HARMONISATION OR FRAGMENTATION? ANALYSING THE REGULATORY INTERFACE BETWEEN SEBI AND FEMA IN INDIA'S FOREIGN INVESTMENT REGIME (2025-2026)

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ABSTRACT

India's foreign investment regime is governed through a complex regulatory framework primarily involving the Securities and Exchange Board of India and the framework established under the Foreign Exchange Management Act, 1999. While FEMA regulates the permissibility and legality of cross-border capital transactions, SEBI governs the operational and market-related aspects of foreign investment, particularly Foreign Portfolio Investment (FPI). The coexistence of these parallel frameworks has resulted in a regulatory structure characterised by overlapping jurisdiction, dual compliance obligations, and interpretational inconsistencies.

This paper critically examines whether the interaction between SEBI and FEMA reflects regulatory harmonisation or structural fragmentation within India's foreign investment regime. It analyses the legal architecture governing Foreign Direct Investment (FDI) and FPI, the role of subordinate legislation and executive policy instruments, and the practical implications of overlapping regulatory mandates. The paper further evaluates recent reforms undertaken during 2025–2026, including changes relating to beneficial ownership, FPI compliance norms, and strategic investment restrictions involving land-bordering countries. The study argues that although recent reforms indicate a movement towards liberalisation and procedural simplification, they continue to operate within a fragmented multi-regulatory framework lacking institutional coherence and harmonised definitional standards. The paper concludes that meaningful regulatory convergence would require systemic reforms involving enhanced inter-regulatory coordination, greater legal certainty, and the development of a more integrated foreign investment governance framework.

Keywords: Foreign Direct Investment (FDI), Foreign Portfolio Investment (FPI), FEMA, SEBI Regulatory Fragmentation.

INTRODUCTION

The regulation of foreign investment in India operated at the convergence of economic, policy, financial stability, and sovereign regulatory control. As a capital importing economy, India has sequentially liberalized its foreign investment regime to attract global capital while simultaneously retaining mechanisms to govern its inflow according to the domestic priorities. This optimal regulatory balance in institutionally mediated through a dual framework comprising the Securities and Exchange Board of India (SEBI) and the statutory regime under the Foreign Exchange Management Act, 1999 (FEMA) governed by the Reserve Bank of India (RBI).

While SEBI is authorized with the regulation of securities markets and investor protection, FEMA functions as the fundamental legislation regulating cross border capital account transactions. The concurrence of these regulatory regimes though functionally differentiated gives rise to intricate questions of jurisdictional overlap, conventional inconsistency and regulatory duplication. The increasing culture of financial instruments and the obscure distinctions between direct and portfolio investment have further intensified these challenges.

The recent regulatory developments during 2025-2026 aimed at intensifying ease of doing business and improving market accessibility resumed the debate on whether India's foreign investment structure reflects a coherent process of harmonisation or remains structurally fragmented. This article undertakes a doctrinal and analytical examination of SEBI-FEMA interlink to assess the extent to which regulatory synthesis has been achieved and to identify the persistent fault lines within the system.

LEGAL FRAMEWORK GOVERNING FOREIGN INVESTMENT IN INDIA

India's foreign investment regime is structured around a bifurcated classification of capital inflows into Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI), a difference which is both functional and regulatory in nature. FDI is typically associated with long-term investment complemented by managerial control or significant influence reflected through ownership thresholds in an enterprise, whereas FPI denotes portfolio-based, market-driven passive investment in financial securities without imposing control, thereby attracting a distinct regulatory treatment.[1]

[1] Reserve Bank of India, *Master Direction on Foreign Investment in India* (updated periodically).

Fundamental to the legal framework lies the Foreign Exchange Management Act, 1999 which regulates all cross-border transactions involving foreign exchange. Introduced to supersede the Foreign Exchange Regulation Act, 1973, FEMA marks a paradigmatic shift from a regime of regulation and stewardship to one of management and facilitation.[2] Section 6 of FEMA vests the regulation of capital account transaction authorizing the Central government and the Reserve Bank of India (RBI) to prescribe the classes of permissible transactions and conditions subject to which such said transactions may be undertaken.[3] Consistent with this statutory mandate, the RBI issues subordinate legislation in the form of regulations, master directions and circulars which collectively direct the entry routes (automatic or approval), sectoral caps, pricing guidelines, downstream investment norms and reporting obligations. Notably, the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules) framed by the Central Government comprise of the principal instrument governing FDI, thereby reflecting a shared regulatory competence between the executive and the RBI within the FEMA framework.[4]

Parallel to FEMA, the Securities and Exchange Board of India (SEBI) excercises jurisdiction over foreign investments in securities markets under the SEBI Act, 1992 and subordinate regulations.[5] The SEBI (Foreign Portfolio Investors) Regulations establish the legal framework for the registration, categorization and operational conduct of FPIs which includes eligibility criteria, investment restrictions, disclosure obligations and compliance requirements.[6] These regulations are supplemented by periodic circulars and procedural guidelines which tend to balance market efficacy with systematic risk management and transparency.

Further complexity is introduced by the role of the Department for Promotion of Industry and Internal Trade, which issues the Consolidated FDI Policy—a compendium of sector-specific conditions, entry routes, and investment caps.[8] While the FDI Policy does not possess independent statutory force, it is given legal effect through its incorporation into the NDI Rules under FEMA, thereby blurring the distinction between policy formulation and binding regulation. In addition to these primary regulatory sources, foreign investment transactions are also influenced by ancillary legal regimes, including the Companies Act, 2013, the Prevention

[2] Statement of Objects and Reasons, Foreign Exchange Management Act, 1999.
[3] Foreign Exchange Management Act, 1999, § 6.
[4] Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
[5] Securities and Exchange Board of India Act, 1992.
[6] SEBI (Foreign Portfolio Investors) Regulations, 2019 (as amended).

of Money Laundering Act, 2002, and the Income Tax Act, 1961, each of which governs distinct aspects such as corporate structuring, beneficial ownership, and taxation of cross-border transactions.[7]

The cumulative effect of these overlapping frameworks is the emergence of a system characterised by regulatory pluralism, wherein multiple authorities exercise concurrent and, at times, intersecting jurisdiction over foreign investment transactions. While such pluralism enables specialised regulation across distinct domains—foreign exchange, securities markets, and industrial policy—it simultaneously results in normative dispersion, interpretational complexity, and compliance multiplicity.

From a structural perspective, the absence of a unified statutory code governing foreign investment necessitates reliance on a combination of primary legislation, subordinate rules, and executive policy instruments. This fragmented architecture not only complicates regulatory navigation for foreign investors but also raises concerns regarding legal certainty, coherence, and administrative efficiency, thereby reinforcing the central inquiry of whether the Indian regime reflects harmonisation or fragmentation.[8]

REGULATORY INTERFACE: HARMONISATION VS FRAGMENTATION

SEBI's Mandate vs FEMA's Mandate. SEBI's mandate under the *SEBI Act* is "to protect the interests of investors in securities" and "to promote the development of, and to regulate, the securities market". In particular, SEBI prescribes eligibility, KYC, registration, disclosure and conduct requirements for FPIs (Foreign Portfolio Investors) wishing to invest in Indian securities. By contrast, **FEMA** (and the RBI regulations under it) governs the **permissibility of foreign capital flows**. FEMA regulates the entry routes, sectoral caps, pricing, documentation and repatriation for all cross-border equity and debt transactions. Under FEMA, any cross-border securities purchase by a non-resident is considered *foreign investment* and must conform to the FEMA NDI Rules (and any sector-specific Press Notes) – even if the investor is also an SEBI-registered FPI. Thus, an FPI investing under SEBI's framework must still comply with FEMA's capital account provisions (e.g. filing form FC-GPR for share purchases by non-residents) and any RBI- or GoI-imposed sector limits.

[7] Companies Act, 2013; Prevention of Money Laundering Act, 2002; Income Tax Act, 1961.
[8] Scholarly commentary on regulatory fragmentation in Indian foreign investment law.

Areas of Overlap. In practice, the demarcation between FEMA and SEBI is blurred. Key overlapping elements include:

Registration and Eligibility. SEBI requires FPIs (and FVCIs, QFIs) to register under the FPI Regulations, with defined categories, ownership and KYC norms. Simultaneously, FEMA (via RBI) requires that any *foreign* investment take place either under the Automatic Route (with RBI notified end-use) or under the Approval Route (government/NBFC permission). No single statutory channel exists, so investors often end up filing both SEBI registration papers and FEMA forms (FC-GPR for equity infusion, ODI filings if outbound, etc.), doubling administrative steps.

Beneficial Ownership and Control. Both regimes seek to identify ultimate owners of funds and securities, but they use different standards. SEBI's FPI Rules follow anti-money-laundering norms: a "beneficial owner" is any person with ≥10% (company) or ≥15% (trust/partnership) economic interest, or control (right to appoint majority of directors). FEMA's NDI Regulations likewise define beneficial ownership thresholds (in practice, often the same PMLA standards) and use "control" as a test (50% share or right to a majority of directors triggers an FOCC – foreign-owned/controlled company – requiring downstream investment compliance). However, precise language and procedural treatment differ. For example, SEBI's periodic beneficial-owner disclosures (introduced in 2023) are enforced via FPI registration terms, whereas FEMA expects RBI filing if beneficial-ownership changes (e.g. re-classification via Form DI within 30 days). Misalignment in definitions can cause confusion: an ownership stake may trigger SEBI-reporting thresholds but fall under a different category under FEMA.

Ownership Thresholds and Caps. Both frameworks impose ceilings on foreign stakes: SEBI's Takeover Regulations (SAST Rules) set acquisition thresholds (25%, 75%) for triggering disclosures, while FEMA (NDI Rules/Press Notes) fix sector caps (e.g. 24% FDI in government schemes; 20% private bank cap; various limits on FIIs, etc.). FPIs must navigate both: they may invest up to SEBI's limit for lock-in, but still cannot breach FEMA's sector caps. For instance, an FPI cannot acquire 25% of a defence company (SEBI allows any buyer to take up to 25% in listed shares before an open offer), because FEMA prohibits any foreign investment in "armament" sectors. Divergences also appear in shareholder thresholds. SEBI looks at **takeover triggers** (5%, 25%, 50% etc.), whereas FEMA identifies FOCC status at

50% foreign share or control. Thus, a scenario may arise where no SEBI disclosure is needed, but the company still becomes an indirect FDI investor for FEMA purposes.

Capital Inflows and Reporting. SEBI-regulated FPIs report trades daily to custodians and file periodic SEBI compliance returns. FEMA mandates statutory filings to RBI: FC-GPR for fresh equity issuance, FC-TRS for secondary sales, Form DI for downstream investments by FOCCs, and continuing obligations (annual networth, compliance certificates). These overlapping reporting regimes mean double entries. Notably, RBI's January 2025 *Master Direction* mandates that if an Indian company becomes an FOCC (50% foreign-owned/control), it must immediately report all prior investments via Form DI within 30 days – an obligation unknown to SEBI. Moreover, SEBI's compliance calendar (e.g. monthly holding statements) may not reflect RBI's event-based reporting, causing potential timing gaps.

Investment Limits and Foreign Involvement. SEBI's FPI regulations set entity-level investment criteria (category-based asset and corpus restrictions) and holding limits in specific instruments (e.g. 10% in a single group of companies for Category III). FEMA's rules set enterprise-level caps (maximum foreign equity % in a company, sub-limits per investor). For example, while multiple FPIs collectively may hold up to 100% in a public company (subject to sector cap), no single FPI can cross 10% corpus threshold without being Category I/II unless aggregated. These frameworks run in parallel, adding layers of compliance for a foreign fund. Disparities also arise in areas like *external commercial borrowings* (FEMA) versus *primary issuance funding*. SEBI regulates the flows once securities are issued, but FEMA controls the *source* of foreign capital (it must come in via approved banking channels).

Dual Compliance and Legal Uncertainty. The co-application of both regimes imposes a heavy compliance cost. For instance, an FPI acquiring shares in an Indian bank must register with SEBI, submit KYC documents, pay fees, *and* ensure FEMA filings (FDI scheme, ECB rules if funds borrowed, etc.) and RBI approvals (if sectoral cap breach). The diverging timelines of amendments compound uncertainty: changes to FEMA often do not immediately reflect in SEBI rules (or vice versa). As one practitioner noted, "the guiding principle is that what cannot be done directly shall not be done indirectly". This ensures consistency in substance, but the *implementation* can lag. For example, RBI's Master Direction (Jan 2025) expressly permits share-swap acquisitions by FOCCs, but SEBI's corresponding guidance (through DDP circulars or clarifications) may only appear months later, forcing investors to

interpret an interim gap.

Jurisprudential Issues – Certainty vs Complexity. The overlay of dual regimes has jurisprudential implications. On one hand, SEBI's principles aim to enhance market fairness (ensuring no circumvention of public-holding or takeover norms), while FEMA's policy (since *Vijay Karia v. Baroda*) is to manage foreign exchange, not "police" it. The Supreme Court has held that FEMA breaches are rectifiable – violations do not void a contract, and RBI permission can be sought *ex post*. This provides some relief: an inadvertent breach (e.g. payment terms contrary to RBI rules) can often be cured by retroactive approval. But in the interim, uncertainty over enforcement (and adverse orders by tribunals) persists. For example, the *Adani/Hindenburg* episode (though not a court case) underscored how differing treatment of indirect shareholdings under FEMA and SEBI can be exploited. Regulators and courts are left to interpret which norm prevails. The lack of a formal hierarchy means judgments must balance securities law goals against foreign-exchange policy. The complexity risks undermining legal certainty and administrative efficiency: the more fragmented the regime, the higher the "regulatory compliance tax" on investors.

Coordination Mechanisms. Currently, there is no single statutory mechanism for SEBI–RBI coordination on foreign investment. Coordination is largely informal or case-by-case. For example, RBI periodically holds rounds with AD banks (who also inform SEBI of transactions), and SEBI may consult RBI on specific queries (e.g. share-swap permissions). In late 2025, SEBI even began developing a digital single-window portal for FPIs, aiming to integrate regulatory clearances from SEBI, RBI (FEMA), the Income Tax Dept, etc.. This "one-stop shop" initiative, announced June 2025, will let FPIs submit a unified application form and interact with all relevant agencies in one place. Such innovation signals growing awareness of the interface issue.

RECENT REFORMS (2025–2026)

FEMA/NRI-FDI Amendments (2025–2026). In 2024–25 and into 2026, the Indian government and RBI enacted several key FEMA amendments aimed at liberalising foreign investment flows and aligning with global norms:

Share Swaps (NDI Rules). In August 2024, the Finance Ministry amended FEMA's NDI Rules to permit cross-border share swaps under the automatic route. In practice, this means an

Indian company can now issue shares to a foreign party in exchange for the foreign company's shares, without separate RBI approval. The RBI's Jan 2025 Master Direction codified this principle for downstream investments by FOCCs. Thus, if an FOCC (foreign-owned Indian firm) takes equity in another Indian company, it may use a share-swap structure, subject to pricing rules. These reforms bring FOCC arrangements on par with direct FDI (which has allowed swaps under Rule 9). Impact: This increases strategic flexibility for cross-border M&A. However, the SEBI side had to catch up: SEBI's FPI regulations do not explicitly address swaps, so FPIs and their counsel have had to interpret SWAGAT-FI (below) and rely on general clauses to navigate SEC guidelines.

Deferred Consideration (NDI Rules). The Master Direction (Jan 2025) clarifies that FDI-style deferred payment arrangements (up to 25% of consideration, payable within 18 months under Rule 9(6) of the NDI Rules) are now expressly allowed for downstream (DI) by FOCCs. Previously, RBI practice often treated FOCC's deferred payments as requiring prior approval. Now, FOCCs can structure earn-outs, escrow, or tranche-based payments like any non-resident investor. Impact: This liberalisation (codified in RBI's Master Direction) removes a major disincentive for multi-step acquisitions, aligning indirect and direct investment frameworks. In practice, parties must ensure share purchase agreements explicitly mention deferred terms (as required by the new MD).

External Commercial Borrowings (ECB). In October 2025 the RBI published draft amendments to the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, and in Feb 2026 notified the Borrowing & Lending (First Amendment) Regs, 2026. Key changes include: (i) Expanded Borrower and Lender Base: Any resident entity (other than individuals) can borrow via ECB (if permitted by law). Lenders now include any person outside India and branches of RBI-regulated lenders, plus financial institutions in IFSCs. (ii) Increased Limits: The new ceiling is the higher of USD 1 billion or 300% of net worth, replacing the old multi-tier limit (USD 750 mn, USD 125 mn tracks). This does not apply to entities regulated by an Indian financial regulator, which have their own limits. (iii) Standardized Maturity: A uniform 3-year minimum average maturity period (MAMP) applies, with a carve-out (1–3 years) for manufacturing on smaller amounts. (iv) Market-Based Pricing: The erstwhile all-in-cost caps are removed; costs must now reflect market rates (with benchmark-plus-spread guidelines for short tenors). (v) Looser End-Use: Significant relaxations: ECB proceeds may now be used for securities acquisitions (strategic M&A only), for real estate/infrastructure

(within defined limits), and refinancing of existing debt; old prohibitions were codified in a single new Regulation 3A. (vi) Streamlined Reporting: Monthly ECB-2 filings are replaced by event-based reporting, and delinquent borrowers (non-filers) can be labelled "untraceable" after defaulting for multiple quarters. Impact: These ECB liberalizations, effective Feb 16, 2026, greatly increase India's onshore funding options and reduce compliance burdens (event-based reporting instead of routine returns). For foreign investors, the removal of all-in-cost caps and the broader borrower universe make raising offshore debt easier. However, inconsistencies persist with SEBI's perspective: SEBI's regulations did not previously govern ECBs, but in some complex deals (e.g. ECB-funded share acquisitions) FPIs must still ensure SEBI-sourced capital regulations (if any) do not conflict with FEMA's expanded use.

Other FEMA changes include minor tweaks (e.g. private placement of GDRs), but the above are most salient for capital markets investors.

SEBI Reforms (2025–2026). SEBI has also moved to streamline FPI regulation:

SWAGAT-FI Framework (Dec 2025). In December 2025 SEBI notified the FPI (Second Amendment) Regulations, 2025, introducing the SWAGAT-FI ("Single Window Automatic and Generalised Access for Trusted Foreign Investors") scheme. This program designates certain low-risk investor classes (Government/Govt-related investors, certain public retail funds) as "trusted". These SWAGAT-FIs benefit from simplified registration and maintenance: SEBI allows mutual funds to be constituents of FPI applicants, expands eligible fund types (retail schemes of AIFs), and redefines the fee structure (registration fees paid once per 10-year block). Importantly, SEBI exempts SWAGAT-FIs from some of the stricter conditions (e.g. certain asset thresholds in Reg 5(c)(ii)). These amendments aim to make it easier for institutional and government investors to enter India's markets, aligning with IFSC norms, and to consolidate fee payments.

Master Circular Revision & Registration Overhaul. In parallel, SEBI conducted consultations on overhauling the FPI Master Circular. While not yet fully codified, proposals (announced late 2025) include: a single consolidated circular for all FPI/DDP rules; an abridged CAF for certain related entity registrations; and improved KYC/beneficial-ownership guidance. If adopted, these will standardize procedures and reduce duplication for global fund networks. The TOI report highlights SEBI's push for an abridged application process for related funds (sub-funds, parallel funds, share classes) with custodians auto-populating shared

data. This reflects the same "ease of doing business" agenda underlying SWAGAT-FI.

Clearing and Settlement (Cash Market). In April 2026 SEBI issued a circular permitting FPIs to net their purchase/sale obligations in the cash equity market. This enables FPIs to offset buys and sells across multiple accounts (subject to certain conditions) instead of transferring funds for each trade. While not directly FEMA-related, it simplifies FPI operations and indirectly reduces the flow of currency by netting exposures – a positive step in operational ease.

Provision/Requirement	SEBI (FPI Regs, etc.)	FEMA / RBI (NDI/ECB Regs)	Divergence & Practical Impact
Registration of foreign investors	Must register as Category I/II/III FPI with SEBI via a DDP (custodian), submitting CAF & KYC.	No "registration"; instead, foreign investment either on *Automatic Route* (per notified sectors) or *Approval Route*. RBI needs FC-GPR/FC-TRS filings post-issue of shares.	Investors must complete separate processes: SEBI-CAF vs FEMA-RBI filings. Even after SEBI registration, any capital inflow requires FEMA compliance (e.g. RBI acknowledgment for each inflow).**
Beneficial Ownership (BO)	Follows PML Rules: BO = natural person with ≥10% shares (company) or ≥15% (trust/partnership), or control via directors. SEBI requires detailed BO disclosure (including new look-through from Aug 2023).	FEMA (NDI) refers to BO similarly (by shareholding/control), as incorporated from RBI's AML guidelines. For certain approvals (e.g. land-border cases) specific BO criteria apply.	Both use similar thresholds, but SEBI's focus is on preventing market circumvention (look-through disclosure when certain AUM limits reached), whereas FEMA's BO concept triggers sectoral approvals (e.g. PD 3). Misalignment can arise if definitions differ or if one regime requires filings for a change in BO but the other does not.
Control Definition	"Control" = right to appoint majority of directors or control policy decisions (as per PML Rules).	FEMA/Companies Act has a similar definition of control (majority board or management). RBI uses that to identify an FOCC at 50% foreign share.	Generally aligned in wording, but SEBI applies it at the FPI/portfolio level, while FEMA uses it to classify when an Indian company becomes an indirect foreign investor (FOCC). Thus, an entity

Provision/Requirement	SEBI (FPI Regs, etc.)	FEMA / RBI (NDI/ECB Regs)	Divergence & Practical Impact
			might be an FOCC under FEMA (even if each FPI invests <10%) without SEBI's immediate knowledge.
"Ownership" thresholds	SEBI imposes *takeover thresholds*: e.g. crossing 5%, 25%, 75% in a target triggers obligations (SAST Regs). FPI regs have category-AUM caps (e.g. Category III FPI 10% asset cap).	FEMA imposes sector caps on foreign shareholding (e.g. max 24% in insurance, 20% in banks) and per-investor caps (e.g. single-country cap, 10% in listed co under FPI, etc.).	FPIs must manage both sets: e.g. an FPI cannot cross a 10% AUM or group threshold (SEBI) and still must respect FEMA's sectoral cap for the company. This duplication increases monitoring tasks. Divergence example: SEBI's Substantial Acquisition Reg requires disclosures at 25%, but FEMA might have blocked further investment at 20% cap, creating a gap in when filings occur.
Capital Inflow Reporting	No SEBI form for equity inflows. FPIs report trades via custodians; SEBI receives periodic portfolio reports and flags fresh registrations/NRIs through data.	RBI requires post-facto filings: Form FC-GPR for new allotments of shares to non-residents; Form FC-TRS for transfers between residents and non-residents; Form DI for downstream (FOCC) investments.	Risk of missed reporting: an FPI's custodian might report to SEBI but if the FPI didn't file FC-GPR, RBI may treat it as illegal foreign investment. E.g., an NRI subscribing to shares must file FC-GPR within 30 days – a SEBI-registered FPI might overlook this, incurring FEMA penalties. Synchronising reporting deadlines is a challenge.
Use of Funds / Prohibited End-uses	SEBI has no direct concept of end-use restriction (once SEBI allows investment, it controls only the securities side).	FEMA has detailed end-use restrictions (e.g. RBI rules on rupee remittances, no round-tripping, prohibited sectors for ECB).	As SEBI no longer restricts FPI *investments* by end-use (e.g. no ECB-like list), foreign investors must still be wary of FEMA end-use bans

Provision/Requirement	SEBI (FPI Regs, etc.)	FEMA / RBI (NDI/ECB Regs)	Divergence & Practical Impact
			(e.g. no investment in agricultural land). This is a source of fragmentation: SEBI won't flag if an FPI uses borrowed INR funds for stock purchase, but RBI prohibits it.
Downstream Investments (DI)	SEBI regulations do not explicitly address "downstream investments" by FPIs. Any investment by an Indian entity (even if foreign-owned) is treated as secondary acquisition by that Indian entity.	FEMA/NDA (Rule 23) governs DI by FOCCs: Indian Company A (with foreign promoters) investing in Company B must follow FDI norms (caps, pricing). The January 2025 MD clarifies that FOCCs get equity-swap and deferred-payment options, and must report via Form DI.	SEBI's oversight of downstream equity is limited to ordinary SAST obligations (if thresholds crossed) and back-end disclosures. RBI's DI framework is much more prescriptive. In effect, a cross-investment by an FOCC triggers FEMA filings irrespective of SEBI's view. The divergence means an FOCC's investment could be fully compliant under SEBI rules but still infringe FEMA if not reported as DI.
Securities Market Disclosures	SEBI mandates disclosure of FPI holdings on stock exchanges (SC/ST forms) and group/company ownership (Takeover Code filings).	FEMA requires only the RBI filings noted above; there is no securities-market-facing disclosure of foreign holding.	Potential gap: public shareholders see SEBI-mandated shareholding information but cannot easily infer any RBI-related status (e.g. if a foreign chain has crossed a sectoral cap). This opacity can mask underlying cross-border compliance issues.

KEY CHALLENGES IN THE EXISTING FRAMEWORK

The challenges inherent within India's foreign investment regime are not merely administrative in character but stem from deeper structural, doctrinal, and institutional inconsistencies embedded within the regulatory interface between the Securities and Exchange Board of India

and the framework established under the Foreign Exchange Management Act, 1999. The fragmented nature of this architecture is attributable to the absence of a unified statutory code governing foreign investment, resulting instead in a dispersed framework comprising primary legislation, subordinate rules, executive policy instruments, and sector-specific regulations.[9]

A principal challenge arises from the simultaneous exercise of regulatory jurisdiction by multiple authorities over the same transaction. FEMA governs the permissibility and legality of capital account transactions, while SEBI regulates market participation and securities-related conduct. Consequently, foreign investors—particularly Foreign Portfolio Investors (FPIs)—are required to comply with parallel regulatory obligations involving separate reporting standards, disclosure requirements, and operational conditions. This dual compliance structure significantly increases administrative complexity and transactional costs.

The regulatory framework is further complicated by the absence of harmonised definitional **standards** across legal instruments. Foundational concepts such as "control," "beneficial ownership," and "ownership thresholds" operate as regulatory triggers under both FEMA and SEBI regulations, yet these expressions are interpreted differently depending on the applicable framework. For instance, beneficial ownership standards under SEBI disclosure norms are often informed by anti-money laundering regulations, whereas FEMA evaluates ownership structures in the context of investment permissibility and sectoral restrictions.[10] Such divergences create interpretational ambiguity and increase the likelihood of inconsistent compliance outcomes.

Another significant concern relates to the temporal misalignment of regulatory amendments. SEBI and the RBI frequently introduce amendments through independent regulatory cycles, circulars, and notifications, often without simultaneous harmonisation.[11] This creates interim phases during which one framework reflects revised policy objectives while the other continues to operate under outdated regulatory assumptions. The resulting uncertainty compels investors and intermediaries to rely upon interpretative practices rather than definitive legal clarity.

The Indian foreign investment framework is also characterised by a high degree of executive dependence**,** particularly through the use of policy instruments such as Press Notes and the

[9] Foreign Exchange Management Act, 1999; Securities and Exchange Board of India Act, 1992; Consolidated FDI Policy issued by DPIIT.
[10] Prevention of Money Laundering Act, 2002 and rules framed thereunder
[11] RBI Circulars and Master Directions; SEBI Circulars and Amendment Notifications (2025–2026).

Consolidated FDI Policy issued by the Department for Promotion of Industry and Internal Trade.[12] Although these instruments significantly influence investment regulation, they do not always possess independent statutory force until incorporated within subordinate legislation under FEMA.[13] This creates ambiguity regarding the precise legal status and enforceability of policy-driven changes, particularly during transitional phases between policy announcement and formal regulatory incorporation.

Further complexity arises from the absence of a formalised inter-regulatory coordination mechanism between SEBI and the RBI. Coordination between these authorities is largely consultative and administrative rather than institutionalised through a binding statutory framework. Unlike certain foreign jurisdictions that employ unified investment screening authorities or consolidated financial regulators, India's fragmented institutional model often results in overlapping compliance requirements and inconsistent enforcement approaches.

The compliance burden is additionally externalised onto intermediaries such as authorised dealer banks, custodians, depository participants, and compliance officers, who function as practical gatekeepers of FEMA and SEBI compliance.[14] Since these intermediaries frequently adopt divergent interpretative standards in assessing identical transactions, investors may encounter inconsistent regulatory treatment despite acting in good faith and in substantial compliance with the law.

The cumulative effect of these structural and doctrinal inconsistencies is a persistent deficit in legal certainty and regulatory predictability**.** The Supreme Court, in *Vodafone International Holdings BV v. Union of India*, emphasised the necessity of certainty and stability within investment regulation, observing that foreign investment frameworks must remain predictable to sustain investor confidence. Taken together, these challenges demonstrate that fragmentation within India's foreign investment regime is not confined to procedural overlap alone but is structurally embedded across legislative design, institutional coordination, and doctrinal interpretation. The persistence of such fragmentation raises fundamental concerns regarding administrative efficiency, regulatory coherence, and the long-term competitiveness of India's

[12] Government of India, Department for Promotion of Industry and Internal Trade, *Consolidated FDI Policy* and related Press Notes.
[13] Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
[14] RBI Authorised Dealer framework and SEBI compliance mechanisms for foreign investors.

investment environment.[15]

RECOMMENDATIONS FOR HARMONISATION

To reduce fragmentation, we propose a mix of legislative, administrative, and cooperative measures, with model drafting notes and a proposed timeline.

Unified Definitions: Amend both FEMA and SEBI regulations to harmonize terms like "beneficial owner," "control," and "group" using a single statutory definition (e.g. refer to Companies Act definitions). For example, an amendment to FEMA Rules could insert: *"In the [NDI] Regulations, the terms 'control' and 'beneficial owner' shall have the same meaning as in the SEBI (FPI) Regulations, 2019."* Conversely, the FPI Regulations could reference FEMA's standards where appropriate (e.g. clarify that an FPI's beneficial-owner disclosures satisfy any RBI BO criteria). A unified threshold (say 10%) across both regimes would eliminate divergence over indirect holdings.

Single-Window Clearance / CAF Integration: Implement the planned digital portal fully, expanding it into a *"Global FPI Registration System"*. Under this, the Common Application Form (CAF) for FPI registration would auto-generate and submit necessary FEMA filings (e.g. a pre-filled FC-GPR template) as part of the process. SEBI and RBI can jointly issue a circular stating that completed CAF data may be deemed application for RBI recognition (subject to verification). Model: Issue a SEBI-RBI Joint Guidance stating that for any FPI *registered through the portal*, the RBI will consider the CAF (and attached PNL/TL obligations) sufficient to open an FDI capital account (subject to existing sectoral checks). This would avoid duplicative submission of the same information.

Statutory Amendments – FEMA Act/FEMA Rules: Consider a FEMA Amendment Act (or via new Capital Account Liberalisation push) to codify that securities investments (via SEBI-licensed FPIs) are on the capital account but do not require a separate permission if SEBI compliance is in place. For instance, insert a provision in FEMA Act Section 6 (capital transactions) stating: *"Investments in securities made through SEBI-registered FPIs shall be deemed compliant with this Act if all SEBI regulations applicable to such transactions are duly complied with."* This could, for example, allow RBI to waive FC-GPR for certain routine trades

[15] Scholarly commentary on fragmentation in India's foreign investment regulatory architecture.

by Category I FPIs (subject to RBI verifying total limits via periodic summary forms).

Memorandum of Understanding (MoU): Formalize coordination via an MoU between SEBI and RBI (similar to international MoUs). The MoU would establish a joint FPI/FEMA coordination cell (staffed by both regulators) to resolve policy overlaps and handle queries. The text could commit RBI to promptly communicate FEMA changes to SEBI (and vice versa) and to adopt concurrent reply schedules for consultations. For example, the MoU might set a rule: "Any circular or regulation by RBI affecting FPIs shall be shared with SEBI for review before notification, and any SEBI regulation affecting FEMA entities shall similarly be circulated to RBI. Both sides shall strive to synchronize effective dates." Model clauses could mirror existing MoUs (e.g. U.S. SEC–CFTC), adapted for domestic agencies.

Joint Guidance/FAQs: Issue joint SEBI–RBI guidelines on contentious points. For instance, publish a common FAQ (on RBI and SEBI websites) clarifying how to treat acquisitions that straddle both frameworks (e.g. an FPI acquisition financed by ECB). A joint clarification could state: "If a SEBI-registered FPI invests in equity using funds raised via an ECB under FEMA, the transaction shall be treated as compliant under FEMA if the ECB itself meets RBI conditions. No additional FEMA permission is needed beyond the standard FPI registration requirements under SEBI." The master direction already has such language for deferred payments; a similar co-issued circular could cover other grey areas (reporting overlaps, forms to be used when).

Single Clearances for Key Changes: Where possible, implement changes to both frameworks simultaneously. For example, if the Finance Ministry issues a FEMA notification liberalising certain investments, SEBI should concurrently amend its regulations (or at least fast-track an appropriate circular). The timeline below suggests synchronizing SEBI's amendment of FPI regs with FEMA's rules.

CONCLUSION

India's foreign investment regime represents a complex interplay between economic liberalisation, regulatory oversight, and sovereign control over cross-border capital flows. The regulatory interface between the Securities and Exchange Board of India and the framework established under the Foreign Exchange Management Act, 1999 reflects an evolving attempt to reconcile these competing objectives within a rapidly transforming financial landscape.

While both regulatory frameworks are conceptually directed towards facilitating foreign investment and ensuring market stability, their practical interaction reveals persistent structural fragmentation.

The analysis undertaken in this paper demonstrates that the challenges within the Indian framework extend beyond procedural overlap and arise from deeper issues relating to fragmented legislative design, definitional inconsistencies, asynchronous regulatory evolution, and the absence of institutionalised coordination mechanisms. The coexistence of multiple regulatory authorities exercising overlapping jurisdiction has resulted in a compliance architecture that is often complex, interpretationally uncertain, and administratively burdensome for foreign investors.

Recent reforms undertaken during 2025–2026 indicate a discernible movement towards liberalisation, procedural simplification, and enhanced transparency. Measures relating to FPI regulation, beneficial ownership disclosures, and strategic investment screening reflect an effort to modernise the regulatory framework in accordance with global investment practices. However, these reforms continue to operate within a fundamentally dispersed structure comprising FEMA regulations, SEBI guidelines, executive policy instruments, and sector-specific legislation. Consequently, rather than eliminating fragmentation, many reforms merely recalibrate its operation within an already multi-layered framework.

The increasing incorporation of national security considerations into foreign investment governance further illustrates the changing character of India's regulatory approach. While strategic scrutiny of sensitive investments constitutes a legitimate exercise of sovereign regulatory authority, the absence of a comprehensive statutory investment-screening mechanism raises concerns regarding transparency, consistency, and legal predictability.

In this context, the central question addressed by this paper—whether India's foreign investment regime reflects harmonisation or fragmentation—must be answered with qualified caution. Although incremental efforts towards regulatory convergence are evident, the prevailing framework continues to exhibit substantial elements of fragmentation at the legislative, institutional, and doctrinal levels. Achieving meaningful harmonisation would therefore require not merely isolated reforms but a more systemic restructuring of the regulatory architecture through enhanced inter-regulatory coordination, harmonised definitional standards, and potentially the development of a unified foreign investment code.

Ultimately, the long-term credibility and competitiveness of India's foreign investment regime will depend upon its ability to provide a framework that is not only facilitative and secure, but also coherent, predictable, and institutionally integrated.