

RBI issues Simple and Transparent Rules under FEMA

June 2, 2000

The Foreign Exchange Management Act, 1999 has come into effect on June 1, 2000 and has replaced the Foreign Exchange Regulation Act 1973. The object of the Foreign Exchange Regulation Act 1973 was to conserve the foreign exchange resources; whereas the object of the new Act, i.e., the Foreign Exchange Management Act, 1999 is to facilitate external trade and payments and to promote orderly maintenance of the foreign exchange market in India. The highlights of the new Act are given below for the information of common citizens.

1. The new law is more transparent in its application. It has laid down the areas where specific permission of the Reserve Bank/Government of India is required. In rest of the cases no such permission would be needed and a person can remit funds and acquire assets, incur liability in accordance with the specific provisions laid down in the Act or notifications issued by the Reserve Bank/Government of India under the Act without seeking approval of the Reserve Bank/Government of India.
2. Application of FEMA may be seen broadly from two angles, viz., capital account transactions and current account transactions. Capital account transactions relate to movement of capital, e.g., transactions in property and investments and lending and borrowing money. Transactions which do not fall in capital account category are current account transactions which are permitted freely subject to a few restrictions as given in the following paragraph.
3.
 - a) Certain current account transactions would require RBI permission if they exceed a certain ceiling.
 - b) A few current account transactions need permission of appropriate Government of India authority irrespective of the amount.
 - c) There are seven types of current account transactions which are totally prohibited and no transaction can, therefore, be undertaken relating to them. These include transactions relating to lotteries, football pools, banned magazines and a few others.

Details of (a), (b) and (c) are given in schedules III, II and I of the Government of India notification dated May 3, 2000. However, some of the ceilings pertaining to miscellaneous remittances covered by (a) are given below for the information of the common citizens:

	<u>Miscellaneous Remittances</u>	(in US \$)
	Earlier limits	Revised limits
Basic Travel Quota	3,000	5,000
Gifts	1,000	5,000
Donations	1,000	5,000
Employment	2,500	5,000
Emigration	3,000	5,000
Maintenance of close	5,000	5,000

4. Some other highlights of the new Act are :

- The Foreign Exchange Management Act and rules give full freedom to a person resident in India who was earlier resident outside India to hold or own or transfer any foreign security or immovable property situated outside India and acquired when he/she was resident there.
- Similar freedom is also given to a resident who inherits such security or immovable property from a person resident outside India.
- A person resident outside India is permitted to hold shares, securities and properties acquired by him while he/she was resident in India.
- A person resident outside India is also permitted to hold such properties inherited from a person resident in India.
- The exchange drawn can also be used for purpose other than for which it is drawn provided drawal of exchange is otherwise permitted for such purpose.
- Certain prescribed limits have been substantially enhanced. For instance, residents now going abroad for business purposes or for participating in conferences/seminars will not need the Reserve Bank's permission to avail foreign exchange up to US \$ 25,000 per trip irrespective of the period of stay; basic travel quota has been increased from the existing US\$ 3,000 to US \$ 5,000 per calendar year.
- The Exchange Earners' Foreign Currency (EEFC) account holders and Residents' Foreign Exchange (RFC) account holders are permitted to freely use the funds held in EEFC/RFC accounts for payment of all permissible current account transactions.
- The rules for foreign investment in India and Indian investment abroad are also comprehensive, transparent and permit Indian companies engaged in certain specified sectors to acquire shares of foreign companies engaged in similar activities by share swap or exchange through issue of ADRs/GDRs up to certain specified limits.

5. FEMA is a civil law unlike FERA. Contravention under FEMA will be dealt with through civil procedures. Unlike in FERA, the burden of proof under FEMA will be on the enforcement agency and not on the implicated. FEMA describes an elaborate redressal machinery for total justice and fairness to the implicated while deciding on the question of contravention.

The Reserve Bank regulations under Foreign Exchange Management Act are available on its website through its home page as also through a special URL: www.fema.rbi.org.in

For any queries regarding FEMA please approach the Exchange Control Department in any of office of the Reserve Bank of India or email it to rbiprd@giasbm01.vsnl.net.in or contact FEMA Cell, Reserve Bank of India, Exchange Control Department, Central Office Building, (10th Floor, Shahid Bhagat Singh Road, Fort, Mumbai-400 001).

The new Act repeals the old FERA. But any offence committed under the old Act which is taken cognisance of by a court within two years from repeal of FERA would be dealt with under the provisions of the old Act.

We wish to make it clear that the above is a simple presentation of some of the provisions of the new Act and should not be used or referred to for claiming any benefit under the Act.

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General Manager

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