MAGADH MAHILA COLLEGE
PATNA UNIVERSITY,PATNA

DR.PUSHPA SINHA
ASSOCIATE PROFESSOR

Foreign Exchange Management Act(FEMA)

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FEMA

INTRODUCTION

- Foreign Exchange transaction were regulated by Foreign exchange regulation act (FERA), 1973.
- Following the liberalization ushered in 1991 some amendments were made to FERA in 1993 there was a lot demand to bring certain major changes in FERA in the light of economic changes took place.
- Consequently,a new act was formed to replace FERA ,known as Foreign exchange management act(FEMA),1999

FOREIGN EXCHANGE MANAGEMENT ACT,1999

- The Foreign Exchange Management Act(1999) ar in short FEMA has been introduced as a replacement for earlier Foreign Exchange Management Act(FERA).FEMA came into act on the 1st day of june,2000.
- FEMA was introduced because the FERA didn't fit in with post liberalisation policy.
- An Act to consolidate and amend the law relating to foreign exchange with the objective of facilitating extarnal trade and payment.

Objective of the Act:

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

FEATURES

- Activities such as payment made to any person outside India ar receipts from them,along with the deals in foreign exchange and foreign security is restricted.It is FEMA that gives the Central Government the power to impose the restrictions.
- Restrictions are imposed on residents of India who carry out transactions in foreign exchange,foreign security or who own or hold immovable property aboard.
- Without general or specific permission of the MA restricts the transactions involving foreign exchange or foreign security and payment from outside the country to India- the transaction should be made only through an authorized person.

FEATURES

- Deal in foreign exchange under the current account by an authorized person can be restricted by the Central Government,based on public interest generally.
- Although selling or drawing of foreign exchange is done through an authorized person,the RBI is empowered by this Act to subject the capital account transaction to a number of restrictions.
- Residents India will be permitted to carry out transactions in foreign exchange,foreign security or to own or hold immovable property aboard if the currency,security or property was owned or acquired when he/she was living outside India,or when it was inherited by him/her from someone living outside India.

Need for this management:

- The buying and selling of foreign currency and other debt instrument by business,individuals and government happens in the foreign exchange market.
- Largest and most liquid market in the world as well as in India.
- The management of foreign exchange market becomes necessary in order to mitigate and the avoid the risks
- Central banks would work towards and orderly functioning of the transaction which can also develop their foreign exchange market.

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).

FEMA is applicable to :-

Broadly speaking FEMA, Covers Three different types of categories and deals differently with them.These categories are-

A.Person

B.Person Resident In India

C.Person Resident Outside India

A.Person

For the purpose of provision,a person shall include any of the following:-

- An Individuals
- A Hindu Undivided Family
- A Company
- A Firm
- An Association of Person or a body of individual,whether Incorporated or not
- Every artificial judicial person not falling with in any of the preceding sub clauses
- Any agency office or branch owned a controlled by such person.

B.Person Resident In India:

- A person who has been residing in India for more than 182 days,in the last financial year.This means if a person has to be assessed,as to whether he is person resident in India,for any offence committed in August 2001,then he should be residing in India for more than 182 days during April to March 2001.
- Any person or body corporate registered or Incorporated in India.
- An office,branch or agency in India owned or controlled by a person resident outside India.
- An office,branch or agency outside India owned or controlled by a person resident in India.
- Person resident outside India.

C.Person resident outside India

- Simply putting it,”a person resident outside India”,means “ a person who is not resident in India”.

Difference between FERA and FEMA

1. FERA was compiled with 81 different and complex provisions, however, FEMA has only 48 simple sections.
2. The current account was not defined in FERA but was introduced in FEMA.
3. FEMA has a broader definition of “*Authorized Person*” and has also included banks in it.
4. Compatibility with IT was not handled by FERA at all. However, FEMA provides on IT.
5. Under FERA, his violation was a criminal offense that was changed to a civil offense at FEMA.
6. According to FERA, the appeal used to be sent to the Supreme Court. However, FEMA had a*Special Director (Appeals) and a Special Court*.

Provision of FEMA

The major provisions of FEMA, 1999 relate to following matters :

- Dealing in foreign exchange, etc.
- Holding of foreign exchange, etc.
- Current account transactions
- Capital account transactions
- Export of goods and services
- Realization and repatriation of foreign exchange

- Power of RBI to inspect authorized person
- Contravention and penalties
- Adjudication and appeal
- Directorate of enforcement
- Miscellaneous provisions
- Exemption from realization and repatriation in certain cases.
- Provisions relating to authorised persons. *i.e.* authorised by RBI to deal with foreign exchange or in foreign securities

Conclusion

At the time of legislation of the law, India had shortage of foreign exchange (forex). The government then tried to restrict the exchanges, or dealings of India with foreign countries. But the rules and regulations had great impact on the import and export of currency.

There were several issues with this act those are:-

- Law violators were treated as criminal offenders.
- Wide power in the hand of Enforcement Directorate to arrest any person and seize any document (Corporate world found themselves at the mercy of E.D)
- Control everything that was specified related to foreign exchange and aimed for minimizing dealings in forex and foreign securities, etc.

With liberalization there has been a move to remove the measures of FERA and replace it with a set of foreign exchange management regulations. A draft for the Foreign Exchange Management Bill (FEMA) was prepared by the Government of India to replace FERA keeping in view of the Indian economy. However until FEMA is enacted the provisions of FERA was applied. These are important basic information about Foreign Exchange Regulation Act (FERA).

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