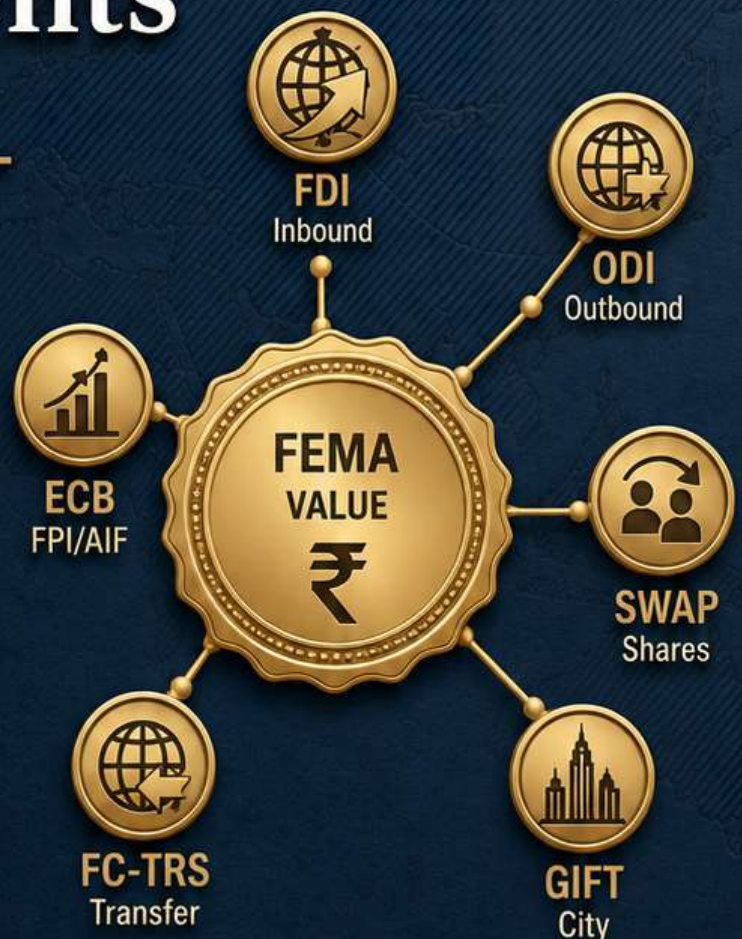


A CFO's Guide to

# FEMA Valuation Requirements

— 2026 —

All Valuation Requirements under FEMA — A Comprehensive Compliance-Focused Practitioner's Guide for Indian CFOs, Treasurers, Company Secretaries & Legal Counsel



BY

**SAGAR SHAH**

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First Edition | 2026

## ABOUT THE AUTHOR

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Sagar Shah is one of India's foremost independent valuation practitioners for cross-border transactions, with 15 years of experience that spans Big Four advisory and boutique specialisation. He spent 9 formative years at Ernst & Young (EY), where he built deep expertise in FEMA-compliant valuations across the full spectrum of inbound and outbound investment transactions, FDI rounds, ODI acquisitions, cross-border mergers, downstream investments, and structured finance instruments regulated by the Reserve Bank of India.

Since founding Elite Valuation, Sagar has become the trusted FEMA valuation partner for CFOs, treasurers, and company secretaries navigating India's complex foreign exchange compliance framework. His practice covers the complete FEMA valuation lifecycle, from initial FDI round pricing, through downstream investments and restructurings, to compounding proceedings and regulatory dispute resolution. He brings a rare combination of valuation technical depth, FEMA regulatory expertise, and commercial pragmatism that allows companies to achieve their cross-border objectives within the regulatory framework.

## Core Expertise

- NDI Rules (FEMA Non-Debt Instruments Rules, 2019) valuation compliance for all FDI inbound transactions, equity, CCPS, CCD, warrants and convertible instruments across all sectors
- ODI outbound valuation under the FEMA (Overseas Investment) Rules, 2022 and RBI Master Direction on Overseas Investment, acquisition of overseas businesses, JVs, and step-down subsidiaries
- Swap transaction pricing and fairness certification for cross-border share exchange deals involving Indian and foreign entities
- Downstream investment valuation for Indian companies with foreign shareholding investing into other Indian entities
- Transfer pricing valuation for FC-TRS filings, resident-to-non-resident and non-resident-to-resident secondary share transfers
- Rights issue, bonus, and buyback pricing compliance for companies with NRI and foreign shareholders
- GIFT City (IFSC) valuation framework, IFSCA regulations, offshore fund structures, and cross-border transaction pricing
- Cross-border merger and demerger valuation under Section 234 of the Companies Act and RBI Master Directions
- FEMA compounding representation and regulatory dispute support for pricing and reporting violations

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# ELITE VALUATION

## FEMA Valuation & Cross-Border Transaction Practice

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### Our FEMA Valuation & Cross-Border Services

**FDI Inbound Valuation & FC-GPR Support:** FMV certification for all equity, CCPS, CCD, and convertible instrument issuances to foreign investors under Rule 21(2) of the FEMA (Non-Debt Instruments) Rules, 2019: by a Chartered Accountant, SEBI-registered Merchant Banker, or Practising Cost Accountant, as applicable, with FC-GPR filing advisory

ODI Outbound Valuation & Overseas Investment Reporting: FMV determination for overseas acquisitions, JV formations, and step-down subsidiary investments under FEMA ODI Master Directions, including valuation support by recognised overseas valuers where required under the ODI framework.

**Swap Transaction Pricing & Fairness Certification:** Independent fairness and valuation opinion for cross-border share swap transactions, ensuring both the Indian and foreign legs satisfy applicable FEMA and RBI pricing requirements.

**Downstream Investment Valuation:** FMV analysis for investments by Indian companies with foreign shareholders into other Indian entities, ensuring downstream investment pricing satisfies both FEMA sectoral conditions and income tax arm's-length requirements.

**FC-TRS Transfer Pricing Certification:** FMV certification for secondary transfers of Indian shares between residents and non-residents (and vice versa), ensuring FC-TRS compliance with the FEMA pricing floor and ceiling rules.

**Rights Issue, Bonus & Buyback FEMA Compliance:** Pricing analysis and compliance advisory for rights issues, bonus share issuances, and buybacks involving NRI and foreign shareholders, including renunciation rights, pricing fairness, and RBI notification requirements.

**GIFT City & IFSC Valuation:** Valuation services under the IFSCA regulatory framework for GIFT City entities, fund valuations, cross-border transaction pricing, and instrument valuations for IFSC-domiciled structures investing into or from India.

FEMA Compounding & Dispute Valuation: Retrospective FMV reports, pricing gap analysis, and valuation-related compounding representations for companies responding to regulatory proceedings, compounding matters, or FEMA compliance reviews and enforcement proceedings on FEMA valuation violations.

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*"FEMA valuation compliance is not a bureaucratic formality: it is the regulatory infrastructure that protects India's foreign exchange reserves, ensures fair treatment of all shareholders, and gives cross-border transactions the legal certainty that investors and companies need to deploy capital with confidence." : Sagar Shah*

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### DISCLAIMER

This eBook is published for general educational and informational purposes only. It does not constitute legal, regulatory, or financial advice. The content reflects the author's professional opinion based on publicly available FEMA regulations, RBI Master Directions, IFSCA circulars, and market practice as of June 2026. FEMA rules, RBI Master Directions, and SEBI/IFSCA regulations are subject to frequent amendment; readers must verify all regulatory references against current notifications before relying on them for compliance. Elite Valuation accepts no liability for decisions made based on the contents of this guide.

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## SECTION 1: FEMA ARCHITECTURE

# Chapter 1: FEMA Architecture & the CFO's Valuation Compliance Map

India's Foreign Exchange Management Act, 1999, and the dense ecosystem of Rules, Regulations, Master Directions, and circulars issued under its authority by the Reserve Bank of India, creates one of the world's most comprehensive regulatory frameworks for cross-border capital transactions. At the heart of this framework is a broad regulatory principle that specified cross-border capital transactions involving Indian securities are subject to pricing, valuation, certification and reporting requirements under FEMA, depending on the nature of the transaction and applicable regulatory provisions.

For a CFO managing a company with foreign shareholders, overseas subsidiaries, NRI investors, or cross-border restructuring plans, FEMA valuation compliance is not a one-time transaction event, it is a continuous, recurring obligation embedded in the company's corporate lifecycle. A rights issue, a buyback, a downstream investment, a share swap, an overseas acquisition, the conversion of a CCD, or the transfer of shares to or from a non-resident, each triggers a distinct set of FEMA valuation requirements with its own prescribed professional, prescribed methodology, prescribed timeline, and prescribed filing.

The consequences of non-compliance are disproportionately severe: potential compounding costs, regulatory scrutiny and transaction regularisation requirements, that can paralyse future capital raising, and reputational damage with foreign investors who expect Indian companies to maintain clean FEMA records. This guide maps every valuation obligation under India's FEMA framework, comprehensively, systematically, and with the practical depth that CFOs, treasurers, and company secretaries need to manage compliance proactively.

## 1.1 The FEMA Regulatory Architecture: The Foundation Documents

The FEMA valuation framework rests on four foundational documents, each of which the CFO must understand and monitor for amendments: the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules), the primary regulations governing FDI and secondary transfers of equity instruments; the RBI Master Direction on the Overseas Investment Rules and Regulations, 2022 read with the RBI Master Direction on Overseas Investment: governing ODI and overseas restructuring transactions; the Consolidated FDI Policy Circular, 2020, as amended from time to time by the Department for Promotion of Industry and Internal Trade (DPIIT), providing sector-specific FDI caps, conditions, and downstream investment guidelines; and the RBI Master Direction on External Commercial Borrowings, governing FCCBs, CCDs as classified under ECB framework, and other cross-border debt instruments.

These documents are living instruments, amended by RBI circulars and DPIIT press notes that are issued without a fixed schedule, sometimes multiple times in a year. A CFO who relies on printed or cached versions of these documents risks using outdated valuation rules. The FEMA compliance function must subscribe to RBI circular notifications and DPIIT press note alerts, and must immediately assess whether any amendment affects the company's current or planned transactions.

Transaction Type	FEMA Rule / Notification	Pricing Direction	Prescribed Valuer	Filing
FDI: equity/CCPS/CCD issuance	NDI Rules, Rule 21(2)	Issue price $\geq$ FMV	CA, SEBI-Regd. Merchant Banker or Practising Cost Accountant	FC-GPR within 30 days
ODI: acquisition of foreign company	OI Rules, 2022 and OI Regulations / Directions	Acquisition price $\leq$ FMV of overseas entity	As per AD bank's board-approved policy under the ODI framework	Form FC; APR where applicable

Transaction Type	FEMA Rule / Notification	Pricing Direction	Prescribed Valuer	Filing
Transfer: resident to non-resident	NDI Rules, Rule 21(2)	Transfer price $\geq$ FMV	CA, Merchant Banker or Practising Cost Accountant	FC-TRS within 60 days
Transfer: non-resident to resident	NDI Rules, Rule 21(2)	Transfer price $\leq$ FMV	CA, Merchant Banker or Practising Cost Accountant	FC-TRS within 60 days
Downstream investment (FDIIC investing)	DPIIT Circular / FDI Policy	At FMV; arm's-length conditions	CA, Merchant Banker or Practising Cost Accountant	Reporting to RBI via AD bank
Swap transaction (share exchange)	NDI Rules, 2019 & FEMA (OI) Rules, 2022	Both legs at respective FMVs	SEBI-registered Merchant Banker or host-country Investment Banker	FC-GPR + Form FC as applicable
Rights issue to non-residents	NDI Rules, Rules 7 & 7A	Pricing to comply with applicable FEMA pricing norms / rights issue provisions	Depends on transaction structure and AD bank requirements	FC-GPR after allotment
Buyback from NRI shareholders	NDI Rules, Rule 9	Buyback price as determined by company	No separate FMV required but fairness advisable	FC-TRS or AD bank reporting
Cross-border merger	Sec 234 Companies Act + FEMA	FMV of both entities	SEBI-Regd. Merchant Banker /CA	Deemed RBI approval if CBM Regulations complied with; NCLT approval.

Table 1: FEMA Valuation Compliance Master Matrix: All Major Transaction Types

## 1.2 The Prescribed Professional: Who Can Certify FEMA Valuations?

Rule 21(2) of the NDI Rules prescribes the professionals who can certify FMV for FEMA compliance purposes: a SEBI-registered Merchant Banker, a Chartered Accountant, or a Practising Cost Accountant.

The RBI's FEMA enforcement teams and compounding authorities scrutinise the methodology and documentation of FEMA valuation reports with increasing technical sophistication. A signed certificate that states "I certify that the FMV is Rs. X" without a detailed methodology explanation, supporting calculations, and sensitivity analysis is technically compliant but practically vulnerable to challenge. We strongly recommend that FEMA valuation reports, particularly for transactions above Rs. 10 Crore, be prepared with the full rigour of a formal valuation report rather than a one-page certificate.

### KEY INSIGHT

*We have reviewed hundreds of FEMA valuation certificates in the course of our practice: both those we have prepared and those prepared by other practitioners that our clients bring to us for second opinions or during due diligence. The quality variation is enormous. At one end of the spectrum, we have seen certificates that consist of two paragraphs: a statement of the company's audited net worth, a computation of the Rule 11UA balance sheet value, and a certification that the transaction price meets the floor. At the other end, we have seen comprehensive valuation reports 30 to 50 pages, with full DCF analysis, comparable company benchmarking, sensitivity tables, and a detailed reconciliation of the FEMA floor price to the actual transaction price. Both may be technically compliant with the NDI Rules. But only the latter provides genuine protection in the event of an RBI inspection or compounding proceeding. The quality of your FEMA valuation report is a direct indicator of the quality of your company's overall FEMA compliance culture.*

### 1.3 The 90-Day Validity Rule and Timing Obligations

One of the most practically significant, and most frequently violated, FEMA valuation rules is the currency of the valuation report. The RBI Master Direction on Foreign Investment provides that the valuation certificate obtained for application of FEMA pricing guidelines must not be more than 90 days old as on the date of investment, except where the price is determined under applicable market convention and RBI practice has settled on 90 days: a valuation prepared more than 90 days before the transaction date is considered stale and a fresh valuation is required.

This 90-day rule has significant practical implications. If an FDI transaction is planned based on a valuation prepared in Month 1 but the actual allotment occurs in Month 5 (which is common for transactions that require time for regulatory approvals, legal documentation, and fund transfers), the original valuation is stale and a fresh certification is required before the FC-GPR is filed. Companies that assume the original valuation remains valid for the full transaction period create a compliance gap that may only surface during an RBI inspection or in due diligence for a subsequent round.

#### PRO TIP

*Maintain a FEMA Valuation Currency Register, a log that tracks the preparation date of every outstanding FEMA valuation report, the transaction it relates to, and the date by which it will expire (preparation date plus 90 days). Review this register monthly and commission fresh valuations 30 days before the expiry of any report relating to a transaction that has not yet closed. The additional cost of a valuation refresh is minimal relative to the compliance risk of proceeding with a stale certificate. For transactions with uncertain closing timelines, particularly cross-border M&A transactions or FDI rounds with lengthy negotiation periods, build a valuation refresh schedule into the transaction management plan from the outset.*

### 1.4 The CFO's FEMA Valuation Calendar

FEMA valuation obligations arise at different points in the corporate calendar, some are triggered by planned transactions, some by corporate actions (rights issues, buybacks), some by calendar events (annual FLA return, which requires portfolio valuation), and some by unanticipated events (a foreign investor transferring their stake, triggering an FC-TRS). The CFO who manages FEMA valuation reactively, commissioning valuations only when a specific transaction requires them, will consistently face compressed timelines, suboptimal valuations, and preventable compliance gaps.

The discipline of a forward-looking FEMA Valuation Calendar, reviewed quarterly, updated for all planned transactions and corporate actions, converts FEMA compliance from a reactive scramble to a planned, well-resourced function. This calendar should identify: all outstanding FDI investments and their anticipated conversion, transfer, or corporate action timelines; all outstanding ODI investments and their annual FLA reporting requirements; all planned corporate actions (rights issues, ESOPs, buybacks) that affect foreign shareholders; and all anticipated M&A transactions with a cross-border component.

## SECTION 2, FDI INBOUND

## Chapter 2: FDI Inbound Valuation: Equity, CCPS, CCD & Convertible Instruments

Foreign Direct Investment (FDI) inflows into Indian companies, the subscription by foreign investors to equity shares, CCPS, CCDs, and warrants of Indian companies, are governed by the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) and the consolidated FDI Policy. The valuation requirements for FDI are grounded in a single, overarching principle: a foreign investor cannot acquire equity or equity-equivalent instruments in an Indian company at a price below the FMV of those instruments, as determined by a prescribed professional using internationally accepted methods. This floor protects existing Indian shareholders from having their ownership diluted by a foreign investor who acquires equity at an artificially low price, and it prevents disguised capital flight where value is transferred to foreign hands below economic value.

### 2.1 The FMV Floor: Rule 21 of the NDI Rules

Rule 21(2)(a)(ii) of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 states: 'The price of equity instruments of an Indian company issued to a person resident outside India shall not be less than the fair value of equity instruments worked out as per any internationally accepted pricing methodology for valuation on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practising Cost Accountant, in case of an unlisted Indian company.'

Three elements of this rule deserve particular attention. First, 'internationally accepted pricing methodology' is not defined, it encompasses DCF, comparable company analysis, net asset value, and any other recognised valuation approach, giving the certifying professional methodological flexibility. Second, the certification must be 'duly certified', a signed, authenticated document, not an informal email estimate. Third, the rule applies to 'equity instruments', which the NDI Rules define broadly to include equity shares, CCPS, CCDs, and warrants, but excludes OCDs and OCPS (which are treated as debt instruments under FEMA).

Instrument	FEMA Classification	Pricing Rule	Valuation Method	FC-GPR Timing
Equity shares	FDI, equity	Issue price $\geq$ FMV	DCF / CCA / NAV, internationally accepted	Within 30 days of allotment
CCPS (Compulsorily Convertible Preference Shares)	FDI, equity equivalent	Issue price $\geq$ FMV (as-converted basis)	Enterprise value / as-converted FMV	Within 30 days of allotment
CCD (Compulsorily Convertible Debentures)	FDI, equity equivalent	Issue price $\geq$ FMV (equity basis at conversion)	Enterprise value / DCF	Within 30 days of allotment
Warrants (attached to equity or debentures)	FDI, equity equivalent	Warrant consideration + exercise price $\geq$ FMV	BSM or Binomial + underlying equity FMV	FC-GPR on conversion / exercise
OCD / OCPS (optionally convertible)	ECB (not FDI)	All-in cost ceiling applies, not FMV-based	N/A, interest rate compliance is key	Form ECB + monthly Form ECB 2
Non-convertible debentures	ECB, pure debt	Interest rate within all-in cost ceiling	N/A, yield and tenor compliance	Form ECB + reporting

Table 2: FDI Instrument Classification and Pricing Requirements under the NDI Rules, 2019

## 2.2 FMV Determination for Unlisted Indian Companies

For unlisted Indian companies, which constitute the overwhelming majority of FDI recipients, the FMV is not observable from a market price. It must be determined through fundamental valuation analysis. The three methodologies most commonly used in FEMA FMV certifications for unlisted companies are: the Discounted Cash Flow (DCF) method, which values the company based on the present value of projected free cash flows; the Comparable Company Analysis (CCA), which values the company based on multiples of earnings or revenue observed for publicly traded peers; and the Net Asset Value (NAV) method, which values the company based on the fair market value of its net identifiable assets.

For a going-concern business with stable or growing cash flows, the DCF method often provides a commercially and regulatorily defensible FMV because it reflects the economic value of the business's future earnings potential rather than its historical book value or market perception. The CCA provides a useful cross-check and market-anchored reference. For asset-heavy businesses (real estate companies, investment holding companies, commodity processors), the NAV method may be the primary approach.

$$\text{Enterprise Value (DCF)} = \sum [\text{FCF}_t / (1 + \text{WACC})^t] + \text{Terminal Value} / (1 + \text{WACC})^n$$

$$\text{Equity FMV} = \text{Enterprise Value} - \text{Net Debt}$$

$$\text{FMV per Share} = \text{Equity FMV} / \text{Fully Diluted Share Count (including all convertibles)}$$

### KEY INSIGHT

*We consistently receive queries from CFOs asking whether they can use the Rule 11UA Income Tax balance sheet formula as the basis for their FEMA valuation certificate. The answer requires nuance. Rule 11UA uses book values of certain assets rather than market values, for businesses with significant real estate, goodwill, brand value, or intellectual property, the Rule 11UA value may be dramatically lower than the economic FMV. Using Rule 11UA as the basis for a FEMA certificate when the economic value is materially higher risks under-pricing the FDI round (beneficial to the foreign investor and potentially harmful to existing Indian shareholders). Since FEMA requires an internationally accepted pricing methodology on an arm's length basis, a purely tax-rule-driven valuation may not always reflect the economic fair market value of a business, particularly for companies with significant growth potential or intangible value. We recommend using a bona fide economic valuation for FEMA purposes and cross-referencing to Rule 11UA only where the two methods produce consistent results. When they diverge significantly, document the reason for the divergence explicitly in the valuation report.*

## 2.3 Listed Indian Companies: When VWAP Meets FEMA

For listed Indian companies issuing shares to foreign investors, typically through a preferential allotment under SEBI ICDR Regulations, the FEMA pricing rule and the SEBI ICDR pricing rule both apply. Under SEBI ICDR Regulation 164, for frequently traded equity shares listed for the prescribed period, the preferential issue floor price is generally linked to the higher of the 90 trading days' VWAP and the 10 trading days' VWAP preceding the relevant date, subject to the detailed conditions in Chapter V of the SEBI ICDR Regulations.

For frequently traded shares, the SEBI ICDR VWAP floor is generally accepted as an approximation of the FEMA FMV floor, the RBI has not issued a specific circular stating that the SEBI floor satisfies FEMA requirements, but market practice and AD bank interpretations have consistently treated SEBI-compliant preferential allotment pricing as FEMA-compliant for frequently traded shares. For infrequently traded shares or where the VWAP floor significantly diverges from fundamental value, a separate FEMA FMV analysis may be advisable.

## 2.4 The FC-GPR Filing: Documentation and Timeline

Every FDI transaction must be reported to the RBI through the Authorised Dealer (AD) bank via Form FC-GPR (Foreign Currency, Gross Provisional Return) within 30 days of the date of allotment of equity instruments to the foreign investor. The FC-GPR requires, among other information: details of the allottee (the foreign investor), the date and type of allotment, the amount of foreign inward remittance received, the issue price per share, and confirmation that the issue price meets the FEMA pricing requirements.

The FC-GPR must be accompanied by the FMV valuation certificate, supporting declarations and certificates (including company secretary, auditor or other certifications as required by the RBI reporting framework or AD bank) confirming compliance with applicable FEMA and Companies Act requirements, and a copy of the board resolution authorising the allotment. A common compliance gap: the FC-GPR is filed but the attached valuation certificate was prepared informally and does not meet the standard of a 'duly certified' report by the prescribed professional. This gap typically surfaces during an RBI FEMA audit or in due diligence for a subsequent round.

## 2.5 Sector-Specific FDI Caps and Valuation Implications

Several sectors in India have FDI caps or approval requirements that interact with the valuation framework. In sectors with FDI caps, such as insurance (100% automatic route with effect from May 2, 2026, per FEMA NDI Second Amendment Rules, 2026; previously 74%), pension (49%), defence (49% under automatic route, higher with approval), multi-brand retail (51%), and print media (26%), the FMV certification applies to any equity instrument issuance to foreign investors, but the issue price must additionally ensure that the aggregate foreign shareholding does not exceed the applicable cap.

For sectors under the government approval route, including defence above 49%, satellite operations, and public sector banks, the FMV certification must be presented as part of the applicable government approval process.

. The quality of the FMV report is particularly important in approval-route applications because the approving authority considers the valuation as part of its overall assessment of the transaction's compliance and investor legitimacy.

### PRO TIP

*For FDI rounds involving investors from countries that share a land border with India, the company must check both the immediate investor and the beneficial ownership chain before accepting funds. Under Press Note 2 of 2026, an entity or citizen of a country sharing land border with India, or an investment where the beneficial owner is a citizen of any such country, can invest only under the Government route. Any direct or indirect transfer of ownership of existing or future FDI that results in such beneficial ownership also requires prior Government approval. For this purpose, beneficial ownership is to be tested with reference to Section 2(1)(fa) of the Prevention of Money-laundering Act, 2002 and Rule 9(3) of the PML Rules, including applicable ownership thresholds, control and ultimate effective control. Where there is direct or indirect ownership by a citizen or entity from a land-border country but prior Government approval is not triggered, the separate DPIIT SOP reporting requirement should also be checked.*

## SECTION 3, ODI OUTBOUND

## Chapter 3: ODI Outbound Valuation: Overseas Acquisitions, JVs & Step-Down Subsidiaries

Overseas Direct Investment (ODI), the investment by an Indian resident entity in a foreign company through equity participation, loans, or guarantees, is governed by the RBI Master Direction on Overseas Investment (September 2022) and FEMA (Overseas Investment) Rules and Regulations, 2022. The 2022 framework significantly rationalised and modernised the ODI regulatory architecture, replacing the legacy FEMA 120 framework with a more streamlined structure that retains the core FMV ceiling principle while expanding the permissible routes for Indian companies to invest abroad.

The FMV ceiling for ODI broadly operates as the counter-principle to the FDI pricing floor: just as a foreign investor cannot acquire Indian equity below FMV (protecting existing Indian shareholders), an Indian company cannot pay above FMV for overseas assets (protecting Indian foreign exchange from being used to overpay for offshore assets). Pricing under the ODI framework must be on an arm's-length basis and must be examined by the AD bank in accordance with Rule 16 of the OI Rules and its board-approved policy.

### 3.1 The ODI Valuation Ceiling: Protecting Indian Foreign Exchange

Rule 16 of the FEMA (Overseas Investment) Rules, 2022 provides the pricing framework for issue or transfer of equity capital of a foreign entity. The transaction must be undertaken on an arm's-length basis, with the AD bank considering valuation under internationally accepted pricing methodology or applicable host-country requirements before facilitating the transaction. The 'internationally accepted pricing methodology' requirement is the same standard as for FDI, DCF, CCA, and NAV are all acceptable, on an arm's-length basis, wherever applicable, in accordance with the AD bank's board-approved policy.

The pricing for issue or transfer of equity capital of a foreign entity under the ODI framework must be on an arm's-length basis. Before facilitating the transaction, the AD bank is required to ensure compliance with the pricing guidelines by considering valuation as per any internationally accepted pricing methodology for valuation, wherever applicable. The nature of valuation support and documents to be obtained should be determined with reference to the OI Rules, OI Regulations, RBI directions, Form FC requirements and the AD bank's due-diligence requirements.

ODI Transaction	FEMA Rule	Pricing Direction	Valuation Standard	Prescribed Professional	Reporting
Acquisition of shares in foreign company	FEMA ODI Master Directions	Acquisition price $\leq$ FMV of foreign company	Internationally accepted method, arm's-length	As per AD bank's board-approved policy; no fixed FEMA-prescribed valuer category.	Form FC; annual APR
Formation of foreign JV (new entity)	FEMA ODI Master Directions	Contribution at FMV of assets contributed	Internationally accepted method	As per AD bank's board-approved policy; no fixed FEMA-prescribed valuer category.	Form FC
Additional investment in existing foreign subsidiary	FEMA ODI Master Directions	Arm's-length pricing at investment date	Internationally accepted method	As per AD bank's board-approved policy; no fixed FEMA-prescribed valuer category.	Form FC, additional investment

ODI Transaction	FEMA Rule	Pricing Direction	Valuation Standard	Prescribed Professional	Reporting
Acquisition of foreign company via equity swap	FEMA ODI + FDI Rules	Both legs at FMV, each country's requirement	Internationally accepted method	As applicable, CA/MB for Indian leg	FC-GPR for Indian shares issued; Form FC for foreign shares received
Strategic acquisition of foreign technology company	FEMA ODI Master Directions	Acquisition price ≤ FMV	Internationally accepted method	Merchant Banker / Investment Banker / Recognised Overseas Valuer	Form FC; RBI prior approval above 400% net worth

Table 3: ODI Outbound Transaction Matrix, Pricing Rules and Valuation Requirements

### 3.2 ODI Limits and the Net Worth Test

The total financial commitment by an Indian entity in all foreign entities taken together is subject to the eligible limit under the OI Rules, generally linked to 400% of its net worth as per the last audited balance sheet, subject to applicable inclusions, exclusions, sector-specific conditions and approval-route requirements. This limit applies to the aggregate of all ODI by the Indian company across all overseas investees, the running total of all outstanding ODI positions must remain within 400% of net worth at all times. Breaching this limit without RBI prior approval is a FEMA violation.

For OI purposes, net worth should be understood with reference to Section 2(57) of the Companies Act, 2013 and the last audited balance sheet considered under the OI framework. The CFO should compute the eligible financial commitment limit strictly as per the OI Rules, OI Regulations and AD bank requirements. CFOs managing companies with significant ODI programs must maintain a current ODI headroom calculation and monitor it against each planned investment, including the impact of repatriated dividends (which reduce the outstanding ODI total) and any valuation increases in overseas investments (which do not count as additional ODI for ceiling purposes).

$$\text{ODI Headroom} = (400\% \times \text{Net Worth}) - \text{Aggregate Outstanding ODI (at historical cost)}$$

#### KEY INSIGHT

We have advised several mid-market Indian companies whose ODI programs were approaching their 400% net worth ceiling, requiring careful sequencing of new investments, dividend repatriations, and capital reductions. A particularly instructive situation: one client had made multiple ODI investments at historical cost but the current fair values of those investments had grown significantly. The client initially believed they had exhausted their ODI headroom and could not make a new acquisition. Our analysis clarified that ODI headroom is calculated at historical cost (the amount of Indian foreign exchange deployed), not at current fair value, meaning the appreciation in value of existing investments does not consume additional headroom. This clarity allowed the client to proceed with a new acquisition within their existing headroom. The FMV certification requirement for the new acquisition was nonetheless essential, it confirmed that the new investment met the ODI pricing ceiling even though it was within the headroom limit.

### 3.3 Valuing Foreign Targets: Methodological Considerations

Valuing a foreign company for ODI purposes presents challenges that do not arise in purely domestic valuations: the financial statements may be in a foreign currency and prepared under non-Indian standards; the comparable companies for CCA are in overseas markets with different risk profiles and liquidity; and the discount rate must incorporate country risk premium for the target's jurisdiction, the additional return required by an investor for operating in a higher-risk country relative to a risk-free benchmark.

The country risk premium (CRP) is typically estimated using one of two approaches: Damodaran's country risk framework, which derives the CRP from sovereign bond spreads adjusted for the relative equity

market volatility of the target country versus the US; or credit default swap (CDS) spread differentials between the target country and a benchmark (typically the US), adjusted for equity market volatility. For commonly invested-in countries from India (UAE, Singapore, UK, US, Southeast Asia), these CRPs are well-established. For less common destinations (African markets, frontier economies, conflict-adjacent jurisdictions), the CRP requires more careful estimation and explicit documentation.

**Discount Rate for Foreign Target = Risk-Free Rate (USD/local) + Equity Risk Premium + Country Risk Premium**

**Country Risk Premium = Sovereign Spread × (Equity Volatility of Target Country / Bond Volatility of Target Country)**

### 3.4 The Annual Performance Report: Ongoing ODI Compliance

he APR must be based on the audited financial statements of the foreign entity. Where the resident investor does not have control in the foreign entity and audit is not mandatory under the host-country law, APR may be submitted based on unaudited financial statements certified by the statutory auditor of the Indian entity or by a Chartered Accountant where statutory audit is not applicable.

The APR valuation is not merely an administrative exercise. It provides the RBI with a current picture of the fair value of India's outbound ODI portfolio, and significant unexplained discrepancies between the historical cost of an ODI investment and its current fair value can trigger RBI queries. For ODI investments that have declined significantly in value, indicating potential impairment or unsuccessful overseas operations, the APR provides the natural occasion for considering whether the ODI should be wound up or restructured, which in turn requires FMV analysis for any restructuring transaction.

#### PRO TIP

*Establish a dedicated ODI Compliance Calendar that tracks: the date of each ODI investment and the amount at historical cost; the running total against the 400% net worth ceiling; the due date for each entity's APR (December 31 for investments in entities with March year-ends; may vary for other fiscal year entities; and the status of audited / permitted unaudited financial statements required for APR filing. APR filing is one of the most consistently missed ODI compliance obligations, many companies file the APR without the required fair value update, treating it as a form-filling exercise. An RBI inspection that reveals systematically stale APR valuations is a significant compliance finding that can escalate to a broader FEMA audit.*

## SECTION 4, TRANSFER OF SHARES

## Chapter 4: Transfer of Shares: FC-TRS, Secondary Pricing & NRI Transactions

The secondary transfer of shares in an Indian company, where existing shareholders sell their shares rather than the company issuing new shares, is governed by Rule 21(2) of the NDI Rules, 2019 and constitutes one of the most frequently occurring FEMA valuation events in Indian corporate practice. Secondary sales from promoters to PE investors, transfers from angel investors to VCs in bridge rounds, exits by strategic investors to financial investors, and buy-outs of minority NRI shareholders, each of these is a secondary transfer that triggers the FEMA pricing rule and the FC-TRS reporting obligation.

### 4.1 The Asymmetric Pricing Rule

The FEMA pricing rule for secondary transfers is asymmetric, different floors and ceilings apply depending on the direction of the transfer. When a resident Indian transfers shares to a non-resident (outbound sale), the transfer price must be at or above FMV, the resident cannot sell cheap to a foreign buyer. When a non-resident transfers shares to a resident (inbound purchase), the transfer price must be at or below FMV, the resident cannot be made to overpay for shares from a foreign seller.

This asymmetry reflects the core FEMA policy objective: protecting Indian foreign exchange. An outbound sale at below FMV would represent a transfer of value from India to a foreign party (the resident seller is underpaid; the foreign buyer receives a windfall). An inbound purchase at above FMV would represent an outflow of Indian foreign exchange in excess of the economic value received. The asymmetric pricing rule prevents both forms of value transfer.

Transfer Direction	Instrument	Pricing Rule	Who Bears Risk	FC-TRS Deadline
Resident – Non-Resident (sale)	Equity shares (unlisted)	Sale price $\geq$ FMV (certified)	Seller (must sell at or above FMV)	60 days from date of transfer or receipt/remittance
Non-Resident – Resident (sale)	Equity shares (unlisted)	Sale price $\leq$ FMV (certified)	Buyer (must not overpay above FMV)	60 days from date of transfer or receipt/remittance
Resident – Non-Resident (sale)	Equity shares (listed)	SEBI block deal / negotiated trade price	Market price governs, no separate FMV cert	60 days from date of transfer
Non-Resident – Non-Resident	Equity shares (unlisted)	Both parties agree, no FEMA pricing rule applies	Neither party, bilateral agreement	No FC-TRS required; RBI reporting may apply
Resident – NRI (gift)	Equity shares (unlisted)	No consideration, FMV for IT purposes	No FEMA pricing rule for gift	FC-TRS not required; IT compliance needed
Foreign investor – PE fund (secondary)	CCPS / CCD (unlisted)	Transfer price $\geq$ or $\leq$ FMV per direction	As per R-NR direction	FC-TRS within 60 days
Resident – Non-Resident (transfer by way of pledge)	Equity shares	FMV applies if pledge is invoked	Margin call triggers transfer, FMV at exercise	FC-TRS if pledge exercised

Table 4: Transfer of Shares, FEMA Pricing Rules and FC-TRS Requirements by Transaction Type

## 4.2 FMV Determination for FC-TRS Purposes

For unlisted Indian company shares, the FMV for FC-TRS purposes must be certified by a CA, Merchant Banker or Practising Cost Accountant using internationally accepted methodology, the same standard as for FDI issuances. The FMV certification should be dated as close to the transfer date as possible, and certainly within the 90-day validity window. A practical compliance sequence: commission the FMV valuation as soon as the transfer negotiations have reached a price-agreement stage, ensure the certified report is available before the transfer agreement is executed, and file the FC-TRS within 60 days of the actual transfer.

For listed shares, pricing is as per relevant SEBI guidelines. Where transfer by sale is done in accordance with SEBI regulations and pricing is prescribed by SEBI, FEMA pricing guidelines do not apply; CA certificate confirming SEBI compliance is attached to FC-TRS. However, for block deals or negotiated transactions on the stock exchange (which may occur at a discount or premium to the prevailing market price), the SEBI block deal rules govern the price band, and the transaction must occur within the SEBI-permitted price range.

### KEY INSIGHT

*We are regularly consulted on a compliance scenario that arises frequently in the private equity secondary market: a domestic PE fund wishes to purchase shares from a foreign PE fund's India portfolio at a negotiated price, and both parties approach the valuation as if it is a purely commercial negotiation. This approach ignores the FEMA pricing ceiling; the domestic fund (resident buyer) cannot pay above FMV for the shares being purchased from the foreign fund (non-resident seller). If the negotiated price exceeds the FEMA FMV ceiling, which can happen when competitive auction dynamics push the price above fundamental value, the transaction technically violates FEMA. We advise clients in this situation to: obtain an independent FMV certification before finalising the price; ensure the negotiated price does not exceed the certified FMV; and if competitive dynamics are pushing the price toward FMV upper range, obtain a range valuation that sets the upper bound of FMV to provide comfort that the negotiated price is within the permissible ceiling. The FMV certification is not merely a formality in PE secondary transactions, it is a binding pricing constraint.*

## 4.3 NRI Share Transfers: Special Considerations

Non-Resident Indians (NRIs) occupy a unique position in the FEMA framework, they are treated as non-residents for FEMA purposes (unlike Persons of Indian Origin who have foreign citizenship), but they enjoy certain relaxations not available to other foreign investors. An NRI can hold Indian shares on a repatriable basis (NRE account-backed investment, where sale proceeds can be remitted abroad) or a non-repatriable basis (NRO account-backed investment, where sale proceeds are credited to an NRO account but remittance abroad is limited to USD 1 million per year).

When an NRI transfers their repatriable shares to a resident Indian, the transfer triggers FC-TRS reporting and the FEMA pricing ceiling (the resident cannot pay above FMV). When an NRI transfers to another NRI, no FC-TRS is required and no FEMA pricing rule applies, the transaction is treated as a non-resident-to-non-resident transfer. However, income tax implications (capital gains for the NRI seller) apply regardless of the FEMA treatment, and the NRI seller must comply with TDS provisions and file an Indian tax return for the gain.

## 4.4 The FC-TRS Filing: Process and Documentation

FC-TRS must be filed through the FIRMS (Foreign Investment Reporting and Management System) portal of the RBI, through the company's AD bank, within 60 days of the transfer of shares. The filing requires: details of both transferor and transferee, the number of shares transferred, the transfer price, the FMV certificate (for unlisted shares), evidence of receipt of consideration (bank certificate of inward remittance), and a declaration by the company that the transfer complies with FEMA provisions.

A critical compliance point: while the Indian company often coordinates the process, the obligation to file FC-TRS generally rests with the resident transferor/transferee (or authorised filer through the AD bank/FIRMS framework). The Indian company's company secretary or finance team must monitor all share transfers, including transfers that occur in secondary markets without the company's direct involvement, and ensure FC-TRS is filed for every transfer between a resident and a non-resident. Many

Indian companies are surprised to discover, during FEMA audits, that transfers they were peripherally aware of but did not monitor have resulted in unfiled FC-TRS obligations that are now years overdue.

**PRO TIP**

*Implement a Share Transfer Monitoring Protocol in your company secretarial function: every share transfer request or notice must be screened for FEMA implications before the transfer is registered in the company's register of members. For transfers involving NRI or foreign shareholders (in either direction), the FEMA compliance checklist must be completed before the transfer is registered, including confirmation that the FMV certificate has been obtained and FC-TRS has been filed or queued for filing within the 60-day deadline. Registering a transfer without completing this checklist creates a situation where the FEMA compliance obligation exists but the 60-day clock is running without the company's awareness.*

## SECTION 5, DOWNSTREAM INVESTMENT

# Chapter 5: Downstream Investment

## Valuation: When an FDI Company Invests Downstream

Downstream investment, the investment by an Indian company that itself has foreign shareholding into other Indian companies, is one of the most technically complex areas of FEMA compliance, because it creates a situation where foreign capital, while legally invested in an Indian entity, is being deployed further into the Indian economy through that Indian entity's own investments. The regulatory consequence, however, depends on whether such investment is treated as indirect foreign investment under the applicable ownership and control test. The DPIIT's FDI Policy and the NDI Rules have evolved specific rules to govern downstream investments, ensuring that foreign capital cannot circumvent sectoral caps or approval requirements by routing through an Indian intermediary.

An Indian entity that has received foreign investment may make further investment into another Indian entity. Such investment is generally referred to as downstream investment. However, it is treated as indirect foreign investment in the investee company only where the investing Indian entity is foreign owned or controlled, or otherwise satisfies the indirect foreign investment test and is referred as Foreign Owned and Controlled Company (FOCC). Where the investing Indian entity satisfies the indirect foreign investment test, its downstream investment is treated as indirect foreign investment in the investee company, subject to applicable entry route, sectoral caps, pricing guidelines and reporting requirements.

### 5.1 Ownership, Control and Its Valuation Implications

For downstream-investment analysis, the key question is not merely whether the Indian company has any foreign shareholder. The relevant test is whether the investing Indian entity is owned or controlled by resident Indian citizens / Indian owned and controlled entities, or is owned or controlled by persons resident outside India. Mere minority foreign shareholding, by itself, does not automatically mean that every downstream investment is treated as indirect foreign investment.

Where the investing Indian entity is foreign owned or controlled, its downstream investment is treated as indirect foreign investment in the investee company. In such cases, the applicable FEMA pricing guidelines must be followed. The investee company's shares cannot be issued or transferred at a price below the FEMA fair value, as certified by a CA, SEBI Registered Merchant Banker or Practising Cost Accountant, as applicable. Routing the investment through an Indian intermediary does not remove the pricing constraint.

Downstream Scenario	FEMA Treatment	Valuation Requirement	Key Restriction
FOCC invests in another Indian company	Indirect FDI, treated as FDI in investee	FMV of investee shares, CA, MB or Practising Cost Accountant	Investee sector must permit FDI; sectoral caps apply
Indian holding company (100% FDI) invests in Indian subsidiary	Downstream FDI, automatic if sector permits	FMV, arm's-length pricing required	Cannot use domestic borrowed funds
Two-level downstream structure: FOCC – Indian Co A – Indian Co B	Indirect FDI two levels down	FMV at each level of investment	Entry route, sectoral caps, pricing, source of funds and Form DI reporting must be checked at each relevant level

Downstream Scenario	FEMA Treatment	Valuation Requirement	Key Restriction
FOCC invests in Indian financial sector company, such as NBFC / bank	FDI in financial sector, additional SEBI/RBI conditions	FMV + fit and proper assessment	Prior approval from RBI / SEBI may be required
FOCC invests in Indian real estate company	Indirect foreign investment, subject to permitted real estate / construction-development FDI conditions	FMV of real estate company shares	Strict end-use conditions; construction development conditions
FOCC purchases shares from existing Indian shareholder in subsidiary	Downstream acquisition by FOCC,	FMV ceiling applies	Price $\geq$ FMV of shares being acquired

Table 5: Downstream Investment, FEMA Treatment and Valuation Requirements by Scenario

#### KEY INSIGHT

*We have assisted several corporate groups in mapping the downstream investment implications of their holding structures. A common discovery: Indian companies with foreign shareholding often assume that downstream investment rules do not apply to them. In practice, the correct analysis requires checking the ownership and control status of the investing Indian entity and, in the case of investment vehicles, the status of the sponsor, manager or investment manager. Where the downstream investment is treated as indirect foreign investment, the investee company must comply with the applicable sectoral, pricing and reporting requirements..*

## 5.2 Borrowed Funds and Downstream Investments

One of the most significant restrictions on downstream investments is the prohibition on using borrowed funds, particularly funds borrowed in the Indian domestic market, to make downstream investments, unless specifically permitted under FEMA / applicable RBI framework. The policy rationale is to prevent 'round-tripping': a scenario where foreign capital is introduced into India as an equity investment in an FOCC, the FOCC borrows additional Indian funds and deploys them as downstream investment in another Indian entity, effectively leveraging the FDI with Indian debt to create a larger downstream investment than the FDI alone would support.

CFOs managing FDIICs must ensure that the source of funds for downstream investments is clearly documented as funds brought from abroad or internal accruals rather than borrowed funds. Where the FDIIC has permitted foreign funds and internal accruals, maintaining a clear segregation, and being able to demonstrate to RBI that downstream investments are funded from own funds, is an essential compliance discipline. The fund flow documentation (bank statements, board resolutions specifying funding source) should be maintained as part of the FEMA compliance file for each downstream investment.

## 5.3 Sectoral Compliance in Downstream Investments

When an FOCC makes a downstream investment in an Indian investee, the investee's sectoral FDI cap and approval requirements apply. If the investee operates in a sector with a 49% FDI cap, the aggregate of all foreign investment in the investee, including direct FDI from overseas investors and indirect foreign investment through FOCC shareholders, must not exceed 49%. This calculation requires checking the ownership and control status of the investing Indian entity and the downstream investment percentage, not merely the direct foreign shareholding in the investee.

For sectors under the government approval route, the downstream investment by an FOCC may also require government approval, not just the FEMA pricing compliance. CFOs managing complex group structures with multiple FOCCs investing across regulated sectors must maintain a current foreign ownership calculation for each investee entity, updated whenever any investment, share transfer, or ESOP exercise affects the ownership structure.

## 5.4 Reporting Downstream Investments

Downstream investments by FOCCs must be reported through DPIIT intimation within 30 days of investment and Form DI through FIRMS / AD bank within 30 days of allotment or acquisition, as applicable. The reporting captures: the name and details of the investee company, the amount and nature of the investment (equity, CCPS, CCD, or loan), the purpose of the investment, and the details of the FOCC making the investment. Additionally, the FOCC must file the Annual Return on Foreign Liabilities and Assets (FLA Return) by July 15th of each year, reflecting both its outstanding FDI liabilities and its downstream investment assets.

### PRO TIP

*For corporate groups with complex multi-entity structures, particularly holding company structures where a foreign-invested Indian holding company owns multiple Indian operating subsidiaries, conduct an annual Downstream Investment Compliance Review before filing the FLA Return. This review should: verify the current FOCC status of each group entity (does it have any foreign shareholding?); map all investments made by each FOCC into Indian entities; verify that each investment was made at FMV / applicable FEMA pricing for equity instruments; confirm that all investments were made from funds brought from abroad or internal accruals; and confirm that all required filings (30-day downstream investment reports and FLA Returns) are current. This annual discipline converts downstream investment compliance from a reactive, audit-triggered exercise into a systematic, well-documented process.*

## SECTION 6, SWAP TRANSACTIONS

## Chapter 6: Swap Transactions & Cross-Border Share Exchanges

A swap transaction, the exchange of shares between parties in different jurisdictions, typically as consideration for a cross-border acquisition or merger, is one of the most complex FEMA valuation scenarios because both legs of the transaction simultaneously trigger FEMA valuation requirements. The Indian entity issuing its shares triggers the FDI FMV floor (it must not issue below FMV to foreign recipients). The Indian entity receiving foreign shares triggers the ODI FMV ceiling (it must not pay above FMV for the foreign shares it is acquiring). These two requirements must be satisfied simultaneously, by separate valuations of the two entities involved, using appropriate methodologies for each.

### 6.1 The Dual-Leg Valuation Framework

In a share swap where an Indian company acquires a foreign company by issuing its own shares to the foreign company's shareholders, the transaction requires two independent FMV certifications: the FMV of the Indian company's shares (for FEMA FMV floor compliance, the Indian company's shares must not be issued below FMV to the foreign shareholders, who are receiving FDI); and the FMV of the foreign company's shares (for ODI FMV ceiling compliance, the Indian company cannot pay above FMV for the foreign company's shares it is acquiring).

The exchange ratio in the share swap, the number of Indian shares issued per foreign share acquired, is determined by the relative FMVs: if the FMV of one foreign company share is USD 100 and the FMV of one Indian company share is Rs. 500 (approximately USD 6), the exchange ratio would be approximately  $100/6 = 16.7$  Indian shares per foreign share, subject to rounding and the parties' commercial negotiation within the FMV bounds. The exchange ratio must ensure that the Indian company is not issuing its shares below their FMV (implying the foreign shares are overvalued) and is not valuing the foreign shares above their FMV (implying the exchange is overpaying for the foreign asset).

Swap Structure	Indian Entity Action	Foreign Entity Action	Valuation Requirement (Indian Leg)	Valuation Requirement (Foreign Leg)
Indian company acquires foreign company by issuing its own shares	Issues new equity shares to foreign shareholders	Foreign shareholders transfer their shares to Indian company	FMV $\leq$ issue price of Indian shares (FEMA FMV floor)	FMV of foreign company shares, ODI ceiling ( $\leq$ FMV)
Indian company merges with foreign company (cross-border)	Issues shares to foreign entity shareholders	Foreign entity vests assets/shares into Indian entity	FEMA FMV; RBI prior approval; share exchange ratio	Section 234 Companies Act; NCLT approval; FMV certification
Indian promoter exchanges Indian shares for foreign company shares	Transfers Indian shares to foreign entity	Foreign entity / foreign shareholder issues or transfers foreign shares to Indian promoter	FC-TRS, transfer $\geq$ FMV of Indian shares being transferred	ODI, investment $\leq$ FMV of foreign shares received
ESOP/ESOS, Indian parent issues shares to employees of foreign subsidiary	Issues parent company shares to overseas employees	Overseas employees participate in Indian parent ESOP	No separate FEMA-prescribed valuer. Compliance as per SEBI regulations, Companies Rules, 2014	Host country employment law; ESOP plan rules

Swap Structure	Indian Entity Action	Foreign Entity Action	Valuation Requirement (Indian Leg)	Valuation Requirement (Foreign Leg)
Listed Indian company acquires overseas company via share swap	Preferential allotment to overseas shareholders	Overseas shareholders transfer shares in overseas company	SEBI ICDR pricing / FEMA pricing, as applicable	ODI valuation / arm's-length pricing for overseas company shares

Table 6: Swap Transaction Structures, Dual-Leg Valuation Requirements

**KEY INSIGHT**

*We have managed the dual-leg valuation for several cross-border share swap transactions involving Indian technology companies acquiring overseas targets. The most complex aspect is not the arithmetic of the exchange ratio, it is the currency of the two valuations. If the Indian company's valuation and the foreign company's valuation are prepared at different dates, exchange rate movements between those dates can shift the effective exchange ratio from the intended terms. We recommend that both valuations be prepared with the same valuation date, even if one valuation is technically for an overseas entity in a foreign currency, so that the exchange ratio is computed using contemporaneous FMVs. Using a single financial closing date for both valuations, with exchange rates locked at that date, eliminates this risk. The one-pager that specifies the valuation dates, exchange rates used, and the exchange ratio calculation should be explicitly included in the FEMA compliance file as the link between the two independent valuation reports.*

## 6.2 SEBI Implications for Listed Company Swap Transactions

When the Indian entity in a swap transaction is a listed company, which is increasingly common as Indian technology and consumer companies use their own market-valued equity as acquisition currency, the SEBI ICDR Regulations impose additional requirements. The issuance of new Indian shares as consideration in a swap transaction is treated as a preferential allotment under SEBI ICDR Regulation 164, subject to the applicable VWAP-based floor price computation, and Regulation 167 lock-in requirements, which generally prescribe 18 months for promoter/promoter group allotments and 6 months for non-promoter allotments, subject to detailed conditions and exceptions.

The interaction between the SEBI VWAP floor and the FEMA FMV floor in a listed company swap must be carefully managed. If the fundamental FMV of the Indian company's shares (computed by DCF for FEMA purposes) is Rs. 450 but the SEBI VWAP floor is Rs. 550 (reflecting current market sentiment), the effective exchange ratio for the swap must use the higher SEBI floor, the Indian company must issue fewer shares (at the higher Rs. 550 price) than the fundamental FMV would imply. This reduces the consideration value for the overseas seller, who may need to accept a lower exchange ratio than initially contemplated. The CFO and investment banker must model this interaction early in the transaction planning process.

## 6.3 Indian Promoter Exchanging Indian Shares for Foreign Company Shares

A specific swap structure that arises in private company contexts is the Indian promoter who exchanges their shares in an Indian company for shares in a foreign holding company, typically as part of a restructuring to create a Singapore or Mauritius hold co structure. This transaction has two FEMA legs: the transfer of Indian shares by the Indian promoter (resident) to the foreign holding company (non-resident), governed by Rule 21(2) of the NDI Rules as a transfer from resident to non-resident; and the receipt of foreign holding company shares by the Indian promoter, governed by FEMA ODI as an outbound investment.

For the Indian shares transfer, the FEMA pricing rule requires the Indian promoter to transfer at or above FMV (since they are the resident seller transferring to a non-resident buyer). For the foreign holding company shares receipt, the FEMA ODI framework requires the Indian promoter's investment (valued at the FMV of the Indian shares transferred) to not exceed the FMV of the foreign holding company shares received. Since the foreign holding company is being created to hold the Indian shares, its FMV would generally track the FMV of the Indian shares it holds, subject to specific transaction facts and capital

structure, often resulting in an exchange ratio that broadly reflects the relative FMV equivalence between the Indian and foreign holding structures, subject to specific transaction facts and capital structure. .

## 6.4 ESOP Issuance to Foreign Employees: Indian Parent, Foreign Subsidiary Employees

An increasingly common structure for Indian technology companies with overseas operations is the issuance of Indian parent company stock options (ESOPs) to employees of foreign subsidiaries. This is not a share swap in the strict sense; it is an ESOP issuance to persons resident outside India.: the Indian parent issues its ESOPs/shares to foreign residents (the overseas employees), and in exchange receives the value of the employee's services to the foreign subsidiary (which benefits the group as a whole).

Under FEMA, the issuance of Indian parent shares to overseas employees is treated as FDI, the overseas employee is a non-resident receiving equity instruments of an Indian company. The issue price (typically the exercise price of the ESOP) must meet the FEMA FMV floor. For listed Indian parents, the SEBI ICDR ESOP guidelines provide the pricing framework; for unlisted Indian parents, a FMV certification by a CA, Merchant Banker or Practising Cost Accountant is required at each grant and exercise event. Form ESOP / applicable FEMA reporting is required at the ESOP grant stage, and FC-GPR is required within 30 days of allotment of shares at each exercise event when new shares are issued to the overseas employee.

### PRO TIP

*For Indian companies contemplating a share swap acquisition of an overseas target, engage FEMA counsel and the valuation advisor at the Letter of Intent (LOI) stage, not after the LOI is signed. The LOI typically specifies an indicative exchange ratio, and if that ratio is derived without reference to the FEMA FMV constraints (FDI floor for Indian shares, ODI ceiling for foreign shares), it may need to be revised after the formal valuations are completed, creating awkward renegotiation dynamics with the overseas counterparty. An exchange ratio set with the FEMA constraints explicitly embedded from the outset is a more stable commercial foundation for the transaction.*

## SECTION 7, RIGHTS, BONUS &amp; BUYBACK

## Chapter 7: Rights Issues, Bonus Shares & Buybacks Involving Foreign Shareholders

Corporate actions, rights issues, bonus share allotments, and share buybacks, affect all shareholders, including foreign and NRI shareholders, creating a class of FEMA compliance obligations that are less obvious than direct FDI transactions but equally important to manage correctly. The FEMA framework treats each of these corporate actions differently from a pricing and compliance perspective, and the CFO must understand the specific rules applicable to each action to avoid filing gaps and pricing violations.

### 7.1 Rights Issues: The Special FEMA Exemption

A rights issue, the offer of new shares to existing shareholders in proportion to their existing holdings, enjoys a significant FEMA accommodation. Unlike FDI subscriptions where the issue price must meet the FEMA FMV floor, a rights issue to NRI or foreign shareholders of a listed company can be offered at any price determined by the company, including a price below FMV. For an unlisted Indian company, Rule 7 of the NDI Rules requires that the rights price to non-residents (in proportion to their existing holdings), and there is no mechanism by which a below-FMV rights price disproportionately benefits the foreign shareholder, everyone receives the same price.

However, FEMA permits rights issue / bonus issue to eligible foreign shareholders, but the actual offer, exclusion or renunciation must also be checked under the Companies Act, articles and shareholders' agreement. Where a company proposes to structure the offer in a manner that excludes or dilutes foreign shareholders, this is more of a corporate law / shareholder approval issue than a pure FEMA pricing issue, but CFOs should obtain FEMA and legal advice on the specific facts before proceeding.

Corporate Action	NRI / Foreign Shareholder Position	FEMA Pricing Rule	Valuation Requirement	Filing
Rights issue, resident Indian company	NRI / foreign shareholders entitled to rights proportionate to holding	Listed company: any price determined by the company. Unlisted company: not less than the price offered to residents (NDI Rules, Rule 7)	No FEMA FMV requirement for rights pricing	FC-GPR after allotment
Rights issue, renunciation by NRI shareholder	NRI shareholder renounces rights in favour of resident	Rule 7A not triggered; final allottee is resident	No FEMA FMV solely for renunciation	No FC-GPR / FC-TRS if shares are finally allotted to resident
Rights issue, renunciation by NRI to non-resident	NRI renounces rights to another non-resident	Not a share transfer, renunciation	No FEMA pricing rule; IT implications for NRI	FC-GPR after allotment to Non-Resident, FC-TRS not required
Bonus issue	All shareholders receive bonus shares pro-rata	No consideration, FEMA pricing rules do not apply	No FMV requirement	FC-GPR for bonus shares allotted to NRIs / FPIs
Buyback, tender offer from NRI shareholders	NRI tenders shares to company for cash	Buyback price is transaction price, FEMA does not prescribe FMV	Fairness advisory desirable; no mandatory FMV cert	FC-TRS if buyback treated as transfer to resident company

Corporate Action	NRI / Foreign Shareholder Position	FEMA Pricing Rule	Valuation Requirement	Filing
Buyback, open market (stock exchange route)	NRI sells through exchange in buyback window	SEBI-regulated market price	CA certificate for SEBI compliance where FC-TRS is applicable	Standard exchange reporting; SEBI compliance

Table 7: Corporate Actions Involving Foreign Shareholders, FEMA Valuation Treatment

## 7.2 Renunciation of Rights: The FEMA Complexity

The renunciation of rights, the transfer of subscription rights by one shareholder to another, creates FEMA complexity when the renouncing or receiving party is a non-resident. If an NRI shareholder renounces rights in favour of a resident Indian, FEMA share pricing and FC-GPR are generally not triggered because the final allottee is resident. However, where rights are renounced in favour of a non-resident, the resulting allotment of shares to the non-resident must comply with applicable entry route, sectoral caps, pricing guidelines and reporting requirements. Under Rule 7A of the NDI Rules, where a person resident outside India acquires equity instruments pursuant to renunciation by a resident, the acquisition must comply with the applicable entry route, sectoral caps, pricing guidelines and reporting requirements.

The FMV of a rights entitlement is the theoretical value of the right to subscribe to a new share at the rights price. For a share trading at Rs. 200 with a rights issue price of Rs. 150, the theoretical ex-rights price and the value of the right are mathematically determinable. However, for unlisted companies where no market price exists, the FMV of the rights entitlement requires a valuation analysis that determines both the pre-rights FMV of the existing shares and the post-subscription FMV of the new shares, and derives the implicit value of the right.

### KEY INSIGHT

*We have encountered FEMA compliance gaps in rights issue transactions with NRI shareholders more frequently than in direct FDI rounds. The pattern is typically: the company issues a right offer to all shareholders including NRIs; some NRI shareholders do not respond within the offer period; the company either forfeits the unexercised rights or re-allots them to other shareholders. The re-allotment of unexercised NRI rights to resident shareholders creates a transfer from a non-resident (the NRI who let the rights lapse) to residents, which may technically be a FEMA-reportable event depending on how the re-allotment is structured. We recommend that rights issue documentation for companies with NRI shareholders explicitly address the treatment of unexercised NRI rights, with FEMA counsel confirmation, before the offer is dispatched. Retrofitting the compliance analysis after the rights issue has closed, when the company is filing FC-GPR, is significantly more complex than planning it in advance.*

## 7.3 Bonus Issues: Straightforward but Reportable

A bonus issue, the capitalisation of reserves into new shares issued pro-rata to existing shareholders without consideration, does not trigger FEMA valuation requirements because there is no price: the shares are issued for nil consideration. The FEMA framework treats bonus shares as an accretion to the foreign shareholder's existing investment, not a new FDI subscription. However, the issuance of bonus shares to NRI or foreign shareholders must still be reported via FC-GPR, since new shares are being issued to foreign investors, even though the consideration is nil.

The FC-GPR for a bonus issue should specify the issue as 'nil consideration' and document the basis of the bonus (the board resolution and the reserves being capitalised). The cumulative foreign investment in the company increases by the value of the bonus shares reported as a nil-consideration issue; no FEMA pricing valuation is required), and the FLA Return for the relevant year must reflect the updated foreign equity investment quantum.

## 7.4 Buybacks: FEMA Treatment of NRI Tendering

When a company conducts a share buyback, purchasing its own shares from shareholders in a tender offer or open market transaction, and NRI shareholders tender their shares, the buyback creates a transfer from

a non-resident (the NRI shareholder) to the company (a resident Indian entity). Under the NDI Rules, a transfer from a non-resident to a resident is subject to the FEMA pricing ceiling: the resident cannot pay above FMV. For a buyback at above FMV, there is technically a FEMA pricing issue for the NRI shareholders tendering at the above-FMV price.

In practice, SEBI-regulated listed company buybacks are conducted at prices that SEBI has reviewed and approved, and RBI has generally not taken the position that the SEBI-compliant buyback price creates a FEMA violation. For unlisted company buybacks involving NRI shareholders, the situation is less clear, and obtaining FEMA counsel advice before proceeding with an above-FMV unlisted buyback involving NRI shareholders is the appropriate compliance precaution.

**PRO TIP**

*Before any corporate action, rights issue, bonus issue, or buyback, where NRI or foreign shareholders are involved, prepare a FEMA Action Plan that addresses: the FEMA classification of the corporate action; whether the action requires FC-GPR filing, FC-TRS filing, or any other regulatory filing; whether any FMV certification is required and by whom; whether there are any special conditions or restrictions applicable to NRI / foreign shareholders; and the timeline for all required filings after the corporate action is completed. This Action Plan should be prepared and approved by FEMA counsel before the corporate action is announced, not retrospectively after it is completed.*

## SECTION 8, GIFT CITY &amp; IFSC

## Chapter 8: GIFT City (IFSC) Valuation: The Special Economic Zone Framework

GIFT City, the Gujarat International Finance Tec-City, is India's first and only International Financial Services Centre (IFSC), a special economic zone established to bring international financial services and transactions that would otherwise occur in offshore jurisdictions (Singapore, London, New York, Cayman Islands) into Indian territory. Regulated by the International Financial Services Centres Authority (IFSCA), GIFT City entities operate under a unique regulatory framework that is distinct from the onshore Indian regulatory environment, but that intersects with FEMA in specific and important ways when GIFT City entities transact with entities in Indian territory.

For CFOs of Indian companies that have GIFT City structures, offshore-style holding entities, IFSC-based funds, or banking and insurance units domiciled in the IFSC, understanding the valuation requirements under IFSCA regulations and their interaction with FEMA is essential. The GIFT City regulatory framework is evolving rapidly, with IFSCA issuing frequent regulations, frameworks and circulars, making currency of regulatory knowledge a particular challenge.

### 8.1 IFSCA: The Regulatory Framework for GIFT City

The International Financial Services Centres Authority Act, 2019, established IFSCA as the unified regulator for all financial services in IFSCs in India. IFSCA has since issued a comprehensive suite of regulations covering: Fund Management (AIF, PMS, and other pooled vehicles), Banking (IBUs and their products), Capital Markets (listing, trading, and exchange operations), Insurance, and Fintech activities. IFSCA's regulatory philosophy is broadly aligned with international standards, IOSCO for securities, Basel for banking, IAIS for insurance, making GIFT City regulations more recognisable to international market participants than India's onshore regulatory frameworks.

For valuation purposes, IFSCA's most significant regulations are the IFSCA (Fund Management) Regulations, 2025, which govern IFSC-based AIFs and PMS providers and impose portfolio valuation requirements; and the Banking Regulations, which govern IFSC Banking Units (IBUs) and their asset valuation for capital adequacy purposes. IFSCA-prescribed valuations use internationally recognised standards, primarily IPEV guidelines for private equity portfolios and IFRS 13 for fair value measurement, rather than Indian GAAP or Ind AS-specific frameworks.

GIFT City Entity / Activity	IFSCA Regulation	Valuation Requirement	Interaction with FEMA	Key Regulatory Body
IFSC-based fund (AIF, PMS, investment vehicle)	IFSCA (Fund Management) Regulations, 2025	Portfolio valuation per IFSCA norms; NAV computation	FEMA applies to investments into Indian territory	IFSCA (primary); RBI for Indian territory transactions
IFSC Banking Unit (IBU) lending to Indian entity	IFSCA (Banking) Regulations	FMV for collateral assessment	Treated as ECB, RBI ECB framework applies	IFSCA + RBI
Cross-border acquisition financed through GIFT City	IFSCA framework + FEMA	FMV of acquisition target (overseas or Indian)	If Indian target, FEMA FDI/downstream rules apply	IFSCA + RBI + DPIIT
IFSC entity investing into Indian company (through FDI route)	IFSCA + NDI RULES, 2019	FMV ≥ issue price (standard FEMA FDI rule)	Full FEMA FDI compliance required	RBI (FEMA) + IFSCA

GIFT City Entity / Activity	IFSCA Regulation	Valuation Requirement	Interaction with FEMA	Key Regulatory Body
International exchange in IFSC, listing of Indian company	IFSCA (Markets) Regulations	Issue / listing price as per IFSCA listing framework;	No FEMA for NR-NR trades; India leg triggers FEMA	IFSCA
Reinsurance / insurance entity in GIFT City	IFSCA (Insurance) Regulations	Actuarial and FMV-based reserve valuation	FEMA for cross-border premium flows	IFSCA + IRDAI

Table 8: GIFT City (IFSC), Entity Types, IFSCA Regulations, and FEMA Interaction

## 8.2 FEMA Interaction with GIFT City: The Critical Boundary

The most important regulatory principle for GIFT City structures is the distinction between transactions within the IFSC (which are treated as transactions outside India for FEMA purposes and governed by IFSCA regulations) and transactions between GIFT City entities and Indian territory entities (which are treated as cross-border transactions for FEMA purposes, subject to full FEMA compliance).

This means that transactions wholly within the IFSC or between non-residents may primarily be governed by the IFSCA framework. However, Indian resident investments into IFSC structures, overseas investments by Indian funds/AIFs, and transactions between IFSC entities and Indian territory entities must still be analysed under the OI Rules, NDI Rules, SEBI limits, RBI reporting framework and AD bank requirements, as applicable. But when the same GIFT City fund invests into an Indian company, whether directly as FDI or through a complex structure, it is making an FDI investment into Indian territory, and The NDI Rules, 2019 apply in full, including the FMV floor, the FC-GPR filing requirement, and all sectoral conditions.

### KEY INSIGHT

*We have advised multiple international fund managers setting up structures in GIFT City on the FEMA boundary issue for Indian portfolio investments. The key structuring question is whether the IFSC entity's investment into an Indian company should be routed through the FDI route, where not covered by FPI route (direct IFSC-to-India FDI, with full FEMA compliance) or through an intermediate foreign holding company (IFSC entity – Singapore hold co – India, with FEMA applying at the Singapore-to-India leg). The choice has implications not just for FEMA but for tax treaty access, SEBI FPI registration requirements (for listed company investments), and the exit route for the investment. Our consistent advice: map all cross-border investment flows carefully, engage FEMA counsel for each Indian territory investment regardless of how internationally designed the overall structure is, and ensure the FEMA valuation report for any Indian territory investment is prepared at the standard appropriate for a direct FDI, because from the RBI's perspective, it is.*

## 8.3 IFSC-Based Fund Valuation Requirements Under IFSCA

IFSCA's Fund Management Regulations require IFSC-based schemes / funds managed by FMEs to value their portfolios in accordance with prescribed valuation norms. The valuation requirements include valuation of scheme assets by an independent service provider / valuer, as applicable; disclosure of valuation methodology in the placement memorandum or offer document; and preparation of NAV statements. The NAV frequency depends on the type of scheme: venture capital schemes at least annually; restricted schemes monthly for open-ended schemes and half-yearly for close-ended schemes; and retail schemes daily for open-ended schemes and weekly for close-ended schemes.

For IFSC-based funds with Indian portfolio companies, the valuation of those Indian companies must satisfy both the IFSCA fund valuation requirements (for NAV computation and investor reporting) and the FEMA valuation requirements (for any FC-GPR, FC-TRS, or other FEMA filing). In many cases, a single comprehensive valuation report, prepared by a qualified professional who understands both frameworks, can satisfy both requirements simultaneously, avoiding duplication and ensuring consistency between the IFSCA NAV and the FEMA-compliant FMV.

## 8.4 Listings in GIFT City: Cross-Border Securities Regulation

IFSCA has established exchanges in GIFT City, NSE IFSC and India INX, where companies can list USD-denominated securities (Global Depository Receipts, bonds, and other instruments). For Indian companies listing their securities in GIFT City, the listing and trading of these IFSC-listed securities is governed by IFSCA regulations, not SEBI regulations (except for the Indian domestic equity market, which remains SEBI's jurisdiction). FEMA does not apply to transactions in IFSC-listed USD-denominated securities among non-residents, these are treated as offshore transactions.

However, when IFSC-listed depository receipts are converted into underlying Indian equity shares (exercising the conversion right), the resulting Indian equity shareholding is subject to FEMA, the non-resident holder of IFSC-listed DRs becomes a holder of Indian equity shares, and any subsequent transfer of those Indian shares requires FC-TRS compliance. The FEMA position and cost basis should be documented at the time of conversion / holding change.

### PRO TIP

*CFOs of Indian companies with GIFT City structures should designate a FEMA Boundary Custodian, a specific individual in the finance or legal team who is responsible for identifying all transactions between GIFT City entities and Indian territory entities and ensuring they are assessed for FEMA compliance before execution. The sophistication of GIFT City structures can obscure the regulatory boundary: a multi-fund, multi-jurisdiction structure with GIFT City, Singapore, and Mauritius intermediaries may have Indian territory exposures that are not immediately visible in a transaction-by-transaction review. The FEMA Boundary Custodian must have a current group structure diagram and must review any new transaction flow against that diagram before the transaction is approved.*

## SECTION 9, CROSS-BORDER RESTRUCTURING

# Chapter 9: Cross-Border Mergers, Demergers & Restructuring under FEMA

Cross-border mergers, demergers, and business restructurings involving Indian companies and foreign entities represent the most complex and high-stakes FEMA valuation scenarios. These transactions simultaneously engage FEMA (for the cross-border element), the Companies Act (for the scheme of arrangement process), SEBI (for listed company parties), the Income Tax Act (for neutrality conditions), and foreign law (for the overseas entity). The valuation in such transactions is not merely a FEMA compliance certification, it is the analytical foundation for the NCLT-filed scheme, the basis for shareholder communications, and the document that must satisfy regulators in two or more jurisdictions.

## 9.1 The Legal Framework: Section 234 and FEMA Cross-Border Merger Regulations

Section 234 of the Companies Act, 2013, permits mergers and amalgamations between Indian companies and foreign companies, subject to such rules as the Central Government may prescribe and subject to the approval of the Reserve Bank of India. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017, inserted Rule 25A providing the procedural framework for cross-border mergers. FEMA has its own specific regulation for cross-border mergers: the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, which set out the pricing and reporting requirements for cross-border merger transactions.

The FEMA Cross-Border Merger Regulations distinguish between inbound mergers (where the surviving entity is an Indian company, the foreign company merges into the Indian company) and outbound mergers (where the surviving entity is a foreign company, the Indian company merges into the foreign company). The FEMA treatment differs for each: inbound mergers are treated as FDI (the shares issued by the Indian surviving entity to the foreign company's shareholders are equity instruments issued to foreign investors, subject to the FDI pricing floor); outbound mergers are treated as ODI (the Indian entity ceasing to exist as a result of the merger represents an indirect investment in the surviving foreign entity, subject to ODI rules).

Restructuring Type	FEMA Rule / Regulation	Valuation Requirement	RBI Approval Needed?	Additional Bodies
Inbound cross-border merger (foreign → Indian)	Sec 234 Companies Act + FEMA (Cross Border Merger) Regs 2018	Valuation of both entities / exchange ratio as per Companies Act scheme, Rule 25A and FEMA pricing, where applicable	Deemed approval if FEMA Compliant	NCLT; SEBI (if listed)
Outbound cross-border merger (Indian → foreign)	Sec 234 + FEMA Cross Border Merger Regs 2018	Valuation of both entities / exchange ratio as per Companies Act scheme, Rule 25A and FEMA pricing, where applicable	Deemed approval if FEMA Compliant	NCLT; SEBI (if listed); host country regulator
Cross-border demerger (Indian undertaking → foreign entity)	FEMA overseas investment / cross-border merger framework+ Sec 234	FMV of demerged undertaking, ODI FMV ceiling	RBI prior approval likely needed	NCLT; SEBI (if listed)

Restructuring Type	FEMA Rule / Regulation	Valuation Requirement	RBI Approval Needed?	Additional Bodies
Foreign company acquiring Indian company via scheme	NDI Rules, 2019 (FDI route) + Sec 230-232	FMV of Indian company, FDI pricing floor	Regulatory approvals as per FDI policy and NCLT	NCLT; SEBI (if listed); DPIIT if government approval sector
Domestic merger involving Indian company with foreign shareholders	FEMA applies to any share issuance/transfer to foreign holders	FMV at appointed date, SER FMV analysis	No separate RBI approval for domestic merger	NCLT; SEBI (if listed)
Cross-border business transfer (slump sale to foreign entity)	FEMA ODI, Indian company selling undertaking to overseas entity	FMV of undertaking, ODI FMV ceiling	RBI approval if consideration exceeds ODI headroom	Tax clearance under Sec 50B; NCLT if structured as scheme

Table 9: Cross-Border Merger and Restructuring, FEMA Valuation and Approval Requirements

#### KEY INSIGHT

We have prepared the share exchange ratio valuation for two cross-border merger schemes, one inbound (a foreign parent merging into its Indian subsidiary to simplify the group structure) and one outbound (an Indian technology company merging into a Singapore-incorporated parent company post-acquisition). The inbound merger was straightforward from a FEMA perspective: the Indian company issued shares to the foreign company's shareholders, and we certified FMV compliance for those shares. The outbound merger was significantly more complex: the Indian company's shareholders were receiving shares in the Singapore parent company, and we needed to ensure that the exchange ratio satisfies the ODI FMV ceiling (the Indian shareholders are making an overseas investment in exchange for their Indian shares). Simultaneously, the foreign company was issuing shares to Indian residents (the Indian company's shareholders), which may trigger FEMA (Overseas Investment) reporting for those individual shareholders if the aggregate value exceeds the LRS limit. The cross-border merger is therefore simultaneously a FEMA FDI event, a FEMA ODI event, and potentially an LRS event, all governed by different FEMA sub-regulations, each with its own valuation and reporting requirements.

## 9.2 RBI Prior Approval: The Critical Gateway

Unlike domestic mergers, which can proceed to the NCLT without RBI involvement, cross-border mergers require RBI prior approval under the FEMA Cross-Border Merger Regulations, 2018, unless they qualify for the 'deemed approval' route. The deemed approval route is available if: the cross-border merger complies with all FEMA regulations, the scheme complies with SEBI regulations (for listed parties), the scheme is approved by the relevant Courts/NCLT, and all other applicable laws are complied with. In practice, most cross-border mergers with any complexity in their terms or structure opt to seek RBI prior approval rather than rely on deemed approval, to avoid the risk of the merger being unwound due to a FEMA compliance issue discovered post-completion.

For RBI prior approval applications, the valuation report plays a particularly important role: the RBI reviews the share exchange ratio and the underlying valuation to assess whether the terms of the merger are consistent with FEMA's objective of ensuring fair value in cross-border transactions. A valuation report that is thorough, transparent, and clearly certified by a SEBI-registered Merchant Banker provides the RBI with the evidence it needs to process the approval efficiently. Incomplete or inadequate valuation reports are the most common cause of RBI approval delays in cross-border merger proceedings.

## 9.3 Cross-Border Demerger: The ODI Framework

A cross-border demerger, where an Indian company's business undertaking is transferred to an overseas entity, is primarily governed by the ODI framework rather than the cross-border merger framework. Where a restructuring involving transfer of an undertaking to an overseas entity is legally implemented, the FEMA consequences may be analysed through the ODI framework, including valuation of the transferred undertaking in accordance with applicable ODI pricing principles. Given the evolving legal position on cross-border demergers, transaction-specific legal analysis is essential. The resulting company

(the overseas entity receiving the undertaking) issues shares to the Indian company's shareholders as consideration, this is treated as an offshore share receipt by Indian residents, which may trigger LRS reporting if individual shareholders receive overseas shares.

For corporate group demergers where an Indian holding company separates its technology business (to be housed in a Singapore entity) from its Indian operations, the FEMA implications are multi-layered: the Indian company's transfer of the undertaking is ODI; the Indian shareholders' receipt of Singapore shares is an overseas investment; the continuing Indian entity's relationship with the Singapore entity (which now holds part of the former group's business) involves ODI reporting. The valuation of the demerged undertaking for FEMA ODI purposes should be supported by a valuation report. Where Rule 25A applies, the valuation should be conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and should be in accordance with internationally accepted principles on accounting and valuation.

## 9.4 Domestic Mergers with Foreign Shareholders: The Invisible FEMA Element

Even in purely domestic mergers, where both the transferor and transferee companies are Indian, FEMA compliance obligations arise when either company has foreign shareholders. The share issuance by the surviving Indian company to the transferor company's foreign shareholders is a fresh FDI event: new equity instruments are being issued to foreign investors, and the FMV floor applies to the share exchange ratio as it affects the consideration received by (and the dilution imposed on) foreign shareholders.

CFOs managing domestic mergers involving companies with foreign shareholders must ensure that the share exchange ratio is assessed not just for Companies Act fairness (which the NCLT evaluates) and SEBI compliance (for listed companies), but also for FEMA FMV compliance, the SER must ensure that foreign shareholders of the transferor company receive shares in the surviving company whose FMV equals or exceeds the FMV of the shares they are surrendering, and that the shares they receive in the surviving company are issued at or above their FMV.

### PRO TIP

*For any cross-border restructuring transaction, merger, demerger, or business transfer, prepare a FEMA Impact Assessment Document before engaging NCLT counsel or investment bankers. This document should: identify all entities in the transaction and their FEMA status (resident or non-resident); map all share issuances and transfers between residents and non-residents; identify which FEMA regulations apply to each flow (NDI Rules, 2019 for FDI; FEMA (Overseas Investment) Rules, 2022 for ODI; FEMA Cross-Border Merger Regulations, 2018; LRS framework); specify the valuation certification required for each flow; and identify whether RBI prior approval is required. This document, prepared by FEMA counsel and the valuation advisor jointly, serves as the compliance architecture for the entire restructuring and prevents the discovery of FEMA issues after the scheme structure is finalised, when modification is costly and time-consuming.*

## SECTION 10, ECB &amp; HYBRID INSTRUMENTS

# Chapter 10: External Commercial Borrowings, FCCBs & Hybrid Instrument FEMA Compliance

External Commercial Borrowings (ECBs), debt raised by Indian entities from foreign lenders, occupy a parallel regulatory universe to FDI within the FEMA framework. While FDI is equity capital from foreign investors (regulated by the NDI Rules, 2019 and governed by FMV pricing floors), ECBs are foreign debt capital (governed by the RBI Master Direction on External Commercial Borrowings) where the focus is on borrower eligibility, recognised lender status, maturity, end-use, cost of borrowing, security, repayment and reporting discipline rather than FMV-based pricing. For CFOs managing companies with both equity FDI and debt ECB funding from foreign sources, understanding the classification of each instrument, and its specific valuation or pricing compliance requirement, is essential.

## 10.1 The ECB Framework: Cost of borrowing vs FMV

The fundamental distinction between the FDI valuation framework (FMV-based pricing floor) and the ECB framework reflects the different nature of the two instruments. FDI equity is permanent capital that acquires proportional ownership; the FMV floor ensures that the ownership acquired is fairly priced relative to the company's economic value. ECB debt is contractual capital with a defined repayment obligation; the cost of borrowing ensures that Indian companies do not pay excessive interest rates to foreign lenders, preventing capital flight through disguised interest payments.

The cost of borrowing includes interest, fees, expenses, charges, guarantee fees and export credit agency charges, but excludes commitment fees and statutory taxes payable in India. For USD-denominated ECBs, the all-in cost is benchmarked to the Secured Overnight Financing Rate (SOFR), which replaced LIBOR, plus a maximum spread. For INR-denominated ECBs, the benchmark rate is the prevailing yield of Government of India securities of corresponding maturity. The cost of borrowing should be in line with prevailing market conditions. For eligible ECBs with average maturity of less than three years, the cost of borrowing must comply with the cost ceiling specified for trade credit. Non-compliance with applicable ECB cost, maturity, end-use, security, repayment or reporting conditions may result in FEMA non-compliance.

ECB Instrument	FEMA Category	Pricing Rule	Valuation Requirement	Filing
External Commercial Borrowing (USD/EURO/GBP loan)	ECB, pure debt	Cost of borrowing (benchmark + spread)	No FMV, interest rate compliance is key	Form ECB 1 for LRN; Form ECB 2 for receipt of proceeds / debt servicing
Foreign Currency Convertible Bond (FCCB)	ECB, convertible debt	Coupon: cost of borrowing until conversion, Conversion: FEMA FMV floor	FMV at conversion (equity value $\geq$ conversion price)	Form ECB 1 / ECB 2; FC-GPR on issue of equity shares upon conversion
Compulsorily Convertible Debenture (CCD) from foreign investor	FDI, equity equivalent (not ECB)	FMV floor at issuance and conversion	FMV certification at issuance; check at conversion	FC-GPR, not ECB form

ECB Instrument	FEMA Category	Pricing Rule	Valuation Requirement	Filing
Optionally Convertible Debenture (OCD) from foreign investor	ECB, treated as debt (redeemable option exists)	Cost of borrowing until conversion; FEMA FMV at conversion if exercised	FMV at conversion if conversion option is exercised	Form ECB 1 / ECB 2; FC-GPR on conversion into equity shares
Trade credit (import/export financing)	Trade credit; not ECB if original maturity is up to 3 years	Cost of financing within ECB ceiling	No separate FMV, tenor and cost compliance	Trade credit reporting through AD bank, not normal ECB-2 where it remains trade credit
SAFE note from foreign investor (properly structured as CCD)	FDI, equity equivalent	FMV floor at issuance	FMV at issuance; fresh FMV if terms modified	FC-GPR within 30 days

Table 10: ECB and Hybrid Instruments, FEMA Classification, Pricing Rules and Valuation Requirements

## 10.2 FCCBs: The Hybrid at the ECB-FDI Boundary

Foreign Currency Convertible Bonds (FCCBs) are the classic hybrid instrument that sits at the boundary between ECB and FDI. An FCCB is issued as a bond (ECB treatment for the initial debt phase) with an embedded option for the holder to convert into equity shares (FDI treatment at conversion). The FEMA compliance for FCCBs therefore spans two frameworks: during the bond phase, the coupon and any redemption premium must satisfy the ECB cost of borrowing; at conversion, the conversion price must satisfy the FEMA FMV floor for equity issuances.

The conversion compliance is the most critical and most frequently challenged aspect of FCCB FEMA compliance. The conversion price of an FCCB is typically set at a premium to the market price at the time of issuance (say, a 30% premium to the 6-month trailing average market price). If the company's share price has declined between issuance and the conversion date, the conversion price may be above the current market price, meaning the FCCB holder's conversion is 'out of the money' and they are unlikely to convert. If the share price has increased, the conversion is in the money, and the FCCB holder converts at the original (now below-market) conversion price.

### KEY INSIGHT

*We have assisted several listed Indian companies in managing the FEMA compliance for FCCB conversions, particularly in situations where the original conversion price has been reset due to anti-dilution provisions or SEBI-mandated reset mechanisms. A FCCB conversion price reset, whether triggered by a rights issue, a bonus issue, or a negotiated repricing, is treated by the RBI as a modification of the original ECB terms. This modification triggers: a fresh FEMA assessment of whether the reset conversion price meets the FEMA FMV floor at the time of the reset; an ECB modification report to the RBI through the AD bank; and potentially the need for RBI prior approval if the reset changes the cost of borrowing compliance. In one engagement, a company's FCCB had been reset three times over a five-year period without any of the resets being reported to the RBI as ECB modifications. When we were brought in to manage the FCCB conversion, we identified this filing gap and worked with FEMA counsel to regularise the position through a comprehensive compounding application, avoiding a more serious regulatory finding during the company's subsequent qualified institutional placement.*

## 10.3 The CCD vs OCD Classification: The Highest-Stakes FEMA Decision

The classification of a foreign investor's convertible instrument as either a CCD (FDI, equity equivalent) or an OCD (ECB, debt) is the most consequential FEMA decision in the structuring of any convertible instrument transaction, and the consequences of misclassification are severe in both directions.

An instrument misclassified as CCD when it should be OCD (because it has an optional redemption feature): the foreign investor's subscription was reported as FDI via FC-GPR, but it should have been reported as

ECB via Form ECB. The company has received foreign capital without the required ECB compliance (RBI permission for ECB above the automatic route ceiling, ECB-2 monthly reporting, cost of borrowing compliance). Regularising this requires a compounding application that addresses both the incorrect FC-GPR filing and the non-compliance with ECB requirements.

An instrument misclassified as OCD when it should be CCD (because it is compulsorily convertible): the foreign investor's subscription was reported as ECB, but FDI reporting was required. The ECB interest payments (if any) may have been deducted as finance costs when they should have been non-deductible equity distributions. The sectoral FDI cap compliance was not verified at the time of subscription (because it was treated as ECB), and the actual foreign equity ownership may have exceeded the applicable sectoral cap without approval.

## 10.4 Masala Bonds and Rupee-Denominated ECBs

Masala Bonds, Rupee-denominated bonds issued by Indian entities in overseas markets, are a specific category of ECB that allows Indian issuers to borrow in INR from foreign investors, transferring the currency risk to the investor (who must convert their foreign currency to INR to subscribe). For listed Indian companies, Masala Bonds have been used by infrastructure companies, NBFCs, and large corporates to diversify their investor base and achieve longer tenors than available in the domestic bond market.

The FEMA valuation requirement for Masala Bonds is the cost of borrowing, the coupon rate and fees must not exceed the RBI-prescribed ceiling for INR ECBs. There is no FMV requirement for bond pricing (unlike equity FDI), but the bond must be priced at a rate that is consistent with the issuer's domestic borrowing cost (to satisfy the cost of borrowing, which is linked to the prevailing secondary market yield on GOI bonds of similar maturity). The pricing of Masala Bonds also engages SEBI regulations if the bonds are listed on an overseas exchange.

### PRO TIP

*Maintain a separate ECB Compliance Register for each outstanding ECB facility, including FCCBs and Masala Bonds, that tracks: the principal amount and currency; the all-in cost at inception and any subsequent modifications; the cost of borrowing at inception and any updates due to RBI benchmark changes; Form ECB filing status and ECB-2 monthly return status; any conversion events (for FCCBs) with their FMV documentation; and any maturity or bullet payment dates. Review this register quarterly against the current cost of borrowing to ensure continued compliance as RBI revises the ceiling in response to monetary policy changes. An ECB that was within the cost of borrowing at issuance may become non-compliant if the RBI reduces the ceiling and the ECB terms include a review mechanism that should have triggered a re-pricing.*

## SECTION 11, FPI, AIF &amp; REGULATED ENTITIES

# Chapter 11: FPI, AIF & Regulated Entity Valuation Requirements under FEMA

India's capital markets attract a wide variety of foreign investors, Foreign Portfolio Investors (FPIs), Alternative Investment Funds (AIFs), Foreign Venture Capital Investors (FVCIs), Non-Resident Indians (NRIs), and other regulated entities, each governed by a specific FEMA framework that determines the permissible investments, the pricing rules, and the valuation requirements. For CFOs of companies that have these entities as shareholders, understanding the FEMA framework applicable to each investor type is essential for managing corporate actions, capital raises, and share transfers that affect these shareholders.

## 11.1 Foreign Portfolio Investors: The Market Price Framework

FPIs, foreign investors registered with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2019, invest primarily in listed Indian securities. For listed equity and debt securities, the FEMA pricing rule for FPIs is the market price: FPIs buy and sell listed securities at exchange-traded market prices, and no separate FMV certification is required. The FEMA compliance for FPI transactions is managed through the custodian bank system, with each FPI's custodian reporting transactions to the RBI through a specific reporting framework.

The valuation complexity for FPIs arises in non-standard investments: pre-IPO equity investments (where FPIs may invest in unlisted companies subject to SEBI's FPI circular restrictions), investments in listed companies through block deals or off-market negotiated transactions (where the price must be within the SEBI-prescribed range for block deals), and investments in listed company debt (where the yield must be within FEMA ECB framework parameters for foreign currency bonds or market-determined for listed INR bonds).

Entity Type	FEMA Category	Valuation Trigger	FEMA Valuation Requirement	Additional Regulatory Overlay
FPI (Foreign Portfolio Investor), equity investment in listed companies	FPI, portfolio investment	On each purchase transaction	Market price governs, no separate FMV cert for listed	SEBI FPI Regulations; SEBI disclosure rules
FPI, investment in unlisted companies (pre-IPO)	FDI (FPI cannot generally invest in unlisted, limited exceptions)	On each investment	FEMA FMV floor, CA, MB or Practising Cost Accountant certification	SEBI FPI circular on pre-IPO investments
Category I AIF registered in India with foreign investors	FDI, fund receives from foreign LPs	At AIF subscription and at portfolio investment	AIF subscription: FMV floor; Portfolio co. investment: FMV floor	SEBI AIF Regulations; NDI Rules, 2019
SEBI-registered FVC Fund (FVCI) with foreign capital	FVCI route, special FDI category	On each portfolio investment	Price mutually acceptable to buyer and seller / issuer for permitted FVCI securities / instruments	SEBI FVCI Regulations; more flexibility than standard FDI
NRI investing in Indian company through PIS account	NRI FDI through NRE account	On each equity purchase	Market price for listed; FMV cert for unlisted	NRI investment through PIS, specific RBI approval for

Entity Type	FEMA Category	Valuation Trigger	FEMA Valuation Requirement	Additional Regulatory Overlay
				aggregate NRI holding
NBFC with foreign shareholding making domestic investments	Downstream FDI rules apply	On each investee company investment	FMV at each investment, arm's-length pricing	RBI NBFC regulations; FEMA downstream rules

Table 11: FPI, AIF, FVCI and Regulated Entity FEMA Valuation Requirements

## 11.2 SEBI-Registered AIFs: The FDI-Invested Fund

A SEBI-registered AIF is an 'Investment Vehicle' under the FEMA NDI framework. A person resident outside India is permitted to invest in units of an Investment Vehicle, subject to the NDI Rules, SEBI framework and applicable conditions. Where an Investment Vehicle issues unit to a person resident outside India, Form InVI is required to be filed within 30 days from the date of issue of units. The AIF's subsequent investments in Indian portfolio companies may be treated as downstream FDI where the applicable sponsor / manager / investment manager ownership-control test is satisfied.

This downstream FDI treatment has important implications for AIF fund managers. Where the AIF's portfolio investment is treated as indirect foreign investment, the investee Indian entity must comply with applicable entry route, sectoral caps, pricing guidelines and other FDI-linked performance conditions. FMV / pricing compliance is not automatic for every AIF portfolio investment merely because the AIF has foreign LPs. The AIF must also ensure that its portfolio company investments comply with sectoral FDI caps and conditions, since the foreign LP's indirect exposure through the AIF counts toward the foreign equity cap in the portfolio company.

### KEY INSIGHT

*We work with several SEBI-registered AIF managers on FEMA compliance for their portfolio investments. A frequently encountered issue: the AIF uses a standard investment agreement template that includes a 'discount to next round' provision, the AIF invests at a 15–20% discount to the Series A price when doing a pre-Series, A bridge. For a domestic AIF without foreign investors, this is a commercial term with income tax implications only. For an AIF whose portfolio investment is treated as indirect foreign investment, any next-round discount or variable pricing structure should be tested against applicable FEMA pricing guidelines at the relevant investment / conversion event. This may create FEMA pricing risk where the investment is treated as downstream FDI. We advise AIF managers with foreign LPs to structure their bridge investments as fixed-price instruments (at FMV at the time of investment, certified by a CA, Merchant Banker, or Practising Cost Accountant) rather than as next-round-priced discounts, to maintain FEMA compliance without sacrificing the commercial objective of rewarding early investment risk.*

## 11.3 Foreign Venture Capital Investors: The FVCI Route

SEBI-registered Foreign Venture Capital Investors (FVCIs) enjoy a specific investment route under FEMA that provides significantly more flexibility than the standard FDI route. Under the FVCI route, foreign investors registered as FVCI may invest in permitted securities / instruments, including securities of specified-sector Indian companies, equity / equity-linked / debt instruments of Indian start-ups irrespective of sector, units of VCFs or Category I AIFs, and securities on a recognised stock exchange subject to SEBI FVCI Regulations. An FVCI may acquire or transfer permitted securities / instruments at a price mutually acceptable to the buyer and seller / issuer.

The FVCI pricing flexibility comes with important restrictions: FVCIs can only invest in the specified sectors; their investments must be in equity, equity-linked instruments, or debt with equity warrants; and they must maintain their FVCI registration with SEBI on an annual basis. For Indian start-ups in the eligible sectors, the FVCI route allows US-style angel and seed investment structures (where pricing is set by negotiation rather than FMV certification) while maintaining a legitimate FEMA framework.

## 11.4 NBFCs and Regulated Financial Entities with Foreign Shareholding

Non-Banking Financial Companies (NBFCs) and other regulated financial entities that have foreign shareholders occupy a specific compliance position: they require a downstream-investment analysis based on whether the entity is foreign owned or controlled under the NDI Rules / FDI Policy framework, and their investment activities, which are the core of their business for an NBFC, constitute downstream investments subject to FEMA pricing rules. An NBFC with, say, 40% foreign shareholding that makes equity investments in Indian operating companies is technically making downstream FDI investments in those companies but RBI requires ownership-control analysis, not a mere foreign shareholding test. A 40% foreign shareholding does not, by itself, make every downstream equity investment an indirect foreign investment.

The RBI and DPIIT have issued specific guidance for NBFCs with FDI, acknowledging that requiring FMV certification for every NBFC loan disbursement or investment would be operationally impractical. The guidance distinguishes between NBFC lending (which is an ECB-type activity not subject to FMV pricing rules for each loan) and NBFC equity investing (which remains subject to downstream FDI pricing rules). CFOs of NBFCs with foreign shareholding must maintain a clear distinction in their operations between lending activities (not subject to FEMA FMV per transaction) and equity investment activities (subject to FEMA FMV per investment).

### PRO TIP

*For companies considering new foreign investors, whether institutional FPIs, AIFs with foreign LPs, FVCIs, or direct FDI investors, map the investor's FEMA category and investment route before accepting the investment. The FEMA category determines: the permissible investment amount and sectoral conditions; the pricing rules (FMV floor, VWAP ceiling, or FVCI flexibility); the reporting requirements (FC-GPR, Form ECB, FPI custodian reporting); and the aggregate foreign ownership calculation for sectoral cap compliance. Accepting a foreign investment without understanding the investor's FEMA category can result in inadvertent sectoral cap breaches, missing reporting obligations, or pricing non-compliance, all of which require compounding to regularise and create complications for future capital raises.*

## SECTION 12, COMPOUNDING &amp; ENFORCEMENT

## Chapter 12: FEMA Compounding, Enforcement & Valuation-Based Dispute Resolution

Despite the best compliance efforts, FEMA violations occur, and when they do, the compounding framework provides a mechanism for regularisation that, while costly, is preferable to the alternative of an uncorrected violation persisting into an RBI inspection or enforcement action. Compounding is governed by the Foreign Exchange (Compounding Proceedings) Rules, 2024. The competent compounding authority may be an officer of the Reserve Bank or the Directorate of Enforcement, depending on the nature of the contravention and the provision. For valuation-related violations, the compounding application must include a detailed explanation of how the violation occurred, a retrospective FMV analysis establishing the correct value at the transaction date, and evidence that all outstanding reporting obligations have been fulfilled.

### 12.1 The Anatomy of a FEMA Valuation Violation

FEMA valuation violations arise in three primary ways: the violation of the pricing floor (FDI issued or transferred at below FMV), the violation of the pricing ceiling (ODI paid above FMV or non-resident transfer received above FMV), and the violation of the reporting requirement (failure to file FC-GPR, FC-TRS, or other prescribed form within the required timeline). Each category has different consequences and different compounding mechanics.

Pricing violations are the most serious because they represent a substantive breach of FEMA's core principle, not merely an administrative failing. A pricing violation means that value has been transferred across India's borders at a price that does not reflect FMV, which is exactly what FEMA's pricing rules are designed to prevent. The RBI treats pricing violations with proportionate severity: The compounding amount is computed based on the computation matrix in the RBI Compounding Directions. The actual amount may vary depending on the facts of the case and the factors specified in the Directions.

Violation Type	Primary Cause	Compounding Authority	Indicative Computation Basis	Valuation Role in Response
Pricing violation, FDI issued below FMV	Stale or inadequate valuation; incorrect method	RBI Enforcement Department	Multiple of the pricing shortfall (difference × period factor)	Retrospective FMV to establish gap; contemporaneous FMV to argue compliance
Pricing violation, ODI paid above FMV	No FMV ceiling check; overpayment	RBI Enforcement Department	Based on fixed amount plus applicable variable amount / percentage, subject to the ceilings and facts of the case.	Historical FMV of overseas entity at transaction date
Late FC-GPR filing	Administrative delay; transaction not reported in time	RBI / AD Bank	Fixed amount per violation + period-based penalty	FMV certification must accompany the late FC-GPR
Late FC-TRS filing	Share transfer registry gap; not monitored	RBI / AD Bank	Fixed amount per violation; may compound with pricing violation	FMV certification required retroactively for the transfer date

Violation Type	Primary Cause	Compounding Authority	Indicative Computation Basis	Valuation Role in Response
OCD misclassified as CCD (FDI when ECB was required)	Incorrect instrument classification	RBI Enforcement Department	Compounding of all ECB non-compliances (cost ceiling, tenor, end-use)	FMV analysis to support reclassification arguments
Downstream investment without FEMA compliance	FDIIC unaware of downstream rules	RBI Enforcement Department	Based on downstream investment amount; sector-specific	FMV of each downstream investment, contemporaneous certification

Table 12: FEMA Valuation Violations, Types, Causes, Compounding Framework and Valuation Role

## 12.2 The Compounding Process: Step by Step

The FEMA compounding process begins with either a voluntary disclosure by the violating party (the preferred approach) or a show-cause notice from the RBI following an inspection finding. A compounding application may be submitted either suo motu or based on a Memorandum of Contraventions issued by the Reserve Bank.

A compounding application must contain: a complete description of the violation (what happened, when, and why); the amount involved; an explanation of the circumstances that led to the violation; a detailed FMV analysis for the relevant transaction(s) at the transaction date (prepared by a qualified professional); evidence that the violation has been rectified (e.g., the FC-GPR has now been filed, the transaction has been structured correctly going forward); and any mitigating factors. The applicable RBI Compounding Authority examines the application and may call for information / documents. The compounding order is passed within 180 days from receipt of a complete application. The amount specified in the compounding order must be paid within 15 days from the date of the order.

### KEY INSIGHT

*We have supported clients through FEMA compounding proceedings for valuation-related violations across a range of transaction types, FDI pricing gaps, ODI overpayments, and downstream investment non-compliance. Our consistent experience: the quality and credibility of the retrospective valuation submitted with the compounding application has a direct impact on the compounding amount. A well-prepared, methodology-transparent retrospective FMV analysis that demonstrates a minimal or technical pricing gap, while acknowledging the filing error or structural non-compliance, is treated significantly more favourably than a cursory single-page certificate submitted as a compliance formality. In one compounding application involving an FDI pricing gap of approximately Rs. 2.5 Crore (the company had issued shares at Rs. 480 per share when the FMV was Rs. 510 per share, a 6% gap), our detailed retrospective DCF analysis showed that the gap arose entirely from the use of a conservative working capital assumption that was within the reasonable range of professional judgment. The RBI's compounding order acknowledged the marginal nature of the gap and imposed a substantially lower penalty than the formula would have suggested. Valuation quality in compounding proceedings is not merely a compliance formality, it is a direct financial outcome determinant.*

## 12.3 Voluntary Compounding: The Proactive Approach

Voluntary compounding, identifying and regularising a FEMA violation before the RBI does, is one of the most valuable compliance practices available to Indian companies with foreign investment. The benefits are material: the RBI's administrative guidelines for compounding provide for reduced penalty multipliers for voluntary disclosures; the process is faster (voluntary applications are processed more expeditiously than enforcement-triggered compounding); and the relationship with the AD bank and RBI is maintained more constructively.

The practical challenge of voluntary compounding is identifying the violation in the first place. FEMA violations are often not obvious at the time they occur, a valuation that seemed adequate at the time may later be found inadequate when the methodology is examined more carefully; a corporate action that was

processed routinely may have had a FEMA implication that was not identified; or an acquisition of foreign shares may have inadvertently breached the ODI ceiling. A periodic FEMA Compliance Audit, conducted annually by FEMA counsel or the company's valuation advisor, is the most effective mechanism for identifying potential violations while they are still in the voluntary compounding window.

## 12.4 Regulatory Best Practices: Building a FEMA-Compliant Valuation Culture

The CFOs and compliance teams that consistently achieve clean FEMA records share a common characteristic: they treat FEMA valuation compliance as a proactive governance discipline rather than a reactive response to regulatory scrutiny. This means: engaging qualified valuation professionals before each FEMA-triggering transaction rather than after; maintaining a comprehensive FEMA compliance register; conducting annual FEMA compliance reviews; and building the institutional knowledge within the finance team to identify potential FEMA valuation issues before they become violations.

The investment in FEMA valuation compliance culture, the cost of qualified valuers, periodic compliance reviews, and proactive filings, is systematically lower than the cost of compounding proceedings, deal delays, and reputational damage that arise from inadequate compliance. India's regulatory environment is moving toward greater FEMA enforcement, with the RBI's Enforcement Department issuing more compounding orders and conducting more systematic inspections than at any previous point in FEMA's history. A company whose FEMA compliance records are clean, whose valuation reports are thorough and current, and whose filings are on time and complete, is a company that can engage in cross-border transactions with confidence and speed, a genuine competitive advantage in an economy where cross-border capital is the fuel of growth.

### PRO TIP

*Conduct an annual FEMA Health Check, a structured review of the company's FEMA compliance position across all transaction categories. This review should cover: all outstanding FDI positions and their FC-GPR filing status; all completed secondary transfers and their FC-TRS status; all ODI investments and their annual APR status; all outstanding ECBs and their Form ECB-2 filing status; the FLA Return for the preceding year; and a review of all corporate actions (rights issues, buybacks, ESOPs) that involved foreign shareholders. Present the findings to the audit committee as a standing annual item. A company that conducts this review annually is a company that knows its FEMA exposure, and that knowledge is the foundation of the proactive compliance culture that keeps FEMA violations from becoming compounding proceedings.*

**CONCLUSION**

# Conclusion: Working with a FEMA Valuation Expert

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## The CFO's FEMA Valuation Mandate

This guide has mapped the complete landscape of FEMA valuation requirements across twelve critical transaction categories, FDI inbound, ODI outbound, secondary transfers, downstream investments, swap transactions, rights issues and buybacks, GIFT City, cross-border restructurings, ECBs and hybrid instruments, regulated entity frameworks, and compounding proceedings. In each chapter, the same organising principle has been evident: every transaction involving the movement of securities or money across India's borders must occur at a price that reflects fair market value, certified by a qualified professional, and reported to the RBI within prescribed timelines.

The consequence of failing to meet this requirement, whether through an inadequate valuation methodology, an unqualified certifying professional, a stale report, or a missed filing deadline, is a FEMA violation that must eventually be regularised through the compounding process, at cost, distraction, and reputational risk that far exceeds the compliance investment that would have prevented it. The CFO who understands FEMA valuation comprehensively, who can identify every FEMA-triggering transaction, apply the correct pricing rule, engage the appropriate professional, and file the required return on time, is managing one of the most significant regulatory risks in the Indian corporate compliance framework.

## When Independent FEMA Valuation Is Non-Negotiable

Across the twelve chapters of this guide, we have identified the specific transactions where independent, professionally certified FEMA valuation is a legal obligation:

- Any equity, CCPS, or CCD issuance to a foreign investor: Rule 21(2) of the NDI Rules, 2019 requires  $FMV \geq$  issue price, certified by a CA, SEBI-registered Merchant Banker, or Practising Cost Accountant, before FC-GPR is filed
- Any ODI acquisition of a foreign entity:  $FMV \leq$  acquisition price, certified by an internationally recognised firm, before the investment is made and Form FC is filed
- Any secondary transfer of unlisted shares between a resident and a non-resident (in either direction): FMV certification required, with FC-TRS filed within 60 days
- Any downstream investment by an FDIIC into an Indian investee: FMV floor applies as if the investment were direct FDI; arm's-length pricing must be documented
- Any swap transaction: both legs of the exchange must independently satisfy the applicable FEMA pricing rule, each with its own FMV certification
- Any cross-border merger (inbound or outbound): FEMA Cross-Border Merger Regulations require FMV certification of both entities, typically by a SEBI-registered Merchant Banker, as part of the RBI approval application
- Any FCCB conversion: the conversion price must satisfy the FEMA FMV floor for equity issuances at the time of conversion, with a fresh assessment if conversion price has been reset
- Annual APR for ODI investments: current FMV of overseas entities must be reported, requiring an annual valuation update for each ODI investment

## How Elite Valuation Can Help

Elite Valuation brings deep FEMA regulatory expertise, IBBI registration, and 15 years of cross-border valuation practice to every FEMA compliance engagement. Our comprehensive FEMA valuation services include:

- FDI inbound valuation and FC-GPR support, FMV certification by CA, Merchant Banker, or Practising Cost Accountant for all equity, CCPS, CCD, and warrant issuances to foreign investors, with full methodology documentation under Rule 21(2) of the NDI Rules
- ODI outbound valuation, FMV ceiling certification for overseas acquisitions, JV formations, and step-down subsidiary investments, including internationally recognised firm certification and annual APR valuation support
- FC-TRS secondary transfer pricing, independent FMV certification for resident-to-non-resident and non-resident-to-resident share transfers, with FEMA pricing direction compliance and filing advisory
- Downstream investment valuation, FMV analysis for FDIIC investments into Indian subsidiaries, ensuring downstream FDI pricing compliance and arm's-length documentation
- Swap transaction dual-leg valuation, simultaneous FMV certification for both the Indian and foreign legs of cross-border share exchange transactions, including SEBI ICDR interaction analysis for listed company swaps
- Rights issue, bonus, and buyback FEMA compliance advisory, pricing analysis, renunciation rights valuation, and filing advisory for corporate actions involving NRI and foreign shareholders
- GIFT City / IFSC valuation, IFSCA-compliant portfolio and instrument valuations, with FEMA boundary analysis for transactions between GIFT City entities and Indian territory
- Cross-border merger and demerger valuation, share exchange ratio certification and RBI prior approval application support under the FEMA Cross-Border Merger Regulations, 2018
- FEMA compounding support, retrospective FMV analysis, compounding application preparation, and representation before the RBI Enforcement Department for pricing and reporting violations
- FEMA Compliance Programme design, FEMA Valuation Calendar, FEMA Health Check framework, FC-GPR/FC-TRS tracking systems, and team training on FEMA valuation obligation.

## The Integrated FEMA Valuation Advantage

The most significant competitive advantage that Elite Valuation brings to its FEMA compliance clients is integration: the ability to prepare a single valuation report that simultaneously satisfies the NDI Rules, 2019, Income Tax Act Rules 11UA and 50CA, Companies Act Section 247, and Ind AS 113, eliminating contradictions, reducing cost, and ensuring that no regulatory framework is inadvertently overlooked. For the majority of cross-border transactions, this integrated approach produces a more defensible, more comprehensive, and more efficiently delivered compliance outcome than engaging separate advisors for each regulatory framework.

India's cross-border investment environment is becoming more active and more complex simultaneously, more FDI, more ODI, more cross-border M&A, more GIFT City structures, and more regulated entity participation in the capital markets. In this environment, the CFO who invests in a systematic, proactive FEMA valuation compliance programme is building not just regulatory safety but transactional velocity: the ability to close cross-border transactions quickly, confidently, and without the delays that arise when FEMA compliance is addressed reactively rather than proactively.

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*"Every rupee that crosses India's borders, whether as FDI capital flowing in or ODI investment flowing out, carries a valuation obligation. Fulfilling that obligation rigorously, proactively, and with professional depth is not just regulatory compliance; it is the foundation of the trust that makes cross-border capital flow freely and productively."*

*Sagar Shah, CA, CS, IBBI Registered Valuer & Ex EY*

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