A2 Preliminary (Chapter I, Sections 1 to 2)

Contents of this Chapter

The Foreign Exchange Management Act, 1999 (Act No. 42 of 1999).

1. Preamble of the Act.

An Act 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.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows :—

1.1 *Comments.*

The preamble of the FEMA, outlines the fundamental purpose and intent of the legislation, marking a significant shift in India's approach to foreign exchange from restriction to management. It repealed the restrictive Foreign Exchange Regulation Act (FERA), 1973, to create a more liberalized and modern framework compatible with the post-1991 economic liberalization policies and WTO regulations. The core objective is to ease the flow of foreign exchange for trade, services, and payments, transforming forex from a scarce, controlled commodity into a manageable resource. Unlike FERA, which was "regulation-oriented" (everything prohibited unless permitted), FEMA is "management-oriented" (everything permitted unless specifically restricted).

The Preamble states that FEMA is enacted 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 the foreign exchange market in India.

The FEMA was enacted on 29th December, 1999 and came into force with effect from 1st June, 2000.

1.2 *Provisions under the FEMA.*

The FEMA have 49 Section divided into 7 Chapters.

1.2.1 *Preliminary – Chapter I.*

This Chapter consists of Sections 1 and 2 and lays down the foundational framework of the Act by defining key terms such as "foreign exchange", "authorised person", "capital account transaction", and "current account transaction". It also specifies the extent and application of the Act. These definitions are crucial as they determine the scope and interpretation of all subsequent provisions under FEMA, ensuring clarity and uniformity in implementation.

1.2.2 *Regulation and Management of Foreign Exchange – Chapter II.*

This is the core Chapter of FEMA having Sections 3 to 9 which governs dealings in foreign exchange. It provides that all foreign exchange transactions shall be conducted through authorised persons and distinguishes between current account and capital account transactions. While current account transactions are generally permitted, capital account transactions are regulated by the Reserve Bank of India (RBI). This Chapter reflects the liberalised approach of FEMA by allowing flexibility while maintaining regulatory oversight.

1.2.3 *Authorised Person – Chapter III.*

This Chapter consisting of Sections 10 to 12 deals with entities authorised by the RBI to deal in foreign exchange, such as banks, money changers, and financial institutions. It outlines their duties, responsibilities, and compliance requirements. Authorised persons act as intermediaries between the public and the regulatory framework, ensuring that foreign exchange transactions are carried out in accordance with FEMA and RBI guidelines.

1.2.4 *Contravention and Penalties – Chapter IV.*

This Chapter consists of Sections 13 to 15, provides for civil penalties in case of contravention of FEMA provisions. Unlike FERA, offences under FEMA are not criminal in nature. The penalties are primarily monetary and may extend up to three times the sum involved. This Chapter reflects the shift from a punitive regime to a compliance-oriented framework, encouraging voluntary adherence rather than fear-based enforcement.

1.2.5 *Adjudication and Appeal – Chapter V.*

This Chapter consists of Sections 16 to 35 establishes the mechanism for adjudication of contraventions and provides a structured appellate framework. It empowers adjudicating authorities to inquire into violations and imposes penalties where necessary. It also provides for appeals to the Special Director (Appeals), Appellate Tribunal, and further to the High Court, ensuring procedural fairness and judicial oversight.

1.2.6 *Directorate of Enforcement – Chapter VI.*

This Chapter consists of 36 to 38 deals with the establishment and powers of the Directorate of Enforcement. It authorises officers to investigate contraventions, conduct searches, seize documents, and enforce compliance with FEMA provisions. Although the powers are significant, they are exercised within a civil law framework, distinguishing FEMA from the more stringent enforcement regime under FERA.

1.2.7 *Miscellaneous – Chapter VII.*

The final Chapter consists of Sections 39 to 49 contains various supplementary provisions such as rule-making powers of the Central Government and the RBI, provisions relating to compounding of offences, protection of action taken in good faith, and repeal of FERA. It ensures smooth implementation of the Act and provides flexibility for adapting to evolving economic conditions through subordinate legislation.

1.3 *Rules, Regulations, and Master Directions under the provisions of FEMA.*

Besides the core Sections of the FEMA, there are Rules, Regulations and Master Directions for effectively manage the provisions of the FEMA.

1.3.1 *Role of Rules under FEMA.*

The **Rules** under FEMA are framed by the **Central Government** under Section 46 of the Act. They provide the **broad policy framework and substantive provisions** governing foreign exchange transactions, especially in areas such as **current account transactions, capital account transactions, and permissible limits/restrictions**. Rules reflect the Government's macro-economic policy and determine what transactions are allowed, prohibited, or require approval. For example, the Current Account Transactions Rules specify which transactions are freely permitted, restricted, or prohibited.

1.3.2 *Role of Regulations under FEMA.*

The **Regulations** are framed by the **Reserve Bank of India (RBI)** under Section 47 of FEMA. These are more **detailed and operational in nature**, laying down the **procedures, conditions, limits, and reporting requirements** for foreign exchange transactions. Regulations operationalise the policy laid down in the Rules and provide clarity to authorised persons and stakeholders. They cover areas such as **Foreign Direct Investment (FDI), External Commercial Borrowings (ECB), Overseas Investment, and export-import transactions**.

1.3.3 *Role of Master Directions under FEMA.*

The **Master Directions** are issued by the **RBI** as **consolidated instructions and guidelines** to ensure uniform implementation of FEMA provisions. They compile various circulars, notifications, and instructions into a single, updated document for ease of reference. Master Directions are **practical, user-friendly documents** meant for banks, financial institutions, and businesses to ensure day-to-day compliance. While they do not override the Act, Rules, or Regulations, they provide **interpretation, procedural clarity, and compliance guidance**.

2. Short title, extent, application and commencement – Section 1.

(1) This Act may be called the Foreign Exchange Management Act, 1999.

(2) It extends to the whole of India.

(3) It shall also **apply to all branches, offices and agencies outside India** owned or controlled by a person resident in India and also to **any contravention thereunder committed outside India by any person to whom this Act applies**.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint[1] :

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2.1 *Comments.*

Section 1 of FEMA deals with the short title, extent, application, and commencement of the Act, thereby laying the foundational framework for its operation. It provides that the Act shall be called the Foreign Exchange Management Act, 1999 and extends to the whole of India, and also applies to all branches, offices, and agencies outside India owned or controlled by a person resident in India. This extra-territorial application is significant as it ensures that Indian entities cannot evade FEMA compliance by operating through overseas branches or subsidiaries. Further, the section specifies that FEMA came into force on 1st June 2000, marking the transition from the restrictive FERA regime to a more liberalized and management-oriented framework. Thus, Section 1 establishes the scope, reach, and applicability of FEMA, ensuring comprehensive regulation of foreign exchange transactions both within and beyond India's territorial boundaries.

3. Definitions – Section 2.

In this Act, unless the context otherwise requires,—

3.1 *"Adjudicating Authority"* means an officer authorised under sub-section (1) of section 16. **[Section 2(a)].**

3.1.1 *Comments.*

Section 2(a) of FEMA defines the term "Adjudicating Authority", which plays a crucial role in the enforcement mechanism under the Act. It refers to an officer authorized under Section 16 to conduct inquiries and impose penalties for contraventions of FEMA provisions. The

1 **1-6-2000** *vide* Notification No. GSR 371(E), dated 1-5-2000. NOTIFICATION NO. GSR 371(E), DATED 1-5-2000 : In exercise of the powers conferred by sub-section (4) of section 1 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby appoints the 1st day of June, 2000 as the date on which the said Act shall come into force.

significance of this definition lies in identifying the authority responsible for quasi-judicial proceedings relating to violations of foreign exchange regulations. The Adjudicating Authority is empowered to examine evidence, hear the parties, and determine whether a contravention has occurred, thereby ensuring due process and adherence to principles of natural justice. This provision reflects FEMA's civil and regulatory nature, where enforcement is carried out through administrative adjudication rather than criminal prosecution. Thus, Section 2(a) establishes the institutional framework for handling violations and ensures that enforcement actions are conducted in a structured, fair, and legally accountable manner.

3.2 ***"Appellate Tribunal"*** means the Appellate Tribunal referred to in section 18. [Section 2(b)][2]

3.2.1 *Comments.*

Section 2(b) of FEMA defines the term "Appellate Tribunal", which refers to the Appellate Tribunal constituted under Section 18 of the Act. This Tribunal serves as the appellate authority to hear appeals against the orders passed by the Adjudicating Authority and other specified authorities under FEMA. The provision is significant as it ensures a multi-tiered adjudicatory mechanism, thereby upholding the principles of natural justice and providing an effective remedy to aggrieved parties. The Appellate Tribunal functions as a quasi-judicial body with powers similar to those of a civil court, enabling it to examine the legality, propriety, and correctness of orders. By defining this term at the outset, Section 2(b) reinforces the importance of judicial oversight and accountability in the enforcement of foreign exchange laws, ensuring that decisions are subject to independent review and are not arbitrary in nature.

Section 18 of the FEMA states that the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

3.3 ***"Authorised person"*** means an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities. [Section 2(c)]

3.3.1 *Comments*

Section 2(c) of FEMA defines the term "authorised person", which is central to the operational framework of foreign exchange transactions in India. It refers to any person authorised by the Reserve Bank of India under Section 10 of the Act to deal in foreign exchange or foreign securities. This includes entities such as Authorised Dealers (AD Banks), money changers, offshore banking units, and other financial institutions permitted by the RBI.

The significance of this provision lies in the fact that all foreign exchange dealings are required to be routed through such authorised persons, thereby ensuring regulatory oversight, transparency, and control. Authorised persons act as the first line of compliance, responsible for verifying documentation, ensuring adherence to FEMA provisions and RBI directions, and reporting transactions where required. They also play a key role in preventing misuse of foreign exchange and maintaining the integrity of the foreign exchange market.

2 Subs. by Act 7 of 2017, s. 165, for clause (b) (w.e.f. 26-5-2017).

Thus, Section 2(c) establishes a regulated channel for foreign exchange transactions, ensuring that dealings are conducted only through entities that are properly licensed and supervised, thereby facilitating orderly management of foreign exchange in line with the objectives of FEMA.

3.4 *"Authorised Officer"* means an officer of the Directorate of Enforcement authorised by the Central Government under section 37A. [Section 2(cc)][3]

3.4.1 *Comments*

Section 2(cc) of the FEMA, defines an "Authorised Officer" as an official from the Directorate of Enforcement (ED) empowered by the Central Government under Section 37A. This provision is central to investigating illegal foreign exchange holdings and assets, acting as a key enforcement mechanism against violations.

3.5 *"Bench"* means a Bench of the Appellate Tribunal. [Section 2(d)]

3.5.1 *Comments*

Section 2(d) of the FEMA provides a procedural definition, stating that "Bench" means a Bench of the Appellate Tribunal. While it is a concise definition, its significance lies within the broader framework of dispute resolution under FEMA, specifically concerning the adjudicating mechanisms.

3.6 *"Capital Account Transaction"* means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6. [Section 2(e)]

3.6.1 *Comments*

Section 2(e) of the FEMA provides the legal definition of a "capital account transaction." This section is foundation to FEMA's regulatory framework, as it distinguishes between routine transactions (current account) and those that impact long-term capital structure.

A **"Capital Account Transaction"** is a transaction which **alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India, or assets or liabilities in India of persons resident outside India**. This definition is central to FEMA, as it distinguishes capital account transactions from current account transactions and determines the extent of regulatory control.

Key Components of the Definition:

- **Alteration of Assets/Liabilities:** The core test is whether the transaction changes the Balance Sheet position—specifically, increasing or decreasing assets or liabilities.
- **Cross-Border Focus:** It deals with either (a) Residents holding assets/liabilities abroad, or (b) Non-Residents holding assets/liabilities in India.
- **Includes Contingent Liabilities:** Future or potential liabilities (e.g., guarantees given) are also covered.
- **"Includes" Clause (Section 6(3)):** The definition is not exhaustive; it specifically includes items mentioned in Section 6(3) of FEMA, such as foreign security transfers, borrowing/lending, and immovable property transactions

3 Ins. by Act 20 of 2015, s. 138 (w.e.f. 9-9-2015).

The rationale behind this definition is to ensure that the Reserve Bank of India (RBI) and the Central Government maintain control over the movement of capital to prevent sudden, destabilizing outflows or inflows of foreign exchange, which can affect the rupee's volatility.

Examples of Capital Account Transactions

Based on Section 2(e) and related regulations (Schedule I & II), here are illustrative examples:

A. Persons Resident in India (Altering Assets/Liabilities Outside India)

1. **Overseas Direct Investment (ODI):** An Indian company invests in a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) in Singapore.
2. **Purchase of Immovable Property Abroad:** An Indian resident purchases a residential apartment in London.
3. **External Commercial Borrowings (ECB):** An Indian firm raises a 5-year loan from a bank in Germany.
4. **Portfolio Investment Abroad:** An individual resident in India purchases shares of Apple Inc. on the NASDAQ using the Liberalised Remittance Scheme (LRS).
5. **Giving a Guarantee:** An Indian parent company gives a corporate guarantee to a foreign bank on behalf of its foreign subsidiary.

B. Persons Resident Outside India (Altering Assets/Liabilities in India)

1. **Foreign Direct Investment (FDI):** A US-based venture capital firm invests in an Indian SaaS startup, acquiring equity shares.
2. **Purchase of Property in India:** An Non-Resident Indian (NRI) purchases a commercial office space in Mumbai.
3. **Investment in Debt Instruments:** A Foreign Portfolio Investor (FPI) invests in Indian government bonds.
4. **Lending to Resident:** A foreign company provides an interest-bearing loan to an Indian company

3.7 *"Chairperson"* means the Chairperson of the Appellate Tribunal. **[Section 2(f)]**

3.7.1 *Comments*

Section 18 of the FEMA provides that the Appellate Tribunal constituted **under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976),** shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Section 12(1)(d) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) provides that the Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by the Government for hearing appeals against the orders made by the Adjudicating Authorities, Competent Authorities and the Qualifications, Special Director (Appeals) under the Foreign Exchange Management Act, 1999 (42 of 1999).

Section 12(2) of the SAFEMA states that the Chairman of the Appellate Tribunal shall be a person who is or has been a Judge of the Supreme Court or of a High Court.

Section 12(3) of SAFEMA states that the terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

Section 12A of the SAFEMA deals with the matter relating to the qualifications, terms and conditions of service of Chairperson, and Member. It provides that notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal appointed **after** the commencement of **the Tribunals Reforms Act, 2021**, shall be governed by the provisions of Chapter II of the said Act:

Provided that the Chairperson and other members appointed **before** the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), shall continue to be governed by the provisions of this Act, and the rules.

3.8 ***"Chartered Accountant"*** shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949). **[Section 2(g)]**

3.8.1 *Comments*

In terms of Section 2(1)(b) of the Chartered Accountants Act, 1949 "chartered accountant" means a person who is a member of the Institute.

3.9 ***"Competent Authority"*** means the Authority appointed by the Central Government under sub-section (2) of section 37A. **[Section 2(gg)]**[4]

3.9.1 *Comments*

Section 2(gg) of the FMEA states that the meaning of Competent Authority is defined in Section 37A(2). **Section 37A(2)** of the FEMA states that the order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

This provision is significant as it introduces an additional layer of oversight and control in enforcement actions undertaken by authorities such as the Directorate of Enforcement. While Section 37A(1) empowers authorized officers to seize equivalent value of assets in India where foreign exchange violations involving assets abroad are suspected, Section 37A(2) ensures that such action is subject to independent confirmation by a higher authority, thereby preventing arbitrary exercise of power.

The concept of "Competent Authority" thus serves as a check-and-balance mechanism, ensuring that enforcement actions affecting property rights are reviewed in a structured and quasi-judicial manner. It reinforces adherence to principles of natural justice, as the affected person is generally provided an opportunity to be heard before final confirmation of seizure.

From a compliance and legal perspective, this provision strengthens FEMA's enforcement regime by enabling authorities to act against undisclosed foreign assets while simultaneously ensuring procedural safeguards and accountability.

4 Ins. by Act 20 of 2015, s. 138 (w.e.f. 9-9-2015).

In essence, Section 37A(2) balances effective enforcement with due process, ensuring that actions taken under FEMA are both robust and legally sustainable.

3.10 ***"Currency"*** includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank. **[Section 2(h)]**

3.10.1 *Comments*

Section 2(h) of the FEMA defines "Currency**"** to mean and include cash in the form of coins and bank notes. While this definition appears straightforward, it plays a foundational role in the overall regulatory framework of the Act.

The term "currency", is a fundamental concept for the regulation of foreign exchange transactions under the Act. The definition is broad and inclusive, covering all forms of money, such as coins and banknotes, as well as postal notes, money orders, cheques, drafts, traveller's cheques, letters of credit, bills of exchange, promissory notes, credit cards, and other similar instruments.

The significance of this provision lies in its wide scope, ensuring that FEMA is not limited to physical cash transactions but also extends to various negotiable instruments and modern payment mechanisms used in domestic and international trade. By adopting such an inclusive definition, the Act effectively captures all possible forms through which value can be transferred across borders, thereby preventing regulatory gaps.

This broad definition is essential for maintaining comprehensive control and monitoring of foreign exchange dealings, especially in a dynamic financial environment where new instruments and payment systems continue to evolve. It also ensures that regulatory oversight extends to both traditional and electronic modes of payment, thereby strengthening compliance and enforcement under FEMA.

In essence, Section 2(h) provides a foundational and expansive definition that supports the effective implementation of FEMA by bringing all relevant monetary instruments within its regulatory ambit.

3.10.2 *Judicial Pronouncement*

3.10.2.1. Whether Foreign Currency can be sent by post without making any declaration

In the matter of **Thomas Cook (India) Ltd. Vs. Collector of Customs, New Delhi, Appeal No. C/2026/89-NRB, (Supreme Court of India, dated 11th February,1994)** the issue under consideration was whether sending foreign currency by post without declaration violates Section 18(1) of FERA[5], and whether such currency is liable for confiscation under Section 113(i) of the Customs Act.

The Apex Court held that **foreign currency is "goods"** under law and its export requires **mandatory declaration under Section 18(1) of FERA**. Failure to declare makes it **prohibited goods**, liable for confiscation under the Customs Act, even if the exporter is an authorized dealer.

5 Section 18(1) of the Foreign Exchange Regulation Act (FERA), 1973, which dealt with the obligation of exporters to declare and repatriate the full value of exported goods, corresponds primarily to Section 7 of the Foreign Exchange Management Act (FEMA), 1999.

3.10.2.2. RBI Circular on Virtual Currencies Quashed on Grounds of Disproportionality

In the matter of **Internet and Mobile Association of India Vs. Reserve Bank of India,** Writ Petition (Civil) Nos. 373 & 528 of 2018**, Supreme Court of India**, dated 4th March, 2020, a writ petition was filed in the Supreme Court against the Circular DBR, BP.BC.104/08.13/02/2017-18, dated 6-4-2018 issued by RBI. Under this Circular the RBI had directed banks and entities regulated by RBI to not to deal in Virtual Currencies (VC) or to provide banking services facilitating any person or entity dealing with or settling VCs. The Supreme Court observed that the Crypto-token Regulation Bill, 2018 initially recommended by the Inter-Ministerial Committee contained a proposal (*i*) to prohibit persons dealing with activities related to crypto tokens from falsely posing these products as not being securities or investment schemes or offering investment schemes due to gaps in the existing regulatory framework and (*ii*) to regulate VC exchanges and brokers where sale and purchase may be permitted.

The key aspects of the Crypto-token Regulation Bill, 2018, found in paragraph 13 of the 'Note-precursor to report' shows that the Inter-Ministerial Committee was fine with the idea of allowing the sale and purchase of digital crypto asset at recognized exchanges.

But within a year, there was a volte-face and the final report of the very same Inter-Ministerial Committee, submitted in February 2019 recommended the imposition of a total ban on private cryptocurrencies through a legislation to be known as "Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019". The draft of the bill contained a proposal to ban the mining, generation, holding, selling, dealing in, issuing, transferring, disposing of or using crypto currency in the territory of India. At the same time, the bill contemplated (*i*) the creation of a digital rupee as a legal tender, by the central government in consultation with RBI and (*ii*) the recognition of any official foreign digital currency, as foreign currency in India.

In case the said enactment (2019) had come through, there would have been an official digital currency, for the creation and circulation of which, RBI/central government would have had a monopoly. But that situation had not arisen. The position as on date is that VCs are not banned, but the trading in VCs and the functioning of VC exchanges are sent to comatose by the impugned Circular by disconnecting their lifeline namely, the interface with the regular banking sector. What is worse is that this has been done (*i*) despite RBI not finding anything wrong about the way in which these exchanges function and (*ii*) despite the fact that VCs are not banned.

The Apex Court opined that till date, RBI has not come out with a stand that any of the entities regulated by it namely, the nationalized banks/scheduled commercial banks/co-operative banks/NBFCs has suffered any loss or adverse effect directly or indirectly, on account of the interface that the VC exchanges had with any of them.

When the consistent stand of RBI is that they have not banned VCs and when the Government of India is unable to take a call despite several committees coming up with several proposals including two draft bills, both of which advocated exactly opposite positions, it is not possible for us to hold that the impugned measure is proportionate.

Therefore, in the light of the above discussion, the petitioners are entitled to succeed and the impugned Circular dated 6-4-2018 is liable to be *set aside* on the ground of proportionality. Accordingly, the writ petitions are allowed and the Circular dated 6-4-2018 is set aside.

3.11 ***"Currency notes"*** means and includes cash in the form of coins and bank notes. **[Section 2(i)]**

3.11.1 *Comments*

Section 2(i) of FEMA defines the term "currency notes", which refers specifically to banknotes and paper money issued by a government or monetary authority and used as legal tender. This definition forms a subset of the broader term "currency" under the Act.

The importance of this provision lies in its role in distinguishing physical paper-based money from other forms of currency such as coins, instruments, or electronic payment modes. By clearly defining "currency notes," FEMA ensures precise interpretation in provisions dealing with physical movement, possession, import, and export of currency, which are subject to strict regulatory controls.

This definition is particularly relevant in the context of cross-border movement of cash, where limits and reporting requirements are imposed to prevent activities such as money laundering, illegal remittances, and smuggling of currency. It also aids enforcement agencies in identifying and regulating transactions involving tangible monetary instruments.

Thus, Section 2(i) provides clarity and specificity within the statutory framework, supporting effective monitoring and control of physical currency transactions, while complementing the broader regulatory objectives of FEMA.

3.12 ***"Current Account Transaction"*** means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—

(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children. **[Section 2(j)]**

3.12.1 *Comments*

Section 2(j) of FEMA defines the term "current account transaction", which is central to the regulatory framework governing foreign exchange dealings. It refers to transactions other than capital account transactions and includes payments due in connection with foreign trade, services, short-term banking and credit facilities, interest payments, income from investments, remittances for living expenses, travel, education, medical care, and other similar purposes.

The significance of this provision lies in its role in distinguishing current account transactions from capital account transactions, which are regulated differently under FEMA. While capital account transactions are subject to stricter control under Section 6, current account transactions are generally permitted freely under Section 5, subject to reasonable restrictions imposed by the Central Government in consultation with the Reserve Bank of India.

This definition reflects FEMA's objective of facilitating external trade and payments, as it allows routine and day-to-day international transactions to be conducted with minimal regulatory hurdles. At the same time, the inclusion of a wide range of transactions ensures comprehensive coverage and prevents misuse under the guise of current account dealings.

In essence, Section 2(j) provides a functional and liberal framework for handling foreign exchange transactions related to trade and services, while maintaining the necessary regulatory oversight to safeguard the country's economic interests.

3.12.2 *Difference between Capital Account Transactions and Current Account Transactions*

Basis	Capital Account Transactions	Current Account Transactions
Section	Section 2(e) of FEMA deals with the Capital Account Transactions.	Section 2(j) of FEMA deals with the Current Account Transactions.
Definition	"Capital Account Transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;	"current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,— (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business, (ii) payments due as interest on loans and as net income from investments, (iii) remittances for living expenses of parents, spouse and children residing abroad, and (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;
Nature	Capital / Investment in nature. Capital deals with the "stock" of wealth (long-term impact).	Revenue / Day-to-day transactions. Current deals with the "flow" of money (short-term/routine).
Focus	Capital transactions fundamentally change assets/liabilities (e.g., buying overseas property, FDI, loans).	Current transactions are income/expenditure items (e.g., salary, trade payment) that do not alter them.
Time Horizon	Long-term impact	Short-term / Recurring
Regulatory Approach	RBI + Central Government	Central Government in consultation with RBI
Control Level	Strict Control	Liberal Approach
Economic Impact	Affects Capital Flows, Forex Reserves	Affects Trade and Current Flows.
Compliance	High (RBI Filings, Limits, Conditions)	Low / Minimal
Risk Level	High (can impact economy significantly)	Low (Routine transactions)

Permissibility	Capital account transactions are prohibited unless specifically permitted by the RBI/Government.	Current account transactions are generally permitted, unless specifically prohibited (e.g., lottery winnings).
Approval & Regulation	Capital transactions often require RBI approval, detailed documentation, and reporting.	Current transactions are easier to process and rarely require pre-approval.
Examples	Foreign Direct Investment (FDI) inflows, setting up a foreign subsidiary (ODI), purchasing foreign shares, borrowing from a foreign bank.	Payment for imports, interest payments, remittances for family maintenance, travel expenses.

3.13 ***"Director of Enforcement"*** means the Director of Enforcement appointed under sub-section (1) of section 36. **[Section 2(k)]**

3.13.1 *Comments*

Section 2(k) of FEMA defines the term "Director of Enforcement", referring to the officer appointed as such under the Act, who heads the Enforcement Directorate (ED) responsible for investigating and enforcing the provisions of FEMA.

The significance of this provision lies in identifying the chief enforcement authority under the Act. The Director of Enforcement exercises powers relating to investigation of contraventions, search and seizure, adjudication support, and initiation of proceedings against persons violating FEMA provisions. This role is crucial in ensuring that foreign exchange regulations are not merely facilitative but are also effectively enforced.

The Director functions within the framework of the Enforcement Directorate, an agency entrusted with tackling economic offences, including violations of foreign exchange laws. The powers exercised by this authority are subject to statutory safeguards and judicial scrutiny, thereby ensuring a balance between regulatory enforcement and protection of individual rights.

Thus, Section 2(k) establishes the institutional authority responsible for enforcement, strengthening the overall compliance and deterrence mechanism under FEMA while aligning with its objective of orderly management of foreign exchange.

3.14 ***"Export"***, with its grammatical variations and cognate expressions, means—

(i) the taking out of India to a place outside India any goods,

(ii) provision of services from India to any person outside India. [Section 2(l)]

3.14.1 *Comments*

Section 2(l) of FEMA defines the term "export", which is a key concept in the regulation of foreign exchange transactions relating to cross-border trade. The term generally refers to the taking out of goods or services from India to a place outside India, and in the context of FEMA, it also includes the provision of services to persons outside India.

The importance of this definition lies in its broad and inclusive scope, ensuring that both physical exports (goods) and intangible exports (services) are covered under the regulatory framework. This is particularly relevant in modern economic conditions where India is a major exporter of services such as IT, consultancy, and financial services.

Section 2(l) forms the basis for various compliance requirements under FEMA, including:

- Realisation and repatriation of export proceeds,
- Submission of export declarations,
- Monitoring through systems like EDPMS (Export Data Processing and Monitoring System).

It also helps distinguish export transactions from domestic transactions, thereby enabling appropriate application of foreign exchange regulations.

In essence, Section 2(l) provides a comprehensive definition of export, facilitating effective monitoring of foreign exchange inflows arising from international trade, and supporting FEMA's objective of promoting external trade while ensuring proper regulation of foreign exchange earnings.

3.15 ***"Foreign Currency"*** means any currency other than Indian currency. **[Section 2(m)]**

3.15.1 *Comments*

Section 2(m) of FEMA defines the term "foreign currency", which refers to any currency other than Indian currency. This simple yet crucial definition forms the backbone of FEMA's regulatory framework, as the Act primarily governs transactions involving foreign exchange.

The significance of this provision lies in clearly distinguishing Indian currency from all other global currencies, thereby identifying the scope of transactions that fall under FEMA regulation. Any dealing, holding, transfer, or receipt of foreign currency is subject to the provisions of FEMA and the directions issued by the Reserve Bank of India.

This definition is broad enough to include all internationally recognized currencies, whether in physical form (notes and coins) or in electronic form through banking channels. It is fundamental for regulating activities such as:

- Foreign remittances,
- Import-export payments,
- Foreign investments, and
- Overseas borrowings.

By clearly defining "foreign currency," Section 2(m) ensures that there is no ambiguity in identifying transactions involving cross-border monetary value, thereby enabling effective monitoring, control, and facilitation of foreign exchange operations.

In essence, Section 2(m) provides a basic but essential definition that underpins the entire structure of FEMA, ensuring clarity in the application of foreign exchange regulations.

3.16 ***"Foreign Exchange"*** means foreign currency and includes,—

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency. [Section 2(n)]

3.16.1 *Comments*

Section 2(n) of FEMA defines the term "foreign exchange", which is one of the most fundamental concepts under the Act. The definition is broad and inclusive, covering not only foreign currency but also deposits, credits, balances payable in foreign currency, drafts, traveller's cheques, letters of credit, bills of exchange, and any other instruments expressed or payable in foreign currency. It also includes Indian currency held outside India, thereby extending the scope beyond conventional notions of foreign money.

The importance of this provision lies in its comprehensive coverage, ensuring that all forms of cross-border monetary value—whether physical, electronic, or documentary—are brought within the regulatory ambit of FEMA. By including instruments and claims payable in foreign currency, the Act effectively captures both tangible and intangible forms of foreign exchange, preventing loopholes in regulation.

Section 2(n) forms the basis for controlling and facilitating various foreign exchange transactions such as:

- Remittances and receipts,
- Trade payments,
- Investments and borrowings, and
- Banking and financial instruments linked to foreign currency.

The definition aligns with FEMA's objective of orderly management of foreign exchange, enabling the Reserve Bank of India to regulate a wide spectrum of transactions through directions and guidelines.

In essence, Section 2(n) provides a holistic and expansive definition of foreign exchange, forming the core of FEMA's regulatory structure and ensuring that all relevant financial instruments and cross-border transactions are effectively governed under the Act.

3.17 ***"Foreign Security"*** means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency. **[Section 2(o)]**

3.17.1 *Comments*

Section 2(o) of FEMA defines the term "foreign security", which refers to any security expressed in foreign currency and includes shares, stocks, bonds, debentures, or any other financial instrument denominated or payable in foreign currency. This definition is significant in the context of cross-border investments and capital account transactions.

The importance of this provision lies in bringing within FEMA's ambit all forms of overseas financial assets and instruments, whether held by residents of India or issued by entities outside India. It ensures that transactions involving foreign securities—such as Overseas Direct Investment (ODI), portfolio investments, and acquisition or transfer of shares abroad—are subject to regulatory oversight.

Section 2(o) also facilitates clarity in distinguishing foreign securities from domestic securities, thereby enabling proper application of FEMA provisions relating to investment limits, reporting requirements, and approval mechanisms prescribed by the Reserve Bank of India.

In essence, this definition plays a crucial role in regulating capital flows and international investment activities, ensuring transparency and compliance while supporting FEMA's objective of orderly development of the foreign exchange market.

3.18 ***"Import",*** with its grammatical variations and cognate expressions, means bringing into India any goods or services. **[Section 2(p)]**

3.18.1 *Comments*

Section 2(p) of FEMA defines the term "import", which generally refers to bringing goods or services into India from a place outside India. This definition is fundamental to the regulation of foreign exchange transactions relating to cross-border trade.

The significance of this provision lies in its broad and inclusive scope, covering not only physical import of goods but also import of services, which has gained increasing importance in a globalised economy. By including services within its ambit, the Act ensures that all outward foreign exchange payments related to international transactions are properly regulated.

Section 2(p) serves as the basis for various compliance requirements under FEMA, such as:

- Payment for imports through authorised channels,
- Submission of Bill of Entry as proof of import,
- Monitoring through systems like IDPMS (Import Data Processing and Monitoring System), and
- Adherence to timelines for settlement of import payments.

It also enables authorities to distinguish import transactions from domestic transactions, ensuring appropriate application of foreign exchange rules and RBI guidelines.

3.19 ***"Indian Currency"*** means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934). **[Section 2(q)]**

3.19.1 *Comments*

Section 2(q) of FEMA defines the term "Indian currency" as currency which is expressed or drawn in Indian rupees but does not include special bank nots and special One Rupee Note.

3.20 ***"Legal Practitioner"*** shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961). **[Section 2(r)]**

3.20.1 *Comments*

In terms of Section 2(1)(i) of the Advocates Act, 1961 "legal practitioner" means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent.

3.21 ***"Member"*** means a Member of the Appellate Tribunal and includes the Chairperson thereof. **[Section 2(s)]**

3.21.1 *Comments*

Section 2(s) of the Foreign Exchange Management Act (FEMA), 1999, defines 'Member' as a member of the Appellate Tribunal and includes the Chairperson thereof. This definition is vital for the administrative and judicial structure of FEMA, ensuring that the adjudication and appeal processes have a clear, statutory interpretation of who constitutes the governing body of the Appellate Tribunal.

The definition explicitly states that "Member" includes the Chairperson of the Appellate Tribunal. Therefore, all provisions, duties, and powers assigned to a Member apply equally to the Chairperson. This definition supports the overall framework where, if a person is dissatisfied with an adjudication order under Section 16, they can appeal to the Appellate Tribunal (Section 18). The members defined in Section 2(s) are the individuals authorized to hear and decide these appeals.

Section 12A of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 deals with the matter relating to the qualifications, terms and conditions of service of Chairperson, and Member. It provides that notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal appointed **after** the commencement of **the Tribunals Reforms Act, 2021**, shall be governed by the provisions of Chapter II of the said Act:

Provided that the Chairperson and other members appointed **before** the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), shall continue to be governed by the provisions of this Act, and the rules.

3.22 ***"Notify"*** means to notify in the Official Gazette and the expression "notification" shall be construed accordingly. **[Section 2(t)]**

3.22.1 *Comments*

Section 2(t) of the Foreign Exchange Management Act (FEMA), 1999, provides a concise yet crucial definition: **"**notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly.

Official Gazette Requirement: For any rule, regulation, or order to be validly «notified» under FEMA, it must be published in the Official Gazette of India.

Constitutional Validity: Notification in the gazette ensures that the public has constructive notice of the law, which is essential for compliance, as FEMA regulations are binding on all persons resident in India.

Authority to Notify: Under FEMA, the power to "notify" is primarily vested in the Central Government, for framing rules under Section 46 and in the Reserve Bank of India (RBI) for framing regulations under Section 47.

Purpose and Scope: FEMA sets the overarching framework, while the actual operating procedures, limitations, and permissions are "notified" by the Central Government or RBI. **Operationalizing Regulations:** Key elements like permissible capital account transactions, restrictions on current account transactions, and reporting requirements are implemented through these notifications.

Legal Significance of 'Notify': Several sections, such as Section 2(za) (definition of security) and Section 2(y) (repatriation), use the term "notified" to allow for flexibility, permitting the RBI to include or exclude items via notification without amending the Act itself. **Effectiveness:** A notification takes effect from the date of its publication in the Official Gazette, unless a future date is specified within the notification.

Distinction from "Directions": It is important to note that while notifications are published in the Official Gazette, the RBI also issues "Master Directions" or "Circulars." However, **notifications** under Section 2(t) carry higher statutory weight, as they are formally notified delegated legislation.

3.23 ***"Person"*** includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person. [Section 2(u)]

3.23.1 *Comments*

Section 2(u) of the Foreign Exchange Management Act (FEMA), 1999, defines the term "person" for the purpose of the Act. This definition is crucial because it determines who is subject to the Act's restrictions and regulations regarding foreign exchange, foreign securities, and cross-border transactions.

The definition under FEMA is intentionally broad, similar to the definition in the Income-tax Act, 1961, to ensure that all forms of business entities and economic actors are covered.

Definition of 'Persons as Defined in Income-tax Act, 1961 / 2025

Section 2(31) of the Income-tax Act, 1961	**Section 2(77) of the Income-tax Act, 2025**
"Person" includes—	"Person" includes—
(i) an individual,	(a) an individual;
(ii) a Hindu undivided family,	(b) a Hindu undivided family;
(iii) a company,	(c) a company;
(iv) a firm,	(d) a firm;
(v) an association of persons or a body of individuals, whether incorporated or not,	(e) an association of persons or a body of individuals, whether incorporated or not;
(vi) a local authority, and	(f) a local authority; and
(vii) every artificial juridical person, not falling within any of the preceding sub-clauses. *Explanation*.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.	(g) every artificial juridical person, not falling within any of the preceding sub-clauses, whether or not such an association of persons or a body of individuals or a local authority or an artificial juridical person was formed or established or incorporated with the object of deriving income, profits, or gains.

The definition of 'Person' as provided in Section 2(u) of FEMA is comprehensive, intended to prevent the evasion of foreign exchange laws through complex corporate structures, associations, or foreign-controlled branches.

Section 2(u) merely defines the entity. The applicability of FEMA is further determined by Section 2(v), which defines "Person Resident in India," and Section 2(w), which defines "Person Resident Outside India".

Clause (vii) of Section 2(u) of FEMA is of great importance. Even if a foreign company is a "person resident outside India," its branch, office, or agency in India is considered a "person" and, depending on the circumstances, can be treated as a "person resident in India." This allows Indian residents to deal with such branches without attracting the stricter regulations applicable to non-residents. The definition ensures that a branch/office outside India, if controlled by a person resident in India, is within the ambit of FEMA, thereby allowing the Act to have extra-territorial jurisdiction.

Similar to the Income Tax Act, **FEMA does not rely on citizenship to define a person**. A person can be a foreign national but still be considered a resident of India if they meet the criteria in Section 2(v).

Thus, Section 2(u) acts as the foundational definition, encompassing all potential actors in foreign exchange transactions, ensuring that no entity, whether an individual, business, or operational branch, escapes the ambit of FEMA regulation.

3.24 ***"Person Resident in India"*** means—

(i) a person residing in India for **more than one hundred and eighty-two days** during the course of the **preceding financial year but does not include—**

- (A) a person who has gone out of India or who stays outside India, in either case—
  - (a) for or on taking up employment outside India, or
  - (b) for carrying on outside India a business or vocation outside India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, **otherwise than—**
  - (a) for or on taking up employment in India, or
  - (b) for carrying on in India a business or vocation in India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India. **[Section 2(v)]**

3.24.1 *Comments*

Section 2(v) is one of the most critical definitions under FEMA, as it determines the **applicability of the entire regulatory framework**. By emphasizing **intention, economic nexus, and control**, rather than mere physical presence, it ensures that foreign exchange regulations