Foreign Exchange Management Act

The Foreign Exchange Management Act, 1999 (FEMA) is an Act of the Parliament of India "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India". It was passed in the winter session of Parliament in 1999, replacing the Foreign Exchange Regulation Act (FERA). This act makes offences related to foreign exchange civil offenses. It extends to the whole of India, replacing FERA, which had become incompatible with the pro-liberalization policies of the Government of India. It enabled a new foreign exchange management regime consistent with the emerging framework of the World Trade Organization (WTO). It also paved the way for the introduction of the Prevention of Money Laundering Act, 2002, which came into effect from 1 July 2005.

The FEMA provides:

- Free transactions on current account subject to reasonable restrictions that may be imposed
- RBI control over Capital Account Transactions
- Control over realization of export proceeds
- Dealings in Foreign Exchange through Authorised Person (e.g Authorised Dealer/ Money Changer/ Off-shore Banking Unit)
- Adjudication of Offences
- Appeal provisions including Special Director (Appeals) and Appellate Tribunal
- Directorate of Enforcement

The Main Features of the FEMA:

The following are some of the important features of Foreign Exchange Management Act:

i. It is consistent with full current account convertibility and contains provisions for progressive liberalization of capital account transactions.

ii. It is more transparent in its application as it lays down the areas requiring specific permissions of the Reserve Bank/Government of India on acquisition/holding of foreign exchange.

iii. It classified the foreign exchange transactions in two categories, viz. capital account and current account transactions.

iv. It provides power to the Reserve Bank for specifying, in , consultation with the central government, the classes of capital account transactions and limits to which exchange is admissible for such transactions.

v. It gives full freedom to a person resident in India, who was earlier resident outside India, to hold/own/transfer any foreign security/immovable property situated outside India and acquired when s/he was resident.

vi. This act is a civil law and the contraventions of the Act provide for arrest only in exceptional cases.

vii. FEMA does not apply to Indian citizen's resident outside India.

Objective of the Act

- The main objectives of FEMA is to utilize foreign exchange resource of the country effectively.
- It is facilitates external trade, payment, orderly development & maintenance of foreign exchange in India.
- It Is applicable to all parts of India.
- It is also applicable to all branches, offices & agencies outside India owned or controlled by a person who is a resident of India.
- Its head office is known as Enforcement Directorate is situated in New Delhi & headed by a Director.
- It is very important to an foreign trade & to maintain a good relation with other countries

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.