

Foreign Exchange Legislation in India: Role of Professionals

The shift from the Foreign Exchange Regulation Act, 1973 (FERA) to the Foreign Exchange Management Act, 1999 (FEMA) marked a paradigm change—from a criminal law framework aimed at control to a civil, facilitative statute aimed at management. This transformation has occurred alongside India's emergence as a major economic player, attracting substantial foreign investment, expanding overseas operations of Indian enterprises, and experiencing a surge in cross-border financial flows. Within this landscape, professionals such as Company Secretaries' role has expanded far beyond documentation and statutory filings. They now serve as transaction architects, cross-border compliance strategists, governance advisors, valuation experts, and custodians of regulatory integrity. This article examines the evolution of India's foreign exchange legislation, outlines the core features of the current regulatory framework, analyses contemporary policy developments, and, most importantly, articulates the expanding and multi-dimensional role of professionals in ensuring compliance, facilitating investments, and strengthening India's position in the global financial ecosystem.



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INTRODUCTION

Foreign exchange management is an indispensable component of a modern economy, particularly for a country like India that actively participates in global trade, capital flows, and financial markets.

As Indian enterprises increasingly explore international markets and foreign investors continue to view India as a promising investment destination, the regulatory framework governing foreign exchange has assumed critical importance.

In the post-liberalisation era, India's foreign exchange policy has been aligned with broader economic goals—economic growth, macroeconomic stability, capital account prudence, and financial integrity. The transition from a restrictive regime under FERA to a managerial and facilitative framework under FEMA reflects India's evolving economic narrative.

Professionals such as Company Secretaries have played a significant role at each stage of this journey. The complexity of cross-border transactions—share subscriptions, mergers, ECBs, joint ventures, overseas acquisitions, export-import financing, or non-resident remittances—requires deep understanding not only of the statutory framework but also of business considerations, risk implications, and international

practices. Boards and senior managements increasingly rely on the interpretative clarity and practical experience brought by professionals.

As global economic interactions become more intricate, professionals need to harmonise regulatory requirements with business objectives. The subject is no longer confined to routine filings; it now encompasses sophisticated structuring, risk assessment, valuation standards, governance advisory, and navigating regulatory expectations that evolve with each policy shift.

EVOLUTION OF INDIA'S FOREIGN EXCHANGE LEGISLATION

1. Early Framework and the Era of Controls

At independence, India inherited a fragile external sector characterised by limited reserves and volatile global conditions. To address this, the Defence of India Rules (1939) and later the Foreign Exchange Regulation Act, 1947 granted the Government significant powers to regulate foreign exchange transactions. These controls, designed for crisis management, persisted for decades as India continued to grapple with foreign exchange shortages.

2. FERA 1973 – The Control Regime

FERA, enacted in 1973, was amongst the strictest foreign exchange laws globally. It criminalised most violations, prioritised conservation of foreign exchange, and imposed tight restrictions on foreign investment, remittances, and overseas transactions. The law reflected the economic philosophy of the time—protectionism, import substitution, and limited openness to foreign capital.

3. The Liberalisation Era and the Need for Reform

The economic crisis of 1991 led to sweeping reforms. As foreign investment accelerated and India integrated with global markets, the rigid, punitive provisions of FERA became incompatible with emerging realities. A modern, business-friendly, and facilitative statute was required.

4. FEMA 1999 – A Paradigm Shift

The Foreign Exchange Management Act, 1999 came into effect in June 2000. FEMA's focus shifted fundamentally:

- From control to management.
- From criminal penalties to civil consequences.
- From prohibition to regulation.
- From scarcity mindset to growth and global integration.

FEMA also enabled significant delegation of regulatory functions to the Reserve Bank of India (RBI), which issues rules, regulations, and Master Directions to operationalise the law.

5. Progressive Liberalisation

Over the past two decades, India has gradually liberalised its foreign exchange regime by:

- Expansion of FDI sectors.
- Liberalised Remittance Scheme (LRS).
- Overseas Direct Investment reforms.
- Introduction of ECB frameworks.
- Digitisation of reporting.
- Sector-specific policy consolidation.

This evolution mirrors India's economic aspirations and its growing role in global commerce.

FEMA: LEGAL ARCHITECTURE AND CORE FEATURES

1. Objectives and Scope

FEMA's stated objectives are to facilitate external trade and payments and promote the orderly development of the foreign exchange market in India. It governs:

- Capital Account Transactions.
- Current Account Transactions.
- Non-resident investments.
- Transaction reporting and documentation.
- Enforcement and adjudication.

2. Key Regulatory Authorities

- Reserve Bank of India (RBI): Central authority for regulating foreign exchange, issuing directions, approving transactions, and administering reporting frameworks.
- Central Government: Frames rules for capital account transactions and notifies sectoral policies.
- Enforcement Directorate (ED): Investigates contraventions under FEMA and conducts adjudication proceedings.

3. Capital and Current Account Transactions

FEMA differentiates between:

- Current Account Transactions: Generally permitted unless prohibited (e.g., certain remittances).
- Capital Account Transactions: Regulated or restricted based on sectoral considerations.

4. Rules, Regulations, and Master Directions

The framework is implemented through:

- FEMA Rules (framed by the Government).
- FEMA Regulations (notified by RBI).
- Master Directions consolidating norms.
- FAQs and circulars for clarity.

Professionals must track frequent updates to ensure compliance.

5. Enforcement and Compounding

Contraventions under FEMA attract civil penalties. The compounding mechanism enables voluntary settlement, reducing litigation and promoting compliance. It has become an important avenue for corporates seeking regularisation of technical breaches.

Civil proceedings dominate FEMA enforcement, with increased use of compounding for procedural lapses and higher penalties reserved for willful contraventions or egregious layering/misrepresentation cases.

KEY SECTORS AND TRANSACTIONS GOVERNED BY FEMA

1. **Foreign Direct Investment (FDI):** India's FDI policy defines sectoral caps, entry routes (automatic vs approval), pricing guidelines, reporting obligations, and restrictions for sensitive sectors.

2. **Overseas Investment (ODI/OFS):** The 2022 and subsequent reforms created a unified, modern ODI regime covering:

- Equity investments abroad.
- Debt instruments.
- Round-tripping safeguards.
- Financial commitment limits.
- Financial services entity guidelines.

3. **External Commercial Borrowings (ECB):** Corporates access foreign debt through the ECB framework, subject to:

- Track categorisation.
- End-use restrictions.
- All-in-cost ceilings.
- Reporting obligations.

4. **Cross-Border M&A and Corporate Restructuring:** FEMA significantly impacts:

- Share swaps.
- Inbound/outbound mergers.

- Transfer of shares between residents and non-residents.
- Valuation requirements.

5. **Export and Import Transactions:** Documentation, timely realisation, advance remittance norms, and trade credit policies are central to compliance.

6. **Real Estate, Remittances, and LRS:** Non-resident purchases, rental income, gifted property, and individual remittances fall under regulatory supervision.

7. **Emerging Domains: Digital and Fintech:** RBI continues to strengthen oversight over cross-border digital payments, fintech platforms, wallet-based transactions, and potential foreign exchange exposure from crypto-assets.

CONTEMPORARY DEVELOPMENTS (2023-2025)

1. **Unified FDI Framework and Sectoral Clarity:** Recent policy consolidation has enabled easier navigation of sectoral caps, beneficial ownership considerations, and national security reviews.
2. **ODI Framework Modernisation:** New reporting formats, clarity on step-down subsidiaries, financial services entity norms, and restrictions on round-tripping reflect contemporary global norms.
3. **Revised Compounding Procedures:** Enhanced transparency, reduced timelines, and digitised submissions have simplified the process.
4. **LRS Tightening and Digital Remittance Monitoring:** Increased focus on:
 - High-value outward remittances.
 - Risk-based KYC.
 - Fintech platforms handling cross-border payments.
5. **Start-Up Funding, Convertible Instruments, and Valuation:** Regulators are particularly attentive to pricing integrity, genuine commercial justification, and avoidance of disguised debt.
6. **FATF Alignment and National Security Considerations:** Cross-border fund flows are subject to higher scrutiny in light of global anti-money laundering expectations.

THE EVOLVING ROLE OF COMPANY SECRETARIES: FROM FORM FILLING TO STRATEGIC STEWARDSHIP

In the FERA era, professional engagement was often defensive and episodic, centring on obtaining permissions, responding to notices and firefighting enforcement actions. Under FEMA's management-oriented regime, professionals have become embedded in the full lifecycle of cross-border activity—from transaction design and documentation to execution, reporting, assurance and litigation strategy.

Governance professionals such as Company Secretaries, in-house legal counsel and compliance officers now shoulder frontline responsibility for ensuring FEMA-compliant board processes, shareholder approvals and documentation, particularly for FDI, outbound investments, guarantees and group treasury structures. Their remit spans advising on regulatory routes, engaging with authorised dealers, aligning internal policies with RBI directions and training management teams on practical do's and don'ts in foreign exchange dealings.

1. Transaction advisory and structuring

For corporate lawyers, investment bankers and transaction advisors, FEMA considerations are integral to structuring cross-border mergers, acquisitions, joint ventures and financing arrangements. Choice of instrument—equity, compulsorily convertible securities, non-convertible preference shares or debt—often turns on FEMA norms relating to pricing, end-use, maturity, security and repatriation, requiring close coordination between legal, tax and treasury functions.

Advisors must also navigate sectoral caps, prohibited and conditional activities, downstream investment rules and beneficial ownership concerns while ensuring that transaction timelines accommodate regulatory filings, approvals where necessary and post-closing reporting obligations. This has elevated the expectation that professionals combine technical mastery of FEMA instruments with commercial sensitivity and cross-jurisdictional awareness.

2. Compliance Management, Monitoring and Remediation

Compliance professionals in banks and corporates have seen their role expand from transactional vetting to continuous risk monitoring and governance of foreign exchange exposure. In authorised dealer institutions, compliance teams oversee KYC and AML checks, documentation standards, transaction coding, suspicious transaction reporting and adherence to RBI circulars across branches and digital channels.

Within corporates, professionals design internal control frameworks for tracking foreign currency receivables and payables, ensuring timely repatriation of export proceeds, validating eligibility under relevant schedules and managing documentation for audits, inspections and compounding applications. Early identification of potential contraventions—such as delayed filings, incorrect reporting or inadvertent breaches of caps—and timely recourse to compounding or rectification have become central to responsible governance practice.

3. Interface with technology, data and analytics

The digitisation of foreign exchange operations has created new domains of expertise for professionals, who must now understand not only substantive law but also system design, data architecture and algorithmic controls. In banks, this includes configuring transaction-monitoring systems to flag FEMA-relevant anomalies, integrating customer-facing apps with back-end compliance engines and ensuring that automated processes remain aligned with evolving RBI prescriptions.

For in-house teams, increasingly granular reporting obligations and data-driven supervision by regulators demand robust compliance dashboards, reconciliations and exception-management tools that can withstand regulatory scrutiny and independent audit. Professionals who can bridge legal requirements with technological solutions—whether through RegTech deployments, workflow tools or analytics—are becoming indispensable to effective foreign exchange governance.

4. Capacity building, ethics and professional standards

The complexity and fluidity of FEMA-related norms make continuous learning non-negotiable for professionals operating in this space. Professional bodies and academic institutions are responding with specialised courses, certification programmes and practice-oriented publications that address emerging areas such as overseas investment restructuring, cross-border insolvency, derivative documentation and ESG-linked capital flows under the foreign exchange framework.

At the same time, heightened expectations on ethical conduct and fiduciary responsibility mean that professionals must exercise independent judgement—not merely execute client instructions where these appear to strain, circumvent or technically exploit regulatory provisions. The alignment of professional standards with broader public-interest objectives—financial stability, integrity of markets and deterrence of illicit flows—is central to sustaining the credibility of India's liberalised yet closely supervised foreign exchange regime.

5. Future directions: towards a more integrated and principle-based regime

Looking ahead, foreign exchange legislation in India is likely to move incrementally towards greater consolidation, principle-based drafting and harmonisation with allied regulatory domains. Current debates highlight the need to simplify overlapping regulations, modernise definitions to account for digital assets and platforms, and streamline approval and reporting processes without diluting safeguards against volatility and financial crime.

For professionals, this trajectory implies an even stronger emphasis on interdisciplinary expertise, anticipatory compliance and proactive engagement with policy-making and consultative processes. As India's aspiration to be a leading global economic power translates into deeper capital integration and more complex cross-border financial relationships, the role of informed, ethically grounded and technologically attuned professionals will be pivotal in ensuring that the foreign exchange legal framework remains both facilitative and resilient.

6. Technology, Complexity, and Professional Practice

Digitalisation and fintech innovations have transformed foreign exchange activity. Online remittances, algorithmic trading, cross-border digital services, and crypto-assets have each drawn legislative and regulatory responses to close gaps and protect integrity without stifling growth. Concurrently, India's globalization has driven the proliferation of sophisticated capital structures, layered holding entities, and hybrid instruments, demanding precise compliance with both the letter and spirit of FEMA.

This complexity makes domain expertise indispensable. Professionals—lawyers, Company Secretaries, compliance officers, and corporate bankers—now function far beyond mere processors of approvals. Their mandates include early compliance risk identification, cross-jurisdictional structuring, and multi-layered reporting. They must integrate FEMA advice with SEBI, Companies Act, 2013, income tax, insolvency, and data regulation frameworks to ensure holistic due diligence.

ENFORCEMENT TRENDS AND JURISPRUDENCE

Civil proceedings dominate FEMA enforcement, with increased use of compounding for procedural lapses and higher penalties reserved for willful contraventions or egregious layering/misrepresentation cases. Adjudicatory authorities, appellate tribunals, and recent court decisions have helped define principles like proportionality, due process, and reasonableness of RBI discretion. This legal landscape clarifies expectations for compliance officers and advisors: diligent reporting, genuine economic justification for transactions, and strict adherence to both timelines and substance of FEMA regulations.

1. Looking Forward: Consolidation and Global Integration

India's foreign exchange regime is expected to gradually shift toward greater codification, simpler compliance interfaces, and principle-based drafting. There is ongoing discussion about streamlining overlapping rules, establishing digital asset definitions, and harmonising cross-border regulations. As India strengthens its global economic stature and financial

integration, professionals must anticipate regulatory expectations, build interdisciplinary fluency, and uphold ethical stewardship.

CONCLUSION

India's foreign exchange regime has evolved from a restrictive control-based system to a modern, facilitative, and globally aligned framework. As the economy becomes more integrated with global markets, the complexity of cross-border transactions continues to rise. Professionals such as Company Secretaries play a pivotal role in interpreting regulations, structuring compliant transactions, advising boards, and upholding the integrity of India's financial ecosystem. Their expertise enhances investor confidence, strengthens governance, and facilitates smooth cross-border operations.

The future will demand deeper knowledge, multidisciplinary skills, and continuous learning, especially in areas such as digital finance, valuation, fintech-led remittances, and global compliance standards. As India progresses toward becoming a major global economic hub, the contribution of professionals in managing foreign exchange and guiding businesses through regulatory expectations will remain indispensable.

REFERENCES:

- i. *Amazon.com NV Investment Holdings v. Reserve Bank of India – relating to ODI/FDI matters.*
- ii. *Annual Enforcement Report, Directorate of Enforcement (ED), Ministry of Finance.*
- iii. *Annual Report on Foreign Trade, Directorate General of Foreign Trade (DGFT), Ministry of Commerce.*
- iv. *Compounding Orders under FEMA, Reserve Bank of India (2020–2024).*
- v. *Consolidated FDI Policy, 2024 – Ministry of Commerce & Industry, DPIIT.*
- vi. *EU Capital Movement Regulations, European Central Bank.*
- vii. *FATF Mutual Evaluation Reports, Financial Action Task Force.*
- viii. *FCA Handbook, Financial Conduct Authority, UK.*
- ix. *Foreign Exchange Management (Adjudication Proceedings & Appeals) Rules, 2000 – Government of India.*
- x. *Foreign Exchange Management (Current Account Transactions) Rules, 2000 – Government of India.*
- xi. *Foreign Exchange Management (Debt Instruments) Regulations, 2019 – Reserve Bank of India.*
- xii. *Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 – Ministry of Finance, Department of Economic Affairs.*
- xiii. *Foreign Exchange Management (Overseas Investment) Rules & Regulations, 2022 – Ministry of Finance & RBI.*
- xiv. *Foreign Exchange Regulation Act, 1973 (FERA) – Government of India.*
- xv. *Hindustan Coca Cola Holdings Pvt. Ltd. v. Directorate of Enforcement – Appellate Tribunal for SAFEMA/FEMA.*
- xvi. *MAS Regulations on Foreign Exchange Transactions, Monetary Authority of Singapore.*
- xvii. *OFAC Compliance Guidelines, U.S. Department of the Treasury.*
- xviii. *Organization for Economic Co-operation and Development (OECD). Foreign Direct Investment Statistics, Annual Report.*
- xix. *Press Notes on FDI Policy (e.g., Press Note 1/2024) – Department for Promotion of Industry and Internal Trade (DPIIT).*
- xx. *RBI Circular – FIRMS 2.0 Digitized Reporting Platform, Reserve Bank of India (2023–2024).*
- xxi. *RBI Circular – Monitoring of LRS Transactions through PAN-based Aggregation, Reserve Bank of India (2023–2024).*
- xxii. *RBI Master Direction – External Commercial Borrowings, Trade Credits & Structured Obligations, 2024.*
- xxiii. *RBI Master Direction – Foreign Investment in India, updated periodically (latest 2024–25 version).*
- xxiv. *RBI Master Direction – Know Your Customer (KYC) Directions, 2016 (Updated 2024).*
- xxv. *RBI Master Direction – Liberalized Remittance Scheme (LRS) for Residents, 2024 update.*
- xxvi. *RBI Master Direction – Reporting under FEMA, updated through 2024.*
- xxvii. *Reserve Bank of India. Handbook of Statistics on Indian Economy, Annual Publication.*
- xxviii. *Tata Sons Ltd. v. Union of India – pertaining to share transfers and pricing considerations.*
- xxix. *The Foreign Exchange Management Act, 1999 (FEMA) – Government of India, Ministry of Finance.*
- xxx. *The Institute of Company Secretaries of India (ICSI). Foreign Exchange Management Manual, Latest Edition.*
- xxxi. *United Nations Conference on Trade and Development (UNCTAD). World Investment Report, Latest Edition.*