

Foreign Exchange Management and Regulation in India: FEMA & FERA

Elective proposal

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Course Duration: One Semester (14 Weeks)

No. of Credit Units: 4 Credits

Level: UG and PG (common elective)

Medium of Instruction: English

Pre-requisites (if applicable): Basic understanding of company law and banking laws

Course Description

This elective course provides a comprehensive understanding of the legal and regulatory framework governing foreign exchange transactions in India. This follows the development of legal provisions from Foreign Exchange Regulation Act (FERA), 1973 to the Foreign Exchange Management Act (FEMA), 1999. The history of foreign exchange regulations and the object behind these provisions shall be covered in this 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.

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. The Prevention of Money Laundering Act, 2002 will also be covered to bridge a relationship between FEMA FERA laws and financial frauds. This course also covers fintech and cryptocurrency regulations relating to cross border transactions towards India's foreign policy mechanism. Therefore, this course studies the complete mechanism of foreign exchange reserves in India and the evolution of governance towards foreign policy.

Teaching Methodology

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

Learning Outcomes

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 safeguarding of forex reserves. The course will also help students appreciate the evolution of foreign exchange regulation to management and how the economy shaped the legislation for foreign exchange movement within India and abroad. Capital and current account transactions are taught along with foreign investments and capital.

(Weekly Plan)

Week	Topic and Description	Reading/Course Materials
(1-2)	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. 	<p><i>FERA, FEMA, The Companies Act, and Their Impact on the Indian Business Environment, Jus Corpus Law Journal</i>(2020–21)</p> <p><i>Foreign Exchange Legislation Transformation and Enterprise Demography in India, Journal of Law & Economics</i> (2007)</p> <p>Shyamala Gopinath, Foreign Exchange Regulatory Regime India: From Control to Management, RBI Bulletin (2005)</p>
(3-4)	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 	Foreign exchange regulation Act 1973
(5-7)	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 	Foreign Exchange Management Act, 1999

Commented [AA1]: Difference between exchange control and exchange management

Commented [AA2]: Or maybe a comparative on legislation in other countries, briefly

	<ul style="list-style-type: none"> Key definitions under FEMA: person resident in India, capital account transaction, etc. 	
(7-9)	<p>Regulatory Authorities and Their Roles</p> <ul style="list-style-type: none"> Role of RBI as the primary regulator Role of Directorate of Enforcement (ED) Role of SEBI, Ministry of Finance Administrative mechanism under FEMA <p>Capital and Current Account Transactions under FEMA</p> <ul style="list-style-type: none"> Rules governing current account transactions (Rule 5 of FEMA) Capital account transactions: inbound and outbound investments ECB (External Commercial Borrowing) Guidelines Foreign Direct Investment (FDI) policy and FEMA compliance Direct equity in Companies, LLP, FII, FPI, Downstream Investments, FCRA 	<p>RBI, ED, SEBI AND FEMA- PROVISIONS AND SECTIONS, AS WELL AS CIRCULARS AND POLICIES</p> <ul style="list-style-type: none"> FEMA 1999 (Bare Act) M.C. Mehanathan – <i>Law of Foreign Exchange</i> LexisNexis or EBC Commentaries on FEMA
	<p>Foreign Exchange Transactions</p> <ul style="list-style-type: none"> 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 	

Commented [AA3]: Authorised Dealers with Categories

Commented [AA4]: Please include a preliminary discussion on basics on FDI, Direct Equity in Company and LLP, FII, FPI, Downstream Investments, FCRA etc.

Commented [AA5]: It might be interesting to start with NRI's, PIO's and foreign nationals under FEMA and types of accounts (NRO, NRE) for better clarity

(9-12)	Adjudication, Penalties and Appeals <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 	<ul style="list-style-type: none"> M.C. Mehanathan – <i>Law of Foreign Exchange</i> LexisNexis or EBC Commentaries on FEMA RBI Circulars and Notifications
	Case Studies and Judicial Pronouncements <ul style="list-style-type: none"> Notable FEMA and FERA judgments Enforcement Directorate investigations FEMA in corporate compliance and business transactions 	
(12-13)	Practical Aspects & Compliance <ul style="list-style-type: none"> FEMA compliance in M&A, FDI, ODI Due diligence for foreign transactions Reporting requirements (FC-GPR, FLA, ECB returns) Role of legal professionals in compliance Drafting FEMA compliant agreements, formats and checklist 	<ul style="list-style-type: none"> RBI Master Directions on FEMA
(13-14)	Case simulations across course material and class participation.	CASE MATERIALS, CASE STUDIES AND CLASS INTERACTIONS

Commented [AA6]: Discussion around nature of offences (civil v. criminal)

Commented [AA7]: If you'd like to include interface of FEMA with PMLA

Commented [AA8]: Insights on drafting FEMA compliant agreements, reporting formats, compliance checklists etc.

Essential readings

- FEMA 1999 (Bare Act)
- FERA Act 1973(bare act)
- RBI Master Directions on FEMA
- M.C. Mehanathan – *Law of Foreign Exchange*
- LexisNexis or EBC Commentaries on FEMA
- RBI Circulars and Notifications
- 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, Saundaryja 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