**Manan Madan 2018UIC3087 ICE-2**

**Foreign Exchange Management Act – FEMA**

The Central Government of India formulated an act to encourage external payments and across the border trades in India known as the Foreign Exchange Management Act. FEMA (Foreign Exchange Management Act) was introduced in the year 1999 to replace an earlier act FERA (Foreign Exchange Regulation Act). FEMA was formulated to fill all the loopholes and drawback of FERA (Foreign Exchange Regulation Act) and hence several economic reforms (major reforms) were introduced under the FEMA act. FEMA was basically introduced to de-regularize and have a liberal economy in India.

## **1.Objectives of FEMA**

The main objective for which FEMA was introduced in Indian was to facilitate external trade and payments. In addition to this, FEMA was also formulated to assist orderly development and maintenance of the Indian forex market. FEMA outlines the formalities and procedures for the dealings of all foreign exchange transactions in India. These foreign exchange transactions have been classified into two categories — Capital Account Transactions and Current Account Transactions.

Under the FEMA Act, the balance of payment is the record of dealings between the citizen of different countries in goods, services and assets. It is mainly divided into two categories, i.e. Capital Account and Current Account. Capital Account comprises all capital transactions whereas Current Account comprises trade of merchandise.  
Current Account transactions are those transactions which involve inflow and outflow of money to and from the country/countries during a year, due to the trading/rendering of commodity, service, and income. The current account is an indicator of an economy’s status.

As mentioned above the balance of payment comprises current and capital accounts, the remainder of the Balance of Payment is Capital Account, which consists the movement of capital in the economy due to capital receipts and expenditure. Capital account recognises domestic investment in foreign assets and foreign investment in domestic.

## **2.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). The head office of FEMA is situated at New Delhi and known as Enforcement Directorate.  
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) and the 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-  
(i) Transactions prohibited by FEMA,  
(ii) The transaction requires Central Government’s permission,  
(iii) The transaction requires RBI’s permission.

## **3.Prohibition on Drawal of Foreign Exchange**

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

## **4.Route for Drawl of Foreign Exchange**

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

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| **S.No.** | **Particulars** | **Limitations** |
| 1. | Visiting privarely 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 preceeding 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 |
| 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 |
| 9 | For Medical treatment | 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 |
| 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 |
| 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 (form A2) |

Transactions for which Central Government prior approval is required for Drawl of foreign exchange

* Cultural tours.
* 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.
* Payment of importation by a Public Sector Unit or a department of government on c.i.f. basis only for importation through ocean transport.
* Remittance of freight of vessels chartered.
* Remittance of detention charges of container exceeding the DGS’s (Director General of Shipping) prescribed rate.
* 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.
* Remittance of hiring charges of transponders:
* Internet Service Providers
* TV channels
* Remittance for P&I Club ministry’s membership.
* Remittance by Multi-model transport operators to their agents in abroad

### [**Securities Contracts (Regulation) Act, 1956**](https://indiacode.nic.in/bitstream/123456789/1644/3/A1956-42.pdf)

**Statement of Objects and Reasons.**-The object of this Bill is to provide for the regulation of stock exchanges and of transactions in securities dealt in on them with a view to preventing undesirable speculation in them. The Bill also seeks to regulate the buying and selling of securities outside the limits of stock exchanges, through the licensing of security dealers.

2. The post-war boom in the stock exchanges between 1945 and 1946 and its aftermath emphasised the urgency of stock exchange reform on an all-India basis. Accordingly, the Government of India asked the then Economic Adviser to the Ministry of Finance to undertake a comprehensive study on the subject in 1948. Later in the year, an official committee consisting of representatives of the Ministries of Finance and Law, the Reserve Bank of India and the Government of Bombay was appointed to consider the recommendations contained in this report and to submit detailed proposals for legislation. The report of this Committee indicated the broad lines on which such legislation should be framed, while another Informal Committee went into the details of these proposals and prepared a draft Bill for consideration of Government. As the representatives of the business community and stock exchanges were not associated with either the official Committee or the Informal Committee the Government of India considered it necessary, at this stage, to appoint another Committee with a predominantly non-official membership, under the Chairmanship of Shri A.D. Gorwala. The terms of reference of this Committee were-

(i) to consider the draft proposals of Government on the subject of stock exchange regulation;

(ii) to submit a revised draft Bill; and

(iii) to make any other recommendations on the subject.

This Committee submitted its report in August, 1951 and enclosed with it a revised draft Bill. The report and the draft Bill prepared by this Committee were circulated to all principal stock exchanges in this country, chambers of commerce and other interested associations and individuals. The comments from all these bodies and individuals were received in course of 1952 and were afterwards studied and analysed in this Department. The present Bill is based on the results of this study and analysis.

3. The Bill, as now drafted, broadly follows the recommendations contained in the report of the Gorwala Committee. The scheme of regulation contemplated in the Bill provides for (a) the prior recognition of the stock exchanges, subject to the fulfilment by them of certain conditions relating to. their membership and their rules and bye-laws (Clauses 3, 4 and 5): and (b) a general control over their trading methods and practices, to be exercised through the powers proposed to be conferred on the Central Government to approve of their rules, regulations, and bye-laws and to make or amend them (Clauses 8, 9 and 10). Powers are taken in clauses 11 and 12 to deal with abnormal situations or emergencies, which may gravely affect the working of the stock exchanges and call for urgent and drastic action by the Central Government.

The Central Government are also empowered to call for such information as they may require in respect of the affairs of a stock exchange or of any of its members and also to direct investigations to be made into the affairs of a stock exchange, if they consider that it is in the interest of trade or in the public interest to do so (clause 6).

Clauses 13 and 14 of the Bill impose certain restrictions on transactions in securities carried on in or outside the recognised stock exchanges, while clause 19 specifically prohibits dealing in options in securities. Power is also taken in clause 17 to prohibit transactions in specified securities, after consultation with the exchanges concerned, in order to prevent undesirable speculation in them.

In order to regulate the buying and selling of securities outside the recognised stock exchanges, the Bill provides for the licensing of all dealers in securities who are not members of a recognised stock exchange or are otherwise exempted from the licensing requirements (clause 18). The provisions of the Bill on this subject broadly follow the pattern of control underlying the Prevention of Fraud (Investments) Act in the U.K. which was passed in 1939, and are intended to protect small and ill-informed investors against unscrupulous share brokers and dealers.

**Amendment Act 32 of 1999-Statement of Objects and Reasons.**-The Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996 govern the operations of the capital market. The objectives of these Acts are to prevent undesirable transactions in securities by regulating the business of dealing therein, to provide for the establishment of the Securities and Exchange Board of India to protect the interests of investors in securities and to promote the development of, and to regulate, the securities markets and to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

2. The Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 were amended by the Securities Laws (Amendment) Act, 1995, which, inter alia, made provisions in the Securities and Exchange Board of India Act, 1992 for appointment of adjudicating officer for imposition of penalties and for establishment of the Securities Appellate Tribunal to hear appeals against the orders or decisions of such adjudicating officers.

3. The Central Government has been conferred powers to hear appeals in respect of all matters (except hearing of appeals against the orders of adjudicating officer under the Securities and Exchange Board of India Act, 1992) under the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996. In addition to appellate powers, the Central Government, inter alia, has been conferred powers to issue directions and to make rules under these Acts. The Central Government is also represented on the management of the Securities and Exchange Board of India as well as stock exchanges.

4. The powers of the Central Government to issue directions and to make rules and to appoint members of the Securities and exchange Board of India as well as on governing body of the stock exchangers are being perceived as compromising its appellate powers. It is, therefore, proposed to transfer the aforesaid appellate functions of the Central Government under all three Acts from the Central Government to the Securities Appellate Tribunal.

**Amendment Act 1 of 2005-Statement of Objects and Reasons.**-Although the Securities Contracts (Regulation) Act, 1956 aims to prevent undesirable transactions in securities by regulating the business of dealing therein, the existing mutual organisational structure of stock exchanges (except two exchanges) failed to address the conflict of interests on stock exchanges. The Joint Parliamentary Committee on the stock market scam and matters relating thereto recommended that the process of corporatisation and dernutualisation of exchanges should be expedited and underlined the necessity for early implementation of corporatisation and demutualisation of stock exchanges.

2. The Central Government, in its Action Taken Report laid before both Houses of the Parliament, assured that necessary legislative amendments to give effect to the aforesaid recommendation will be made. In view of this, it is proposed to make amendments in the Securities Contracts (Regulation) Act, 1956 for structural transformation of stock exchanges from mutual organisational form to a demutualised form.

3. Since demutualisation separates ownership, voting rights and management from the right of access to trading, it is imperative that the representation of brokers in board of directors of stock exchanges is either not permitted at all or kept to a minimum.

4. In order to expedite corporatisation and demutualisation of exchanges, the Securities Laws (Amendment) Act, 2003 was introduced in the Lok Sabha on the 18th August, 2003 to amend the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996, inter alia, which provided for the following matters, namely:-

(a) defining the corporatisation and demutualisation;

(b) limiting the organisational form of a stock exchange to a corporate entity;

(c) specifying the procedure for corporatisation and demutualisation (including approval of scheme for corporatisation and demutualisation by the Securities and Exchange Board of India);

(d) specifying the time limit within which the shares shall be disinvested by stock brokers under the scheme of corporatisation and demutualisation;

(e) restricting the voting rights of brokers as shareholders, and brokers' participation on governing boards of stock exchanges so as to plug the loopholes inherent in governance of stock exchanges whose organisational form is mutual;

(f) defining units of mutual funds as "securities", delisting conditions and consequences of violations and transfer of duties and functions of a clearing house to a clearing corporation;

(g) making certain other provisions in the Securities Contracts (Regulation) Act, 1956, similar to those contained in the Securities and Exchange Board of India (Amendment) Act, 2002, such as, conferring powers upon the Securities and Exchange Board of India to issue directions to stock exchanges and the companies whose securities are listed or proposed to be listed, providing appeal from the orders of the Securities Appellate Tribunal to the Supreme Court, enhancing the penalties specified under the Securities Contracts (Regulation) Act, 1956, and adjudication by an adjudicating authority to impose monetary penalties, making provision for compounding of offences and crediting of amount of penalties into the Consolidated Fund of India, etc.

5. After introduction of the Bill, various suggestions were received from the Securities and Exchange Board of India, the Reserve Bank of India and institutions connected with the securities market. In view of the suggestions and developments in the securities market subsequent to introduction of the aforesaid Bill, it has been decided to-

(i) omit the earlier provisions in the Securities Laws (Amendment) Bill, 2003 relating to-

(A) the definition of "derivatives" which included non-securities based derivatives, such as, those based on rates on indices, in view of the apprehension that the proposed amendment would create further disability to the existing over the counter derivatives;

(B) the spot delivery contracts as the existing provisions are adequate for regulation of certain category of spot contracts;

(C) non-attachment of investment assets as such provision could be misused to pass off assets of brokers as client assets and thus to frustrate the attachment proceedings;

(D) specific conditions of delisting of securities by stock exchanges and instead provide for delisted in the rules under the Securities Contracts (Regulation) Act, 1956 so as to provide flexibility for regulation of delisting;

(ii) incorporate provision in the Securities Contracts (Regulation) Act, 1956 to provide for penalties for offences and grant of immunity on the lines of section 24-B of the Securities and Exchange Board of India Act, 1992;

(iii) allow, in certain cases, the members of one stock exchange to enter into contract with members of other stock exchanges subject to such terms and conditions as may be stipulated, with prior approval of Securities and Exchange Board of India, by the respective stock exchanges or after obtaining prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India;

(iv) make certain amendments in the Depositories Act, 1996 such as, enhancement of existing penalties, make provision for monetary penalty for certain contraventions and provide for crediting penalties into the Consolidated Fund of India, grant of immunity in certain cases by the Central Government and filing of appeal from the Securities Appellate Tribunal to the Supreme Court on the lines of provision contained in the Securities and Exchange Board of India Act, 1992, etc.

6. Due to dissolution of the 13th Lok Sabha, the said Bill had lapsed. Since Parliament was not in session and it had become necessary to take immediate action to provide for above matters, an Ordinance called the Securities Laws (Amendment) Ordinance, 2004 was promulgated by the President on the 12th October, 2004.

7. The Bill seeks to replace the aforesaid Ordinance.

**Amendment Act 27 of 2007-Statement of Objects and Reasons.**-During the Budget Session of Parliament in the current year 2005, it was proposed to amend the definition of "securities" in the Securities Contracts (Regulation) Act, 1956 (the SCR Act) so as to provide a legal framework for trading of securitised debt including mortgage backed debt.

2. Securitisation is a form of financing involving pooling of financial assets and the issuance of securities that are re-paid from the cash flows generated by the assets. This is generally accomplished by actual sale of the assets to a bankruptcy remote vehicle, that is, a special purpose vehicle, which finances the purchase through the issuance of bonds. These bonds are backed by future cash flows of the asset pool. The most common assets for securitisation are mortgages, credit cards, auto and consumer loans, student loans, corporate debt, export receivables, off-shore remittances, etc.

3. Besides other advantages, securitisation (a) allows banks and financial institutions to keep these loans off their balance-sheet, thus reducing the need for additional capital; (b) provides the banks and financial institutions with alternative forms of funding risk transfer, a new investor base, potential capital relief and capital market development; (c) can reduce lending concentration, improve liquidity and improve access to alternate sources of funding for banks and financial institutions; (d) facilitates attainment of funding at lower cost as a result of isolating the assets from potential bankruptcy risk of the originator; (e) facilitates better matching of assets and liabilities and the development of the long-term debt market; (f) provides diversified pools of uniform assets; and (g) has the advantage of converting non-liquid loans or assets which cannot be easily sold to third party investors into liquid assets or marketable securities. Lower funding costs are also a result of movement of investments from less efficient debt markets to more efficient capital markets through the process of securitisation.

4. In India, the securitisation market remains underdeveloped. Although two major legislative initiatives, namely, (a) the amendment to the National Housing Bank Act, 1987 (NHB Act) in the year 2000; and (b) the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act), have been taken, the market has not picked up because of the absence of the facility of trading on stock exchanges. The potential buyers get discouraged by the possibility of having to hold the certificate or instrument in respect of securitisation transactions till maturity. This, in turn, restricts the growth of business of housing finance companies and banks.

5. The securitisation transactions under the NHB Act are not covered under the definition of "securities" under the SCR Act. As such, trading in certificates or instruments relating to such transactions cannot take place on stock exchanges and buyers of such securitised financial certificates or instruments are left with few exit options. Under the SARFAESI Act, while "security receipts" have been covered under the definition of "securities", the provisions of the said Act restrict sale and purchase only amongst qualified institutional buyers. Besides, the "security receipts" under the SARFAESI Act can be issued only by a securitisation company or a reconstruction company registered with the Reserve Bank of India. This obviously limits the interest in such receipts and the market has not taken off at all.

6. Keeping in view the potential of the securities market for the certificates or instruments under securitisation transactions, international trends and consultations held with major institutional participants and market experts, it has been decided to amend the SCR Act, inter alia,

(i) include securitisation certificate or instrument under the definition of "securities" and to insert for the said purpose, a new sub-clause (ie) in clause (li) of section 2 of the SCR Act, 1956;

(ii) to provide for obtaining approval from the Securities and Exchange Board of India for issue of the proposed certificate or instrument and procedure therefor and insert for the said purpose a new section 17-A in the SCR Act, 1956; and

(iii) to provide for the manner in which contents of such certificate or instrument, being the "securities" and acknowledging beneficial interest shall be disclosed.

7. The Bill seeks to achieve the above objectives.