

# *ANNUAL RETURN OF FOREIGN LIABILITIES & ASSETS*

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# *What is FLA?*



- Annual return on Foreign Liabilities and Assets (FLA) was **notified under the regulations of FEMA Act, 1999.**
- Later, RBI vide notification no- [RBI/2010-11/427](#) A.P. (DIR Series) Circular No. 45 & 133 Dated 15 March 2011 & 20 June 2012, FAQs dated 18 June 2014 introduced the concept of FLA return of all investments made in the company during a financial year, which is required to be submitted directly by the Company to the RBI.
- Reason behind the introduction of FLA Return is to capture the statistics relating to Foreign Direct Investment (FDI), both inward and outward in a more comprehensive manner as also to align it with international best practices

# *What is FLA?*



- Coverage:
  - Methodology For Valuation Of Foreign Liabilities And Foreign Assets
  - Nature of Activities Principal Line Of Business As %, With NIC Code (NIC Codes In The FCGPR And FCTRS Forms as per The NIC 2008 Version)
  - Name & Country Of Non-Resident Investor Under FDI
  - Financial Derivatives, Money Market Instruments
  - Trade Credits, Loans, Currency & Deposits
  - ODI And Portfolio Investment Overseas
  - Contingent Foreign Liabilities
  - Disinvestments In India And Abroad

# *Applicability to Submit the FLA Return*

- All **Indian companies** which have:
  - received FDI (foreign direct investment) and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year i.e. who holds foreign Assets or Liabilities in their Balance Sheets.
  - which has not ‘received any fresh FDI and/or ODI (overseas direct investment)’ in the latest year but the company has outstanding FDI and/or ODI.
  - Exclusions:
    - no outstanding investment in respect of inward and outward FDI as on end-March of reporting year.
    - received only share application money and does not have any FDI or ODI outstanding as on end-March of the reporting year.
    - all non-resident shareholders of a company has transferred their shares to the residents during the reporting period and the company does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year.

# *Applicability to Submit the FLA Return*

- shares issued by reporting company to non-resident on Non-Repatriable basis, then it should not be considered as foreign investment.
- **Limited Liability Partnership (LLP)**
- **Partnership firms**, **Branches** or **Trustees** having any outward FDI outstanding as on end-March of the reporting year on the basis of a dummy CIN number which will enable them to file the Excel based FLA Return

# *Timeline for FLA Return*



- The FLA return has to be filed by **July 15 of every Year**. Information should be reported for all the reference period, i.e. Previous March and Latest March.
- However, if Account Closing Period of the company is different from the reference period (end-March), then information should be given for the reference period on internal assessment.
- In case the company's accounts are not audited before the due date of submission, i.e. July 15, then the FLA Return should be submitted based on unaudited (provisional) account. And once the accounts gets audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by **end – September**

# *Submission of the FLA Return and Acknowledg ement therefore*

- RBI has prescribed format of FLA Return as an Excel sheet, which is available on RBI website:
  - [http://rbi.org.in/scripts/BS\\_ViewFemaForms.aspx](http://rbi.org.in/scripts/BS_ViewFemaForms.aspx)
  - ([Home](#) >> [Forms](#) >> [Foreign Exchange Management Act Forms](#))
- Company shall download the updated FLA return every year by end of May.
- Filled-in the Excel based FLA return should be forwarded through the official email id of any authorized person like CFO, Director, Company Secretary etc. to [fla@rbi.org.in](mailto:fla@rbi.org.in). Acknowledgement will be forwarded to the both email ids (sender and mentioned in Contact Details).
- Any other attachment should not be forwarded along with the FLA return.

# Section I: Identification Particulars



- **Nature of Business in item-6**

In the FLA Return, industry codes are given as per the National Industrial Classification (NIC) -2008 codes. The details on NIC-2008 codes can be accessed through the following link:

[http://mospi.nic.in/mospi\\_new/upload/nic\\_2008\\_17apr09.pdf](http://mospi.nic.in/mospi_new/upload/nic_2008_17apr09.pdf).

**In case a company has more than one activity during the year then Company will select that activity, from which, they have earned major revenue.**

- **Identification of the reporting Company (in terms of inward FDI) in item-9**

(a) Subsidiary of Foreign entity (b) Associate of foreign entity (c) Public Private Partnership (d) Special Purpose Vehicle (e) Other

If Company has only Outward Investment and no inward FDI, then 'Others' can be selected in respect of Identification of the reporting company.

- **Meaning of Technical Foreign Collaboration in item-11**

Indian company which has entered into an agreement with a foreign entity in terms of technology transfer, know-how transfer, use of patent, brand name etc, then such type of agreements are treated as Foreign Technical Collaboration (FTC).



# Section II: Financial Details



- Don't try to fill purple cells in the Return, as those are locked/ password protected. Fill-in the yellow cells only. Purple cells denote calculated fields, which are computed automatically.
- **Meaning of participating and non-participating preference shares?**

Participating preference shares are those shares which have one or more of the following rights:

- (a) To receive dividend, out of surplus profit after paying the dividend to equity shareholders.
- (b) To have share in surplus assets remaining after the entire capital is paid in case of winding up of the company.

On the other hand Non-participating Preference Shares are those shares **which do not have** one or more of the above said rights.

- In case of **different class of Equity Share** (class A, class B etc.), consolidated figure should be reported
- **Reporting of premium on issue of Equity Share Capital**

Premium on issue of Equity Share Capital is a part of Reserve, which should be reported under the item 4.1 of Block 1C-

# Section II: Financial Details



- Since Non-Participating share capital is a type of debt investment and is part of Item 1.0, Non-Resident Equity and participating Preference Shares Capital holding (%) is calculated with respect to item 1.1 of Block 1A (in Section II).

- **Insertion of negative figures in Reserve and Surplus**

At item 4.1 of Block 1C, you are supposed to mention the information on Reserves **excluding Profit & Loss account balance**, which is always be positive and Profit & loss account balances (carried forward to the balance sheet) should be reported separately at item 4.2 of Block 1C, which can be negative. Ensure that the item 4.3 of Block 1C (i.e. Item 4.1 + Item 4.2), which is auto calculated figure, must be equal to the Reserve and Surplus mention in Balance sheet of the company.

- **Inclusions in Block 1D: Sales and Purchases made during the reference year**

The information relating to all purchases (including capital and revenue of goods and services)/ sales made domestically as well as foreign during the reference period (April - March).

Both goods and services are to be included.

All foreign purchases/ sales i.e. imports and exports, should be captured from P& L Account.

# Section III: Foreign Liabilities



- **Valuation of equity capital for unlisted companies**

To calculate the market value of equity capital for unlisted companies use the OFBV method as follows:

Market value of equity capital held by Non- resident at OFBV= (Net worth of the company) \* (% non-resident equity holding)

Where, Net worth of the company = (Paid up Equity & Participating Preference share capital of company + Reserves & Surplus - Accumulated losses)

However, in excel based format of FLA Return, Net worth of company will be automatically calculated at item 4.4 of Block 1C under Section II, which may be used for valuation of non-resident equity investment under Section III.

- **Valuation guidelines in case of listed companies**

Closing share price as on reference period, i.e. end-March of previous and latest year should be used for valuation of non-resident equity investment.

# Section III: Foreign Liabilities



- **‘Other Capital’ component of FDI (item 2.1 & 2.2 )**

Other capital is a debt which is to be reported as follows:

- (a) Other capital includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its direct investors holding more than 10 % equity.
- (b) (b) Also includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with non-resident investors holding less than 10 per cent equity and indirect related parties (fellow enterprise or ultimate parent company or group company etc.).

- **Inclusion of Compulsorily convertible debentures (CCD)**

Compulsorily convertible debentures (CCD) issued by the company should not be included in the paid up capital while furnishing the information in Block 1A of the FLA Return.

However, if the CCDs / Debentures are held by the non-resident direct investor who is holding the equity shares of Indian reporting company, then CCD / Debentures holding should be reported in ‘other capital’ component of either Block 2A or 2B (in Section III), depending upon the per cent equity held by the non-resident direct investor.

However if the investor holds only CCD as on end March, then it should be reported in item 2.2 of Block 2C. Similar treatment should be considered while reporting the compulsory convertible preference shares also.

# Section III: Foreign Liabilities



- Meaning of related party

A related party is a person or entity that is related to the entity that is preparing its financial statements (referred to as the ‘reporting entity’).

A person or a close member of that person’s family is related to a reporting entity if that person:

- (i) has control or joint control over the reporting entity;
- (ii) has significant influence over the reporting entity; or
- (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

In the definition of a related party, an associate includes subsidiaries of the associate and a joint venture includes subsidiaries of the joint venture. Therefore, for example, an associate’s subsidiary and the investor that has significant influence over the associate are related to each other

# Section III: Foreign Liabilities



- **Reporting of non-participating preference share issued to non-resident**  
Non-participating preference share are treated as debt securities. (a) If the Non-participating preference shares are held by foreign investor who is also holding equity shares of Indian reporting company, then Non-participating preference share should be reported at item 2.1 of Block 2A or 2B (depending upon the % equity & participating preference share held by foreign investor) at nominal value.
- **Reporting of Fully/Partially/Non-convertible debentures issued to the non-residents**  
Fully/Partially/Non-convertible debentures are treated as debt securities. (a) If the debentures (of any type) are held by foreign investor, the amount should be reported at item 2.1 of Block 2A or 2B (depending upon the % equity plus participating preference share held by foreign investor) at nominal value.
- **Reporting of share application money received from non-resident investor**  
If the share application money is received from the existing non-resident shareholder, then the outstanding share application money should be reported at item 2.1 of Block 2A or 2B, depending upon per cent of equity plus participating preference share holding by non-resident investor.

# Section III: Foreign Liabilities



- **FDI Reporting of ultimate holding company**

While filling the FLA return, FDI reporting should be based on the country of immediate investor. However, if there are any receivables/payables with the non-resident ultimate holding company, then same should also be reported at 'Other capital' component of Block 2B under Section III.

- **Equity Securities under portfolio Investment**

the outstanding equity investments (secondary / stock market investment) by non-resident investors, other than those made under Foreign Direct Investment Scheme in India (i.e. other than those reported in Block-2A & Block-2B).

- **Debt Securities under portfolio Investment**

Following items are included in Debt Securities:

- (a) Money Market Instruments and Bonds & Other instruments are invested by non-resident investors, (other than those are reported in Block-2A & Block-2B)
- (b) Non-participating preference shares and debentures are held by foreign investor who is not holding equity share, then the same should be reported at item 2.2 of Block 2C (Bonds & Notes) at nominal value

# Section IV: Foreign Assets



- **Explanation of Block 3A of Section IV under Foreign assets**

It captures the information on financial details of Overseas Company in which your company's equity holding is 10% or more.

In case the overseas subsidiaries/ joint venture company's accounting period is different from the reference/reporting period (i.e. April-March) in the Return, then the information for end-March should be given on internal assessment basis.

- **Valuation of overseas equity investment using OFBV method under Block 4A In case where overseas company (DIE) is unlisted**

For valuation of overseas equity investment OFBV Method should be used, as explained below:

Market value of equity capital held by you at OFBV= (Net worth of the DIE) \* (% of equity held by you) Where,

Net worth of the DIE = (Paid up Equity & Participating Preference share capital of company +Reserves & Surplus - Accumulated losses)

OR

Item 1.1 of Block 4A = (Item 3.2/ Item 3.1)\* (Item 3.6\* Item 3.7)/100000 for reference period Where, Item 3.1, Item 3.2, Item 3.6 and Item 3.7 are extracted from block 3A

- **Valuation of the equity capital for listed DIE**

Closing share price as on reference period, i.e. end-March of previous and latest year should be used for valuation of equity investment.



# Section IV: Foreign Assets



- **'Other Capital' component of ODI**

Other capital, includes all other claims and liabilities at Nominal value, except equity shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its DIE reported in Block-4A.

Also includes all other liabilities and claims at Nominal value, except equity, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with non-resident companies where Indian company holds less than 10 per cent equity and also with indirect related parties (fellow enterprise or ultimate parent company or group company etc.).
- **Equity Securities under Portfolio Investment Abroad**

The outstanding equity investments (foreign stock market investment) by reporting company, other than those made under Foreign Direct Investment Abroad (i.e. other than those reported in Block-4A & Block-4B).
- **Debt Securities under Portfolio Investment Abroad**

Money Market Instruments and Bonds & Other instruments are invested by reporting company (other than those are reported in Block-4A & Block-4B) are included in the Debt Securities under Portfolio Investment Abroad
- **Outward Foreign Affiliates Trade Statistics**

The information of Direct Investment Enterprises (DIE) abroad relating to all purchases (including capital and revenue of goods and services)/ sales made domestically as well as foreign during the reference period (April - March).

  - (a) All expenses/sales of DIE abroad shown in profit and loss account to be taken as total purchases/total sale.
  - (b) Both goods and services of DIE abroad are to be included.
  - (c) All foreign purchases/ sales of DIE abroad i.e. imports and exports, should be captured from P& L Account

# *Section V: Other Assets and Liabilities with foreign unrelated parties*

- **Nature of transactions required to be reported in Section V**

All financial outstanding liabilities and claims (Trade Credit, Loans, Currency & Deposits, and other receivable & payable accounts) with foreign unrelated Parties should be reported.

Further, if the share application money is received from foreign investor who does not hold equity shares of Indian reporting company as on reference date, then outstanding share application money should be disclosed under Section V, at point 6.4: Other receivable and payable accounts.

Exclusions:

- (a) EEFC account with Bank as is not creating any external Assets and Liabilities.
- (b) Any domestic liabilities or assets (even if it is in foreign currency) should not be reported in the FLA return.

# Other FAQs



- **What is dummy CIN?**

Dummy CIN numbers are provided by RBI for filling the excel based FLA return only and not for any other purpose to Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the reporting year

- **Is it required to submit Annual Performance Report for ODI, if we have submitted FLA Return?**

FLA Return and Annual Performance Report (APR) for ODI are two different returns and monitored by two different departments of RBI. So you are required to submit both the returns if these are applicable for your company.

- **Where should we contact regarding any clarification for submission of FLA Return?**

Any query regarding filling of FLA return should be sent to [email](#). You may also contact RBI person handling FLA return at (022) 26578662/ 26578217/ 26578348/ 26578214/ 26578340/ 26578241

- **If we have already submitted a hard copy of the FLA return with your office. Do we need to submit the FLA return in revised format once again?**

The Return has to be submitted in the Excel based format, which has **inbuilt checks and validations**. So if there are any discrepancies in the furnished information, you will be able to know and rectify them at your end before submitting the information to RBI. Further, by submission of the information in Excel based format by email will ensure that you will receive the **confirmation email** from RBI within a week for successful processing of data submitted by you. In view of this, you are advised to resubmit the information in revised format of FLA return through [email](#).

# Other FAQs



- As per the circular, excel file of return is required to be [mailed](#). However, there is no column for the signature in the soft form. Should we, therefore, submit the signed hard copy or scanned copy of return to your office later or sending soft copy (validated) only would be sufficient compliance?

It is sufficient to submit the validated excel based soft copy of filled-in FLA return through **official email id of any authorized person of company like CFO, Director, Company Secretary etc.** at [email](#) before due date for compliance purpose

- **How would an acknowledgement is provided to us on submission of the form via e-mail?**

After sending the Excel based FLA return to [email](#), you will receive an acknowledgement. Ensure that you have received a successful processing acknowledgement. **If some error is mentioned in the acknowledgement rather than successful processing statement, then you have to resubmit the form by rectifying the mentioned error.**

# *Consequences of non-filing*



**What will be the consequences in case we do not file the said FLA Return by 15th July, as our accounts are not audited as yet, and we do not wish to file it with unaudited figures.**

**Will there be any imposition of penalty or prosecution initiated against the company by RBI or FEMA? Since nowhere it is mentioned either in the Circular No. 145 dated June 18, 2014 or in the Annex to AP (DIR Series) Circular No. 145 about the penalty or the prosecution, so, can we assume that we can file the same once our accounts are audited without any risk of penalty or other proceedings from the concerned authority in future?**

- Non-filing of the return before due date will be treated as a violation of FEMA and penalty clause may be invoked for violation of FEMA.
- Further, compounding provisions will attract.

# *Compounding Provisions*



- Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. One can also make an application for compounding, suo moto, on becoming aware of the contravention.
- RBI has notified the compounding provisions related to delay in filing the Annual Return on Foreign Liabilities and Assets (FLA Return) on [February 2, 2017](#) and has inserted the same in the list of contraventions compounded by the Regional Offices. The contravention shall be compounded by the Regional Offices (except Kochi and Panaji) of FED without any limit on the amount of contravention.

# *Compounding Provisions*



- Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees One hundred lakh (Rs.1,00,00,000/-). The contraventions of Rupees One hundred lakh (Rs.1,00,00,000/-) and above under the jurisdiction of Kochi and Panaji Regional Offices and all other contraventions of FEMA will be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto. Accordingly, applications for compounding related to the above contraventions may be submitted by the concerned entities to the respective Regional Offices under whose jurisdiction they fall or to FED, CO Cell, New Delhi, as applicable.

*THANK YOU!!*