



**THE INSTITUTE OF  
Company Secretaries of India**  
**भारतीय कम्पनी सचिव संस्थान**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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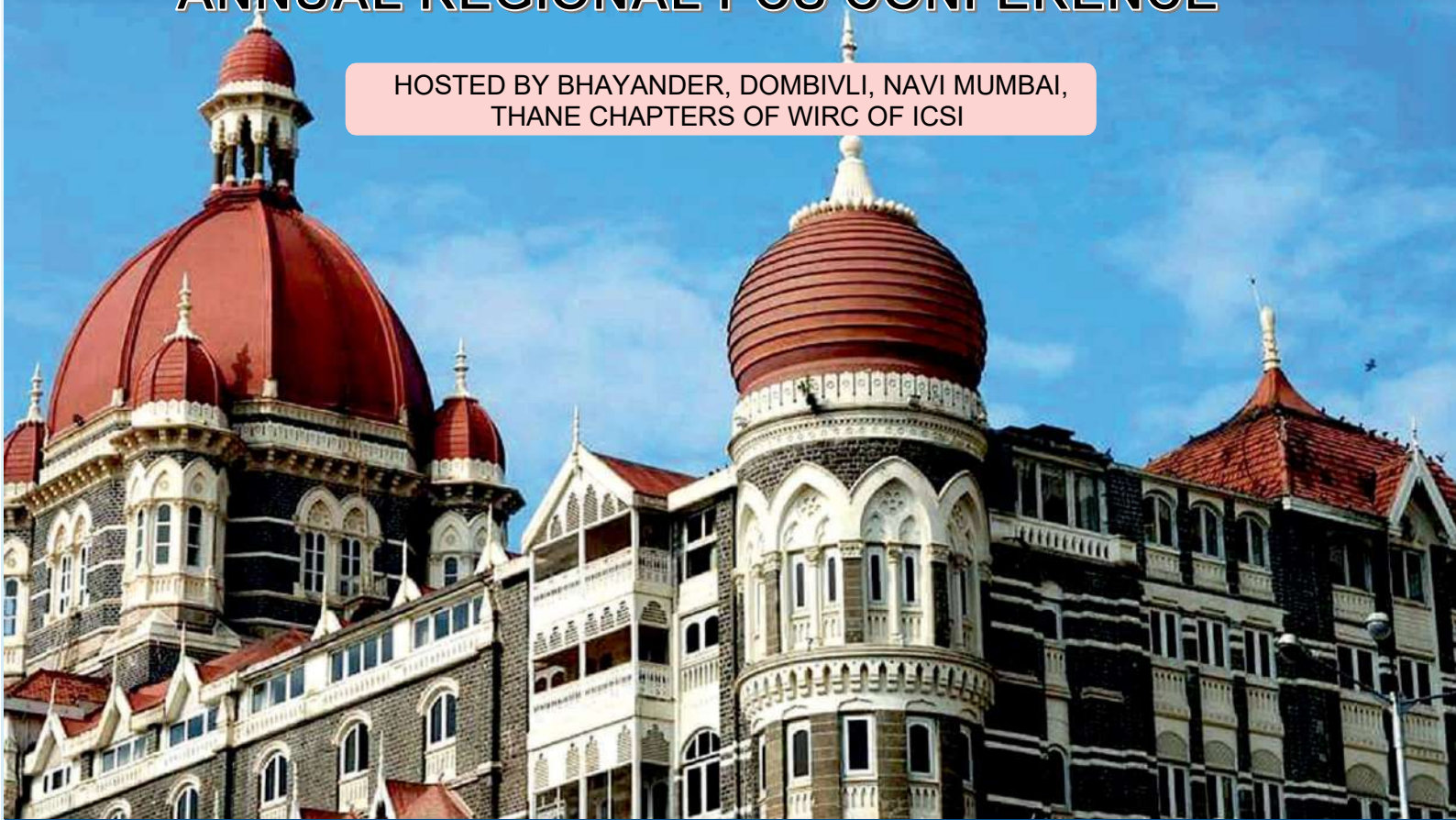
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**e-Focus**  
Special Edition  
on the Occasion of

## ANNUAL REGIONAL PCS CONFERENCE

HOSTED BY BHAYANDER, DOMBIVLI, NAVI MUMBAI,  
THANE CHAPTERS OF WIRC OF ICSI



**ICSI - WIRC e-Newsletter**

**On the Theme**

**"GLOBAL STANDARDS, INDIAN VALUES: COMPANY  
SECRETARIES FOR COMPETITIVE INDIA"**

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WIRC of ICSI Premises: 13, 56 & 57, Jolly Maker Chambers No. 2 (1st & 5th Floors),  
Nariman Point, Mumbai – 400021.

E-mail: [wiro@icsi.edu](mailto:wiro@icsi.edu)

Phone No.: 022-61307900/ 61307901/ 61307902

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## INDEX

Sr.no	Contents	Page no
I.	Chairman's Communique	3
II	Vice President Message	4
III.	Articles	
	<b>a.</b> Gifting Of Equity Instruments And Units Of Indian Mutual Funds Between Residents And Non-Residents Under FEMA	6-12
	<b>b.</b> FEMA Compliance Tool	13-14
	<b>c.</b> FEMA Compliance: A Two-Decade Odyssey of Missing APRs — A Company Secretary's Real-Life Case Study	15-20
	<b>d.</b> ODI Navigator: FEMA Compliance Flowchart & Checklist	21-30
	<b>e.</b> FEMA Tools on Share Swap & Cross-Border Merger	31-48
	<b>f.</b> Checklists Under Corporate Insolvency Resolution Process For Insolvency Professionals	49-52
	<b>g.</b> Section wise compliance tools under the Companies Act,2013	53-59
	<b>h.</b> Auditor Appointment In AGM Under Companies Act, 2013	60-61
	<b>i.</b> Professional Toolkit For Governance Professionals Comprehensive Framework For Corporate Governance Excellence	62-76
	<b>j.</b> ROC Filing & Compliance Requirements – A Practical Checklist	77-79
IV.	Guidelines For Members Contributing Articles To Be PUBLISHED IN E-FOCUS	80-81
V.	Declaration	82
VI.	CSBF Flyer	83



Chairman's Communique



**CS Hrishikesh Wagh**  
**Chairman**  
**WIRC of ICSI**

Respected Seniors, Professional Colleagues and Students,

**कर्मण्येवाधिकारस्ते मा फलेषु कदाचन।**

*You have the right to perform your duty; the fruits must not be your sole motivation.*

It gives me great pleasure to present this Special Edition of FOCUS – the WIRC E-Newsletter, formally released at the PCS Conference 2025. This edition has been curated as a practical, ready-reference compendium, keeping in mind the evolving role of Company Secretaries as compliance professionals, interpreters of law, and strategic advisors.

In a complex regulatory environment, this Special Edition focuses on actionable insights and procedural clarity across three critical legislations—the Companies Act, 2013; the Insolvency and Bankruptcy Code, 2016; and the Foreign Exchange Management Act, 1999. The objective is to ensure that *FOCUS* serves not merely as a publication, but as a working professional aid.

Releasing this edition during the PCS Conference symbolises WIRC's continued commitment to relevant, practice-oriented knowledge dissemination. I place on record my sincere appreciation for the Editorial Team, contributors, and reviewers whose collective efforts have made this edition meaningful and impactful.

Taking over the baton of Chairmanship of WIRC on 19 January 2025 was both an honour and a responsibility. As my tenure concludes on 18 January 2026, I extend my best wishes to CS Yogesh Choudhary, who will assume this role. I also congratulate the Office Bearers for the ensuing term and wish them continued success.

During the year, Team WIRC focused on structured knowledge initiatives, student capacity-building, and professional engagement. Highlights include extensive CLDPs and EDPs, targeted student skill-development workshops, campus placement initiatives, and over 100 Career Awareness Programmes reaching more than 11,000 students.

The year also witnessed a wide range of regional, state, and national-level conferences, seminars, joint programs with NSE, BSE, ICAI, IOD, MCA, IFSCA, and flagship events including the Annual Regional Conferences and Capital Markets Week 2025. These initiatives reflect WIRC's emphasis on regulatory dialogue, governance excellence, and professional synergy.

I am pleased to note that WIRC achieved and exceeded registration targets for CSEET and Executive stages, a testament to the efforts of the Students Committee, Chapters, and dedicated staff.

On a personal note, serving as Chairman of this prestigious Region has been a deeply enriching experience. I sincerely thank my fellow Office Bearers, Regional Council

Members, the ICSI Head Office, regulators, knowledge partners, volunteers, staff, and well-wishers for their unwavering support and cooperation throughout the year.

While the tenure was challenging, it reinforced the importance of teamwork, resilience, and purpose-driven leadership. I endeavoured to lead with positivity and humility, guided by the spirit of the Sanskrit maxim quoted above.

I remain committed to serving ICSI and our profession in all capacities going forward and look forward to your continued engagement and support in WIRC initiatives.

With warm regards,

**CS Hrishikesh Wagh**

Chairman

ICSI – Western India Regional Council



Vice President Message



**CS Pawan G Chandak**  
Vice-President, ICSI

***"Success in management requires learning as fast as the world is changing."***  
**Warren Bennis**

With immense pleasure I have noted that the WIRC at its Annual Regional PCS Conference – 2025 to be held on 13<sup>th</sup> and 14<sup>th</sup> December 2025, at Mumbai bringing out a Special Edition of FOCUS – the E-Newsletter of WIRC.

I am informed that this special edition of E-newsletter, meticulously crafted and exclusively dedicated to the core practice areas relevant to Practicing Company Secretaries (PCS) and it would represent a significant step forward in our ongoing commitment to equip our members with the most relevant, practical, and readily accessible resources to excel in their professional endeavours.

In today's dynamic and increasingly complex regulatory landscape, the role of a PCS has become more critical than ever. Navigating the intricacies of corporate governance, ensuring compliance with a multitude of legal frameworks, and providing sound advisory services demand a comprehensive understanding and a robust toolkit. Recognizing this need, the Team WIRC has dedicated this special edition to serve as a ready reference handbook, a one-stop repository of essential information and practical tools designed to enhance the efficiency and effectiveness of PCS professionals.

We believe that the resources contained herein will prove invaluable in your day-to-day practice, enabling you to provide informed and effective counsel to your clients, uphold the highest standards of professional conduct, and contribute to the overall growth and stability of the corporate sector.

I extend my sincere gratitude to team WIRC for their efforts and contribution for bringing out this special edition. I am confident that it will serve as a valuable asset to our PCS community, empowering you to navigate the challenges and opportunities of the modern corporate landscape with confidence and competence. I wish the annual regional PCS conference a Grand Success.

## Gifting Of Equity Instruments And Units Of Indian Mutual Funds Between Residents And Non-Residents Under Fema

Vikas Agarwal, Co-Founder, LegaLogic Consulting  
Anusha Jamba, Legal Advisor, LegaLogic Consulting

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### I. INTRODUCTION

In the contemporary globalised economy, cross-border transactions involving financial assets have become increasingly prevalent as families and individuals transcend geographical boundaries. The transfer of Equity Instruments and Units of Indian Mutual Funds across international borders, particularly through gifts, represents a significant category of such cross-border transactions. With Indian families frequently having members residing in different countries, some holding resident status in India while others are Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), or Foreign Nationals not being OCIs, the need for clarity on the regulatory framework governing such transfers has assumed paramount importance.

The Foreign Exchange Management Act, 1999 (FEMA) and the comprehensive rules, regulations, and directions issued thereunder constitute the primary legislative framework regulating such cross-border transactions involving Equity Instruments and Units of Indian Mutual Funds in India. This regulatory architecture is designed to balance the legitimate aspirations of individuals to transfer assets across borders with the broader objectives of maintaining financial stability and preventing potential misuse of the foreign exchange regime.

The permissibility of gifting Equity Instruments and Units of Indian Mutual Funds is not governed by a singular rule but depends on a confluence of multiple factors. These factors include the residential status of both the donor and the donee, the specific nature of the instruments being gifted, whether such instruments are held on a repatriation or non-repatriation basis, and compliance with specific conditions and monetary limits prescribed under FEMA. The regulatory treatment varies considerably across different scenarios, necessitating a thorough understanding of the applicable provisions.

This article provides a comprehensive and systematic analysis of the regulatory framework governing the gifting of Equity Instruments and Units of Indian Mutual Funds between residents and non-residents. It examines various transaction scenarios based on the residential status of parties involved, elucidates the conditions and approvals required in different circumstances, and details the compliance and reporting requirements that must be satisfied to ensure regulatory adherence.

### II. KEY DEFINITIONS

For the purpose of understanding the regulatory framework governing gifts of Equity Instruments and Units of Indian Mutual Funds under FEMA, certain key terms require understanding:

**Equity Instruments:** The term "Equity Instruments" refers to equity shares, convertible debentures, preference shares, and share warrants issued by an Indian company. These instruments represent ownership or potential ownership interests in an Indian company



and form the core category of securities dealt with under the foreign investment framework.

**Units of Indian Mutual Funds:** "Units of Indian Mutual Funds" in this context denote units of mutual fund schemes that invest more than 50% of their corpus in equity. Such units are treated in a manner largely analogous to Equity Instruments for the purposes of foreign investment and transfer regulations.

**Non-Resident Indian (NRI):** A "Non-Resident Indian" is an individual resident outside India who is a citizen of India. This category primarily covers Indian citizens who reside abroad for employment, business, or other purposes indicative of an intention to stay outside India for an uncertain period.

**Overseas Citizen of India (OCI):** An "Overseas Citizen of India" is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955. OCIs, although not Indian citizens, are accorded certain rights similar to NRIs under FEMA in respect of investments and transfers.

**Foreign National not being an OCI:** A "Foreign National not being an OCI" is an individual who is neither a citizen of India nor registered as an OCI Cardholder. Such individuals are subject to a more restrictive regime in certain contexts under FEMA compared to NRIs and OCIs.

**Person Resident in India:** The expression "Person Resident in India" is defined with reference to the period of stay and intention. It includes a person residing in India for more than 182 days during the preceding financial year but excludes those who have gone out of India or stay outside India for taking up employment, carrying on business or vocation, or for any purpose indicating an intention to stay outside India for an uncertain period. It also excludes persons who have come to or stay in India otherwise than for taking up employment, carrying on business or vocation, or for any purpose indicating an intention to stay in India for an uncertain period. In addition, any person or body corporate registered or incorporated in India, any office, branch or agency in India owned or controlled by a person resident outside India, and any office, branch or agency outside India owned or controlled by a person resident in India are treated as persons resident in India.

**Person Resident outside India:** A "Person Resident outside India" simply means a person who is not a person resident in India within the meaning described above.

**Relative:** The term "Relative" assumes importance as several gift-related permissions and conditions under FEMA are contingent upon the donor and donee being relatives. For this purpose, "Relative" includes members of a Hindu Undivided Family, spouses, and individuals related in specified manners such as parents (including step-parents), children (including step-children), their spouses, and siblings (including step-siblings).

### III. PERMISSIBILITY OF GIFTING OF EQUITY INSTRUMENTS AND UNITS OF INDIAN MUTUAL FUNDS

#### A. Gift from a Person Resident in India to NRI, OCI or Foreign National not being an OCI

When a Person Resident in India wishes to gift Equity Instruments in an Indian company or Units of Indian Mutual Funds to an NRI, OCI, or Foreign National not being an OCI, prior approval of the Reserve Bank of India (RBI) is required. This requirement reflects the



stringent regulatory oversight applicable to outbound transfers of Equity Instruments and Units of Indian Mutual Funds from residents to non-residents.

The following conditions must be satisfied for such gift transactions:

- **Quantitative Limit:** The gift must not, cumulatively, exceed 5% of the paid-up capital of the Indian company, or each series of debentures, or each mutual fund scheme.
- **Sectoral Cap Compliance:** The applicable sectoral cap in the Indian company must not be breached as a result of the gift.
- **Relationship Requirement:** The donor and donee must be Relatives.
- **Monetary Ceiling:** The value of securities to be transferred by the donor, together with any securities transferred to any person residing outside India as a gift during the financial year, should not exceed the rupee equivalent of USD 50,000.

#### **B. Gift from NRI, OCI or Foreign National not being an OCI to a Person Resident in India**

When an NRI, OCI, or Foreign National not being an OCI wishes to gift Equity Instruments or Units of Indian Mutual Funds to a Person Resident in India, such gifts are generally permitted, subject to compliance with applicable regulations. This represents a more liberalised regime for inbound transfers compared to outbound transfers.

The transaction must comply with pricing guidelines, documentation requirements, and reporting requirements in cases where the instruments are held on a repatriation basis. However, where the NRI, OCI, or Foreign National not being an OCI donor holds the Equity Instruments or Units of Indian Mutual Funds on a non-repatriation basis, transfer by way of gift to a Person Resident in India is permitted without the applicability of pricing guidelines, documentation requirements, or reporting requirements. This exception recognises the distinct character of non-repatriable holdings.

#### **C. Gift from NRI or OCI to Another NRI, OCI or Foreign National not being an OCI**

##### **1. Gift of Equity Instruments and Units of Indian Mutual Funds Held on Repatriation Basis**

An NRI or OCI can gift Equity Instruments in an Indian company or Units of Indian Mutual Funds held on a repatriation basis to another NRI, OCI, or Foreign National not being an OCI. Such gifts are generally permitted without prior RBI approval, which facilitates transfers among non-residents where instruments are held on a repatriation basis.

However, where the beneficial owner wishes to gift the Equity Instruments or Units of Indian Mutual Funds to a person situated in or a citizen of a country that shares a land border with India, prior government approval is required. This requirement, arising from Press Note 3 (2020 series), is grounded in national security considerations and applies irrespective of the otherwise liberal nature of the transfer.

## 2. Gift of Equity Instruments and Units of Indian Mutual Funds Held on Non-Repatriation Basis

Where an NRI or OCI holds the relevant Equity Instruments or Units of Indian Mutual Funds on a non-repatriation basis, the regulatory treatment varies depending on the identity of the donee:

**(a) Gift to NRI or OCI:** An NRI or OCI may gift Equity Instruments or Units of Indian Mutual Funds held on a non-repatriation basis to another NRI or OCI without prior approval of the RBI. The donee must continue to hold such instruments on a non-repatriation basis, thereby preserving the non-repatriable nature of the investment.

**(b) Gift to Foreign National not being an OCI:** Where the donee is a Foreign National not being an OCI, prior RBI approval is required for the gift of Equity Instruments or Units of Indian Mutual Funds held on a non-repatriation basis. The following conditions apply:

- **Quantitative Limit:** The gift must not, cumulatively, exceed 5% of the paid-up capital of the Indian company, or each series of debentures, or each mutual fund scheme.
- **Sectoral Cap Compliance:** The applicable sectoral cap in the Indian company must not be breached.
- **Relationship Requirement:** The donor and donee must be Relatives.
- **Monetary Ceiling:** The value of securities to be transferred by the donor, together with any securities transferred to any person residing outside India as a gift during the financial year, must not exceed the rupee equivalent of USD 50,000.

Further, where the beneficial owner wishes to gift the Equity Instruments or Units of Indian Mutual Funds to a person situated in or a citizen of a country that shares a land border with India, prior government approval is mandatory.

### D. Gift by Foreign National not being an OCI to NRI or OCI or Another Foreign National not being an OCI

A Foreign National not being an OCI may gift Equity Instruments in an Indian company or Units of Indian Mutual Funds to an NRI, OCI, or another Foreign National not being an OCI, subject to compliance with the applicable foreign investment and sectoral rules.

However, consistent with the overarching policy considerations introduced via Press Note 3 (2020 series), where the donee is situated in or is a citizen of a country sharing a land border with India, prior government approval is required for such a gift. This requirement applies in addition to any other FEMA-specific conditions that may be relevant.

## IV. REPORTING REQUIREMENTS

The gifting of Equity Instruments and Units of Indian Mutual Funds across borders is not merely a private arrangement between donor and donee. It carries reporting obligations under FEMA and associated regulations. The principal reporting form for such transfers is Form FC-TRS (Foreign Currency – Transfer of Shares).

## A. Form FC-TRS (Foreign Currency – Transfer of Shares)

**Scope and Applicability:** Form FC-TRS is required to be filed for transfer of Equity Instruments or Units of Indian Mutual Funds between:

- A Person Resident outside India holding Equity Instruments or Units of Indian Mutual Funds in an Indian company on a repatriable basis and a Person Resident outside India holding such Equity Instruments on a non-repatriation basis; and
- A Person Resident outside India holding Equity Instruments in an Indian company on a repatriation basis and a Person Resident in India.

**Obligation to Report:** The responsibility for filing Form FC-TRS lies on the resident transferor or transferee, or on the Person Resident outside India holding Equity Instruments on a non-repatriation basis, as the case may be. This allocation of responsibility ensures that at least one party with a substantive nexus to India bears the reporting obligation.

**Timeline for Filing:** Form FC-TRS must be filed within 60 days of the transfer of Equity Instruments or Units of Indian Mutual Funds, or within 60 days of receipt or remittance of funds, whichever is earlier. Although a gift does not involve consideration, the 60-day period is reckoned from the date of transfer of the securities.

**Consequences of Delay and Non-Compliance:** Delay in submission beyond the prescribed period requires regularisation by the concerned Regional Office of the RBI, Foreign Exchange Department, and may attract a late submission fee as determined by the RBI in consultation with the central government. Persistent or material non-compliance may be treated as a contravention under FEMA, with the possibility of penalties and compounding proceedings.

## B. Supporting Documentation for Form FC-TRS

In order to ensure transparency and proper valuation of gifted securities, a detailed set of documents is required to accompany Form FC-TRS. These include:

1. Names and addresses of the transferor (donor) and transferee (donee).
2. A statement describing the relationship between the transferor and transferee, given that certain permissions hinge on the parties being Relatives.
3. The reason for making the gift.
4. In the case of government dated securities, treasury bills, and bonds, a certificate issued by a Chartered Accountant on the market value of such securities.
5. For units of domestic mutual funds and units of money market mutual funds, a certificate from the issuer indicating the net asset value (NAV) of such units.
6. For shares or convertible debentures, a valuation certificate from a Chartered Accountant confirming the value of the securities in accordance with Securities and Exchange Board of India (SEBI) guidelines for listed companies or internationally accepted pricing methodologies on an arm's length basis for unlisted companies.



A certificate from the Indian company whose Equity Instruments or Units of Indian Mutual Funds are being transferred, affirming that:

- The proposed transfer by way of gift from a Person Resident in India to a Person Resident outside India does not breach the applicable sectoral cap or foreign direct investment (FDI) limit in the company; and
  - The aggregate number of shares or convertible debentures to be held by the non-resident transferee shall not exceed 5% of the paid-up capital of the company.
7. An undertaking from the resident transferor that the value of security to be transferred, together with any security already transferred by way of gift to any person residing outside India during the financial year, does not exceed the rupee equivalent of USD 50,000.
  8. In cases involving partly paid shares or warrants, a declaration from the donee confirming awareness of the liability in respect of calls in arrear and the consequences thereof.
  9. A copy of the executed gift deed documenting the transfer.

## V. SUMMARY

The regulatory framework under FEMA governing the gifting of Equity Instruments and Units of Indian Mutual Funds between residents and non-residents is intricate and nuanced, reflecting the interplay between liberalisation of cross-border capital flows and the need for regulatory safeguards.

First, the framework draws a fundamental distinction between outbound and inbound transfers. Gifts from Persons Resident in India to NRIs, OCIs, or Foreign Nationals not being OCIs require prior RBI approval and are subject to stringent conditions, including a 5% quantitative cap on the paid-up capital or mutual fund scheme, adherence to sectoral caps, a requirement that the parties be Relatives, and an overall monetary ceiling of USD 50,000 per financial year per donor. In contrast, gifts from NRIs, OCIs, or Foreign Nationals not being OCIs to Persons Resident in India are generally permitted, with the regulatory focus being on adherence to pricing and reporting requirements where the holdings are on a repatriation basis.

Secondly, the repatriation character of the holding plays a pivotal role. Transfers of Equity Instruments and Units of Indian Mutual Funds held on a repatriation basis among non-residents (NRIs, OCIs, and Foreign Nationals not being an OCIs) are broadly permitted, subject to the overarching land border restrictions. However, where the instruments are held on a non-repatriation basis, transfers to Foreign Nationals not being OCIs trigger RBI approval and the associated conditional framework, whereas transfers to other NRIs or OCIs may be undertaken without such approval, provided the non-repatriable status is preserved.

Thirdly, the land border policy introduced via Press Note 3 (2020 series) has emerged as a cross-cutting consideration, requiring prior government approval wherever the donee is situated in or is a citizen of a country sharing a land border with India. This requirement applies irrespective of the repatriation character of the investment and underscores the national security dimension embedded within the foreign investment framework.

Fourthly, reporting and documentation requirements, particularly through Form FC-TRS, ensure that such gift transactions are properly recorded within the regulatory system. The 60-day reporting timeline, potential for late submission fees in case of delay, and the detailed set of supporting documents, ranging from valuation certificates to corporate

confirmations and legal documentation, underscore the emphasis on transparency, valuation integrity, and compliance. Failure to comply can result in the transaction being treated as a contravention under FEMA, with attendant enforcement implications.

Finally, while this article has focused on the FEMA framework, it is important to recognise that gift transactions involving Equity Instruments and Units of Indian Mutual Funds may also intersect with other legal regimes, including income-tax law, company law, securities regulation, and anti-money laundering provisions. A holistic analysis, taking into account the definitions and classifications under FEMA, such as Equity Instruments, Units of Indian Mutual Funds, NRI, OCI, Foreign National not being an OCI, Person Resident in India/Person Resident outside India, and Relative, is essential for structuring compliant and effective cross-border gift transactions.

In sum, the FEMA regime for gifting of Equity Instruments and Units of Indian Mutual Funds between residents and non-residents represents a carefully balanced framework that simultaneously accommodates estate-planning considerations in a globalised context and safeguards macroeconomic and security interests through calibrated conditions, approvals, and reporting obligations.

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## FEMA Compliance Tool

Shreya Banerjee (Surat Chapter, ICSI)

### Reporting of Foreign Investment on Firms Portal

#### Introduction

Under the Foreign Exchange Management Act (FEMA) 1999, all Indian companies receiving foreign investment are required to report the transaction to RBI through the FIRMS Portal by filling the Single Master Form (SMF).

Non-reporting or delayed reporting attracts penalties under FEMA (Compounding).

#### When SMF Filing Is Mandatory

SMF filing required for any of the following:

- Fresh issue of shares/CCPS/CCD to a person resident outside India
- Transfer of shares between resident ↔ non-resident
- Conversion of convertible instruments
- Rights/bonus issue to non-resident shareholders
- ESOPs to non-resident employees
- Buyback / reduction of capital involving NR investors
- LLP contribution or disinvestment

#### 1. Applicable forms under Single Master Forms (SMF)

TYPES OF FORMS	Form in SMF
Fresh issue/Capital instruments	<b>FC-GPR</b>
Transfer between Resident & Non-Resident	<b>FC-TRS</b>
LLP Contribution or Disinvestment	<b>LLP-I / LLP-II</b>
ESOP/Stock Awards	<b>ESOP</b>
Convertible Notes	<b>CN</b>
Downstream Investment	<b>DI</b>
Indirect Foreign Investment	<b>IFDI</b>



## 2. Pre-Requisites for Filing

- Company must be registered in **Entity Master**
- Authorized Person must have:
  - Login credentials for **FIRMS Portal**
  - **Digital Signature Certificate (DSC)**
- Board Resolution approving allotment/transfer
- KYC of Foreign Investor (Attested)
- FIRC issued by Bank
- KYC Report issued by AD Bank
- Chartered Accountant / Company Secretary Certificate (where applicable)

## 3. Timelines Important for Compliance

Form	Timeline
FC-GPR	Within 30 days of issue of shares
FC-TRS	Within 60 days of transfer
ESOP	Within 30 days of issue
LLP Forms	Within 30 days
DI / IFDI	Within 30 days

## 4. Common Errors & How to Avoid Them

Mismatch in investor name ,Ensure exact match in KYC & FIRCs

Wrong sector or FDI route ,Cross-check FDI Policy

Files not in PDF , Convert all documents to single PDF each

DSC token not working , Install proper drivers beforehand

## 5. Practical Tips for Professionals

- Prepare a single combined PDF of all documents to avoid upload issues.
- Always verify investor's KYC and passport details early.
- Maintain a FEMA Register for tracking filings.
- Keep communication with AD Bank smooth they approve first.

## 6. Conclusion

**This FEMA Compliance Tool simplifies the process of reporting foreign investment and ensures professionals can complete filings error-free and within prescribed timelines. It serves as a ready-reference toolkit for Company Secretaries handling FDI transactions under FEMA.**

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## FEMA Compliance: A Two-Decade Odyssey of Missing APRs — A Company Secretary's Real-Life Case Study

CS Radhika Moharir

Every organisation has a compliance story — and sometimes the most revealing ones are buried in the filings that were never made. For a Company Secretary, filing an APR each year becomes a matter of discipline, routine and responsibility, yet a single lapse — even one forgotten in the past — can return unexpectedly and unfold into a compliance storm beyond imagination. These are the moments that test us, but they are also the experiences that shape us into resilient professionals. Because sometimes, one FEMA oversight is all it takes for a routine assignment to transform into an unforgettable professional journey.

One such experience in my career—an episode I often say I will narrate to my grandchildren—was the task of resolving almost two decades of non-filing of Annual Performance Reports (APRs) for an overseas subsidiary. What seemed like a minor gap eventually unfolded into a deep, multi-layered compliance challenge requiring extensive research, professional collaboration, and a commitment to uphold the spirit of the law.

Upon joining ABC Ltd. (fictional name), I was assigned the responsibility of clearing historical compliance issues. During a due-diligence review, I discovered that the company was involved in a long-pending DRT matter linked to a Hong Kong subsidiary. A One-Time Settlement was in progress, but remittances were repeatedly blocked by the RBI with the remark:

***"RBI non-compliance: requisite filings not completed."***

That short RBI remark quietly opened the door to a compliance labyrinth we did not yet realise we were about to navigate. During the investigation, I realised that APRs had not been filed for years — a gap that had silently grown into the very reason for the remittance rejection.

To get to the bottom of the matter, we had to trace the corporate history from the very beginning and understand how each shift had eventually led to the DRT case.

### Where the Compliance Complexity Began: The Corporate Shifts

What appeared simple at first turned out to be a long trail of structural changes across entities:

Year	Event Description
1990	ABC Ltd. incorporated in India.
1991	Overseas manufacturing subsidiary established in Hong Kong; UIN issued.
1996	Business demerger of ABC Ltd. resulted in formation of A Ltd., B Ltd., and C Ltd.; Hong Kong subsidiary transferred to A Ltd.

<b>Year</b>	<b>Event Description</b>
<b>2000</b>	Subsidiary transferred from A Ltd. to B Ltd.
<b>Subsequent Years</b>	Subsidiary transferred from B Ltd. to C Ltd.
<b>2012</b>	Hong Kong subsidiary went into liquidation; corporate and personal guarantees invoked.

Over these years, parent entities changed multiple times, documentation was lost (due to statutory retention limits), bank accounts were closed, and remittance records became untraceable—creating a perfect compliance storm.

### **From Liquidation to Litigation: The Compliance Fallout**

During liquidation, the corporate and personal guarantees were called upon, as the liquidator sought to recover the shortfall from the Indian company and the resident individual guarantors. To settle these dues, an outward remittance was required; however, the remittance was repeatedly rejected due to non-filing of APRs and FLA returns.

Since the funds could not be remitted, the overseas lenders initiated legal action in India, resulting in a legal battle that stretched on for years. One hearing led to another — court dates, interim orders, appeals, and repeated proceedings before the DRT — until the case became a constant presence in the organisation's life. That was the turning point, the moment it became undeniably clear that the price of non-compliance is always higher than the cost of compliance.

This was the same DRT matter that marked the beginning of our present compliance exercise. Although the company was willing to settle the outstanding dues, it remained unable to do so because the regulatory filings required for remittance were not in place. We thought the struggle had already reached its peak, but reality had something else planned — the most demanding and defining chapter of this compliance journey was only just beginning.

### **The APR Discovery: Three Filings Buried in a Maze of Time and Compliance**

Upon reviewing the Detailed Project Profile, it was discovered that only three APRs had ever been filed and recorded, leaving the remaining years entirely unreported.

<b>Accounting Year</b>	<b>Status of APR Filing</b>
<b>1993</b>	Reported / Submitted to RBI
<b>2001</b>	Reported / Submitted to RBI
<b>2007</b>	Reported / Submitted to RBI

All other years APR Filings—from **1994–2000**, **2002–2006** and **2008 –2012** —were missing.

This discovery placed a substantial responsibility on the compliance team and required a comprehensive restoration effort involving:

- Reconstruct two decades of financial information,
- Prepare missing APRs,
- File back-dated FLA returns, and



- Regularise the overall project profile, including guarantees, remittances, and inflows.

It was at this point we realised that we were not just rebuilding filings — we were retracing an entire corporate history piece by piece.

### Reconstructing Missing Years of Data: A Professional Thriller

With minimal internal documentation available, extensive research was undertaken using:

To reconstruct the missing compliance trail, we turned to every possible secondary source of information. Public documents were retrieved from the MCA portal and certified true copies were obtained from the ROC, while archived filings were accessed through BSE and NSE records since one of the predecessor companies has been listed. Historical annual reports and segment-wise disclosures helped rebuild the financial chronology, further supported by consolidated financial statements of the Indian parent entities. Legacy backup records of the overseas subsidiary also provided critical details wherever primary documentation was unavailable.

Piece by piece, we were stitching together a compliance history that time itself had almost erased — from:

- Outward ODI transactions;
- Dividend and other inflow details;
- Details of guarantees **that were called upon;**
- Remittance timelines; and
- Investment schedules

As suggested by the professionals and the AD Bank, we prepared APRs for 2008–2012, got them certified by the statutory auditors, and submitted them for further processing. However, the AD Bank refused to accept the filings without the corresponding FLA returns.

After completing and submitting all pending years FLA returns, another query arrived — this time from the AD Bank Head Office — directing us to file APRs for 1994–2000, 2002–2006 and 2008–2012 as well. It felt like every milestone we crossed only unlocked another layer of hidden compliance, as though the finish line kept moving further each time we got closer.

This required reconstructing financials of multiple predecessor companies — even those that had long ceased to exist. B Ltd. had already exited not only the business landscape but also the ROC records, disappearing from all regulatory trace.

And as we continued peeling back the layers, each one reminded us how far this journey still had to go — we were no longer just tracing documents; we were chasing history.



## The Compliance Breakdowns Hidden in the Project Profile and Financial Disclosures

### 1. Change of Parent Company:

No records were available for the transfer of the overseas subsidiary from B Ltd. to C Ltd. This included the absence of board resolutions, journal entries, or supporting documentation. The Detailed Project Profile continued to reflect B Ltd. as the parent company, indicating that no reporting or documentation of the transfer from B Ltd. to C Ltd. had been undertaken.

### 2. Dividend Inflows:

The audited financial statements of both the Hong Kong subsidiary and the Indian holding companies confirmed that dividends had been declared by the subsidiary and recognised as income by the parent entities. This was evident from the notes to accounts and other income schedules. However, key supporting documents—such as FIRC's, KYC documents, and proof of inward remittances—were missing, making it difficult to establish compliance under FEMA.

### 3. Guarantees

No documentation was available to verify whether the corporate guarantees issued in favour of the overseas subsidiary had expired or continued to remain in force. The absence of correspondence or closure confirmations created uncertainty regarding the status of these guarantees.

### 4. Loan-to-Equity Conversions:

The subsidiary's audited financial statements indicated an increase in share capital in 2004, arising from the conversion of loans into equity. This resulted in an increase in the Indian parent's shareholding. However, no records could be traced regarding the RBI reporting or approvals for this transaction, and no documentation existed within the Indian company's files to substantiate the conversion.

### 5. Previously Filed APRs:

Although APRs for 1993 and 2001 had been filed in earlier years, neither the company nor the AD Bank possessed copies of those filings. This created challenges in reconciling opening and closing balances while preparing APRs for subsequent years and raised the risk of inconsistency in reported figures.

### 6. Mismatch in Financial Year:

The Hong Kong subsidiary followed a January–December financial year, whereas the Indian entities followed the April–March cycle. This mismatch made reconciliation and APR preparation more complex, particularly for years with insufficient supporting data.

### 7. Overall Lack of Supporting Documents:

Only limited secondary evidence was available for the reconstruction process. No primary documents—such as FIRC, KYCs, bank statements, remittance proofs, or RBI acknowledgements—were traceable. The only reliable source was the audited financial statements of the Indian parent companies, which contained the subsidiary's financials as part of statutory disclosure requirements.

### **Fixing the Unfixable: The Compliance Revival Plan**

A transparent and legally defensible approach was adopted, firmly grounded in FEMA principles. The objective was not merely to complete filings, but to restore the entire regulatory trail with integrity and documentary credibility. The resolution process unfolded through carefully structured corrective actions:

#### **1. Missing Transfer Documentation**

A notarised affidavit was executed detailing the entire transfer history of the overseas subsidiary, the non-availability of supporting records, and the basis on which historical data had been reconstructed.

#### **2. Dividend Inflow Evidence**

In the absence of primary remittance documents, audited annual report extracts and statutory auditor certificates were attached along with affidavits confirming reliance on audited financial statements.

#### **3 & 4. Guarantees and Loan Conversions**

A separate application was filed to update and close the guarantees reflected in the project profile. Loan-to-equity conversions were disclosed in APRs with supporting auditor validation and formal management declarations.

#### **5. Previously Filed APRs**

APRs for the earlier years were recreated using available secondary disclosures, accompanied by a declaration acknowledging incomplete archival records and outlining the methodology adopted for reconstruction.

#### **6. Financial Year Alignment**

APRs were prepared in accordance with the subsidiary's January–December financial year, and an additional short-period APR was filed to ensure complete alignment with Indian reporting requirements.

#### **7. Supporting Documentation**

Each APR submission was fortified with statutory auditor certificates, explanatory notes, excerpts from annual reports, and sworn affidavits wherever primary documents were unavailable.

Multiple rounds of queries from the RBI and the Authorised Dealer Bank were handled methodically, with reasoned responses backed by documentary evidence. The matter has now progressed to its final stage, and once all irregularities are regularised, the compounding process will be undertaken—as the last step in restoring full compliance.

## The Compliance Case that Transformed My Perspective

This case reinforced the fact that compliance is not simply about filing forms; it is about meeting the larger regulatory purpose. Corrective compliance demands transparency, diligence, and a willingness to regularise past mistakes, regardless of when or how they occurred.

It also reaffirmed that a Company Secretary's learning never stops. Even a straightforward subject like APR filing can evolve into a complex regulatory exercise when examined across multiple decades and entities. Each such matter sharpens professional judgment and deepens understanding of the interconnected nature of corporate governance and FEMA reporting.

## Beyond Compliance: Reflections on the Journey

This experience strengthened my belief in the power of strong governance, the effectiveness of India's regulatory framework, and the essential role that professional advice and mentorship play in resolving legacy issues.

It highlighted that-

**"Company Secretaries do more than ensure compliance— we restore, rectify, and rebuild compliance systems when they break down."**

That is the true strength of our profession.

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## ODI Navigator: FEMA Compliance Flowchart & Checklist

### PCS Jatin Kapadia

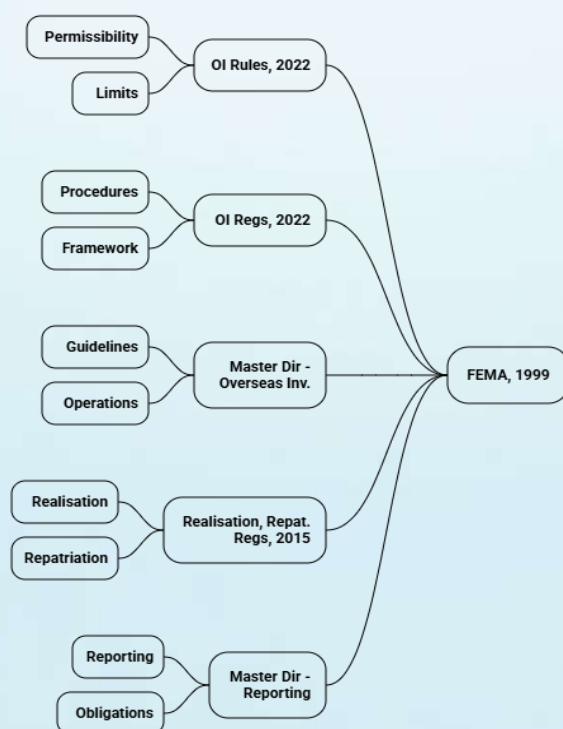
Mobile No.: 8866576084

Email: office@kjatin.com

806, Skywalk the Elements,  
Jagatpur Road, Gota,  
Ahmedabad – 382481

The globalization of Indian enterprise has necessitated a robust, albeit complex, regulatory framework governing cross-border capital flows. The enactment of the Foreign Exchange Management (Overseas Investment) Rules, 2022, and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, marked a paradigm shift from a "control-based" regime to a "trust-based" monitoring system.

#### Regulatory Framework for Overseas Investment



Overseas Investment (OI), a capital account transaction under Section 2(e) of the Foreign Exchange Management Act, 1999 (FEMA), is governed by five key legal instruments: (a) FEMA, 1999; (b) Foreign Exchange Management (Overseas Investment) Rules, 2022; (c) Foreign Exchange Management (Overseas Investment) Regulations, 2022; (d) Master Direction – Overseas Investment (RBI/FED/2024-25/121 dated July 24, 2024); and (e) Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015, supplemented by Master Direction – Reporting under FEMA, 1999.

Under Section 46(1) of the Foreign Exchange Management Act, 1999 (FEMA), the Central Government may, by notification, make rules for carrying out the provisions of this Act. Further, Section 46(2)(aa) empowers rules on the instruments determined to be debt instruments under sub-section (7) of section 6; and under Section 46(2)(ab), on permissible classes of capital

account transactions in accordance with sub-section (2A) of section 6, limits of admissibility of foreign exchange, and prohibitions, restrictions or regulations thereon. Section 47 vests the Reserve Bank of India (RBI) with power to frame regulations, with sub-section (3) mandating that every such regulation be laid before each House of Parliament for thirty days, subject to modification or annulment without prejudice to prior actions. Additionally, Section 11 empowers RBI to issue directions to Authorised Dealer (AD) banks for enforcement, ensuring seamless execution of OI transactions.

These three instruments: Rules (Central Government under Section 46), Regulations (RBI under Section 47), and Directions (to AD banks under Section 11)—constitute the 'trinity' or bible of OI regulation, forming a cohesive hierarchical edifice where Rules set policy boundaries, Regulations operationalize procedures, and Directions provide implementation granularity. Each instrument serves a unique purpose: Section 46 Rules establish broad policy parameters and prohibitions (e.g., sectoral restrictions under OI Rules, 2022); Section 47 Regulations prescribe detailed mechanisms (e.g., reporting in Form ODI under OI Regulations, 2022); while Section 11 Directions offer practical operational guidance (e.g., Master Direction on Overseas Investment for AD compliance). This delineation ensures regulatory clarity, preventing overlap while enabling adaptive governance.

<b>Instrument</b>	<b>Legal Basis</b>	<b>Core Purpose</b>	<b>The "Key Question"</b>	<b>Real-World Example</b>
Rules	Section 46	Policy & Parameters Sets broad boundaries and prohibitions.	What is the law?	OI Rules, 2022 (Sectoral restrictions)
Regulations	Section 47	Mechanisms Prescribes detailed procedures and reporting.	How do we do it?	OI Regulations, 2022 (Reporting via Form ODI)
Directions	Section 11	Guidance Operational instructions for Authorized Dealers (ADs).	How is it enforced?	Master Directions (Compliance checklists)

### **Classification of Overseas Investment (OI)**

Overseas Investment (OI) is classified into two primary categories under the Foreign Exchange Management (Overseas Investment) Rules, 2022: (i) Overseas Direct Investment (ODI) governed by Schedule I, encompassing equity investments in foreign entities for bona fide business activities; and (ii) Overseas Portfolio Investment (OPI) bifurcated into OPI by Indian entities under Schedule II (limited to 50% of net worth), and OPI by resident individuals under Schedule III (subject to Liberalised Remittance Scheme limits). Schedule IV addresses OI by other persons resident in India, while Schedule V pertains to IFSC investments, completing the comprehensive framework

**ODI at Glance**

Investor Type	ODI Definition & Scope	Key Limits/Conditions
Indian Entities	Equity $\geq 10\%$ stake/control in foreign JV/WOS for bona fide business (Schedule I).	$\leq 400\%$ net worth (audited BS); $> \text{USD } 1 \text{ Bn}$ needs RBI approval. Automatic/Approval routes.
Resident Individuals	Via LRS in JV/WOS (no control in unlisted debt entities).	USD 250,000/year under LRS.
Prohibited Activities	Real estate trading, gambling, INR-linked financial products (without approval).	Mandatory Form ODI/APR reporting via AD bank.

**Overseas Portfolio Investment (OPI)<sup>1</sup> at a Glance**

Investor Type	OPI Definition & Scope	Key Limits/Conditions
SEBI-registered Funds	Investments by Mutual Funds (MFs), Venture Capital Funds (VCFs), Alternative Investment Funds (AIFs) under Schedule IV - full flexibility for global diversification.	As per SEBI guidelines; no net worth cap.
Indian Entities	$< 10\%$ stake in listed foreign securities or non-controlling investments (not ODI), including by way of reinvestment, in accordance with schedule II of the OI Rules. 'Reinvestment' means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within the time specified for realisation and repatriation	Up to 50% of net worth (last audited balance sheet); excludes unlisted debt.
Resident Individuals	Small stakes ( $< 10\%$ ) in listed foreign stocks or non-controlling positions via LRS, even after its delisting, shall continue to be treated as OPI until any further investment is made in the entity, i.e., any further investment made in the equity capital of the foreign entity after its delisting shall be made as ODI.  Further, shares or interest acquired by the resident individuals by way of sweat equity shares or minimum qualification shares or under Employee Stock Ownership Plan (ESOP)/ Employee Benefits Scheme up to 10% of the paid up capital/stock, whether listed or unlisted, of the foreign entity and without control shall also qualify as OPI.	USD 250,000/year under Liberalised Remittance Scheme.

<sup>1</sup> The investment (including sponsor contribution) in units or any other instrument (by whatever name called) issued by an investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be treated as OPI. Accordingly, in jurisdictions other than IFSCs, listed Indian companies and resident individuals may make such investment. Whereas in IFSCs, an unlisted Indian entity also may make such OPI in units or any other instrument (by whatever name called) issued by an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable.



**Financial Commitment Limit for Indian Entities**

Indian entities cannot exceed a total financial commitment, under automatic route, of 400% of their net worth (as per the last audited balance sheet), more than 1 Bn USD at approval route, across all foreign entities under Schedule I of the Overseas Investment Rules, 2022.

Financial Commitment = ODI (Equity) + Debt + Non Fund Based Facilities

Component	Description	Calculation for 400% Limit
Equity Investment	Subscription to Memorandum or purchase of shares.	100% of Investment Value
Loans	Loans extended by the Indian Party to the Foreign Entity.	100% of Loan Amount
Corporate Guarantee	Guarantee issued by the Indian Party to a bank/party on behalf of the FE.	100% of Guarantee Amount
Performance Guarantee	Guarantee for performance of a contract by the FE.	50% of Guarantee Amount
Bank Guarantee / SBLC	Issued by a bank in India backed by Indian Party's collateral/counter-guarantee.	100% of Amount
Pledge of Assets	Pledge of Indian assets or foreign shares to raise debt for FE.	100% of Pledged Value

One of the most significant procedural hurdles introduced in 2022 is the requirement for a No Objection Certificate (NOC) from lenders or investigative agencies. This was introduced to prevent "willful defaulters" or financial fraudsters from siphoning funds abroad under the guise of ODI. Who requires an NOC? Any person resident in India who:

1. Has a bank account classified as a Non-Performing Asset (NPA).
2. Is classified as a Willful Defaulter by any bank.
3. Is under investigation by a financial service regulator (SEBI, IRDAI, etc.) or an investigative agency (CBI, ED, SFIO).

Further, the OI Rules incorporate the restriction on "layers" of subsidiaries, mirroring the Companies Act, 2013. An Indian Entity cannot invest in a Foreign Entity that results in a structure with more than two layers of subsidiaries.

**Check List for ODI for Individual:**

Process Phase	Form No. / Action	Documents & Details Required	Process & Timeline Notes
Pre-Transaction (Eligibility & Prep)	Due Diligence	Entity Check: Confirm the foreign entity is engaged in bona fide business (Not Real Estate/Gambling/Financial Products).	Valuation Rule: If investing in an existing entity, a Valuation Report is mandatory.



Process Phase	Form No. / Action	Documents & Details Required	Process & Timeline Notes
		<p>LRS Limit Check: Ensure total remittances (including this ODI) do not exceed USD 2,50,000 for the current Financial Year (Apr-Mar).</p> <p>Funding Source: Confirm funds are from own resources (Savings/Income).</p> <p><i>Borrowed funds are strictly prohibited.</i></p>	<p>If setting up a new company (subscribing to MoA), valuation is not required if investment is at face value.</p> <p>Bank Selection: Choose one Authorized Dealer (AD) Bank branch to route all future transactions for this specific foreign entity.</p>
Application (Submission to Bank)	Form FC (Financial Commitment)	<p>Section A (Investor Details): Name, PAN, Address. Activity Code: NIC 2008 Code (usually "Personal" or N/A for individuals, unless bank specifies otherwise).</p> <p>Group Company: Declaration if any (usually "No" for individuals).</p> <p>Section B (Foreign Entity Details):</p> <p>Basic: Name, Address, Country, Email.</p> <p>Sector: Must be "Bona Fide Business" (e.g., Software, Trading, Mfg).</p> <p>Control: Tick "Yes" if stake &gt;10% or you have management rights.</p> <p>SDS: Declare any Step-Down Subsidiaries (Subsidiaries of the foreign entity).</p>	<p>Submission: Submit physically/digitally to your AD Bank.</p> <p>Note: This form replaces the old "Form ODI". It serves as the master document for the RBI to generate the UIN.</p>
	Form A2 (Remittance Application)	<p>Beneficiary Details: Name, Account No, SWIFT Code of the Foreign Entity.</p> <p>Purpose Code: S0003 (Investment in Equity/Capital).</p>	<p>This is the standard FEMA form for buying foreign currency.</p>

Process Phase	Form No. / Action	Documents & Details Required	Process & Timeline Notes
		Amount: In Foreign Currency & INR.	
	Supporting Documents	<ul style="list-style-type: none"> <li>• PAN Card (Self-attested)</li> <li>• Passport (Self-attested)</li> <li>• Source of Funds</li> </ul> <p>Declaration: Letter confirming funds are not borrowed.</p> <ul style="list-style-type: none"> <li>• Bank Statement: Proof of funds (Last 6 months).</li> <li>• Certificate of Incorporation: of the foreign entity (or Draft MoA if new).</li> <li>• Valuation Report: (If applicable) Certified by CA or Merchant Banker.</li> <li>• Board Resolution: From foreign entity allotting shares to you.</li> </ul>	Startups: If investing in a foreign startup, banks may ask for a specific declaration that the entity is treated as a startup under host country laws.
Processing (Bank & RBI Action)	UIN Generation (Unique ID Number)	No specific document required from you here; the Bank handles this on the RBI FIRMS Portal.	<p>Timeline: 2–5 working days.</p> <p>Process: Bank vets Form FC → Uploads to RBI → RBI generates 13-digit UIN.</p> <p>Critical: You cannot remit funds until the UIN is generated (except for very specific "subscription" cases, but most banks wait for UIN).</p>
Execution (Money Transfer)	Remittance	<p>Debit Authority: Cheque or instruction to debit your savings account.</p> <p>Fx Booking: Deal rate confirmation.</p>	<p>Timeline: T+1 or T+2 days after UIN generation.</p> <p>Funds are remitted directly to the foreign entity's corporate account.</p>

Process Phase	Form No. / Action	Documents & Details Required	Process & Timeline Notes
Post-Compliance (Immediate)	Share Certificate Submission	Document: Copy of Share Certificate, or equivalent proof of investment (e.g., Register of Members extract) issued by the foreign entity.	Timeline: Must be submitted to AD Bank within 6 Months of remittance.  Penalty: Failure to submit this attracts Late Submission Fees (LSF).
Annual Compliance (Recurring)	Form APR (Annual Performance Report)	Financials: Audited Financial Statements of the foreign entity.  Details: Profit/Loss, Exports to India, Repatriation of dividends.	Timeline: By December 31st every year.  Audit Rule: If you have "Control" (>10% stake), the foreign entity's accounts must be audited for APR purposes, even if the host country does not require an audit.
Exit / Changes (Future Events)	Form FC (Disinvestment / Restructuring)	Section C/D (Disinvestment): If you sell shares or liquidate.  Document: Proof of repatriation of funds to India.	Timeline: Money must be repatriated to India within 90 days of sale/liquidation.  Closing: Form FC must be filed within 30 days of the exit to close the UIN.

**Check List for ODI for Indian Entity:**

Process Phase	Form / Action	Documents & Details Required	Process & Timeline Notes
Pre-Transaction (Eligibility Check)	Net Worth & Due Diligence	<p>Net Worth Certificate:</p> <p>Must confirm Financial Commitment (FC) is within 400% of Net Worth (Paid-up Capital + Free Reserves) as per the last Audited Balance Sheet.</p> <p>Entity Check: Foreign entity must be in a bona fide business (Not Real Estate/Gambling/Financial Products linked to INR).</p> <p>OD/NPA Check: The Indian Entity must not be on the RBI's "Caution List," "Defaulters List," or under investigation by enforcement agencies.</p>	<p>Auditor: The Net Worth certificate must be issued by the Statutory Auditor of the Indian entity.</p> <p>No Objection Certificate (NOC): If the Indian entity has any NPA accounts or is a "Wilful Defaulter," it must obtain an NOC from the lender bank before making ODI.</p> <p>Bank Selection: Route all transactions for a specific JV/WOS through one AD Bank branch only.</p>
Corporate Approvals (Internal)	Board Resolution	<p>Board Resolution: Authorizing the investment, specifying the amount (Equity/Loan/Guarantee), and designating an authorized signatory.</p> <p>Shareholders' Resolution: Only if the investment exceeds limits prescribed under Section 186 of the Companies Act, 2013 (i.e., &gt;60% of Paid-up Capital + Free Reserves or &gt;100% of Free Reserves).</p>	Note: Ensure the resolution explicitly mentions "Investment in [Foreign Entity Name] under FEMA ODI Rules 2022."
In addition to the processes outlined in the above table, Indian entities must also file Annual Performance Report (APR) by December 31 annually and Foreign Liabilities and Assets (FLA) return by July 15 every year			



**Check List for ODI for IFSC**

<b>Feature / Aspect</b>	<b>Scenario A: India → IFSC (Indian Entity/Individual investing INTO Gift City)</b>	<b>Scenario B: IFSC → Global (IFSC Unit investing OUTSIDE India)</b>
Nature of Transaction	Treated as Overseas Direct Investment (ODI). The IFSC unit is considered a "Foreign Entity" for the Indian investor.	Treated as Foreign-to-Foreign Investment. The IFSC unit is considered a "Person Resident Outside India" (Non-Resident).
Governing Regulation	FEMA (Overseas Investment) Rules, 2022.	IFSCA Regulations (Sector-specific) & Board Policy. Exempt from FEMA OI Rules limits.
Forms Required	Form FC: File with AD Bank (to generate UIN). Form A2: For remittance.	No Form FC: No filing with RBI/AD Bank required for downstream investment.  Regulatory Filing: Standard periodic reporting to IFSCA (not RBI).
Investment Limits	Individuals: USD 2,50,000 per FY (LRS).  Entities: 400% of Net Worth (Automatic Route).	No FEMA Limits: Limited only by the unit's internal capital adequacy and Board Approved Investment Policy.
Financial Services Rule	Relaxed:  Indian Entities can invest in IFSC financial sectors (except Banking/Insurance) without the 3-year net profit track record required for other jurisdictions.  Individuals can invest in IFSC financial entities (except Banking/Insurance) if they don't control a step-down subsidiary.	IFSC units (like Family Investment Funds or AIFs) are specifically designed to invest in global financial markets, securities, and entities without restriction.
Documents Checklist	Board Resolution (for Entity).  Net Worth Certificate (Statutory Auditor).  Valuation Report (if secondary purchase).  Form FC & A2.	Board Resolution (approving the specific investment).  Investment Policy (Internal document).  Transfer Instruction to IBU (Bank).

Approvals	Automatic Route (Unless the Indian entity is under investigation/NPA, then Lender NOC/Approval required).	Board Approval Only (Unless the investment falls outside the scope of the issued IFSCA license).
"Round Tripping"	Permitted (OPI - Overseas Portfolio Investment): An Indian entity can invest in IFSC, and that IFSC unit can invest back into India (FPI/FDI) up to 2 layers of subsidiaries.	Caution: If investing back into India, the unit must ensure it does not breach the "Layering" rules (max 2 layers of subsidiaries) to avoid tax avoidance scrutiny.
Annual Reporting	Form APR (Annual Performance Report): Filed by Dec 31st based on audited financials of the IFSC unit.	IFSCA Reporting: Varies by unit (e.g., AIFs file quarterly/half-yearly portfolio disclosures to IFSCA).
Bank Account	Debit Source: Indian Savings/Current Account (INR).	Debit Source: IFSC Banking Unit (IBU) Account (USD/Foreign Currency).

### Conclusion

The revised Overseas Investment regime under FEMA heralds a trust-based era, empowering Indian enterprises with strategic global expansion tools while safeguarding economic stability through calibrated limits and robust reporting. This ODI Navigator equips Company Secretaries with ready-to-deploy checklists and flowcharts, ensuring seamless compliance navigation—from eligibility checks to APR/FLA filings across ODI, OPI, and IFSC paradigms. Professionals can now confidently steer clients through FEMA's trinitarian framework (Rules-Regulations-Directions), transforming regulatory complexity into competitive advantage at PCS Conference 2025 and beyond.

### Disclaimer

**Safe Harbour & Limitation of Liability:** The content provided herein is for general informational purposes only and is based on the *Foreign Exchange Management (Overseas Investment) Rules, 2022* and related regulations as available up to the date of publication. While every effort has been made to ensure accuracy, the FEMA regulatory framework is subject to frequent amendments and subjective interpretation by Authorized Dealer (AD) Banks and the Reserve Bank of India (RBI). This "ODI Navigator" is intended to serve as a quick reference tool and does not constitute legal or professional advice. Readers are advised to consult with a qualified professional and refer to the latest relevant Notifications/Master Directions before initiating any transaction. The author and the publisher assume no responsibility for any errors, omissions, or consequences arising from the use of this information.

## FEMA Tools on Share Swap & Cross-Border Merger

CA Hinesh R. Doshi / CA Aarti Karwande  
(Hinesh R Doshi & Co LLP, Chartered Accountants-Mumbai)

### 1. FEMA Checklist for Share Swap Transactions

Share swap transactions have emerged as an important structuring tool in India's Merger & Acquisition and corporate restructuring landscape, particularly where non-resident investors are involved. Unlike cash-based deals, a share swap involves exchange of equity instruments as consideration, enabling acquisitions, group reorganisations, and strategic investments without immediate cash outflow. In domestic transactions with foreign participation, this structure is often used where an Indian company issues shares to a non-resident in exchange for shares of another Indian or overseas entity.

Under the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, share swaps are a permitted mode of foreign investment but are subject to strict regulatory oversight. From a FEMA perspective, a share swap comprises two distinct legs—**issue** of capital instruments and **transfer** of capital instruments—each independently required to comply with entry route conditions, sectoral caps, pricing and valuation norms, and reporting obligations. The Reserve Bank of India mandates that non-cash consideration does not dilute compliance standards applicable to regular FDI transactions, making careful structuring and timely reporting critical for successful execution.

### Share Swap Examples Covered under FEMA – NDI Rules (M&A / Restructuring involving Non-Residents)

Sr. No.	Transaction Scenario	Brief Description of Structure	Key FEMA Compliance Triggered
1	Indian company issues shares to non-resident in exchange for shares of another Indian company	Non-resident transfers shares of Indian Co B to Indian Co A; Indian Co A issues fresh equity to the non-resident	FC-GPR (issue), FC-TRS (transfer), pricing & valuation norms, sectoral caps, downstream investment review
2	PE fund exit via share swap with Indian acquiring company	Indian Co Y acquires Indian Co X and issues its shares to a foreign PE fund exiting Co X	FC-GPR, pricing compliance, change in ownership/control analysis, downstream investment review.
3	Foreign VC/AIF swaps Indian startup stake for shares of Indian holding company	Indian Hold Co issues shares to foreign investor against contribution of operating company shares.	FC-GPR, valuation for swap ratio, downstream investment implications
4	Resident ↔ non-resident swap of Indian shares.	Resident transfers Indian shares to non-resident and receives shares of another Indian company	FC-TRS (transfer leg), FC-GPR (if fresh issue involved), pricing norms



<b>5</b>	Indian group internal consolidation with foreign shareholder	Foreign parent contributes Indian subsidiary shares to Indian Hold Co; Hold Co issues shares to foreign parent	FC-GPR / FC-TRS, sectoral cap & entry route checks, downstream investment review.
<b>6</b>	NCLT-approved merger involving foreign shareholders	Indian Co A issues shares to foreign shareholders of Indian Co B under merger/demerger	FC-GPR, compliance with Para 6.15 of RBI Master Direction, sectoral conditions
<b>7</b>	Capital realignment where foreign shareholder receives shares of another Indian entity	Equity restructuring resulting in swap of shares between Indian entities involving foreign holder	FC-GPR / FC-TRS (as applicable), valuation & reporting compliance
<b>8</b>	Foreign parent consolidates two Indian subsidiaries through share swap	Foreign parent transfers shares of Indian Subsidiary S1 to S2; S2 issues shares to foreign parent	FC-GPR, sectoral cap review, ownership/control assessment

## 2. FEMA COMPLIANCE AND CHECKLIST

### 2.1 Applicability under the NDI Rules

Determining applicability under the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("NDI Rules") is the first and most critical step in a share swap transaction. From a compliance standpoint, professionals must establish that (i) the Indian entity is an eligible investee, (ii) the non-resident investor is permitted under FEMA, (iii) the underlying sector permits foreign investment within prescribed caps and entry routes, and (iv) non-cash consideration by way of swap is contractually and regulatorily acceptable. Failure at this threshold stage typically results in AD bank objections or regulatory exposure at a later stage.

The following table provides a **practitioner-focused verification framework** for assessing applicability under the NDI Rules:

Requirement	Relevant FEMA / NDI Reference	Practical Verification points
Indian entity is a permissible investee	NDI Rules, definition of "Indian company"	Confirm entity is incorporated under Companies Act, 2013; ensure it is not a trust, society, or NPO unless specifically permitted. Review Articles of Association and SHAs for authority to issue shares for non-cash consideration
Eligibility of foreign investor	NDI Rules; Rule 6	Verify investor is not from prohibited or restricted jurisdiction. For land-border countries (e.g., China), confirm applicability of Government Approval Route
Sectoral FDI permissibility and caps	Schedule I of NDI Rules	Map principal business activity (NIC code) with sectoral caps, conditionalities, and prohibited activities
Permissibility of non-cash consideration (share swap)	FEMA 395 read with NDI Rules	Ensure swap consideration is clearly documented in the transaction agreements. Shares involved must qualify as "equity



		instruments" (equity shares, CCPS, CCDs, or share warrants)
Automatic Route eligibility	Rule 6, NDI Rules	Validate that post-swap foreign shareholding and control remain within sectoral caps and comply with FDI-linked conditions; otherwise, identify need for prior Government approval

**Professional takeaway:**

Applicability under the NDI Rules is not a mere formality. It requires a structured, documentary-backed assessment at the planning stage to ensure that the proposed share swap is legally tenable under FEMA before moving to valuation, pricing, and reporting compliances.

**2.2 ENTRY ROUTE (AUTOMATIC VS. GOVERNMENT APPROVAL)**

Before evaluating detailed FEMA compliance for a share swap transaction, it is critical to determine the applicable **entry route** under the NDI Rules. Identification of the correct entry route at the structuring stage ensures regulatory certainty and avoids post-transaction objections from AD banks or regulators.

**Automatic Route:**

A share swap qualifies under the Automatic Route where foreign investment is permitted without prior Government approval. Practitioners must ensure that post-swap foreign shareholding remains within the applicable sectoral cap, no FDI-linked performance conditions apply, and the investor is not from a land-border sharing or otherwise restricted jurisdiction. Additionally, pricing must comply with prescribed valuation norms for both issuance and transfer of shares, and the transaction should not result in a direct or indirect transfer of ownership or control requiring approval.

**Government Approval Route:**

Prior Government approval is mandatory where the share swap results in breach of sectoral caps, involves sectors subject to FDI-linked conditions, includes investors or ultimate beneficial owners from border-sharing countries, or leads to a transfer of ownership or control in regulated or sensitive sectors.

**2.3 PRICING AND VALUATION NORMS – PRACTITIONER CHECKLIST**

Pricing and valuation compliance is a **non-negotiable FEMA checkpoint** in share swap transactions, as the consideration is discharged through exchange of securities rather than cash. Regulators expect the swap ratio to be fair, independently determined, and fully aligned with FEMA pricing norms applicable to issue and transfer of capital instruments.

The following **practical checklist** may be used by professionals while structuring and executing a share swap:

Checkpoint	Regulatory Expectation (FEMA/NDI)	Practitioner Action Point
Valuation methodology	Internationally accepted valuation method	Ensure DCF / comparable method is applied consistently for all entities involved
Independent valuer	Mandatory independent valuation	Appoint SEBI-registered Merchant Banker (India) / overseas regulated Investment Banker
Applicability threshold	Applies to all share swaps	Do not assume exemption for small or group restructurings
Swap ratio determination	Based on fair value	Cross-verify arithmetic and assumptions in valuation report
Alignment with pricing norms	Issue $\geq$ FMV; transfer $\geq$ / $\leq$ FMV as applicable	Confirm pricing compliance for both FC-GPR and FC-TRS legs

### Professional takeaway:

Inadequate or inconsistent valuation is one of the most common grounds for AD bank objections in share swaps; early alignment of valuation and FEMA pricing norms is critical to transaction closure.

## 2.4 SECTORAL CAPS AND CONDITIONALITIES – PRACTITIONER TOOL

Sectoral caps and conditionalities form a **critical FEMA checkpoint** in share swap transactions, as compliance is tested **post-swap** and not merely at the time of structuring. Under the NDI Rules and Consolidated FDI Policy, each sector has a prescribed cap on permissible foreign investment, along with sector-specific operational and regulatory conditions. Where a sector is not prohibited and not specifically listed, foreign investment up to 100% is generally permitted under the Automatic Route, subject to applicable laws. However, certain sectors—such as financial services or investing companies—may still require Government approval irrespective of the investment percentage.

Sector	FDI Cap	Entry Route	Key Practitioner Notes
Agriculture	100%	Automatic	Plantation crops restricted
Defence	74%	Automatic	>74% requires approval
Telecom	100%	Automatic up to 49%	>49% approval route
Pharma (Greenfield)	100%	Automatic	Brownfield capped at 74%
NBFC	100%	Automatic	Minimum capitalisation removed
Multi-brand Retail	51%	Government	Stringent conditions

### Professional takeaway:

Always evaluate foreign shareholding **after the swap**—any breach of sectoral caps or conditionalities triggers mandatory Government approval.

## 2.5 ELIGIBILITY REQUIREMENTS FOR TRANSFEROR & TRANSFeree

In a share swap, FEMA compliance must be tested **separately for the transferor and the transferee**, as each leg of the transaction is independently regulated under the NDI Rules.

### A. Transferor – Key Eligibility Checks

The transferor (resident or non-resident) must ensure that the transfer of Indian shares complies with FEMA pricing, sectoral caps, and entry route conditions. Resident-to-non-resident transfers must meet minimum fair value norms. Shares must be fully paid-up, unencumbered, and qualify as eligible capital instruments. Transfers involving land-border country investors or resulting in change of control require prior Government approval. FC-TRS filing and AD bank KYC are mandatory within prescribed timelines.

## B. Transferee – Key Eligibility Checks

The transferee must be an eligible investor under the NDI Rules and remain within sectoral caps and entry routes. UBO checks are critical, especially for land-border countries. Indian acquirers of foreign shares must comply with ODI valuation and reporting. Any resultant foreign ownership or control triggers downstream investment compliance. Timely reporting (FC-TRS / ODI) and pricing compliance are non-negotiable.

### 3. REPORTING REQUIREMENTS – PRACTITIONER-FRIENDLY FEMA TOOL

Timely and accurate reporting is a **core FEMA compliance obligation** in share swap transactions involving residents and non-residents. Since a share swap typically involves both **issuance** and **transfer** of capital instruments, reporting must be evaluated leg-wise and executed through the RBI's **Single Master Form (SMF)**. Inadequate documentation or delayed filing is one of the most common triggers for AD bank objections and late submission fees.

#### 3.1 FC-GPR – ISSUANCE OF SHARES UNDER SHARE SWAP

FC-GPR is mandatory where an Indian company issues equity / CCPS / CCDs / warrants to a non-resident as part of a share swap.

#### Key compliance checkpoints

Item	Requirement
Form	FC-GPR through SMF (FIRMS portal)
Timeline	Within <b>30 days from date of allotment</b>
Consideration	Non-cash consideration permitted; share swap to be clearly disclosed
AD Bank checks	Investor KYC, valuation compliance, sectoral cap, entry route, UBO, evidence of receipt of foreign shares

#### Key attachments (indicative)

- Valuation certificate supporting swap ratio
- Executed share swap agreement
- Board resolution / PAS-3 extract
- CS compliance certificate
- Declaration on non-cash consideration
- MoA extracts (authorised capital / objects)
- Government approval, if applicable

#### 3.2 FC-TRS – TRANSFER OF SHARES UNDER SHARE SWAP

FC-TRS is required for the **transfer leg** of a share swap involving Indian shares.

#### When applicable:

- Foreign shareholder transfers Indian shares under swap
- Resident transfers Indian shares to non-resident

#### Key compliance checkpoints

- Timeline: **Within 60 days from date of transfer**



- Pricing: Must comply with FEMA transfer pricing norms
- AD Bank verification: KYC, valuation, sectoral eligibility

#### Key documents

- Swap agreement
- Valuation certificate
- Consent letters of parties
- Transfer deed / equivalent
- Proof of non-cash consideration

### 3.3 FLA RETURN – ANNUAL REPORTING

All companies having **FDI and/or ODI** must file the **Annual FLA Return**.

Item	Requirement
Due date	<b>15 July</b> each year
Coverage	Opening & closing FDI/ODI positions, including share swaps
Risk	Non-filing may block future SMF submissions

#### Professional takeaway:

Treat reporting as a **transaction work stream**, not a post-closing formality. Align documentation, valuation, and approvals **before allotment/transfer** to ensure smooth FC-GPR, FC-TRS, and FLA compliance.

### 3.4 DOCUMENTATION & TIMELINES – PRACTITIONER'S QUICK REFERENCE

Effective documentation and timeline tracking are essential for seamless FEMA compliance in share swap transactions. Practitioners should treat documentation as a **parallel compliance track**, not a post-closing activity.

The table below provides a **ready reckoner** for managing key documents and filings:

Document / Form	Responsibility	Timeline	Key Regulatory Notes
Share Swap Agreement	All parties	Before allotment/transfer	Core legal document; mandatory for valuation and FC-GPR / FC-TRS
Board Resolution	Indian company	Prior to allotment	Approves issuance; mandatory FC-GPR attachment
Valuation Report	SEBI-registered Merchant Banker / Investment Banker	Before filing FC-GPR / FC-TRS	Mandatory for share swaps; must follow FEMA pricing norms
FC-GPR	Indian company	Within 30 days of allotment	Filed via SMF; AD bank verifies pricing, sectoral caps, UBO, non-cash consideration
FC-TRS	Transferor / Transferee (Resident)	Within 60 days of transfer	Mandatory for transfer leg involving non-resident
Share Certificates	Indian company	Within 60 days	Evidence of updated ownership
FLA Return	Indian company	By 15 July annually	Covers FDI/ODI
Form DI	Indian company	Within 30 days of allotment	Filed via SMF; AD bank verifies pricing, sectoral caps, UBO, non-cash consideration



**Professional takeaway:**

Align valuation, approvals, and documentation **before allotment/transfer** to avoid AD bank delays and late submission fees.

**3.5 AD BANK VERIFICATION POINTS – PRACTITIONER TOOL**

In share swap transactions involving non-residents, the **Authorised Dealer (AD) Bank acts as the primary FEMA gatekeeper**. Early alignment with AD bank expectations significantly reduces filing rejections and execution delays.

Practitioners should pre-validate the following checkpoints before submission:

Verification Area	What AD Bank Examines
Investor KYC & shareholding	KYC of investor, UBO details, and post-swap shareholding pattern
Transaction documentation	Executed share swap agreement and supporting approvals; confirmation of non-cash consideration under FEMA 395
Valuation & pricing	Independent valuation and compliance with FEMA pricing norms for both issue and transfer legs
Sectoral eligibility	Sectoral caps, entry route, restricted/prohibited investor categories
Evidence of receipt	Proof of receipt of foreign shares/securities before Indian share allotment
Compliance track record	Pending FEMA contraventions, compounding cases, and status of FC-GPR, FC-TRS, and FLA filings

**Professional takeaway:**

Engage the AD bank **before allotment/transfer** with a complete documentation pack to avoid post-submission queries and timeline slippages.

**4. TEMPLATES / WORKING FORMATS – PRACTITIONER TOOL**

To streamline execution and FEMA reporting in share swap transactions, it is essential to maintain **standardised working templates** for valuation and transaction reporting.

**4.1 VALUATION SUMMARY SHEET**

Capture valuer details, valuation methodology (DCF/NAV/Comparable), fair value of Indian and foreign entities, swap ratio, and justification of value parity for FEMA, Companies Act (ROC), and Income-tax purposes. Ensure valuation is certified by the appropriate authority (SEBI-registered Merchant Banker / Investment Banker).

**4.2 SWAP TRANSACTION DATA SHEET**

Maintain a single data sheet covering below details:.

Data Requirement	Practitioner Notes / Attachments
Investor name & country	UBO/KYC verified
Sector	Mapped with NDI Schedule
Pre / Post-swap shareholding	Working attached
Instrument type	Equity / CCPS / CCDs
Valuation basis	Valuation certificate to be attached
Swap ratio	Board-approved workings
FC-GPR / FC-TRS dates	Acknowledgements attached
Swap agreement	Executed copy

CS certificate / Board resolution	Relevant extracts
Non-cash consideration	Justification note
Government approvals	If applicable
Remarks	Special conditions / exceptions

**Professional takeaway:**

Maintain these tables as a **single working pack** to ensure faster AD bank clearance and error-free FEMA reporting.

**4.3 DECLARATION FORMATS**

Under FEMA reporting, standard declarations are a mandatory component of both FC-GPR and FC-TRS filings. The Reserve Bank of India **has prescribed uniform declaration formats under the Single Master Form (SMF) framework**, which are compiled in the SMF / FIRMS User Manual for ready reference. These declarations are not optional and form the basis on which the AD Bank satisfies itself regarding regulatory compliance.

**Professional takeaway:**

Practitioners are advised to use the latest declaration formats embedded in the SMF portal/User Manual, ensure consistency with valuation and swap agreements, and retain signed copies for audit and FEMA compounding defence.

**5. PRACTICAL CONSIDERATIONS – PRACTITIONER TOOL****5.1 HANDLING DIFFERENTIAL VALUATION**

Valuation differences between Indian and foreign entities are common in cross-border share swaps and are a key focus area for AD Banks. Practitioners should proactively manage these gaps to avoid regulatory objections.

**Key action points:**

- Use **consistent valuation methodologies** (DCF/NAV/Comparable) and preferably the same valuation date for both entities.
- Prepare a **valuation bridge note** explaining differences in assumptions (discount rate, risk premium, FX). Where variance exceeds 10–15%, obtain an independent **fairness opinion**.
- Derive the **swap ratio on value parity**, supported by clear workings (mid-ratio or weighted approach).
- Maintain a **robust documentation pack**—valuation reports, workings, sensitivity analysis, FX references, and a swap ratio justification note.

**Professional takeaway:**

Unexplained valuation gaps are a common cause of AD bank escalation; address them upfront.

## 5.2 NON-CASH CONSIDERATION UNDER THE COMPANIES ACT – PRACTITIONER TOOL

In a share swap, issuance of shares is treated as **consideration other than cash** under the Companies Act, 2013 and requires strict procedural compliance. Where shares are issued under **Section 62(1)(c)**, a **special resolution** is mandatory, with clear disclosure of the nature of consideration (shares), valuation basis, swap ratio, object of issue, and pre- and post-issue shareholding.

**Key compliance checkpoints:**

- Obtain a **valuation certificate from a registered valuer** as required under Rule 13 of the Companies (Share Capital and Debentures) Rules.
- Treat **receipt of shares** as receipt of consideration; allot shares **within 60 days** thereof.
- File **PAS-3 within 30 days** of allotment with valuation and swap documents attached.
- Ensure Board and shareholder records explicitly reference **non-cash consideration**, swap agreement, and FEMA compliance.

**Professional takeaway:**

Always obtain **two valuations**—one under the Companies Act and one FEMA-compliant; neither substitutes the other.

## 5.3 RBI TYPICAL QUERIES – PRACTITIONER READY RESPONSES

During review of share swap transactions, RBI (through the AD Bank) typically raises focused queries to validate valuation, eligibility, and compliance. Practitioners should keep **standard response packs** ready as below:

RBI / AD Bank Query	Practitioner Response / Evidence
Basis of swap ratio	Independent valuation reports, swap ratio workings, fairness note (if applicable)
Eligibility of foreign investor	UBO chart, investor KYC, confirmation of non-restricted jurisdiction
Compliance with sectoral caps	Pre- and post-swap shareholding statement mapped to NDI limits
Proof of receipt of foreign shares	Share transfer documents, depository confirmation, or equivalent evidence

**Professional takeaway:**

Preparing these responses upfront significantly reduces back-and-forth with AD banks and speeds up FEMA approvals.

### 3. FEMA Compliance Matrix for Cross-Border Mergers

#### 1. INBOUND & OUTBOUND MERGER CONDITIONS

Cross-border mergers are a key restructuring mechanism for Indian and multinational groups but involve **sharp FEMA compliance** due to cross-jurisdictional movement of assets, liabilities, and securities. Under Indian law, such mergers are governed by the **Companies (Compromises, Arrangements and Amalgamations) Rules, 2016** and the **FEMA (Cross-Border Merger) Regulations, 2018 (FEMA 389/2018-RB)**.

From a FEMA perspective, cross-border mergers are classified as:

- **Inbound mergers** – foreign company merges into an Indian company (Indian entity survives).
- **Outbound mergers** – Indian company merges into a foreign company (foreign entity survives).

Each structure triggers distinct compliance checks relating to **jurisdictional eligibility, sectoral caps, capital instruments, treatment of assets and liabilities, banking arrangements, and reporting (FC-GPR / FC-TRS / ODI)**.

#### Practitioner focus:

Professionals must evaluate the merger structure at the planning stage, determine **jurisdictional eligibility**, the applicable route (automatic vs approval), ensure compliance with RBI-prescribed conditions for asset and security holding, and manage post-merger reporting and integration.

#### 1.1 INBOUND & OUTBOUND MERGER CONDITIONS – PERMISSIBLE JURISDICTIONS

In **cross-border mergers**, jurisdictional eligibility is **the first and non-negotiable FEMA checkpoint**. Both inbound and outbound mergers are permitted only with foreign companies incorporated in **jurisdictions notified under Rule 25A of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016**.

#### Inbound Merger (Foreign Co → Indian Co)

Only a foreign company incorporated in a permitted jurisdiction can merge into an Indian company. This ensures legal recognition of the foreign entity, enforceability of the merger, and alignment with FEMA.

#### Outbound Merger (Indian Co → Foreign Co)

Similarly, an Indian company can merge into a foreign company only if the foreign surviving entity is incorporated in a permitted jurisdiction under Rule 25A. RBI permits outbound mergers only where post-merger holding of assets, securities, and liabilities by the foreign company can be regulated and monitored under FEMA.

#### Practitioner checkpoints

- Verify **place of incorporation** of foreign entity
- Confirm jurisdiction is notified under Rule 25A
- Document jurisdiction eligibility in the merger scheme

#### 1.2 SECURITY HOLDERS' ELIGIBILITY – INBOUND & OUTBOUND MERGERS

Treatment of security holders is a key FEMA checkpoint in both inbound and outbound cross-border mergers, as the merger may result in issuance or transfer of Indian or



foreign securities. Each movement of securities is examined as an independent compliance event under FEMA.

Scenario	FEMA Requirement	Practitioner Insight	Legal Basis
<b>Inbound merger</b> - Issue / transfer of Indian securities to foreign shareholders	Must comply with NDI Rules—pricing guidelines, sectoral caps, entry route, and reporting	Treat as fresh FDI; FC-GPR filing required within timelines	Reg. 4(1), FEMA (Cross-Border Merger) Regulations, 2018
<b>Outbound merger</b> - Issue / transfer of foreign securities to Indian / foreign shareholders	Must comply with ODI Regulations; JV/WOS and step-down rules apply	Verify historical ODI compliance before scheme implementation	Reg. 4(1) provisos, FEMA (Cross-Border Merger) Regulations, 2018

### Professional takeaway:

In both inbound and outbound mergers, **each security movement must independently comply with FEMA**. Early validation of FDI/ODI eligibility, pricing, and reporting avoids RBI objections and post-merger regulatory risk.

### 1.3 TREATMENT OF ASSETS & LIABILITIES – INBOUND AND OUTBOUND CROSS-BORDER MERGERS

In cross-border mergers, the transfer of assets and liabilities from the merging entity to the resultant company is permitted under FEMA on a **deemed approval basis**, subject to strict post-merger compliance conditions and timelines prescribed under the FEMA (Cross-Border Merger) Regulations, 2018. Professionals must evaluate asset-wise and liability-wise treatment separately for inbound and outbound mergers.

#### A. INBOUND MERGER (FOREIGN COMPANY → INDIAN RESULTANT COMPANY)

Area	FEMA Treatment / Condition	Timeline	Key Practitioner Notes
JV / WOS of Indian company	Transfer must comply with ODI Regulations, 2004	Ongoing	Verify original ODI compliance of JV/WOS
Step-down subsidiary of JV/WOS	Acquisition must comply with Reg. 6 & 7 of ODI Regulations	Ongoing	Step-down acquisition is not automatic—check limits
Overseas office / branch	Deemed foreign branch of Indian company	Allowed	Operate under FEMA (Foreign Currency Account) Regulations, 2015
Overseas borrowings / guarantees	Must align with ECB / Trade Credit / Borrowing norms	Within 2 years	No remittance from India during 2 years; end-use norms relaxed
Overseas assets permitted under FEMA	Can be acquired and held	No restriction	Can be transferred for FEMA-permitted transactions
Overseas assets not permitted	Mandatory sale and repatriation	Within 2 years	Sale proceeds to be repatriated immediately

Overseas liabilities not permitted	Can be extinguished from asset sale proceeds	Within 2 years	Track extinguishment separately
Foreign currency bank account	Permitted for merger transactions	Max 2 years	Strictly for merger-related flows

#### B. OUTBOUND MERGER (INDIAN COMPANY → FOREIGN RESULTANT COMPANY)

Area	FEMA Treatment / Condition	Timeline	Key Practitioner Notes
Indian shareholders acquiring foreign securities	Permitted under ODI Regulations	Ongoing	ODI reporting mandatory
Resident individuals	Allowed within LRS limits	Per LRS	Check FMV vs LRS cap
Indian office of merging company	Deemed branch office of foreign company	Ongoing	Governed by BO/LO/PO Regulations, 2016
Indian borrowings becoming foreign liabilities	Repayment as per NCLT scheme	As per scheme	No INR liability non-compliant with FEMA; lender NOC required
Indian assets permitted to foreign company	Can be held and transferred	No restriction	Subject to FEMA acquisition rules
Indian assets not permitted	Mandatory sale and repatriation	Within 2 years	Proceeds may repay Indian liabilities
Banking arrangement	SNRR account permitted	Max 2 years	Only for merger-related transactions

### 1.4 FEMA-Compliant Holding Structure Post-Merger:

Post-merger, the resultant holding structure must strictly align with **FEMA and RBI regulations**. Practitioners should immediately assess whether assets, securities, and liabilities retained after the merger are **permissible under the applicable ODI / FDI framework**.

Checkpoint	Compliance Action
Indian assets / subsidiaries	Retain only those permitted under ODI Regulations
Non-permissible Indian assets	Divest within <b>2 years</b> ; repatriate sale proceeds
Indian liabilities / borrowings	Repay strictly as per NCLT-approved scheme; obtain lender NOC
Shareholding & governance	Ensure compliance with FEMA, LRS limits, RBI norms, and shareholder protection requirements

## 2. APPROVALS & REPORTING

Cross-border mergers enjoy **deemed RBI approval** if executed strictly in accordance with the FEMA (Cross-Border Merger) Regulations, 2018, eliminating the need for a separate RBI application. However, this does not dilute compliance responsibilities. Professionals must ensure **accurate NCLT filings, timely FIRMS reporting (FC-GPR / FC-TRS / ODI, as applicable), proper transfer of capital instruments, and adherence to banking and borrowing norms. A Managing Director/Whole Time**

**Director and CS compliance certificate** confirming full FEMA adherence is mandatory with the NCLT application. Maintaining a **parallel FEMA compliance tracker** is critical to avoid post-merger contraventions.

## 2.1 REGULATORY FILINGS WITH RBI

Cross-border mergers operate on a self-compliance and post-facto scrutiny model under FEMA. While RBI approval is deemed, the onus of demonstrating full compliance rests entirely on the companies and their advisors. Professionals must therefore treat documentation and certification as a critical risk-mitigation exercise rather than a mere procedural formality.

Compliance Trigger	What should you practically ensure	FEMA Reference
Deemed RBI approval	Verify that all conditions under Cross-Border Merger Regulations, NDI / ODI / ECB norms are met before relying on deemed approval	Reg. 9(1)
NCLT certification	Obtain a joint MD/WTD and CS certificate confirming FEMA compliance and file it with the NCLT application	Reg. 9(2)

As a good practice maintain a working FEMA checklist, valuation report, asset–liability mapping and reporting tracker for future RBI inspection.

## 2.2 REPORTING UNDER FIRMS PORTAL – PRACTITIONER-FRIENDLY TOOL

All cross-border mergers involving issuance or transfer of capital instruments trigger mandatory reporting on the FIRMS portal. These filings are treated as independent FEMA events, irrespective of deemed RBI approval. PCS professionals must track reporting timelines closely, as delays attract penalties under FEMA.

Merger Type	FIRMS Filing	Practical Note
Inbound merger	FC-GPR	Issue of shares to foreign shareholders to be treated as <b>fresh FDI issuance</b>
Inbound merger	FC-TRS	Required where shares are transferred to foreign shareholders
Inbound merger	ODI / APR	Applicable for overseas JV/WOS or step-down subsidiaries; verify Reg. 4(1) conditions
Outbound merger – corporates	ODI Form + shareholding reporting	Must comply with ODI Regulations, 2022
Outbound merger – individuals	LRS monitoring	ODI reporting only if transaction qualifies as ODI; retain LRS documentation and limits to be checked



## 2.3 TRANSFER OF CAPITAL INSTRUMENTS

In a cross-border merger, the issue, acquisition, or transfer of capital instruments must be evaluated as a stand-alone FEMA event, separate from the NCLT approval process. Deemed RBI approval does not override compliance with pricing guidelines, sectoral caps, entry routes, eligibility norms, and reporting requirements. Professionals should validate each leg of the transaction to ensure enforceability and regulatory defensibility.

Transaction	FEMA Requirement	Detailed Practitioner Insight
<b>Outbound merger</b> - Indian corporates acquiring foreign securities	Must comply with ODI Regulations, including eligibility of the overseas entity, sectoral permissibility, financial commitment limits, and reporting	<ul style="list-style-type: none"> <li>Review historical ODI approvals, past APR filings, and existing shareholding.</li> <li>Any legacy non-compliance should be regularised prior to merger. Post-merger, ensure timely ODI reporting and continued compliance with downstream investment conditions</li> </ul>
Resident individuals acquiring foreign securities	Acquisition permitted only within LRS limit of USD 250,000 per financial year	<ul style="list-style-type: none"> <li>Ensure securities issued or allotted do not exceed LRS limits on fair value basis.</li> <li>Maintain LRS declarations, bank remittance advice, and valuation support, as RBI scrutiny is common in outbound individual allotments</li> </ul>
<b>Inbound Merger</b> – Indian company issuing or transferring securities to non-residents	Must comply with FDI pricing guidelines, sectoral caps, entry route conditions, and reporting requirements	<ul style="list-style-type: none"> <li>Treat allotment as a fresh FDI transaction.</li> <li>Obtain valuation as per FEMA norms, verify sectoral caps post-merger, and file FC-GPR / FC-TRS on FIRMS portal within prescribed timelines to avoid compounding exposure</li> </ul>

## 2.4 BANK ACCOUNT OPENING, REPATRIATION &amp; BORROWING NORMS – PRACTITIONER-FRIENDLY COMPLIANCE TOOL

Cross-border mergers invariably trigger movement of funds, temporary banking arrangements, and migration of borrowings across jurisdictions. FEMA provides limited **transition windows (up to two years)** to facilitate merger-related transactions, after which full alignment with standard banking, ECB, and borrowing regulations is mandatory. Professionals must closely monitor account usage, repatriation timelines, and debt restructuring to avoid post-merger FEMA contraventions.

Merger Type / Area	FEMA Provision / Requirement	Detailed Practitioner Insight
<b>Inbound merger</b> – foreign currency account	Resultant Indian company may open and maintain a foreign currency account abroad for up to 2 years	Account can be used only for transactions incidental to the merger (e.g., asset sale, liability settlement). Professionals should ensure closure within 2 years and repatriation of balances



<b>Outbound merger</b> – SNRR account	Foreign resultant company may open a Special Non-Resident Rupee (SNRR) Account in India for up to 2 years	Use restricted to merger-related inflows/outflows. Continuous monitoring is required to prevent use for regular business transactions
<b>Inbound merger</b> – foreign borrowings	Overseas borrowings of foreign company must be aligned with ECB / Trade Credit norms within 2 years; no repayment from India during transition	Track ECB eligibility, maturity, and reporting. Although end-use restrictions are relaxed during transition, post-alignment compliance is mandatory
<b>Outbound merger</b> – Indian liabilities	Liabilities to Indian lenders require NOC from lenders and must comply with FEMA debt regulations	Repayment must strictly follow the NCLT-sanctioned scheme. Professionals should coordinate with lenders and ensure no impermissible rupee liability is assumed

### 3. PRACTICAL MATRIX / FLOW CHART

In practice, the main challenge for PCS professionals is **sequencing and coordination**: knowing what to check first, when to file, and how to handle non-permissible assets or securities. This section provides a **practical matrix and stepwise flow** to simplify the execution of cross-border mergers, ensuring smooth FEMA compliance.

#### 3A. STEP-BY-STEP FEMA PROCESS FLOW (APPLICABLE TO BOTH MERGER TYPES)

Cross-border mergers involve multiple steps that require careful sequencing to ensure FEMA compliance. This section outlines a **stepwise process**, from pre-merger planning to post-merger execution, helping PCS professionals systematically manage approvals, filings, and asset/liability alignment.

##### PRE-MERGER (PLANNING STAGE):

- Step 1: Start – Cross-Border Merger Proposal
- Step 2: Jurisdiction Eligibility Check (Rule 25A, Companies Rules)
- Step 3: Comprehensive Asset, Liability & Borrowing Mapping
- Step 4: FEMA Permissibility Test (Assets, Securities, Guarantees)
- Step 5: Capital Instrument Eligibility (FDI / ODI / LRS Analysis)
- Step 6: Borrowings Transition Plan (ECB / Trade Credit Alignment)

##### II. MERGER APPROVAL STAGE (NCLT FILING):

- Step 7: FEMA Compliance Certificate (MD/WTD & CS)
- Step 8: Valuation as per Rule 25A (Mandatory)
- Step 9: NCLT Filing with FEMA-Compliant Scheme

##### POST-MERGER (DAY 0 TO 2 YEARS):

- Step 10: Open FCA (Inbound) / SNRR Account (Outbound)
- Step 11: FEMA Reporting (FC-GPR / FC-TRS / ODI / APR)
- Step 12: Divestment of Non-Permissible Assets (Within 2 Years)
- Step 13: Borrowing Alignment with ECB / Trade Credit Norms
- Step 14: Repatriation of Proceeds (Inbound Mergers)
- Step 15: Closure of Temporary Bank Accounts
- Step 16: End – FEMA Compliant Post-Merger Structure

### 3B. SUMMARY MATRIX – INBOUND VS OUTBOUND MERGER (FEMA PRACTITIONER TOOL)

Inbound and outbound mergers differ not only under FEMA but also in their **procedural and structural requirements under the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**. For Professionals, a combined FEMA–Companies Act view is essential to ensure that NCLT approval, valuation, shareholder approvals, and post-merger compliances are fully aligned. The matrix below provides a **single-window compliance snapshot for** practical application.

Compliance Area	Inbound Merger (Resultant Company in India)	Outbound Merger (Resultant Company Outside India)
<b>Applicable FEMA framework</b>	FDI Regulations / NDI Rules	ODI Regulations / LRS framework
<b>Applicable Companies Act provisions</b>	Sections 230–232 of Companies Act, 2013 read with Rule 25A	Sections 230–232 of Companies Act, 2013 read with Rule 25A
<b>Jurisdiction eligibility</b>	Foreign company must be from jurisdiction permitted under Rule 25A	Foreign resultant company must be from Rule 25A permitted jurisdiction
<b>Securities to foreign / resident holders</b>	Issue or transfer of Indian securities to non-residents must comply with FDI norms, pricing, sectoral caps	Residents acquiring foreign securities must comply with ODI / LRS limits
<b>Valuation requirement</b>	Mandatory valuation by recognised valuer as per Rule 25A	Mandatory valuation by recognised valuer as per Rule 25A
<b>Assets (India / overseas)</b>	Resultant Indian company may retain only permissible overseas assets; others to be sold within 2 years	Foreign resultant company may retain only permissible Indian assets; others to be sold within 2 years
<b>Borrowings &amp; guarantees</b>	Foreign borrowings to be aligned with ECB / Trade Credit norms within 2 years	Rupee liabilities must comply with FEMA; NOC from Indian lenders required
<b>Banking arrangements</b>	Foreign Currency Account permitted for merger-related transactions (max 2 years)	SNRR Account permitted for merger-related transactions (max 2 years)
<b>Repatriation of proceeds</b>	Mandatory repatriation to India of sale proceeds of non-permissible assets	Sale proceeds of non-permissible Indian assets may be repatriated outside India

<b>NCLT documentation</b>	FEMA compliance certificate by <b>MD/WTD and CS</b> to be filed with NCLT	FEMA compliance certificate by <b>MD/WTD and CS</b> to be filed with NCLT
<b>Deemed RBI approval</b>	Available, subject to full FEMA compliance	Available, subject to full FEMA compliance

### 3C. 360-DEGREE FEMA IMPACT TABLE – PRACTITIONER RISK-ASSESSMENT TOOL

Cross-border mergers trigger **simultaneous implications under FEMA, RBI regulations, tax laws, and banking norms**. A holistic assessment is essential, as compliance failure in any one area can invalidate an otherwise NCLT-approved scheme. The table below provides a **360-degree FEMA impact snapshot**, enabling Professionals to identify risk areas early and manage post-merger regulatory exposure effectively.

<b>Compliance Area</b>	<b>Inbound Merger – FEMA Impact</b>	<b>Outbound Merger – FEMA Impact</b>
<b>FDI / ODI framework</b>	Issue or transfer of Indian shares treated as <b>fresh FDI</b> ; subject to sectoral caps, pricing, entry route, and FIRMS reporting	Acquisition of foreign securities treated as <b>ODI or LRS transaction</b> , subject to eligibility, limits, and reporting
<b>Debt / borrowings</b>	Foreign borrowings of the foreign company must be <b>aligned with ECB / Trade Credit norms within 2 years</b> ; no repayment from India during transition	Existing Indian borrowings require <b>NOC from Indian lenders</b> ; resultant company cannot assume Rupee liabilities in violation of FEMA
<b>Tax interplay</b>	Generally tax-neutral under <b>sections 47(via) / 47(viab)</b> , subject to conditions; FEMA timelines may still apply	No automatic tax exemption; capital gains and valuation rules apply independently
<b>Assets &amp; repatriation</b>	Non-permissible overseas assets must be <b>sold within 2 years</b> and sale proceeds <b>repatriated to India</b>	Non-permissible Indian assets must be <b>sold within 2 years</b> and proceeds may be <b>repatriated outside India</b>
<b>Branch / office implications</b>	Overseas office of foreign company deemed to be <b>branch of Indian resultant company</b>	Indian office deemed to be <b>branch office of foreign resultant company</b>

## 4. PRACTITIONER NOTES

Although the FEMA (Cross-Border Merger) Regulations, 2018 provide a structured legal framework, real-world execution often presents complexities beyond the written law. Practitioners commonly face issues such as legacy non-compliant assets, restructuring of guarantees and borrowings, interpretation gaps between FEMA and tax provisions, and tight transition timelines. These practitioner notes highlight practical considerations, risk areas, and execution strategies to help Professionals proactively manage compliance, mitigate regulatory exposure, and ensure smooth post-merger integration.

### 4A. HANDLING NON-COMPLIANT ASSETS

- Certain assets of the transferor company—such as foreign real estate, prohibited portfolio securities, or overseas investments not meeting ODI norms—become “non-



permissible assets” post-merger and must be divested within **two years**.

- Professionals must monitor valuation, tax exposure and repatriation constraints to ensure compliant disposal within the permitted period.
- RBI scrutiny typically focuses on whether active and continuous efforts were undertaken within the permitted period. Maintaining a clear audit trail—including board approvals, valuation reports, sale mandates, broker correspondence, and bank advices—is critical to demonstrate compliance intent.

#### 4B. TREATMENT OF GUARANTEES, LOANS & BORROWINGS

In **inbound mergers**, foreign borrowings inherited by the Indian resultant company must **be aligned with ECB or Trade Credit norms within two years**, covering eligibility, maturity, interest caps, and reporting. Although **ECB end-use restrictions are relaxed during the transition**, reporting discipline remains essential.

In **outbound mergers**, Indian rupee borrowings cannot migrate to the foreign resultant company without FEMA conformity. A **No-Objection Certificate (NOC) from Indian lenders** should be obtained upfront, and repayment schedules must strictly follow the **NCLT-sanctioned scheme**.

#### 4C. TAX + FEMA INTERPLAY

FEMA sets the rules for movement of assets and capital in cross-border mergers, whereas tax laws determine how those movements are taxed. The two frameworks often diverge, requiring careful alignment.

Issue	Practical FEMA–Tax Alignment
<b>Capital gains on merger</b>	Evaluate exemptions under <b>Sections 47(via) / 47(viab)</b> independently of FEMA permissibility
<b>Valuation standards</b>	FEMA requires <b>fair value</b> ; tax authorities may demand <b>FMV with methodology justification</b>
<b>Sale of foreign assets</b>	Assess <b>foreign tax exposure</b> , DTAA relief, and foreign tax credit availability

#### CONCLUSION

Cross-border mergers under FEMA 2018 present strong structuring opportunities but demand disciplined execution. For PCS professionals, success lies in aligning Companies Act approvals with FEMA requirements covering securities, assets, borrowings, banking, and reporting. The **detailed process flow, compliance matrix, checklists, and practitioner pointers** outlined above serve as practical tools to identify risks early, manage transition timelines, and maintain regulatory defensibility. By following a structured, step-by-step approach supported by proper valuation and tax alignment, professionals can confidently handle these complex assignments and deliver smooth, compliant cross-border merger outcomes.



## Checklists Under Corporate Insolvency Resolution Process For Insolvency Professionals

**CS Anagha Anasingaraju,**  
**Partner Kanj & Co LLP**  
**and Insolvency Professional**

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### **A. Checklist for Public Announcement**

1. Legal provision under which public announcement to be made: Section 15 of IBC read with Regulation 6 of CIRP Regulations, 2016.
2. Timeline: The Interim Resolution Professional (IRP) must make the announcement not later than 3 days from the date of appointment.
3. Prescribed format: Must be in Form A prescribed under CIRP Regulations
4. Manner of publication: Regulation 6(2) mandates a strict protocol for publication: Newspapers:
  - (i) One English national daily newspaper and one Regional Language daily newspaper having wide circulation at the location of the Registered Office and the Principal Office (if any) of the CD and any other location where in the opinion of the IRP, the CD conducts material business operations
  - (ii) Websites: On the website of the Corporate Debtor (if any) and on the website designated by the IBBI.
  - (iii) Communication to Creditors (Reg 6A): The IRP must also send the Public Announcement directly to all creditors identified in the last available books of accounts through post or electronic means wherever the information is available.
5. Purpose: To invite claims from stakeholders of the Corporate Debtor (CD)
6. Pre-publication checklist:
  - (i) Basic details of the CD: Name, PAN, CIN, and Registered Office Address as per MCA Master Data.
  - (ii) Take online search on MCA Portal for the PAN, latest financials in case information is not yet received from the Applicant or the CD
  - (iii) Identify number of locations of the CD where the announcement is to be published
  - (iv) Create assignment on IBBI website
  - (v) IRP Credentials: Name, Registration Number, Address, and Email ID as registered with the IBBI
  - (vi) Process email id: Obtain process email id specific to this insolvency process
  - (vii) Classes of Creditors: Identify if there are classes of creditors. This can be determined from the financials of the CD
  - (viii) In case there are classes of creditors, identify 3 Insolvency Professionals who can act as Authorised Representatives. For this, contact these 3 IP and obtain their willingness and consent to act as such

- (ix) Date of commencement of CIRP: Is the insolvency commencement date as per NCLT order
  - (x) Last date of CIRP: Calculate 180 days from CIRP commencement date
  - (xi) Last date of submission of claims: Calculate 14 days from date of appointment of IRP
  - (xii) Obtain quotations from publishers
  - (xiii) Public announcement to be translated in vernacular language where it is being published
7. Once form A is published in newspapers, publish it on the website of CD and also on IBBI website through IP login (ensure assignment is approved)
  8. Also send email to creditors from process mail id along with copy of public announcement published in newspapers. For email id of financial creditors, IP may refer to the form CHG-4 filed by the CD on MCA Portal.

#### B. Checklist for Verification of Claims

1. Legal provision regarding claims: Regulation 7, 8, 8A, 9, 9A, 10, 11, 12, 12A, 13, 14, 15 of CIRP Regulations, 2016.
2. Timeline: Claims shall be submitted by all creditors to the IRP within 14 days of commencement. The IRP shall verify the claims within 7 days thereof and prepare list of creditors within 2 days along with report constituting Committee of Creditors. Delayed claims may be accepted by the IRP / RP as provided in Regulation 12 and 13.
3. Prescribed format: Following formats are prescribed for filing of claims under CIRP Regulations:
  - (i) Form B – Claim by operational creditors
  - (ii) Form C – Claim by financial creditors
  - (iii) Form CA – Claim by financial creditors in a class
  - (iv) Form D – Claim by employee / workers
  - (v) Form E – Claim by employee / workers through authorised representative
  - (vi) Form F – Claim by other creditors
4. Handling of claims: IRP / RP shall maintain a master list of all the claims received and keep updating it as and when new claims are received, existing claims are verified and collated. Bifurcation of claims as principal and interest also to be maintained. The category of the claimants – financial, operational or other creditors should also be maintained. Within financial creditors, the claims may be further categorised into secured and unsecured financial creditors. Within operational, the claims may further be categorised into employees, workers, government dues and other operational creditors. The master sheet should also mention the mode of receiving the claim (by email, courier, post, hand) and date of receipt. In case any claim is received only by courier, post or hand, IP may maintain a scanned copy of the claim for ease of reference. Claims received from related parties should be identified as such.
5. Verification of claims: Claims shall be submitted in the prescribed format to the extent possible. However, IRP / RP shall not reject the claim merely because it is not in the prescribed format. Following points may be considered while verifying the claims:

- (i) Claimants are required to submit proof of claim along with the claim form. The proof may include supporting purchase / work orders, invoices, proof of payment received, ledger, acknowledgement of debt received from the CD, emails exchanged for recovery / agreements etc.
  - (ii) The IRP / RP may refer to the books of accounts of the CD to verify the claims.
  - (iii) Interest may be considered in case there is supporting contractual document which provides for interest – example, interest clause in purchase / work order, invoice or any other document.
  - (iv) The claim shall be as on the insolvency commencement date.
  - (v) In case the IRP / RP is not able to verify the claim, it may be kept under contingent claims or under verification. Provided that, at the time of approval of the resolution plan by the COC, all the claims shall necessarily have been dealt with.
6. Acceptance of claims: The IRP / RP is required to verify and collate the claims received. No claims are to be admitted / rejected by the IRP / RP.
7. Preparation of list of creditors: The IRP / RP shall prepare a list of creditors in the format as required on the IBBI website.
8. Submission of list of creditors: The list of creditors shall be available for inspection by the persons who have filed the claims. It shall also be available for inspection by the directors, members, guarantors of the CD or their authorised representatives. The list shall also be filed on the website of the CD, if any. The list shall also be filed on the IBBI website through the IP login. Further, the list shall be presented at the first COC meeting and the status of new claims received shall also be presented at the COC meetings thereafter. The list of creditors shall be filed with the NCLT before the first COC and thereafter when there is a modification to the list by way of an application.
9. The IRP / RP may also refer to various case law on the subject for information on case specific questions.

### C. Checklist for constitution of COC

1. Legal provision: Section 21 of IBC, Regulation 16, 16A, 16B, 16C, 16D and 17 of CIRP Regulations
2. Timeline: COC should be constituted within 2 days of verification of claims by the IRP.
3. Constitution Checklist:
  - (i) Composition: The CoC must comprise all unrelated financial creditors of the CD. Secured and unsecured financial creditors shall be treated at par for the purpose of composition.
  - (ii) Related Party Exclusion: Any financial creditor that is a related party must be excluded from representation, participation, and voting in CoC meetings.
  - (iii) Voting Share Calculation: Voting share must be proportionate to the extent of the financial debt owed to each creditor as on the insolvency commencement date.
  - (iv) Case of No Financial Creditors: In cases where no claims are received from financial creditors or where claims are received only from related-party financial creditors, the IRP / RP shall constitute the CoC consisting of the 18 largest Operational Creditors (by value).

- (v) Interim Finance Providers as Observers: Under the amended Regulation 18, interim finance providers are now allowed to attend CoC meetings as non-voting observers to improve transparency, subject to COC approval.
  - (vi) In case the CD has real estate projects, the COC may request the representative of the RERA to attend the meetings, without voting rights, for providing inputs on matters associated with the development of the said project.
4. Report on constitution: The IRP shall prepare report on constitution of COC within 2 days of verification of claims. (ICD + 14 days for claims submission + 7 days for verification + 2 days for COC constitution). This report shall be submitted to the NCLT by way of an application. In case of any change in the constitution of COC, the COC shall be reconstituted and voting percentage shall be calculated and informed to the COC members. In case of reconstitution of COC, necessary application shall be filed with the NCLT on each reconstitution.
  5. In case of COC consisting of only operational creditors, such COC may be reconstituted frequently since new claims may be received and existing claims may get verified. Only top 18 operational creditors shall form part of the COC.
  6. Form CP 1 (2025 Update): The IRP shall file the new Form CP 1 (which replaces the old CIRP-1/2) via the IBBI portal to report the constitution.
  7. First meeting of COC: The first meeting of the COC shall be held within 7 days of the constitution of COC with 5 days' notice to be sent to all COC members and directors with suspended powers. Thereafter, COC meetings shall be held every 30 days, unless otherwise decided by the COC. However, at least one meeting shall be held every quarter.
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## Section wise compliance tools under the Companies Act, 2013

Sarvesh Potdar (CS Professional Student)  
Registration No.- 441225416/08/2023/232)

Section	Compliance Requirement	Type of Compliance	Relevant Form(s)	PCS Involvement
<b>Section 7</b>	Incorporation of Company	Event-Based	<b>SPICe+</b> (Part B)	Certification in <b>Form INC-8</b> by PCS/CA/CMA/Advocate.
<b>Section 10A</b>	Commencement of Business	Event-Based	<b>INC-20A</b>	Declaration by Director and PCS/CA/CMA certification.
<b>Section 12</b>	Registered Office Change	Event-Based	<b>INC-22</b>	Filing the changed address, along with Board Resolution.

<b>Section 42</b>	Private Placement	Event-Based	<b>PAS-4</b> (Offer Letter), <b>PAS-5</b> (Record), <b>PAS-3</b> (Return of Allotment)	Scrutinizer/Valuation/Filing Assistance.
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<b>Section 54</b>	Issue of Sweat Equity Shares	Event-Based	<b>MGT-14</b> (Filing of Special Resolution)	Drafting of Special Resolution and filing.
<b>Section 62</b>	Further Issue of Capital (Rights/ESOP)	Event-Based	<b>MGT-14, PAS-3</b>	Drafting of Notice, Resolution, and filing Return of Allotment.
<b>Section 68</b>	Buy-Back of Securities	Event-Based	<b>SH-8</b> (Offer Letter), <b>SH-9</b> (Declaration), <b>SH-11</b> (Return)	Scrutinizer, Compliance Certificates, and filing.

<b>Section 73/76</b>	Return of Deposits	Annual/Time-Based	<b>DPT-3</b>	Filing return for deposits and outstanding loans/advances (transaction not considered as deposit). Due date: <b>June 30th</b> annually.
<b>Section 77</b>	Registration of Charge	Event-Based	<b>CHG-1</b> (Creation), <b>CHG-4</b> (Satisfaction)	Filing within statutory timelines (30/60/120 days) of charge creation/modification.



<b>Section 88</b>	Maintenance of Statutory Registers	Continuous	<b>MGT-1, DIR-7, MBP-3, CHG-7,</b> etc.	Ensuring the registers are duly maintained, updated, and kept at the Registered Office.
<b>Section 92</b>	Annual Return Filing	Annual	<b>MGT-7</b> (for most companies) / <b>MGT-7A</b> (for Small/OPC)	PCS certification in <b>Form MGT-8</b> (Mandatory for Listed/PUC $\geq$ ₹10 Cr / T/O $\geq$ ₹50 Cr.
<b>Section 96/101</b>	Annual General Meeting (AGM)	Annual	-	Drafting Notice, conducting the meeting, and ensuring compliance with Secretarial Standard (SS-2).
<b>Section 117</b>	Filing of Resolutions	Event-Based	<b>MGT-14</b>	Filing specific resolutions (e.g., Special Resolutions, Board Resolutions for Section 179(3) powers) within <b>30 days</b> of passing.

<b>Section 118</b>	Maintenance of Minutes	Continuous	-	Ensuring minutes are correctly prepared, signed, and maintained in compliance with <b>SS-1</b> and <b>SS-2</b> .
<b>Section 90</b>	Significant Beneficial Owner (SBO)	Event-Based	<b>BEN-1</b> (Declaration to Co.), <b>BEN-2</b> (Filing to ROC)	Advising on SBO rules, receiving declarations, and filing <b>BEN-2</b> within <b>30 days</b> of receiving <b>BEN-1</b> .

<b>Section 134</b>	Directors' Report	Annual	<b>AOC-4</b> (Attachment)	Ensuring the report contains all prescribed disclosures, including the <b>Secretarial Audit Report (MR-3)</b> if applicable.
<b>Section 135</b>	CSR Compliance	Annual	<b>CSR-1</b> (Registration) / <b>AOC-4</b> (Attachment)	Certifying fund utilization, filing <b>CSR-1</b> for implementing agencies, and ensuring disclosures in the Board Report.



<b>Section 137</b>	Financial Statement Filing	Annual	<b>AOC-4</b> (including <b>AOC-4 XBRL</b> if applicable)	Filing financials within <b>30 days</b> of the AGM.
<b>Section 139/140</b>	Auditor Appointment/Change	Event-Based	<b>ADT-1</b>	Filing appointment within <b>15 days</b> of the AGM. Filing <b>ADT-3</b> (Resignation).
<b>Section 148</b>	Cost Audit (if applicable)	Annual	<b>CRA-2</b> (Appointment) , <b>CRA-4</b> (Report)	Filing Cost Auditor appointment and the Cost Audit Report with the ROC.

<b>Section 149(4)</b>	Independent Directors	Continuous	<b>DIR-12</b>	Ensuring the correct number of IDs are appointed (mandatory for certain public companies).
<b>Section 164</b>	Disqualification of Directors	Annual	<b>DIR-8</b> (Declaration to Co.)	Receiving annual declaration from directors on non-disqualification.
<b>Section 167</b>	Vacation of Office	Event-Based	<b>DIR-12</b>	Filing the cessation of the director.

<b>Section 173</b>	Board Meetings	Time-Based	-	Ensuring <b>minimum 4 meetings</b> per year, with a gap of $\leq 120$ days, in compliance with <b>SS-1</b> .
<b>Section 177</b>	Audit Committee (AC)	Continuous	<b>MGT-14</b> (for change in terms)	Ensuring AC is constituted (for mandated companies) and advising on its functions and vigil mechanism.
<b>Section 178</b>	Nomination & Remuneration Committee (NRC)	Continuous	-	Ensuring NRC is constituted and advising on policy and appointments.
<b>Section 184</b>	Disclosure of Interest	Annual	<b>MBP-1</b> (to Co.)	Receiving annual disclosure of interest from directors in the first Board Meeting of every financial year.
<b>Section 188</b>	Related Party Transactions (RPT)	Event-Based	<b>MGT-14</b> (if applicable)	Ensuring Board/Shareholder approvals are obtained as per prescribed thresholds and filing of the special resolution.

<b>Section 203</b>	Appointment of KMP	Event-Based	<b>DIR-12</b> (Appointment)	Ensuring mandatory KMPs (CS, CFO, CEO/MD) are appointed as per thresholds.
<b>Section 204</b>	Secretarial Audit	Annual	<b>MR-3</b>	<b>This is a key service of the PCS.</b> Mandatory for: <b>Listed Co.</b> , PUC $\geq$ ₹50 Cr or T/O $\geq$ ₹250 Cr, and <b>Every Co.</b> having O/S loans $\geq$ ₹100 Cr.

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**AUDITOR APPOINTMENT IN AGM UNDER COMPANIES ACT, 2013****CS Mayur Mazumdar****M. No.: A77993****Mob. No.: 7898632220****Email ID: csmayurmazumdar@gmail.com****[A] Board Process & Approval****1st Step: Board to discuss with the existing auditor for their re-appointment or can approach a new auditor**

- if the existing auditor is considered for re-appointment than the auditor needs to give his/her consent + eligibility certificate to the Board
- but if the board wants to consider a new auditor than:
  - > First, proposal letter will be given the prospective auditor
  - > than the new prospective auditor needs to give their consent + eligibility certificate to the company.
- the prospective auditor needs to communicate with the previous auditor before accepting an audit assignment (Clause 8 of Part I of the First Schedule to the Chartered Accountants Act, 1949)

**2nd Step: Audit Committee to hold their Committee Meeting (only if Audit Committee is applicable)**

- Audit Committee shall recommend the Board the name of the Auditor Board Process

**3rd Step: Notice of Board Meeting need to be sent**

- Notice of atleast 7 days need to be sent or shorter notice can also be given along with agenda & notes to agenda (draft resolution, if any)

**4th Step: Holding of BM**

- taking one of the agenda as auditor appointment.
- if Board agrees with the Audit Committee recommendation, it shall pass the resolution and place the same before AGM for shareholders' approval.
- if Board disagrees with the Audit Committee recommendation, then it shall record reasons and sent its own recommendation to the shareholders' and pass the resolution.
- fixing day, date, time and venue of AGM.
- approving draft of Notice of AGM (21 clear days' notice or Shorter Notice can also be sent).

**[B] Shareholders Approval**



### 5th Step: Holding & Convening of AGM

- Members to Consider & pass Ordinary Resolution (members also has power not to consider the board's recommendation)
- tenure/term of auditor is of 5 years, and re-appointment of auditor (i.e. rotation) as per the act is as follows:

[a] 1 Term of 5 years for an Individual Auditor & 2 Terms of 5 years for and Audit Firm: –

-> listed company

-> Unlisted company having paid up share capital of Rs. 10 cr or more

-> Private company having paid up share capital of Rs. 50 cr or more

-> all companies having public borrowing from Financial Institution, Banks, Public deposit of Rs. 50 cr or more

[b] No Tenure / Term for: –

-> Small Company & OPC

### 6th Step: Company to inform the Auditor about his/her appointment:

- by sending appointment letter & CTC of resolution

### [C] Filings with Regulatory

### 7th Step: Filing of e-form ADT-1 within 15 days\* of Appointment by the Company

- attachments in e-form ADT-1 :- CTC of Ordinary Resolution, Appointment Letter, Consent of Auditor + eligibility certificate

\*note: 15 days from Step 5

\*note: from auditors' perspective, the auditor needs to check his/her limit to act as statutory auditor

\*note: MGT-14 is not required for Ordinary Resolution

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## Professional Toolkit For Governance Professionals Comprehensive Framework For Corporate Governance Excellence

### CS Dr Kunal Mandwale

FCS, ESG Certified, SAP FICO Certified

Chief Compliance Officer

Member, Chartered Institute for Securities & Investment, London

Executive Programme in Public Policy & Management, IIM Calcutta

15+ Years in Municipal Finance, Governance & Compliance

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### TABLE OF CONTENTS

#### 1. INTRODUCTION

Objectives of This Toolkit

#### 2. CORPORATE GOVERNANCE FRAMEWORK

Key Pillars of Corporate Governance

Governance Implementation Roadmap

#### 3. COMPLIANCE MANAGEMENT TOOLKIT

Compliance Universe Mapping

Compliance Risk Assessment Matrix

Monthly Compliance Checklist

#### 4. ESG INTEGRATION GUIDELINES

ESG Framework for Company Secretaries

Business Responsibility and Sustainability Reporting (BRSR)

ESG Risk Assessment Framework

#### 5. BOARD GOVERNANCE BEST PRACTICES

Board Composition Framework

Board Meeting Excellence Checklist

Board Committee Structure

#### 6. REGULATORY COMPLIANCE MATRIX

Annual Compliance Calendar

SEBI Compliance Framework for Listed Companies

## **7. RISK MANAGEMENT FRAMEWORK**

Enterprise Risk Categories

Risk Assessment Methodology

## **8. INTERNAL AUDIT & CONTROL SYSTEMS**

Internal Financial Controls Framework

Internal Audit Annual Plan Template

## **9. SECRETARIAL STANDARDS IMPLEMENTATION**

SS-1: Board Meetings

SS-2: General Meetings

## **10. DIGITAL GOVERNANCE TOOLS**

Board Portal Systems

Compliance Management Software

Digital Signature and Document Management

Stakeholder Communication Platforms

## **11. KEY TAKEAWAYS & ACTION POINTS**

Immediate Action Items

Medium-Term Initiatives

Long-Term Strategic Goals

Professional Development

## **12. CONCLUSION**



## INTRODUCTION

The role of Company Secretaries has evolved significantly in the contemporary corporate landscape. From being compliance officers to strategic business advisors, Company Secretaries now serve as the cornerstone of corporate governance, regulatory adherence, and ethical business conduct.

This comprehensive toolkit has been designed to equip practicing Company Secretaries with frameworks, checklists, and best practices essential for excellence in governance. Drawing from extensive experience in finance, compliance, ESG integration, and regulatory management, this toolkit addresses the multifaceted challenges faced by governance professionals in today's dynamic regulatory environment.

### Objectives of This Toolkit

1. Provide structured frameworks for implementing robust governance systems
2. Offer practical tools for regulatory compliance management
3. Enable integration of ESG principles into governance practices
4. Present risk assessment methodologies for proactive governance
5. Deliver actionable checklists and templates for daily operations





## CORPORATE GOVERNANCE FRAMEWORK

Effective corporate governance requires a well-defined framework that aligns with regulatory requirements, industry best practices, and organizational objectives. The following framework provides a comprehensive approach to establishing and maintaining governance excellence.

### Key Pillars of Corporate Governance

Pillar	Description	Key Elements
Board Effectiveness	Ensuring optimal board composition, structure, and functioning	Board diversity, independent directors, committee structure, board evaluation
Transparency & Disclosure	Maintaining accurate and timely communication with stakeholders	Financial reporting, material disclosures, investor communications, regulatory filings
Accountability	Establishing clear lines of responsibility and oversight	Audit mechanisms, internal controls, risk management, performance metrics
Ethical Culture	Promoting integrity and ethical behavior across the organization	Code of conduct, whistleblower policy, ethics training, conflict management
Stakeholder Engagement	Balancing interests of shareholders, employees, customers, and society	Stakeholder mapping, engagement channels, grievance redressal, CSR initiatives

### Governance Implementation Roadmap

#### Phase 1: Assessment & Planning (Months 1-2)

- Conduct comprehensive governance gap analysis
- Review existing policies, procedures, and practices
- Identify regulatory requirements and compliance obligations
- Develop governance improvement plan with timelines

#### Phase 2: Policy Development (Months 3-4)

- Draft and approve board governance policies
- Establish committee charters and terms of reference
- Create code of conduct and ethics policies
- Implement disclosure and transparency frameworks

#### Phase 3: System Implementation (Months 5-8)

- Deploy governance technology platforms
- Train board members and management on new frameworks
- Establish internal audit and monitoring mechanisms
- Create governance reporting dashboards

#### Phase 4: Monitoring & Review (Ongoing)

- Conduct quarterly governance reviews
- Perform annual board effectiveness evaluations
- Update policies based on regulatory changes
- Benchmark against industry best practices

## COMPLIANCE MANAGEMENT TOOLKIT

Effective compliance management requires systematic processes, clear accountability, and proactive monitoring. This toolkit provides comprehensive frameworks for managing regulatory compliance across multiple domains.

### Compliance Universe Mapping

Regulatory Domain	Key Laws/Regulations	Compliance Frequency
Corporate Laws	Companies Act, SEBI Regulations, Listing Obligations	Continuous, Quarterly, Annual
Securities Laws	SEBI (ICDR, LODR, PIT, Takeover) Regulations	Event-based, Quarterly
Financial Reporting	Accounting Standards, Auditing Standards	Quarterly, Annual
Tax Compliance	Income Tax, GST, TDS, International Taxation	Monthly, Quarterly, Annual
Labor Laws	PF, ESI, Gratuity, Contract Labor Regulations	Monthly, Quarterly, Annual
Environmental Laws	Environment Protection Act, Pollution Control Acts	Quarterly, Annual
Data Protection	IT Act, DPDP Act, Privacy Regulations	Continuous
Industry-Specific	Sector-specific regulations (Banking, Insurance, etc.)	Varies

### Compliance Risk Assessment Matrix

#### Risk Rating Methodology:

- High Risk: Significant financial/reputational impact, frequent changes, complex requirements
- Medium Risk: Moderate impact, periodic changes, moderate complexity
- Low Risk: Limited impact, stable regulations, straightforward compliance

### Monthly Compliance Checklist

#### Statutory Compliance (By 10th of Every Month)

1. TDS payment and return filing
2. GST return preparation and filing
3. PF and ESI deposits and returns
4. Professional tax payment

#### Board & Committee Meetings (As Scheduled)

1. Prepare and circulate meeting agenda
2. Coordinate with departments for board notes
3. Ensure quorum and attendance records
4. Draft and circulate minutes within statutory timelines
5. Track implementation of board resolutions

#### Disclosure Obligations (Ongoing)

1. Monitor material events requiring disclosure
2. Review and approve press releases
3. Update website with required disclosures
4. File disclosures with stock exchanges

## ESG INTEGRATION GUIDELINES

Environmental, Social, and Governance (ESG) factors have become central to corporate strategy and stakeholder expectations. As an ESG certified professional, integrating ESG principles into governance frameworks is essential for long-term value creation and sustainable business practices.

### ESG Framework for Company Secretaries

ESG Pillar	Governance Role	Key Actions
Environmental (E)	Ensure board oversight of environmental risks and opportunities	Climate risk disclosure, carbon footprint reporting, environmental compliance monitoring
Social (S)	Oversee stakeholder engagement and social responsibility	Human rights policies, diversity metrics, community engagement, labor practices
Governance (G)	Strengthen governance structures and ethical conduct	Board independence, executive compensation, anti-corruption measures, transparency

## Business Responsibility and Sustainability Reporting (BRSR)

### Section A: General Disclosures

- Corporate identity and business details
- Products and services information
- Operational footprint and value chain

### Section B: Management and Process Disclosures

- Policy framework and governance structure
- Stakeholder engagement mechanisms
- Material ESG risks and opportunities

### Section C: Principle-wise Performance Disclosure

- Nine principles covering business ethics, product responsibility, employee welfare, environmental stewardship, and stakeholder relations
- Quantitative and qualitative disclosures with KPIs

## ESG Risk Assessment Framework

### Environmental Risks:

- Climate change impacts on operations and supply chain
- Regulatory compliance with environmental laws
- Resource scarcity and water stress
- Waste management and circular economy transition

### Social Risks:

- Labor practices and employee welfare
- Diversity, equity, and inclusion challenges
- Community relations and social license to operate
- Data privacy and cybersecurity

**Governance Risks:**

- Board composition and effectiveness
- Executive compensation alignment
- Corruption, bribery, and ethics violations
- Transparency and disclosure quality

**BOARD GOVERNANCE BEST PRACTICES**

The board of directors serves as the apex governance body, responsible for strategic oversight, risk management, and stakeholder accountability. Company Secretaries play a pivotal role in enabling effective board functioning through meticulous planning, documentation, and advisory support.

**Board Composition Framework**

Director Category	Recommended Proportion	Key Responsibilities
Independent Directors	Minimum 50% for listed companies	Objective oversight, audit committee, nomination & remuneration, stakeholder relations
Executive Directors	20-30% including CEO/MD	Strategic execution, operational management, business development
Non-Executive Directors	20-30%	Strategic guidance, sectoral expertise, network access
Woman Director	Minimum 1 (listed companies)	Diversity perspective, inclusive decision-making

**Board Meeting Excellence Checklist****Pre-Meeting Phase (7-10 Days Before)**

1. Finalize meeting date, time, and venue (physical/virtual)
2. Collect agenda items from CEO, CFO, and functional heads
3. Draft comprehensive board notes with annexures
4. Circulate agenda, notes, and financial statements
5. Confirm attendance and ensure quorum availability
6. Arrange video conferencing facilities if required
7. Prepare disclosure of interest registers

**During Meeting Phase**

- Record attendance and declarations of interest
- Present agenda items systematically
- Facilitate discussion and capture key deliberations
- Document dissent, if any, with reasons
- Record resolutions passed with voting details
- Note action items with responsible persons and timelines

**Post-Meeting Phase (Within 15 Days)**

- Draft detailed minutes capturing discussions and decisions
- Obtain chairman's approval on draft minutes
- Circulate signed minutes to all directors
- Update statutory registers and compliance records
- File required disclosures with regulators
- Track implementation of board decisions



**Board Committee Structure**

<b>Committee</b>	<b>Composition</b>	<b>Key Functions</b>	<b>Meeting Frequency</b>
Audit Committee	Minimum 3 directors, majority independent, all financially literate	Financial reporting, internal controls, audit oversight, related party transactions	Quarterly minimum
Nomination & Remuneration Committee	Minimum 3 non-executive directors, majority independent	Board appointments, succession planning, compensation policy, performance evaluation	As needed, minimum annually
Stakeholders Relationship Committee	Minimum 3 directors with at least 1 independent	Investor grievances, share transfers, dividend distribution	Quarterly minimum
Corporate Social Responsibility Committee	Minimum 3 directors with at least 1 independent	CSR policy formulation, spend monitoring, impact assessment	Quarterly minimum
Risk Management Committee	Board members and senior executives	Risk identification, mitigation strategies, crisis management	Quarterly minimum

**REGULATORY COMPLIANCE MATRIX**

Company Secretaries must maintain a comprehensive compliance calendar covering all regulatory obligations. This matrix provides a structured approach to tracking and ensuring timely compliance across multiple regulatory domains.

**Annual Compliance Calendar**

Due Date	Compliance Requirement	Applicable Law	Form/Return
Within 30 days of AGM	Filing of Annual Return	Companies Act, 2013	MGT-7
Within 30 days of AGM	Filing of Financial Statements	Companies Act, 2013	AOC-4
30th June	Annual Return to RoC	Companies Act, 2013	MGT-7 (for companies with financial year ending March)
30th September	Filing of Director's Report	Companies Act, 2013	Part of AOC-4
Within 60 days of Q1/Q2/Q3	Quarterly Results	SEBI LODR	Financial results to stock exchanges
Within 45 days of year end	Annual Audited Results	SEBI LODR	Audited financial results
31st May	BRSR Filing	SEBI LODR (Top 1000 listed entities)	Annual Report annexure
30th June	Secretarial Audit Report	Companies Act, 2013	MR-3
15th November	Half-yearly Disclosure	Companies Act, 2013	Related party transactions

**SEBI Compliance Framework for Listed Companies****Listing Obligations and Disclosure Requirements (LODR):**

- Corporate governance report in annual report
- Disclosure of material events within 24 hours
- Related party transaction disclosures
- Shareholding pattern filing
- Website maintenance with mandatory disclosures

**Prohibition of Insider Trading (PIT) Regulations:**

- Code of conduct for prevention of insider trading
- Trading window closure mechanism
- Pre-clearance of trades by designated persons
- Structured Digital Database (SDD) maintenance
- Disclosure of shareholding by promoters and KMPs

## RISK MANAGEMENT FRAMEWORK

Effective risk management is central to governance excellence. Company Secretaries must ensure that robust risk identification, assessment, and mitigation processes are in place and regularly reviewed by the board and risk management committee.

### Enterprise Risk Categories

Risk Category	Examples	Mitigation Strategies
Strategic Risks	Market changes, competition, business model disruption, M&A failures	Scenario planning, market intelligence, strategic reviews, due diligence
Financial Risks	Credit risk, liquidity risk, forex exposure, interest rate fluctuations	Financial controls, treasury management, hedging, credit policies
Operational Risks	Process failures, supply chain disruptions, technology failures	Process documentation, BCP/DR plans, vendor management, automation
Compliance Risks	Regulatory violations, non-compliance penalties, litigation	Compliance monitoring, legal reviews, audit programs, training
Reputational Risks	Brand damage, stakeholder trust erosion, media crises	Crisis communication plans, stakeholder engagement, ethics programs
Cybersecurity Risks	Data breaches, ransomware, system hacks, privacy violations	Security protocols, data encryption, incident response, awareness training
ESG Risks	Climate impacts, social controversies, governance failures	ESG policies, sustainability initiatives, stakeholder dialogue

### Risk Assessment Methodology

#### Step 1: Risk Identification

- Conduct workshops with business units
- Review industry reports and peer benchmarks
- Analyze historical incidents and near-misses
- Monitor regulatory changes and market trends

#### Step 2: Risk Evaluation

- Assess likelihood: Rare, Unlikely, Possible, Likely, Almost Certain
- Evaluate impact: Insignificant, Minor, Moderate, Major, Catastrophic
- Calculate risk score: Likelihood × Impact
- Prioritize risks: Critical (Red), High (Orange), Medium (Yellow), Low (Green)

#### Step 3: Risk Mitigation

- Avoid: Eliminate the risk-causing activity
- Reduce: Implement controls to lower likelihood or impact
- Transfer: Use insurance or outsourcing
- Accept: Acknowledge and monitor if risk is within tolerance

**Step 4: Risk Monitoring**

- Quarterly risk register updates
- Key Risk Indicators (KRI) tracking
- Incident reporting and root cause analysis
- Board reporting on top risks

**INTERNAL AUDIT & CONTROL SYSTEMS**

Robust internal controls and independent audit functions are foundational to effective governance. Company Secretaries must ensure that adequate internal financial controls exist and that internal audit mechanisms provide objective assurance to the board.

**Internal Financial Controls Framework****Control Environment:**

- Tone at the top: Ethical leadership and integrity
- Organizational structure with clear reporting lines
- Competent personnel with defined roles and responsibilities
- Accountability mechanisms and performance metrics

**Risk Assessment:**

- Identification of financial reporting risks
- Assessment of fraud risks and internal vulnerabilities
- Evaluation of technology and cybersecurity risks

**Control Activities:**

- Authorization and approval controls
- Segregation of duties
- Physical and system access controls
- Reconciliation and verification procedures
- Documentation and record retention

**Information & Communication:**

- Reliable financial reporting systems
- Management Information Systems (MIS)
- Communication channels for escalation
- Whistleblower mechanisms

**Monitoring Activities:**

- Ongoing monitoring by management
- Internal audit reviews
- External audit assessments
- Self-assessment tools





**Internal Audit Annual Plan Template**

<b>Audit Area</b>	<b>Risk Level</b>	<b>Audit Type</b>	<b>Timing</b>	<b>Resources Required</b>
Financial Reporting	High	Compliance, Substantive	Q1, Q3	2 auditors, 4 weeks
Procurement & Contracts	High	Operational, Compliance	Q2	2 auditors, 3 weeks
IT Systems & Cybersecurity	High	Technology Audit	Q2, Q4	1 IT auditor, 2 weeks
Inventory Management	Medium	Operational	Q3	1 auditor, 2 weeks
HR & Payroll	Medium	Compliance, Operational	Q1	1 auditor, 2 weeks
Sales & Revenue	High	Substantive, Compliance	Q4	2 auditors, 3 weeks
Related Party Transactions	High	Compliance	Q2	1 auditor, 1 week
Tax Compliance	High	Compliance	Q3	1 tax specialist, 2 weeks

**SECRETARIAL STANDARDS IMPLEMENTATION**

The Institute of Company Secretaries of India (ICSI) has issued Secretarial Standards (SS-1 and SS-2) which are mandatory for companies. These standards provide detailed guidance on board meetings and general meetings, ensuring uniformity and best practices across corporate governance.

**SS-1: Board Meetings****Key Provisions:**

- Minimum 4 board meetings per year with maximum 120-day gap
- Notice: Minimum 7 days in advance; shorter notice allowed with consent
- Agenda: Clear, concise, and supported by explanatory notes
- Quorum: One-third of total strength or 2 directors, whichever is higher
- Attendance by video conferencing permitted except for certain matters
- Minutes: Prepared within 15 days and signed within 30 days
- Dissent recording in minutes if directors disagree

**Agenda Items Requiring Physical Meetings:**

- Approval of annual financial statements
- Approval of board's report
- Approval of prospectus
- Audit committee meetings

**SS-2: General Meetings****Annual General Meeting (AGM) Requirements:**

- Must be held within 6 months from the end of financial year
- Notice: 21 clear days in advance
- Sent to members, directors, auditors, and debenture holders
- Accompaniments: Annual accounts, board report, auditor's report
- Quorum: As per Articles of Association
- Chairman's role in conducting proceedings

**Extraordinary General Meeting (EGM):**

- Called for specific urgent matters
- Notice: 21 clear days; 14 days for special resolutions
- Can be requisitioned by shareholders holding 10% voting power

**Postal Ballot and E-Voting:**

- Mandatory for certain items like material related party transactions
- E-voting platform for listed companies
- Scrutinizer appointment for vote counting
- Results declared within 48 hours

**DIGITAL GOVERNANCE TOOLS**

The digital transformation of governance functions has become imperative for efficiency, transparency, and real-time monitoring. Company Secretaries must leverage technology platforms to streamline governance processes, enhance stakeholder communication, and ensure compliance automation.

**Board Portal Systems****Key Features:**

- Secure access to board materials
- Electronic distribution of agenda and board packs
- Digital annotation and collaboration tools
- Video conferencing integration
- Minutes management and e-signatures
- Action item tracking and reminders
- Document version control
- Offline access for directors

**Benefits:**

- Reduction in paper usage and environmental impact
- Enhanced security and confidentiality
- Time savings in document distribution
- Improved director preparedness
- Audit trail for governance activities

**Compliance Management Software****Core Modules:**

- Compliance calendar with automated alerts
- Task assignment and workflow management
- Document repository with search capabilities
- Regulatory update tracking
- Compliance reporting dashboards
- Risk assessment and scoring
- Integration with MCA, SEBI, RBI portals

## Digital Signature and Document Management

### Implementation Guidelines:

- Obtain Class 3 Digital Signature Certificates for directors
- Establish secure document management system
- Define access controls and permission levels
- Implement retention and disposal policies
- Enable e-filing of statutory forms
- Backup and disaster recovery protocols

## Stakeholder Communication Platforms

### Digital Engagement Tools:

- Investor portal for grievance redressal
- Virtual AGM platforms
- Email broadcast for disclosures
- Website maintenance for corporate governance
- Social media monitoring and engagement
- Analyst and institutional investor relations tools

## KEY TAKEAWAYS & ACTION POINTS

This toolkit provides a comprehensive framework for governance excellence. The following action points will help practicing Company Secretaries implement these frameworks systematically within their organizations.

### Immediate Action Items (First 30 Days)

- Conduct governance gap analysis using the Corporate Governance Framework
- Update compliance calendar with all regulatory due dates
- Review board composition and committee structure
- Implement monthly compliance checklist
- Assess current risk management practices

### Medium-Term Initiatives (3-6 Months)

- Develop or update governance policies using templates provided
- Implement ESG integration framework and prepare for BRSR
- Deploy board portal or upgrade existing system
- Establish internal audit annual plan
- Conduct board effectiveness evaluation

### Long-Term Strategic Goals (6-12 Months)

- Achieve full digital transformation of secretarial functions
- Benchmark governance practices against industry leaders
- Implement comprehensive ESG reporting framework
- Establish center of excellence for governance
- Pursue governance certifications and awards

## Professional Development

### Continuous Learning Pathways:

- Attend ICSI programs on emerging governance topics
- Pursue specialized certifications (ESG, Forensic Audit, Data Privacy)
- Engage with peer networks and industry forums
- Subscribe to regulatory update services
- Participate in thought leadership through publications

## CONCLUSION

The role of Company Secretaries has evolved from being mere compliance officers to strategic advisors at the heart of corporate governance. This transformation demands continuous learning, adaptation to regulatory changes, and proactive implementation of best practices.

This toolkit provides a comprehensive framework covering governance fundamentals, compliance management, ESG integration, risk management, internal controls, and digital transformation. The frameworks, checklists, and templates presented here are designed to be practical, actionable, and aligned with contemporary regulatory requirements.

As governance professionals, we must recognize that effective governance is not merely about regulatory compliance—it is about building trust, ensuring transparency, protecting stakeholder interests, and contributing to sustainable value creation. The integration of ESG principles, adoption of technology, and commitment to ethical conduct are no longer optional but essential elements of modern governance.

The journey toward governance excellence is continuous. It requires vigilance, dedication, and a commitment to upholding the highest standards of professional conduct. By implementing the frameworks outlined in this toolkit systematically, Company Secretaries can significantly enhance the governance quotient of their organizations and contribute meaningfully to corporate India's growth story.

I hope this toolkit serves as a valuable resource for practicing Company Secretaries and contributes to strengthening corporate governance across India's business landscape.

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**ROC Filing & Compliance Requirements – A Practical Checklist****Kavya Nigam - Student****ANNUAL ROC COMPLIANCE CHECKLIST**

Sections under Companies Act 2013	Requirement	Time Limit
Section 184 (1)	Disclosure of interest in prescribed format of Form MBP-1 by all directors	Beginning of every F.Y. – 1st APR
Section 149 (7)	Declaration of meeting the criteria of independence by independent directors	Beginning of every F.Y. – 1st APR
Section 164(2)	Disclosure of non-disqualification) in DIR -8	Beginning of every F.Y. – 1st APR
Sec 88, 189	Maintenance of Statutory Registers	Ongoing
Rule 16 A (3) Companies (Acceptance of Deposits) Rules, 2014	File Form DPT 3 – Return of Deposits with ROC	Up to June 30th
Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.	DIR 3 KYC – eKYC for all directors	September 30th
Section 96 (1)	Hold AGM	Within 6 months of the closure of the F.Y. – on/before September 30th

**Half-Yearly ROC COMPLIANCE**

Section under CA 2013	Requirement	Time Limit
Section 405	File Form MSME 1 with ROC	Within 1 month from HYE. By 30th April for half year ended March. By 31st October for half year ended September

**Board Meeting Related Compliances under Companies Act 2013**

Section	Requirement	Time Limit
Sec 173	Minimum number of Board Meetings	Quarterly (max 120 days gap)
Section 173(3) and Clause 1.3.1, 1.3.6 & 1.3.7 of Secretarial Standard-1 (SS-1)	Send Notice & agenda of board & committee meeting to directors, auditors	7 days before the BM date
Section 179(3) of the Companies Act 2013 read with rule 8 of the Companies (Meetings of Board and its Powers) Rules 2014.	File MGT-14 for board resolutions [event based]	within 30 days of the BM
Sections 7(1) (c), 168 & 170 (2) of the Companies Act, 2013 and Rule 17 Of Companies (Incorporation) Rules, Rule 8, 15 & 18 of Companies (Appointment and Qualification of Directors) Rules, 2014	Form DIR -12 with ROC for particulars of appointment, cessation and changes taken place in designations of the Directors and KMP of the company – post BM [event based]	Within 30 days of BM
Sec 148	File Form CRA-2 for appointment of cost Auditor	within 180 days of commencement of FY/ 30 days of appointment whichever is earlier

**AGM Related ROC Compliances under companies Act**

Section	Requirement	Time Limit
Section 101, 102	Notice of the AGM + Explanatory statement must be sent to all members, directors, auditors,	21 Days before the AGM
MCA circular 14/2020 dated April 8, 2020	File MGT 14 with ROC for all resolutions passed at the AGM held through VC/OAVM Note : If AGM is held through physical mode then MGT-14 will be filed only for the special resolutions	within 30 days of the AGM

Section 121	MGT 15 with ROC	within 30 days of the AGM
Section 92(2)	MGT 7 ( MGT 8 – certification of Annual return from PCS to be attached to MGT -7)	within 60 days of the AGM
IEPF rule 8	EPF 2 – Details of unclaimed div. amounts of previous 7 financial years as on the date of closure of FY+ upload on company's website	within 60 days of the AGM
Section 137	AOC 4 & AOC 4 CFS – filling of financial statements	within 30 days of the AGM
Sections 7(1) (c), 168 & 170 (2)	Form DIR -12 with ROC for particulars of appointment, cessation and changes taken place in designations of the Directors and KMP of the company – post AGM	within 30 days of the AGM
Section 139	Form ADT 1 – Appointment of auditor with ROC	Within 15 days of appointment/AGM
Section 196 and Section 197	Form MR. 1 return of appointment of managerial personnel with ROC	Within 60 days of appointment/AGM

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## **GUIDELINES FOR MEMBERS CONTRIBUTING ARTICLES TO BE PUBLISHED IN e-FOCUS**

Regional Council ("WIRC") of The Institute of Company Secretaries of India ("ICSI") is pleased to bring out a monthly magazine for corporate executives and other professionals, viz., "FOCUS" under the guidance of its newly formed Editorial Board.

However, the Editorial Board wouldn't be able to succeed in releasing e-FOCUS unless all the members of ICSI put in some efforts to make release of e-FOCUS a success. What better than writing articles for e-FOCUS and getting a 'FOCUSSED' recognition! "Start writing, no matter what. The water does not flow until the faucet is turned on." — Louis L'Amour Well, if the above quote inspires you and you decide to author an article to be published in e-FOCUS, following are a few guidelines for authoring the articles for e-FOCUS ("Guidelines for e-FOCUS articles").

The article must be original contribution of the author .

The article must be an exclusive contribution for FOCUS. The article must not have been published elsewhere and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.

The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants. An article can be jointly written by not more than two (2) members. Case studies and research-based articles with empirical data which would be of practical relevance to the company secretaries are welcome. Unless a particular theme is provided by WIRC, articles on topics related to management, international trade, finance, tax and other related areas may be written and submitted for e-FOCUS.

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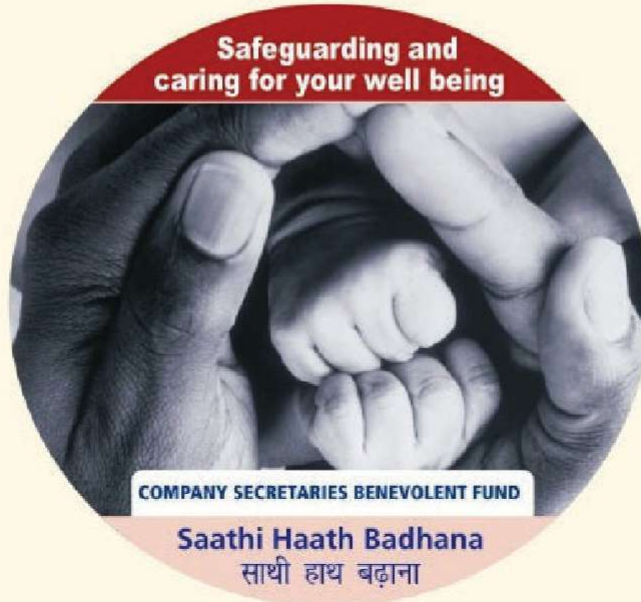


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