	<p>Module 9: Practical Aspects & Compliance</p> <ul style="list-style-type: none"> • FEMA compliance in M&A, FDI, ODI • Due diligence for foreign transactions • Drafting FEMA compliant agreements, formats and checklist
(13-14)	Revision of the course and practice tests and scenarios.
1.	<p style="text-align: center;">REVISION WEEK</p> <p>[NOTE: There shall be teaching classes scheduled during the fourteenth week subject to the JGU Academic Calendar circulated by the Office of the Registrar, JGU and any official declaration of non-working days by the JGU Registrar.]</p>

Part V Relevant Readings / Essential Readings

(Week 1-2):

- *FERA, FEMA, The Companies Act, and Their Impact on the Indian Business Environment, Jus Corpus Law Journal(2020–21)*
- *Foreign Exchange Legislation Transformation and Enterprise Demography in India, Journal of Law & Economics (2007)*
- **Shyamala Gopinath**, *Foreign Exchange Regulatory Regimes in India: From Control to Management*, RBI Bulletin (2005)

(Week 3):

Foreign exchange regulation Act 1973

(Week 4-5):

- . Foreign Exchange Management Act, 1999
- Explanation of how FEMA works and the salient features
- **Director of Enforcement v. MCTM Corporation Pvt. Ltd. (1996) 2 SCC 471**
- **R.K. Dalmia v. Delhi Administration (1962) SCR Supl. (3) 253**
- **V. C. Shukla v. CBI (1980) SCR (2) 380**
- **Mardia Chemicals Ltd. v. Union of India (2004) 4 SCC 311**
- **Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530**
- **Ravi Shankar Sharma v. Directorate of Enforcement (Delhi HC, 2008)**
- **NDTV v. Directorate of Enforcement (Delhi HC, 2017)**
- **Adani Enterprises Ltd. v. Directorate of Enforcement (2023, Gujarat HC)**
- Munmi Saikia, Saundarjya Borbora, Foreign direct investment of India: an analysis based on 'dynamic or developmental approach', *Transnational Corporations Review*, Volume 10, Issue 1, 2018, Pages 69-85, ISSN 1925-2099

(Week 5-10):

- RBI, ED, SEBI AND FEMA- PROVISIONS AND SECTIONS, AS WELL AS CIRCULARS AND POLICIES
- FEMA 1999 (Bare Act)
- M.C. Mehanathan – *Law of Foreign Exchange*
- LexisNexis or EBC Commentaries on FEMA
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(Week 10-12):

- M.C. Mehanathan – *Law of Foreign Exchange*
- LexisNexis or EBC Commentaries on FEMA
- RBI Circulars and Notifications

(Week 12-13):

- RBI Master Directions on FEMA

(Week 13-14):

- CASE MATERIALS, CASE STUDIES AND CLASS INTERACTIONS