

RECURRING COMPLIANCE UNDER FEMA

INTRODUCTION

The Foreign Exchange Management Act, 1999 (FEMA) has followed a liberalized approach by permitting Indians to invest abroad and encouraged investors to invest in India through companies, LLPs, branch offices etc. Most of the sectors in inbound as well as outbound structures are under automatic route. Further, External Commercial Borrowings regulations have been eased out to allow entities to obtain loan. Therefore, in order to be able to monitor the entities on a regular basis, the Reserve Bank of India (RBI) has mandated certain compliances. To be aware about such compliance is the need of the hour so that the entities do not face penalty. This article covers broad recurring compliances prescribed under FEMA.

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RECURRING COMPLIANCES

❖ Annual Performance Report (APR)

- ✓ Indian Party / resident Individual who have made investment in overseas Joint Venture (JV) / Wholly-Owned Subsidiary (WOS) after considering various key factors such as financial commitment, entry route, sector etc. are required to submit APR (Part II of Form ODI).
- ✓ APR is required to be submitted to the AD bank by 31st December of every year in respect of each overseas JV/WOS along with the audited financials of such overseas JV/WOS.
- ✓ In case where the host country does not mandatorily require auditing of books of accounts of overseas JV/WOS, APR is to be submitted along with following documents:
 1. Unaudited Financial statement of the overseas JV/WOS
 2. Board resolution stating adoption of the unaudited accounts of the overseas JV/WOS
 3. Statutory auditor's certificate stating that the APR is based on the unaudited accounts of the overseas JV/WOS.
- ✓ APR is required to be certified by the statutory auditor of the Indian party. However, incase the APR is submitted by a resident individual, self-certification is sufficient instead of statutory auditor.
- ✓ In case multiple Indian entities/resident individuals are investing in one overseas JV/WOS, the obligation to submit APR shall lie with the one having maximum stake. Alternatively, they can mutually agree to assign responsibility to one of them to submit APR.

❖ Annual Return on Foreign Assets & Liabilities (FLA)

- ✓ An Indian company/LLP which has received FDI or made ODI in any of the previous years¹ including the current year are required to submit FLA online by 15th July every year.
- ✓ Incase of FDI, data regarding the Indian entity is to be entered in the prescribed manner. In case of ODI, data regarding the Indian entity as well as overseas venture is to be entered.
- ✓ Indian company/LLP need not file FLA for investment made by NRIs/OCIs on non-repatriation basis.

¹ Year denotes the period from April to March

❖ Annual Activity Certificate (AAC)

- ✓ Branch Office (BO) /Liaison Office (LO) /Project Office (PO) established by non-resident entity are required to submit AAC by 30th September every year along with the audited financial statements including receipt and payment account to the AD bank as well as Director General of Income Tax (International Taxation), New Delhi.
- ✓ In case the annual accounts of the BO/LO are finalized with reference to a date other than 31st March, the AAC may be submitted within 6 months from the due date of the Balance Sheet.
- ✓ AAC is to be submitted by:
 1. In case of sole BO/LO/PO, by BO/LO/PO concerned
 2. In case of multiple BOs / LOs, a combined AAC in respect of all the offices in India by the nodal office of the BOs / LOs.

❖ ECB -2 Return

- ✓ ECB-2 Return is to be filed for all categories of External Commercial Borrowings (ECB).
- ✓ Borrowers are required to report actual particulars of ECB transactions to the RBI on a monthly basis through an AD bank in 'ECB 2 Return'.
- ✓ Changes in in ECB parameter, if any, should also be incorporated in the return.
- ✓ Even if there are no transactions during a particular period for that ECB, Nil return should be submitted.

For simplified understanding please refer the table below

Return	Applicability	Due Date	Mode of submission
APR	Entity with ODI	31st December of every year	Manual
FLA	Entity with ODI / FDI	15th July of every year	Online
AAC	BO/LO/PO in India	30th September of every year	Manual
ECB-2	Entity availing ECB	Within 7 working days from end of the month	Manual

Late Submission Fees (LSF) and Compounding Fees for non-compliance is as follows:

Return ²	Fees
APR	INR 10,000 per year
FLA	INR 10,000 per year
AAC	INR 10,000 per year
ECB-2	<ul style="list-style-type: none"> • Upto 30 days - INR 5,000 • Upto 3 years - INR 50,000 per year • Beyond 3 years - INR 1,00,000 per year

CONCLUSION

It is crucial to note that future transactions are also impacted by defaulting in FEMA compliance in present phase. Therefore, it is suggested to adhere with the above compliance based on applicability for hassle-free business operations.

GLOSSARY

AD	Authorized Dealer
FDI	Foreign Direct Investment
NRI	Non-resident Indian
OCI	Overseas Citizen of India
ODI	Overseas Direct Investment

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² ECB-2 Return can be regularized by payment of LSF. All other three compliances need to be compounded for delay.