4. Foreign Exchange Management (Guarantees) Regulation - Economy

RBI issues Foreign Exchange Management (Guarantees) Regulations 2026. The RBI has notified the Foreign Exchange Management (Guarantees) Regulations, 2026, to establish a unified and transparent framework for guarantees involving non-residents, replacing fragmented circulars. This move reinforces FEMA's management-oriented approach by streamlining compliance for cross-border trade, FDI, and ECBs while maintaining the Act's civil law character.

Foreign Exchange Management (Guarantees) Regulations, 2026

1. Context and Objective

Notification- Issued by the Reserve Bank of India (RBI) to govern guarantees involving persons resident outside India.

Core Purpose

Unified Framework- Consolidates fragmented instructions into a single, comprehensive set of regulations for the issuance, modification, and invocation of guarantees.

Compliance- Enhances regulatory clarity, transparency, and consistency to improve the ease of doing business in cross-border transactions.

2. Definition and Scope of "Guarantee"

Definition- A financial commitment by a guarantor to fulfill the payment or performance obligation of another party (the principal debtor) if they default.

Key Application Areas

1. Cross-border Trade- Guarantees for import/export obligations.
2. Foreign Direct Investment (FDI)- Guarantees supporting investment agreements.
3. External Commercial Borrowings (ECBs)- Guarantees backing loans raised by eligible Indian entities from foreign lenders.

3. Key Highlights of the 2026 Regulations

Rationalization- Supersedes earlier fragmented circulars to reduce the compliance burden.

Reporting Reforms- Discontinues the requirement of quarterly reporting on guarantees issued for Trade Credits (effective March 2026). Mandates strict adherence to reporting timelines (typically within 7 days of issuance/invocation) to ensure real-time monitoring.

Foreign Exchange Management Act (FEMA), 1999

1. Overview and Evolution

Enactment- FEMA was enacted in 1999 and came into force on June 1, 2000.

Paradigm Shift- It replaced the draconian Foreign Exchange Regulation Act (FERA), 1973, marking a transition from "policing and control" to "management and facilitation."

Primary Goal- To facilitate external trade and payments and promote the orderly development of the foreign exchange market in India.

2. Comparison- FERA (1973) vs. FEMA (1999)

Feature	FERA, 1973	FEMA, 1999
Philosophy	Control- Preserved forex as a scarce asset.	Management- Facilitates forex as an economic asset.
Nature of Offence	Criminal Offence- Violations led to imprisonment.	Civil Offence- Violations lead to monetary penalties (arrest only if penalty is not paid).
Approach	Restrictive- Everything prohibited unless permitted.	Liberal- Everything permitted unless prohibited (especially Current Account).
Burden of Proof	On the Accused (Presumption of guilt).	On the Enforcement Agency (Presumption of innocence).

3. Key Features of FEMA

Civil Law Framework- Contraventions are treated as civil wrongs, focusing on monetary penalties rather than criminal prosecution.

Transaction Classification

Current Account- Transactions like trade payments, travel, and education are generally free (unless restricted by the Central Govt).
Capital Account- Transactions altering assets/liabilities outside India (e.g., buying property abroad, FDI) are regulated by the RBI.
Residential Status- Determined by the number of days spent in India (>182 days in the preceding financial year), rather than citizenship.

4. Applicability and Scope

Territorial Reach

1. Applies to the whole of India.
2. Extraterritorial Jurisdiction**-** Extends to branches, offices, and agencies outside India owned or controlled by a person resident in India.

Persons Covered - Individuals, Firms, and Companies resident in India.
Non-Resident Indians (NRIs) and Overseas Citizens of India (OCIs) for specific transactions.

Transactions Covered

1. Foreign exchange and foreign securities.
2. Export and import of goods/services.
3. Banking, financial, and insurance services.

5. Institutional Framework

Reserve Bank of India (RBI)

1. The primary regulator responsible for administration and implementation.
2. Frames regulations for Capital Account transactions.
3. Controls the flow of foreign exchange reserves.

Central Government

1. Frames rules for **Current Account** transactions.
2. Appoints adjudicating authorities for appeals.

Enforcement Directorate (ED)

1. The investigative agency responsible for enforcing the provisions of the Act.
2. Investigates contraventions and conducts adjudication proceedings.

6. Enforcement and Penalties

Monetary Penalty

1. Up to 3 times the sum involved in the contravention.
2. Up to ₹2 Lakh if the amount is not quantifiable.

Continuing Offence- Additional penalty of ₹5,000 per day for each day the contravention continues.
Confiscation- The adjudicating authority can order the confiscation of currency, security, or property related to the violation.
Imprisonment- Only applicable if the penalty is not paid within 90 days of the order (civil imprisonment).

Way Forward

The 2026 Regulations signify RBI's intent to simplify cross-border financing while maintaining strict oversight through better data reporting. This ensures that while Indian entities can easily issue guarantees for global expansion, the systemic risk remains monitored.

Source- https-//www.newsonair.gov.in/rbi-issues-foreign-exchange-management-guarantees-regulations-2026/