



FREQUENTLY ASKED QUESTIONS

Date : Nov 14, 2022
Annual Return on Foreign Liabilities and Assets (FLA) under FEMA 1999

Commercial Banking
Co-operative Banking
Non-banking
Financial Inclusion and Development
Financial Market
Foreign Exchange Management
Consumer Education and Protection
Issuer of Currency
Payment and Settlement System
Research
Others
Deposit Insurance and Credit Guarantee Corporation

(Updated as on November 14, 2022)

General Instructions

Annual return on Foreign Liabilities and Assets (FLA) has been notified under FEMA 1999 (A.P. (DIR Series) Circular No. 45 dated March 15, 2011) and it is required to be submitted by all the India-resident companies/ LLPs / Others [(include SEBI registered Alternative Investment Funds (AIFs), Partnership Firms, Public Private Partnerships (PPP)] (hereafter referred as 'entities') which have received FDI and/ or made overseas investment in any of the previous year(s), including the current year.

The Reserve Bank participates in the Co-ordinated Direct Investment Survey (CDIS) and Co-ordinated Portfolio Investment Survey (CPIS) conducted by the International Monetary Fund (IMF). Here, consolidated information collected from FLA return related to foreign financial liabilities and assets position as at end-March of the previous financial year (FY) and end-March of the latest FY of these entities are reported. This information is also used in the compilation of India's Balance of Payments (BoP) and International Investment Position (IIP).

Confidentiality Clause

The entity-wise information collected under the FLA return are kept confidential and only consolidated aggregates are released by the Reserve Bank.

Eligible entities and requirements to submit the FLA return

Q1. Which entities are required to submit the FLA return?

Ans: The annual return on Foreign Liabilities and Assets (FLA) is required to be submitted by the following entities 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/and liabilities in their balance sheets;

- A Company within the meaning of section 1(4) of the Companies Act, 2013.
- A Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008
- Others [include SEBI registered Alternative Investment Funds (AIFs), Partnership Firms, Public Private Partnerships (PPP) etc.]

Q2. What is the due date of submission of the FLA return?

Ans: Entities who comply with the criterion mentioned in Q1 are mandatorily required to submit the FLA return under FEMA 1999 based on audited/ unaudited accounts of the entity by **July 15** every year.

Q3. What will be the consequences in case we do not file the said FLA Return by July 15, as our accounts are not yet audited, and we do not wish to file it with unaudited figures. Will there be any imposition of penalty or prosecution initiated against the entity by RBI or FEMA?

Ans: Non-filing of the return on or before due date (July 15 of every year) will be treated as a violation of FEMA and penalty clause may be invoked for violation of FEMA. For further details on penalty clause, please see the below links:

1. Notification No. FEMA. 395/2019-RB dated October 17, 2019.
2. A.P. (DIR Series) Circular No.16 dated September 30, 2022.

Q4. What information should be reported in FLA return, if balance sheet of the entity is not audited before the due date of submission?

Ans: Entities should mandatorily fill the FLA return within the due date. In case the entities do not have their audited balance sheet ready, they may fill the return with the provisional/unaudited numbers. Thereafter, once the audited numbers are ready, request for revision of the previously filed return to RBI needs to be raised. Once approved by RBI, you can revise the previously filed return with audited numbers and re-submit the same to RBI.

Q5. In case where account closing period of the entity is different from reference period (end-March), can we report the information as per account closing period?

Ans: No, the entity cannot report the information as per the account closing period, in case it is different from March closing. Information should be reported for the reference period only, i.e., previous March and latest March, based on the entity's internal assessment.

Q6. If the old/new entity fails to fill the FLA form before the due date, can the entity submit the FLA form?

Ans: Yes, entities can fill the FLA return even after due date, after taking approval from RBI. But in that case, penalty clause may be invoked on the entity for late submission.

Q7. If an old/new entity wants to fill the previous year FLA form, can they do so?

Ans: Yes, entities can fill the FLA return even after due date, after taking approval from RBI. But in that case, penalty clause may be invoked on the entity for late submission.

Q8. If an old/new entity wants to modify the previous version of FLA form, can they do so?

Ans: Yes, entities can modify the already submitted FLA return after taking the approval from RBI.

Q9. If an entity did not receive FDI or made overseas investment in any of the previous year(s) including the current year, do we need to submit the FLA return?

Ans: If the Indian entity does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, they need not submit the FLA return.

Q10. If an entity has only share application money, then is that entity supposed to submit the FLA return?

Ans: If an entity has received only share application money and does not have any foreign direct investment or overseas direct investment outstanding as on end-March of the latest FY, it is not required to fill the FLA return.

Q11. If an entity has not received any inward FDI / made overseas investment in the latest FY, do they need to submit the FLA return?

Ans: If an entity has not 'received any fresh FDI and/or ODI (overseas direct investment)' in the latest FY but has outstanding FDI and/or ODI as at end-March of that financial year, then it is required to submit their outstanding position as on March 31 in the FLA return every year by July 15.

Q12. Whether FLA return is required to be submitted by Registered Partnership Firms (Registered under Partnership Registration Act) or branches or trustees, who have made Overseas Direct Investment or it is mandatory only for Companies (Registered under Companies Act, 1956)?

Commercial Banking
Co-operative Banking
Non-banking
Financial Inclusion and Development
Financial Market
Foreign Exchange Management
Consumer Education and Protection
Issuer of Currency
Payment and Settlement System
Research
Others
Deposit Insurance and Credit Guarantee Corporation

Ans: If the Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the latest FY, then they are required to file the FLA return.

Q13. Is it required to submit Annual Performance Report for ODI if we have submitted FLA Return?

Ans: 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 entity. For more information on APR, please refer to the Master Direction – Reporting under Foreign Exchange Management Act, 1999 on RBI's website.

Q14. If non-resident shareholders of an entity have transferred their shares to the residents during the reporting period, then whether that entity is required to submit the FLA return?

Ans: If all non-resident shareholders of an entity have transferred their shares to the residents during the reporting period and the entity does not have any outstanding investment in respect of inward and outward FDI as on end-March of the latest FY, then the entity need not submit the FLA return.

Q15. If an entity issues the shares to non-resident on non-repatriable basis, whether that entity is required to submit the FLA return?

Ans: Shares issued by reporting entities to non-resident on non-repatriable basis should not be considered as foreign investment; therefore, entities which have issued the shares to non-resident only on non-repatriable basis, is not required to submit the FLA return.

Q16. Is it required to submit any financial statements like balance sheet or P&L accounts (audited/ unaudited) along with the FLA return?

Ans: No, balance sheet or profit and loss (P&L) accounts are not required to be submitted along with the FLA return.

Procedure for submission of the FLA return

Q17. How should entities report FLA return to RBI?

Ans: Entities can submit the FLA return through the online web-based portal Foreign Liabilities and Assets Information Reporting (FLAIR) system, having address <https://flair.rbi.org.in/fla/faces/pages/login.xhtml>.

- To access the URL <https://flair.rbi.org.in/fla/faces/pages/login.xhtml>, any of the browsers viz., Internet Explorer, Google chrome, Firefox etc. can be used, as all of these would support this application.
- The entity has to register on the portal by clicking **Registration for New Entity Users**.
- The entity has to fill the details in the FLA user registration form, upload the documents mentioned (Verification Letter and Authority Letter) and click submit to complete the registration.
- After successful registration, user id and default password will be sent to the authorized person's mail id. Using this user id and password, entities can login to the FLAIR portal and file the FLA Return.
- **Please note:** The excel-based format and email-based reporting system has been replaced by the web-based format for submission of annual FLA return from June 2019.

Q18. How would an acknowledgement be provided to us on submission of the form?

Ans: You will receive the system-generated acknowledgement of FLA data submitted by you at the time of final submission itself. No separate mail will be sent in this regard.

Q19. How can an AIF (Alternative Investment Fund) file the FLA Returns?

Ans: An AIF needs to register on the FLAIR portal. Since there is no provision for online filing of FLA return for AIF in the prescribed format as of now, they need to send a mail requesting for the latest format for filing of FLA Return for AIF after completing registration process on the portal. Thereafter FLA Team will send the excel based format for filling FLA return by AIF via mail to them. They need to fill the excel format and send us the same on email. Email based acknowledgement form will be sent to them by FLA Team on receiving the filled-in FLA form.

Q20. Where should we contact regarding any query/ clarification for submission of FLA Return?

Ans: Any query regarding filling of FLA return should be sent by email. We will revert back to you within one or two working days.

Q21. How can an entity get approval for revising the previous year returns?

Ans: Please follow the below given step to revise the FLA return for a previous year:

Visit <https://flair.rbi.org.in/fla/faces/pages/login.xhtml> → Login to FLAIR → Click on MENU tab on the left-hand side of the homepage → ONLINE FLA FORM → FLA ONLINE FORM → "Please click here to get the approval to fill revised FLA form for current year after due date /previous year" → select "Year" and click on  → Click "Request".

Your request status will be visible in the table below available on the screen. After sending request to RBI through FLA portal, entities need to wait for at least one working day for approval. Entities can check the status of their request in "Multiple Year Enable Screen" under menu on the left corner. Once approved by DSIM, RBI, the entity can revise FLA return for selected year.

Some Useful Definitions

Q22. What is Direct investment?

Ans: Direct investment is a category of international investment in which a resident entity in one economy [Direct Investor (DI)] acquires a lasting interest in an enterprise resident in another economy [Direct Investment Enterprise (DIE)]. It consists of two components, viz., Equity Capital and Other Capital.

Q23. What is meant by "Equity Capital" under Direct Investment?

Ans: It covers (1) foreign equity in branches and all shares (except non-participating preference shares) in subsidiaries and associates; (2) contributions such as the provision of machinery, land & building(s) by a direct investor to a DIE by equity participation; (3) acquisition of shares by a DIE in its direct investor company, termed as reverse investment (i.e. claims on DI).

Q24. What is "Other Capital" under Direct Investment?

Ans: The other capital component (receivables and payables, except equity and participating preference shares investment) of direct investment covers the outstanding liabilities or claims arising due to borrowing and lending of funds, investment in debt securities, trade credits, financial leasing, share application money etc., between direct investors and DIEs and between two DIEs that share the same direct Investor. Non-participating preference shares owned by the direct investor are treated as debt securities & should be included in 'other capital'.

Q25. What is meant by "Residence of Enterprises"?

Commercial Banking
Co-operative Banking
Non-banking
Financial Inclusion and Development
Financial Market
Foreign Exchange Management
Consumer Education and Protection
Issuer of Currency
Payment and Settlement System
Research
Others
Deposit Insurance and Credit Guarantee Corporation

Ans: An enterprise is said to have a centre of economic interest and to be a resident unit of a country (economic territory) when the enterprise is engaged in a significant amount of production of goods and/or services in that centre or when it owns land or buildings located in that centre. The enterprise must maintain at least one production establishment in the country and must plan to operate the establishment indefinitely or over a long period of time.

Q26. What are definitions of “Foreign Subsidiary”, “Foreign Associate” and “Special Purpose Vehicle”

Ans:

Foreign Subsidiary: An Indian entity is called as a Foreign Subsidiary if a non-resident investor owns more than 50% of the voting power/equity capital OR where a non-resident investor and its subsidiary(s) combined own more than 50% of the voting power/equity capital of an Indian enterprise.

Foreign Associate: An Indian entity is called as Foreign Associate if non-resident investor owns at least 10% and no more than 50% of the voting power/equity capital OR where non-resident investor and its subsidiary(s) combined own at least 10% but no more than 50% of the voting power/equity capital of an Indian enterprise.

Special Purpose Vehicle: A special purpose Vehicle (SPV) is a legal entity (usually a limited company of some type or, sometimes, a limited partnership) created to fulfil narrow, specific or temporary objectives. SPV have little or no employment, or operations, or physical presence in the jurisdiction in which they are created by their parent enterprises, which are typically located in other jurisdictions (economies). They are often used as devices to raise capital or to hold assets and liabilities and usually do not undertake significant production.

Q27. What are participating and non-participating preference shares?

Ans: 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 any of the above said rights.

Q28. What is Foreign Direct Investment (FDI) in India?

Ans: If the Indian entity has issued the shares to non-resident entities under the FDI scheme in India, then it is a FDI and should be reported under the Foreign Direct Investment in India (Liabilities) of the return.

Q29. What valuation guidelines are used while reporting foreign equity investment for unlisted companies?

Ans: Under FLA return, calculation of market value of equity capital for unlisted companies is done using the Own Funds at Book Value (OFVB) method, in accordance with IMF's guidelines under the compilation of CDIS data for a country. It is calculated as follows:

Market value of equity capital held by Non- resident at OFBV for current year/previous year

= (Net worth of the company for current year/previous year) * (% non-resident equity holding for current year/previous year)

where, Net worth of the company

= (Paid up Equity & Participating Preference share capital of company + Reserves & Surplus – Accumulated losses)

Q30. What valuation guidelines are used while reporting foreign equity investment for listed companies?

Ans: If the Indian reporting entity is listed, then their closing share price as on reference period, i.e., end-March of previous and current year is used for valuation of non-resident equity investment.

Q31. What is the definition of related party?

Ans: 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.

Q32. Whether, any assets or liabilities for Indian party (i.e. domestic assets and liabilities) are to be included in the FLA return?

Ans: Any domestic liabilities or assets (even if it is in foreign currency) should not be reported in the FLA return.

Q33. What is Direct Investment abroad by Indian companies?

Ans: If the reporting Indian company invests in equity and/or participating preference shares of overseas company, under the Overseas Direct Investment Scheme in India, i.e. investment in Joint venture or wholly owned subsidiaries abroad, then it is considered as direct investment abroad of the Indian company.

NOTE: Registration guidelines and section-wise FAQs for further guidance to be file the FLA return are available in the FAQs section of the FLAIR portal (<https://flair.rbi.org.in/fla/faces/pages/login.xhtml>).