

INTRODUCTION TO INDIAN FOREIGN EXCHANGE LAWS

Responsible Faculty Instructor:

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Designation: Assistant Professor of Legal Practice

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: Company Law I, Company Law II, Company Law (for LLB), Contract Law I, Contract Law II

COURSE DESCRIPTION (COURSE VISION):

The course is intended to introduce the concepts related to foreign exchange laws in India and their impact on businesses. India is the recipient of record foreign investments in the last few years (only behind the US and China), increasing foreign investments are being made by Indians in companies abroad, and record-breaking import and export of goods and services.

These investments by and in businesses have increased the demand for legal counsel who understand foreign exchange compliance and can advise clients on different structuring options, such that parties comply with regulatory restrictions but also maximise value for the investors and the company alike.

The Indian FDI and ODI regimes are the cornerstone of India's participation in cross-border transactions. While the laws are derived from the principal act, Foreign Exchange Management Act, 1999, there are a plethora of rules, regulations, directions, circulars, Master Directions, Master Circulars, notifications, policies, etc., issued by the RBI, Department of Economic Affairs (Ministry of Finance) and the Department for Promotion of Industrial Policy and Promotion (Ministry of Commerce and Industry). Understanding the myriad provisions can be cumbersome and challenging, especially due to their fast-paced amendments.

The course intends to introduce the concepts related to foreign exchange, compare it to the erstwhile regime under FERA, 1973, and the manner in which these laws are required to be read along with the Companies Act, 2013 and the extant regulations issued by the RBI. The course will also introduce real-life case studies and the application of these laws in a transaction. The course is based on the practice experience of the course instructor, who has worked on multiple (inbound and outbound) transactions over the years, covering not only direct investments, but also import and export laws for both goods and services.

TEACHING METHODOLOGY:

The course will be taught primarily through the FEMA Manual, which comprises the most comprehensive consolidation of laws, regulations, rules and notifications relevant and pertaining to the subject. A combination of the lecture method, faculty-led discussions and the Socratic method may be employed. Case studies of actual foreign exchange deals will be relied upon and may include cases that the course instructor has also undertaken in her professional experience.

INTENDED LEARNING OUTCOMES:

Course Learning Outcomes	Intended Weightage in %	Teaching and Learning Activities	Assessment Tasks/ Activities
Core principles and concepts underlying foreign exchange laws	30%	Lectures, problem-solving, case studies	The internal components will include a mid-term examination, and an opinion that students will have to draft, offering the client possible legal options to structure deals.
Identifying, reading and interpreting the various components of foreign exchange laws to derive the correct legal position.	40%		
Applying the identified laws to commercial propositions – assisting in identifying legal issues and highlighting possible solutions	30%		

READING LIST (upto 10 select readings):

Unfortunately, there is no specific book or reading resource which can be used for understanding foreign exchange laws in India. There is also no credible commentary on FEMA in India. The main sources for the purposes of this subject would be the extant laws, newspaper articles, comments on legal websites and other documents which will be shared with the class from time to time. This can also include deal disclosures and discussions on past deals, such as those published by Nishith Desai Associates from time to time. The course is reliant upon practical experiences, and guest lectures may also be scheduled to discuss how deals are structured for cross-border deals.

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
MODULE 1	Weeks 1 and 2
Introduction to Foreign Exchange Management Act, 1999 Important definitions under FEMA Differences between FEMA, 1999 and FERA 1973 Master Directions and Master Circulars Introduction to the FDI Policy 2020	

<ul style="list-style-type: none"> • <i>Director of Enforcement v. MCTM Corporation Pvt. Ltd.</i> (1996) 2 SCC 471 • <i>LIC v. Escorts</i> (1986) 1 SCC 264 	
<p style="text-align: center;">MODULE 2</p> <p>Capital Accounts Transactions Regulations, 2000 Current Account Transactions Rules, 2000; and Master Directions - Liberalised Remittance Scheme, 2016</p>	Week 3
<p style="text-align: center;">MODULE 3</p> <p>Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 Types of inbound foreign investments – FDI, FPI, NRI, OCI, FVCI Pricing guidelines and other restrictions for foreign inbound investments Press Notes issued by DPIIT</p> <ul style="list-style-type: none"> • Tata-Docomo Case Study 	Week 4
<p style="text-align: center;">MODULE 4</p> <p>Restricted route, government route, and approval route for foreign inbound investments under the FDI Policy 2020 and the FEM (Non-Debt) Instrument Rules, 2019 Downstream investments for foreign inbound investments</p> <ul style="list-style-type: none"> • HDFC-Max Life Merger Case Study • Walmart’s investment in Flipkart Case Study • Notice by the Enforcement Directorate against Myntra Case Study 	Weeks 5 and 6
<p style="text-align: center;">MODULE 5</p> <p>Master Directions – Establishment of Branch Office / Liaison Office/ Project Office or any other place of business in India by foreign entities, 2016 Reporting requirements for foreign inbound investments under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019</p>	Week 7
<p style="text-align: center;">MODULE 6</p> <p>Overseas Direct Investment per the Foreign Exchange Management (Overseas Investment) Rules, 2022; Foreign Exchange Management (Overseas Investment) Regulations, 2022; and Master Direction – Overseas Investment, 2024 Pricing guidelines for other restrictions on foreign outbound investments Joint ventures and subsidiaries outside India <u>Binani Industries Limited</u></p>	Weeks 8 and 9

MODULE 7	Week 10
Master Directions - External Commercial Borrowings, Trade Credits and Structured Obligations, 2019 Foreign Exchange Management (Guarantees) Regulations, 2026	
MODULE 8	Weeks 11 and 12
Master Directions – Import of Goods and Services, 2016 Master Directions – Export of Goods and Services, 2016	
MODULE 9	Weeks 13 and 14
Penalties under the Foreign Exchange Management Act, 1999 Master Directions – Compounding of Contraventions under FEMA, 1999, 2025	
<ul style="list-style-type: none"> • <u>Dinesh Kumar Garg</u> • <i>Standard Chartered Bank v. Directorate of Enforcement</i> (2005) 4 SCC 530 • <i>New Delhi Television Limited v. RBI</i> WP 2026/2017 	
REVISION WEEK	Week 15