



For a foreign investor entering India, incorporation is often treated as the finish line. Legally and commercially, however, it is only the beginning.

Once a foreign-owned Indian company receives capital, issues shares, appoints directors, enters into arrangements with its overseas parent, makes investments, or eventually distributes or repatriates funds, a much broader Foreign Exchange Management Act (FEMA) compliance framework comes into play.

This is particularly important given the scale of foreign investment into India. During FY 2025-26, India received approximately **USD 58.85 billion of FDI equity inflows**, according to the Department for Promotion of Industry and Internal Trade (DPIIT). Of this, approximately USD 43.19 billion came through the automatic route and USD 13.79 billion through the acquisition of shares.

The practical lesson is simple: **incorporation compliance and FEMA compliance are not the same exercise.**

The following are ten FEMA risks that frequently emerge after a foreign-owned Indian company has already been incorporated.

1. Assuming that incorporation automatically means FDI compliance is complete

A company may be properly incorporated with the Ministry of Corporate Affairs (MCA) and still have unresolved FEMA issues.

FEMA compliance begins with understanding the nature of the foreign investment: who is investing, through which entity, into which sector, under what entry route, at what percentage and subject to which conditions.

The RBI's Master Direction on Foreign Investment states that foreign investment remains subject to applicable entry routes, sectoral caps, security requirements and other conditionalities.

What should companies check?

Area	Post-incorporation Question
Sector	Is the company's actual business correctly classified?
Entry Route	Automatic Route or Government Rule
Sectoral Cap	Has the foreign investment exceeded the permitted limit?
Ownership	Who ultimately owns and controls the foreign investor?
Conditions	Are there sector-specific conditions or performance requirements?



Reporting

Have all applicable RBI filings been completed?

The risk becomes greater where the company's business evolves after incorporation. A business initially established for one activity may subsequently expand into activities carrying different FDI conditions.

2. Missing or delaying FC-GPR reporting

One of the most common post-incorporation FEMA issues arises when the foreign shareholder funds the Indian subsidiary, but the corresponding equity issuance is not reported correctly or within the prescribed timeline.

Under the FEMA reporting framework, an Indian company issuing equity instruments to a person resident outside India, where the issue qualifies as FDI, is required to report the issue through **Form FC-GPR within 30 days from the date of issue.**

This is not merely a company-secretarial filing.

The underlying transaction must also align with the permitted mode of payment, pricing/valuation requirements, shareholding structure and supporting documentation.

A common practical problem

A foreign parent may remit funds to the Indian subsidiary's bank account shortly after incorporation. The finance team may record the amount as capital, while the legal or secretarial team assumes the FEMA reporting will be handled later.

Months later, the company discovers that:

- The shares were issued on a different date than expected;
- The valuation certificate was not obtained at the appropriate stage;
- The foreign remittance documentation is incomplete; or
- FC-GPR was never filed.

A delay can therefore become a transaction-level remediation exercise rather than a simple filing.

3. Getting valuation and pricing wrong

Foreign investment transactions involving Indian companies are subject to FEMA pricing and valuation requirements. These become particularly important when shares are issued to or transferred by non-residents.

The problem often arises when commercial negotiations are completed first, and regulatory valuation is considered later.



For example, a foreign investor and an Indian promoter may agree on a share price based on a business valuation. That does not necessarily answer the separate question of whether the transaction complies with the applicable FEMA pricing framework.

Where does the risk appear?

Pricing issues may surface during:

- fresh issuance of shares;
- transfer of shares between residents and non-residents;
- secondary sales;
- restructuring;
- mergers and demergers;
- preferential allotments;
- employee-related transactions; and
- eventual exits.

The RBI's foreign investment framework expressly links transactions involving equity instruments to applicable pricing and valuation requirements.

4. Treating the annual FLA return as a routine formality

The **Foreign Liabilities and Assets (FLA) return** is frequently underestimated because it is an annual compliance rather than a transaction-specific filing.

An Indian company that has received FDI is required to submit the FLA return to the RBI by **15 July each year**, subject to the applicable reporting framework.

Why do Errors Occur?

The data required for FLA reporting often needs to be reconciled with:

- audited financial statements;
- foreign shareholder information;
- share capital records;
- previous FLA filings;
- foreign liabilities;
- assets and investment positions; and
- changes in ownership during the year.

A company that changes its shareholding, issues additional shares or restructures its capital should not simply reproduce the previous year's return.

The RBI has specifically identified delayed FLA filing as a type of FEMA contravention for which compounding powers have been delegated.



5. Overlooking downstream investment

This is one of the more sophisticated FEMA risks.

A foreign-owned Indian company may itself invest in another Indian company. What appears domestically to be an ordinary Indian corporate investment can potentially become **indirect foreign investment/downstream investment** for FEMA purposes.

The analysis can depend on the ownership and control of the investing Indian entity and the structure of the investment.

The RBI framework provides for reporting of downstream investment and requires compliance with applicable sectoral caps, entry routes and other conditions. Form DI is part of the foreign investment reporting architecture.

6. Ignoring beneficial ownership and the “who is really investing?” question

The identity of the immediate foreign shareholder may not always tell the entire regulatory story.

Foreign investment compliance can become significantly more complex where ownership structures involve multiple jurisdictions, intermediate holding companies, trusts, investment vehicles or changes in ownership/control.

This becomes particularly relevant where sector-specific restrictions or government approval requirements apply.

The compliance exercise should therefore map:

Ultimate beneficial ownership → immediate foreign investor → Indian investee → sector/activity → ownership/control after investment.

A structure that was acceptable at incorporation may require fresh analysis if the foreign parent undergoes a merger, acquisition, internal restructuring or change in control.

7. Forgetting that employee stock options and other instruments can trigger FEMA

FEMA analysis does not stop with ordinary equity shares.

Foreign-owned companies frequently use:

- ESOPs;
- sweat equity;
- convertible instruments;
- preference shares;
- convertible notes, where applicable; and
- other equity-linked arrangements.



The treatment of these instruments can differ depending upon the investor, instrument, sector, eligibility and transaction structure.

RBI's reporting architecture expressly includes several foreign-investment forms beyond FC-GPR and FC-TRS, including reporting associated with ESOPs, convertible notes and downstream investment.

Practical risk

A multinational may roll out its global employee stock plan in India without separately examining the FEMA implications for Indian employees or foreign employees connected with the Indian entity.

The existence of a global group policy does not, by itself, establish Indian regulatory compliance.

8. Treating intercompany transactions as “just group transactions”

Foreign-owned Indian companies routinely enter into arrangements with overseas group companies involving:

- management fees;
- technology fees;
- software licences;
- royalty;
- reimbursement of expenses;
- technical services;
- guarantees;
- loans;
- cash pooling; and
- other cross-border payments.

The fact that both parties belong to the same corporate group does not eliminate Indian foreign-exchange requirements.

Different transactions can fall under different FEMA frameworks, including rules relating to borrowing, guarantees, current-account transactions or other foreign-exchange regulations.

This is particularly important because the RBI has continued to update India's foreign-exchange regulatory framework. In 2026, for example, RBI issued amendments covering borrowing and lending, guarantees and reporting of non-debt instruments.

The appropriate question is therefore not:

“Is this an intercompany transaction?”

but:

“What is the legal character of this cross-border transaction under FEMA?”



9. Discovering FEMA problems only when raising the next funding round

A foreign-owned company may operate for years without anyone reviewing its historical FEMA position in detail.

The problem becomes visible when the company approaches investors, lenders, auditors or acquirers.

A due diligence exercise may identify:

- delayed FC-GPR filings;
- inconsistent shareholding records;
- historical valuation gaps;
- missing FLA returns;
- unreported downstream investments;
- incorrect reporting of share transfers;
- unresolved late-submission fees; or
- historical transactions requiring compounding or regularisation.

10. Assuming FEMA penalties are limited to a nominal filing fee

This is perhaps the most important misconception.

Under Section 13 of FEMA, contraventions can attract a penalty of up to **three times the sum involved**, where the amount is quantifiable, or up to **₹2 lakh where the amount is not quantifiable**, with additional penalties for continuing contraventions.

The actual regulatory consequences depend on the nature and circumstances of the contravention and the applicable mechanism for regularisation or compounding.

The important point for management is that FEMA should not be treated as an administrative checklist.

A relatively small reporting error can become materially more complicated when it affects:

- share ownership;
- capitalisation;
- valuation;
- downstream investment;
- repatriation;
- a merger or acquisition; or
- a future fundraiser.



A practical post-incorporation FEMA compliance matrix

Compliance Area	When to Review	Typical Risk
Sector and Entry Route	At incorporation and whenever business changes	Incorrect Route
FC-GPR	Every foreign equity issuance	Delayed due to erroneous reporting
Valuation	Before issue/transfer	Pricing non-compliance
FC-TRS	Applicable share transfers	Incorrect reporting
FLA	Annually	Data mismatch/delay
Downstream Investment	Before Indian acquisitions/investments	FDI non-compliance
Beneficial Ownership	At onboarding and ownership changes	Approval/ eligibility issues
ESOPs/ equity instruments	Before implementation/ exercise	Incorrect instrument treatment
Intercompany payments	Before execution	Incorrect FEMA framework
Exit/ restructuring	Before transaction	Historic FEMA exposure

What Foreign-Owned Indian Companies Should Do After Incorporation?

A robust FEMA compliance framework should ideally include a **post-incorporation FEMA health check** covering:

1. Foreign investor eligibility and ownership/control.
2. Sectoral cap and entry-route analysis.
3. All capital received from foreign shareholders.
4. FC-GPR and other applicable filings.
5. Valuation and pricing documentation.
6. Annual FLA filings.
7. Historical share transfers and FC-TRS filings.



8. Downstream investments.
9. Cross-border loans, guarantees and group transactions.
10. Repatriation and exit documentation.

The review should then be repeated whenever there is a **fundraise, acquisition, restructuring, change in ownership, new business activity, ESOP issuance, intercompany financing or exit.**

Why this matters even more as India's FDI ecosystem expands

India's FDI numbers demonstrate the scale of the ecosystem in which these compliance questions operate.

For FY 2025-26, DPIIT reported **USD 58.85 billion of FDI equity inflows**. Computer software and hardware accounted for approximately USD 13.95 billion, or about 24% of FDI equity inflows, while the services sector accounted for approximately USD 10.01 billion.

This means that FEMA compliance is not an issue limited to traditional manufacturing subsidiaries. It is increasingly relevant to technology companies, service businesses, trading businesses, energy companies, infrastructure ventures and other cross-border operating structures.

At the same time, the regulatory framework continues to evolve. RBI issued a further amendment to the FEMA Mode of Payment and Reporting of Non-Debt Instruments Regulations in June 2026, demonstrating why historical checklists should be supplemented by periodic regulatory reviews.

Conclusion

For a foreign-owned Indian company, incorporation establishes the legal entity—but it does not complete the foreign-exchange compliance journey.

The more consequential FEMA risks often emerge later: when the parent injects additional capital, shares are transferred, the Indian subsidiary makes an acquisition, employees exercise equity, group companies enter into cross-border arrangements, or investors conduct due diligence for the next funding or exit.

The most effective approach is therefore to treat FEMA compliance as a **continuing corporate governance function**, rather than a one-time incorporation requirement.

For foreign investors, the objective should not merely be to ask whether the Indian company was incorporated correctly. The more useful question is:

“Can we demonstrate, transaction by transaction, that the company's foreign investment history remains compliant with FEMA?”

That is the standard that becomes increasingly important as the Indian business grows, raises capital, restructures or prepares for an eventual exit.



Disclaimer: This article provides general information existing at the time of preparation and we take no responsibility to update it with the subsequent changes in the law. The article is intended as a news update and Affluence Advisory neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this article. It is recommended that professional advice be taken based on specific facts and circumstances. This article does not substitute the need to refer to the original pronouncement.

