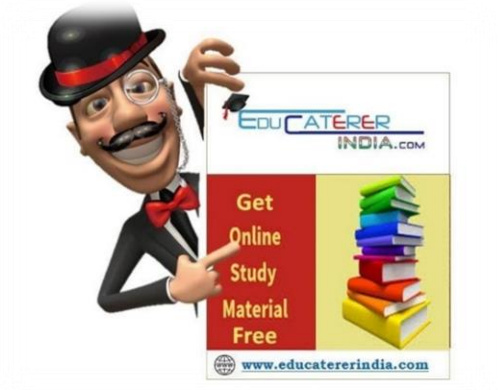
Foreign Exchange Regulation Act (FERA)- Explained



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Introduction

Foreign Exchange Regulation Act (FERA) was introduced at a time when foreign exchange (Forex) reserves of the country were low. FERA proceeded on presumption that all foreign exchange earned by Indian residents rightfully belonged to the Government of India and had to be collected and surrendered to the Reserve Bank of India (RBI). FERA primarily prohibited all transactions that are not permitted by RBI. The objective of FERA was to regulate certain payment dealings in foreign exchange and securities transactions that indirectly affects foreign exchange of import and export of currency and to conserve precious foreign exchange and to optimize the proper utilization of foreign exchange so as to promote the economic development of the country.

Basic definitions of FERA

- **Authorized dealer**- means a person for the time being authorized to deal in foreign exchange.
- Bearer certificate- means a certificate to securities of which the title to the securities is transferable.
- **Coupon-** means a coupon representing dividends or interest on a security.
- **Currency-** includes all coins, currency notes, banks notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letters of credit, bill of exchange and promissory notes.

- **Foreign currency-** means any currency other than Indian currency.
- **Foreign exchange-** means foreign currency all deposits, credits and balance payable in any foreign currency and any drafts traveller's cheque, letters of credit and bill of exchange drawn in the form of Indian currency but payable in any foreign currency.
- **Foreign security-** means any security created or issued elsewhere than in India and any security the principal of interest on which is payable in any foreign currency or elsewhere than in India.
- **Money changer-** means a person for the time being authorized to deal in foreign currency.
- Overseas market- means the market in the country outside India and in which such goods are intended to be sold.
- **Transfer-** in relation to any security includes transfer by way of loan or security.

Officers of Enforcement

The officers of Enforcement take different roles in foreign exchange enforcement. They are as follows

- Director of Enforcement
- Additional Director of Enforcement
- Deputy Director of Enforcement
- Assistant Director of Enforcement
- Officers of Enforcement can be appointed for the purposes of this Act.

The appointment of enforcement officer and their powers are appointed by central government. The Central Government may appoint persons such as it thinks fit to be officers of Enforcement. Subject to conditions and limitations as the Central Government may impose an officer of Enforcement may exercise powers and discharge the duties conferred on him under this Act.

Features of FERA

FERA applied to all citizens of India. The idea was to regulate the foreign payments that deal the Foreign Exchange & securities and conservation of Foreign exchange for the nation. RBI can authorize a person / company to deal in foreign exchange and also can authorize the dealers to do transact the Foreign Currencies subject to review. RBI was given power to revoke the authorization in case of non-compliancy. RBI authorizes Money Changers who will convert the currency of one nation to currency of other nation at rates determined by RBI. For whatever purpose Foreign exchange is required it has to be used only for that purpose. If he feels that he cannot use the currency for that particular purpose he would sell it to an authorized dealer within 30 days. Some of the rules and restrictions that are followed by RBI are as follows

- Restrictions on import and export of certain currency
- Restrictions on payments that is illegal
- Restrictions on dealing in foreign exchange
- Payment for exported goods are done according to RBI
- Restrictions on issue of bearer securities
- Restriction on settlement in other country
- Restriction on holding of immovable property outside India
- Restrictions on the appointment of certain persons and companies as agents for doing FOREX
- Restrictions on establishment of place of business in India
- Permission of Reserve Bank required for practicing profession, etc. in India by nationals of foreign States
- Restriction on acquisition, holding, etc., of immovable property in India
- RBI has the Power to call for information of any person documents like Indian currency, foreign exchange and books of account.
- Power to search suspected persons and to seize documents

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).