

ANNUAL PERFORMANCE REPORT (APR) FOR ODI IN FOREIGN ENTITY

As India is continuously reviving its measures to encourage and attract more and more FDI, the measures to promote Indians to do business outside India by way of Overseas Direct Investments are also parallelly evolving. Any Indian individual or entity undertaking Overseas Direct Investment is obliged to file an Annual Performance Report (APR) with respect to its foreign entity based on its accounting year completed in the host country by 31st of December every year.

Annual Performance Report (APR) is a mandatory annual compliance specified under FEMA Act, 1999. Non-filing/delay in filing of the APR on or before the due date will be treated as a violation of FEMA and late submission fees (LSF) as per Regulation 11 of Overseas Investment Regulations shall apply. Further filing of APR regularly is an important compliance during the subsistence of the foreign entity as well as for the exit from the foreign entity.

The Central Government has notified the Foreign Exchange Management (Overseas Investment) Rules and Regulations, 2022 (OI Regulations) on 22.08.2022 in supersession of FEMA Notification No. 120 i.e. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. Some significant changes and relaxations have been brought in for investment by Indian entities and individuals in foreign securities. [\(Refer our Article on Overseas Investments under FEMA – Comparative Analysis\)](#)

Under the revised Rules & Regulations, all reporting with respect to overseas investment by a person resident in India shall be made in accordance with Regulation 10 of OI Regulations through the designated AD bank as per the revised reporting forms and instructions.

These Regulations state various provisions pertaining to filing of APR such as who is obliged to file APR, in case of more than one Indian investors who would take the responsibility to file APR, circumstances under which audited financials of the foreign entity are needed, what are the events other than ODI which need to be reported in the APR etc. It is important to know some of the changes introduced under these regulations as due date for filing APRs is 31st December 2022 to avoid any last minute surprises.

CHECKLIST FOR APR

AUDITED FINANCIAL STATEMENT OF FOREIGN ENTITY:

The APR shall be based on Audited Financial Statement of Foreign Entity. Relaxation is provided from audited financial statement if Indian person does not have control & local laws of foreign entity do not require mandatory audit. Thus it is important to note that audit shall be required where Indian resident has control even if host country does not mandate it.

PERSON RESPONSIBLE TO FILE APR IN CASE OF MORE THAN ONE PERSON MAKING AN ODI:

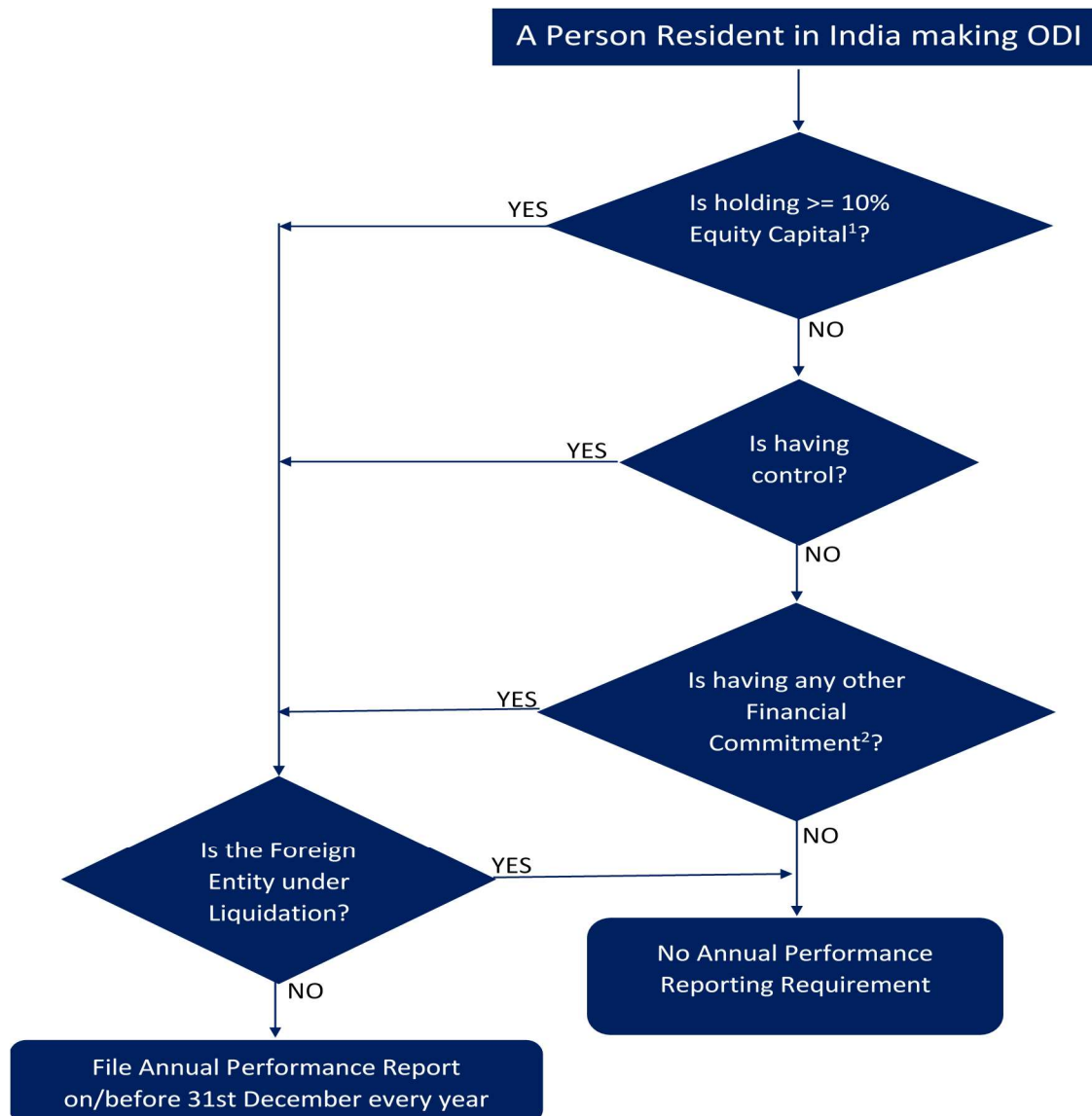
In case more than one Indian resident have made ODI, person holding higher stake in foreign entity has to submit APR. APR may be filed jointly by such persons, in case where the holding are equal.

DETAILS OF INVESTMENT & ALTERATION:

Details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the year has to be reported in the APR.

Below flow chart would provide a ready guidance for applicability of APR compliance due in December 2022:

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30th November, 2022

Disclaimer:

The information contained in this write up is to provide a general guidance to the intended user. The information is based on our interpretation of various prevailing laws, rules, regulations, pronouncements as on date mentioned below. The information should not be used as a substitute for specific consultations. The information has been provided in simplified manner for general reference of the public which can lead to interpretation not intended under law. Hence, we recommend that professional advice is sought before taking any action on specific issues before entering into any investment or financial obligation based on this Content. No part of this document should be distributed or copied by anyone without express written permission of the publisher.

¹ Equity Capital is defined as per Rule 2(e) of FEM (Overseas Investment) Rules, 2022 as equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments;

² Financial Commitment is defined as per Rule 2(f) of FEM (Overseas Investment) Rules, 2022 as the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt (other than Overseas Portfolio Investment) in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non-fund-based facilities extended by such person to or on behalf of such foreign entity or entities