

ADDITIONAL COMPLIANCES FOR WHOLLY OWNED SUBSIDIARY COMPANIES

COMPANIES ACT 2013 Compliances for Holding & Wholly Owned Subsidiary Companies

**Note: these are the Compliances in addition to the regular compliances. Therefore, the compliance requirements for WOS are same as the compliance requirements for a standalone company depending on the type of company except for the accounting treatments with respect to the consolidation and few additional compliances. Thus, following are the express provisions that need to be considered:*

S.NO	REFERENCE	PARTICULARS	SECTION / COMPLIANCE
1.	Section 185	Loan to Directors, etc	(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by- (a) any director of the company, or of a company which is its holding company or any partner or relative of any such director; (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan, including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the directors of the company is interested, subject to the condition that- (a) a special resolution is passed by the company in general meeting and (b) the loans are utilized by the borrowing company for its principal business activities. The Compliance requirements for passing the resolution under the provisions of Sec 185(1) and (2) shall not apply to: (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.

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			<u>Example:-</u> - Holding Private Limited can give loan to WOS Private Limited as according to the provisions of Section 185(3)(c), sub-sections (1) and (2) are not applicable to it. - WOS Private Limited can give loan to Holding Private Limited subject to the condition that- - a special resolution is passed by the company in general meeting and - the loans are utilized by the borrowing company for its principal business activities.
2.	Proviso to Section 186 (3)	Loan and investment by company.	Provided that where a loan or guarantee is given or where a security has been provided by a company to its WOS or a JV, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of section 186 (3) shall not apply: <i>(Sub sec (3): requirement of passing SR: Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.)</i> <u>Example:-</u> Holding Private Limited can give loan, investments, guarantee to WOS Private Limited exceeding 60% (PC+FR+SP) or 100% (FR+SP) whichever is higher without passing of special resolution.
3.	5 th Proviso to Section 188(1)	Related party transactions	In case of WOS, the ordinary resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly-owned subsidiary company and the holding company, subject to the condition that the accounts of the subsidiary company are consolidated with holding company and placed before shareholders at the general meeting for its approval.

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			<u>Example:-</u> Holding Private Limited can enter into RPT's with its WOS subject to the approval of shareholders via Ordinary Resolution at the general meeting. Also, accounts of WOS Private Limited to be consolidated with Holding Private Limited.
4.	Section 129(3)	Financial Statements	Where a company has one or more subsidiaries, it shall, in addition to standalone financial statements, prepare a consolidated financial statement (CFS) of the company and of all its subsidiaries in the same form and manner as that of its own. Such consolidated financial statements shall also be laid before the AGM along with the standalone financial statements.
5.	Section 89 + Rule 9(3)	Declaration of Beneficial Interest	<i>(One-time compliance only at the time of formation of WOS)</i> Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form MGT.6 with the Registrar in respect of such declaration with fee. Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the SEBI.
6.	-	Other Disclosures	-CFS (Consolidated Financial Statements) must be approved by the Board and filed in Form AOC-4 CFS (in XBRL format). -Disclosure of Subsidiaries in the Board's Report (Rule 8). -Statement containing salient features of financials of subsidiary to be included in Form AOC-1 as an annexure to Form AOC-4. -If WOS Private Limited's accounts are unaudited, a Declaration must be made and reasons must be stated in AOC-1. -Ultimate Beneficial Ownership (UBO) Declaration – BEN-2 / BEN-1

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			-Disclosure of the ultimate holding/beneficial owner (especially in layered holding structures). -Register of Contracts with Related Parties – MBP-4 -Must include contracts/arrangements with holding/subsidiary.
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FEMA Compliances for Holding & Wholly Owned Subsidiary Companies

Here is a comprehensive list of FEMA compliances specifically applicable to Holding Companies and Wholly Owned Subsidiary (WOS) Companies in India under the Foreign Exchange Management Act (FEMA), 1999:

S.NO	PARTICULARS	COMPLIANCE
1	Foreign Direct Investment (FDI) Reporting	When a foreign holding company invests in its WOS in India, the following compliances are mandatory: a. FC-GPR (Foreign Currency-Gross Provisional Return) <i>Applicable When:</i> Shares are allotted by the Indian WOS to the foreign holding company. <i>Timeline:</i> Within 30 days from the date of share allotment. <i>Mode:</i> Filed online on the FIRMS portal of RBI. b. Form CN (Compounding Application) <i>Applicable When:</i> Any delay or non-compliance in filing FC-GPR or other FEMA returns. <i>Filed With:</i> Reserve Bank of India (RBI). c. FC-GPR (Foreign Currency-Gross Provisional Return)

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		<i>Applicable When:</i> Shares are allotted by the Indian WOS to the foreign holding company. <i>Timeline:</i> Within 30 days from the date of share allotment. <i>Mode:</i> Filed online on the FIRMS portal of RBI. d. Form CN (Compounding Application) <i>Applicable When:</i> Any delay or non-compliance in filing FC-GPR or other FEMA returns. <i>Filed With:</i> Reserve Bank of India (RBI).
2	Annual Return on Foreign Liabilities and Assets (FLA Return)	FLA Return <i>Applicable To:</i> All Indian WOSs with FDI or ODI outstanding as on March 31st. <i>Timeline:</i> Filed by July 15 every year. <i>Mode:</i> Submitted on RBI's FLAIR portal. <i>(No Extension is usually granted, and it is mandatory even if no change in FDI during the year.)</i>
3	ODI (Overseas Direct Investment) Reporting	If an Indian Holding Company invests in a WOS abroad, then the following forms are applicable: a. Form ODI – Part I (Reporting of investment) <i>Timeline:</i> Before remittance of funds or within 30 days of acquiring shares. <i>Filed Through:</i> Authorised Dealer Bank via RBI portal. b. Form ODI – Part II (Annual Performance Report or APR) <i>Timeline:</i> By December 31st every year. <i>Details:</i> Performance of the overseas subsidiary. c. Form ODI – Part III (Disinvestment Reporting) <i>Applicable When:</i> Indian company disinvests from the foreign WOS.

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4	Advance Reporting Form (ARF)	Form (ARF) <i>Applicable When:</i> Indian WOS receives inward remittance against issue of shares. <i>Timeline:</i> Within 30 days from date of inward remittance. <i>Filed With:</i> RBI via AD Bank.
5	Know Your Customer (KYC) Compliance	KYC form of the foreign investor needs to be submitted through AD Bank when remittance is received.
6	Other Event-Based FEMA Compliances	<i>Depending on business activities, you may also need to comply with:</i> ECB (External Commercial Borrowings) Reporting – Form ECB and ECB-2 . Transfer of shares between resident and non-resident – Form FC-TRS . Delayed reporting – may require compounding under FEMA.

Important Portals & Authorities

RBI FIRMS Portal – <https://firms.rbi.org.in>

FLAIR Portal (FLA Return) – <https://flair.rbi.org.in>

Authorized Dealer (AD) Bank – primary liaison for all FEMA filings

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✓ SEBI Compliances for Holding & Wholly Owned Subsidiary Companies- SEBI (LODR) Regulations, 2015-

S.No	Regulation	Compliance	Applicability	Timeline
1	Reg. 16(1)(c)	Definition of ' Material Subsidiary '	Holding Co. (Listed)	Annual policy adoption
2	Reg. 24(1)	Independent Director on the Board of material unlisted Indian subsidiary	If WOS is a material subsidiary	Ongoing
3	Reg. 24(2)	Audit Committee of listed entity to review financials of unlisted subsidiary	Listed Holding Co.	Quarterly
4	Reg. 24(3)	Minutes of Board Meetings of unlisted subsidiary to be placed before Holding Co.	WOS → Holding Co.	Ongoing
5	Reg. 24(4)	Statement of significant transactions of WOS to be placed before Holding Co.	WOS → Holding Co.	Quarterly
6	Reg. 24A	Secretarial Audit of material unlisted Indian subsidiary	Holding Co. & Material Indian WOS	Annually by May 30
7	Reg. 33	Consolidated Financial Results including those of subsidiaries	Listed Holding Co.	Quarterly & Annually
8	Reg. 46	Policy on Material Subsidiary to be disclosed on website	Holding Co. (Listed)	Ongoing
9	Reg. 23	Disclosure and approval of Related Party Transactions (RPTs)	Holding & WOS (if RPTs exist)	Quarterly / As needed
10	Schedule V, Part A	Disclosure of financial performance of subsidiaries in Annual Report	Holding Co.	Annually
11	Reg. 34	Annual Report to include salient features of financials of subsidiaries	Holding Co.	Annually
12	Reg. 17(8)	CEO & CFO to certify internal controls (including those of subsidiaries)	Holding Co.	Quarterly / Annually
13	Reg. 46(2)(h)	Disclosure of financials of material subsidiaries on website	Listed Holding Co.	Ongoing

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☑ Definitions-

Material Subsidiary:

A **subsidiary** whose **income or net worth > 10%** of the **consolidated income/net worth** of the listed entity and its subsidiaries in the immediately preceding financial year.

Significant Transaction/Arrangement:

Individual transaction > 10% of total revenues, expenses, assets or liabilities of the WOS during the quarter.

☑ INCOME TAX ACT, 1961 Compliances Holding & Wholly Owned Subsidiary Companies

S.NO	PARTICULARS	COMPLIANCE
1	Transfer Pricing Disclosures	Transfer Pricing Disclosures- Form 3CEB -If international transactions occur between the holding and subsidiary, detailed disclosures required.
2	Master File & Country-by-Country Reporting (CbCR)	Form 3CEAA / 3CEAB -Applicable to international group companies crossing thresholds.

☑ Pro Tip:

Maintaining a centralized compliance dashboard and entity relationship chart helps track and report these disclosures more effectively during audits and filings.

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*Compliance **Summary** for Holding & Wholly Owned Subsidiary Companies-*

S.no	Compliance	Applicability	Due Date / Frequency	Remarks
1	Disclosure of Subsidiaries in Financials	Holding Co. (Consolidated FS)	Annually	As per Rule 5 of Companies (Accounts) Rules
2	Form AOC-1	Holding Co.	With AOC-4 filing	Statement of salient features of WOS financials
3	Annual Return (MGT-7 / MGT-7A)	Holding & WOS	Annually	Must reflect subsidiary/holding relationship
4	Disclosure of RPTs (AOC-2)	Holding & WOS	Annually (with Board Report)	Mandatory if related party transactions exist
5	Board's Report – WOS Info	Holding Co.	Annually	Report should include WOS incorporation/performance
6	FLA Return	WOS with foreign investment	By July 15 every year	Filed on RBI's FLAIR portal
7	ODI Annual Performance Report (APR)	Indian Holding Co. with overseas WOS	By Dec 31 every year	Through AD Bank via RBI portal
8	SEBI LODR Reg. 24	Listed Holding Co.	Ongoing	Financials, minutes, and transactions of WOS to be disclosed
9	Material Subsidiary Policy	Listed Holding Co.	Annually / as revised	To be disclosed on website and annual report
10	Form 3CEB – Transfer Pricing	Holding & WOS with cross-border transactions	By Nov 30 (unless extended)	Disclosure of international related party transactions
11	Master File & CbCR (3CEAA / 3CEAB)	Int'l Group with turnover > INR 500 Cr	Annually	As per Indian TP rules (Section 92D)
12	Ultimate Beneficial Ownership (BEN-1 / BEN-2)	Holding/WOS where SBO applicable	On change or new SBO	Declaration & return of SBO
13	MBP-4 – Register of RPTs	Both Holding & WOS	Ongoing	Must include intercompany agreements/contracts
14	Register of SBOs	Applicable entity under SBO rules	Ongoing	Maintained internally; produce on demand

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Disclaimer:

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