

Reporting of Foreign Investment under FEMA, 1999

An Indian Entity (Company or LLP) receiving foreign investment has to report the same to Reserve Bank of India (RBI) through Authorised Dealer (AD) Category-I Banks. Reporting of Foreign Investment under FEMA, 1999 is governed Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations (“FEMA FDI Regulations, 2017”) dated November 07, 2017 and Part-IV of Master Direction No-18/2015-16 dated 1st January 2016, as amended from time to time. Non-compliance with the reporting of foreign investment provisions shall be reckoned as contraventions under FEMA, 1999 and could attract penal provisions.

In terms of Regulation-13.1 of FEMA FDI Regulations, 2017, the reporting requirements of foreign investment are mentioned as under:

S. No	Type of Return	Triggering Event	Due date
1.	ARF	Receipt of funds	Within 30 days from the date of receipt of funds
2.	FC-GPR	Allotment of capital instruments	Within 30 days from the date of allotment of capital instruments
3.	FC-TRS	Transfer of shares	Within 60 days of transfer of capital instruments or receipt/ remittance of funds, whichever is earlier
4.	ESOP	Issue of ESOPs and sweat equity shares	Within 30 days from the date of issue of employees’ stock option
5.	DRR	Issue of ADR/GDR	Within 30 days of close of the issue
6.	LLP-I	Receipt of amount towards capital contribution and acquisition of profit shares by LLP	Within 30 days from the date of receipt of the amount of consideration
7.	LLP-II	Disinvestment / transfer of capital contribution or profit share between resident and non-resident or vice-versa by LLP	Within 60 days from the date of receipt of the amount of consideration
8.	CN	Issue or transfer of Convertible Notes	Within 30 days of the issue or transfer of the CN
9.	DI	Downstream Investment by Indian Investor	Within 30 days from the date of investment
10.	InVi	Issue of units to non-residents by investment vehicle	Within 30 days from the date issue of units

From the time of inception of the Act, till 2016, reporting was made in physical form. Later, with a view to promote the ease of reporting of transactions related to Foreign Direct Investment (FDI), RBI under the aegis of the e-Biz project of the Government of India has enabled online filing of the returns. On 1st February 2016, RBI vide AP (DIR) Series Circular No. 40 (Ref Notification No. RBI/2015-16/303) introduced the concept of online filing/ reporting through e-Biz platform (<http://www.ebiz.gov.in>).

With effect from 8th February 2016, reporting of Advance Remittance Form (ARF), Foreign Currency-Gross Provisional Return (FC-GPR) and Foreign Currency-Transfer of Shares (FC-TRS) has been made online through e-Biz portal and physical filing of the aforesaid forms has been discontinued.

With the objective of integrating the extant reporting structures of various types of foreign investment in India, RBI vide A.P (DIR) Circular No. 30 dated 7th June 2018 (Ref Notification No. RBI/2017-18/194) introduced Single Master Form (SMF), which shall be filed online. This form provides facility for reporting of total foreign investment in an Indian entity as per FEMA FDI Regulations, 2017. SMF is a master form containing 9 reports. They are FC-GPR, FC-TRS, LLP-I, LLP-II, CN, ESOP, DRR, DI and InVi.

In order to implement the aforesaid announcement, RBI introduced FIRMS (Foreign Investment Reporting and Management System) application in two phases. The interface is available on RBI website (<https://firms.rbi.org.in>). In the first phase, Entity Master Form (EMF) was made available online from 28th June 2018 to 12th July 2018 which was later extended to 31st July 2018. In the second phase, RBI vide announcement dated 1st September 2018, with immediate effect, has made available SMF along with User Manual and FAQs on FIRMS.

In the first phase, the first module viz., EMF has been made available online by RBI to the Indian entities to input the data on total foreign investment in a specified format. For providing details in EMF, entities need to register by mentioning the name, mobile number and email ID of Authorised Person along with Letter of Authorisation as per the format specified by RBI.

In the second phase, with effect from 1st September 2018, the second module containing 9 forms has been made available. With the implementation of SMF, the reporting of FDI, which was a two-step procedure viz., ARF and FC-GPR has been merged into a single revised FC-GPR.

Meanwhile, Government of India vide G.S.R. 823(E) dated 30th August 2018 and RBI vide FEMA FDI (Second Amendment) Regulations, 2018 dated 30th August 2018 notified that reporting of ARF, as per regulation-13.1 (1) of FEMA Regulations, 2017, has been deleted with effect from 1st September 2018. It was also notified that in case of indirect foreign investment (downstream investment), Indian entity making downstream investment shall file Form DI within 30 days from the date of allotment of capital instruments and investment vehicle which has issued units to a person resident outside India shall file Form InVi within 30 days from the date issue of units. The SMF also introduced the aforesaid forms for reporting of foreign investment on FIRMS portal.

Furthermore, RBI vide letter FE.CO.FID/282/10.02.035/2018-19 dated 31st August 2018 addressed to AD Category-I Banks stipulated that forms pending on eBiz Portal need to be cleared off before 20th September 2018 (later extended to 30th September 2018) by taking necessary steps. It was also informed that with effect from 1st September 2018, eBiz Portal would no longer be available for filing fresh forms and all fresh foreign investment reporting shall be made on FIRMS Portal only.

Finally, with effect from 1st September 2018, RBI introduced 5 reports viz., FC-GPR, FC-TRS, LLP-I, LLP-II and ESOP. Later, with effect from 23rd October 2018, DI and CN are made available for reporting. Form InVi is yet to be made available.

Below are few practical challenges faced on FIRMS portal. Over the period of time some of them were addressed/clarified vide FAQs by RBI.

1. Business User Registration:

a. Entity Business User Registration:

One should note that BU Registration is in addition to the Entity Master registration related user. The Portal is silent about the requirement of self-attested PAN Card copy of authorised person, but bankers are considering it as a mandatory document. In addition, bank account number of applicant is to be mentioned mandatorily.

Unlike ebiz portal where single registration is enough for reporting of forms with multiple AD Banks, under FIRMS portal, the entity/ each nature of filer need to obtain multiple registrations qua AD Banker, and that too based on IFSC code.

At the time of BU registration, CIN of the entity for which the reporting is being made and may change the shareholding pattern needs to be selected. For example, in case of reporting of Form FC-TRS and Form DI, the filer need to select CIN of company in which shareholding pattern is undergoing change.

No changes to be done in the formats prescribed by RBI, unless specifically suggested by AD Bank, failing which they shall be considered as invalid.

b. Individual Business User Registration:

Initially, there was no specified format of letter of authorisation for individuals. However, based on the personal discussions, RBI Officials suggested to proceed with available format of corporate entities by striking off the details not applicable to individuals. However, AD Banks have been rejecting the BU registration forms saying letter of authorization is not as per format. On 23rd October, 2018 RBI has released revised User Manual and FIRMS Portal FAQs through which letter of authorisation format was specified for individuals. FAQ-14 deals with individual BU registration.

2. Delay in getting BU credentials:

RBI has clearly specified to contact AD Bank with respect to BU registration and filing of Forms in SMF. However, AD Banks are not responding on timely basis and addressing the queries of applicants in an appropriate manner. This is because they are new to the portal and have been very conservative in their actions/ approaches thereby causing delay in allotting BU credentials. BU registrations made for reporting of Form FC-TRS and Form DI were getting more impacted as AD Banks are not guiding the applicants in correct direction.

3. Pre and post shareholding pattern:

Pre-issue shareholding pattern gets auto-populated from Entity Master Form (EMF). In the initial stages of launch of FIRMS Portal, several technical issues have been emerged with respect to pre and post shareholding pattern wherein auto-populated data from EMF was erroneous. In addition, in case of any errors in details provided or omitted in EMF, pre and post shareholding pattern reflected in FIRMS Portal is not accurate, it may lead to rejection of forms filed.

Relevant FAQ for updating Entity Master is FAQ-9.

4. Incomplete scrutiny of Forms by AD Banks:

As per FIRMS User Manual, it is understood that AD Banks have been given 5 working days, only with three options, either to approve or reject or forward the form to RBI as the case may be and in case of any special issues mentioning the reason thereof. However, many of the queries raised by them are not pertinent, while rejecting the forms. Moreover, they are raising queries for a single form multiple times thereby leading to unnecessary time lag.

It was experienced that though RBI has given specific formats for Certifications and Declarations, sometimes AD Banks were asking in format in which they are comfortable. E.g. CS Certificate for Form FC-GPR.

AD Banks are not scrutinising the documents/information completely provided by the applicant. Sometimes they are rejecting the forms in hurry and without complete scrutiny.

5. Subsequent Development in FIRMS Portal:

- Initially the date of application was not getting updated. Date of initial saving the form in draft was being shown as date of application previously. However now it is rectified, and date of application is being getting auto-updated.
- There is no option of **“Add Fields”** for entering the details of multiple remittances such as date of remittance, amount and FIRC number. For example, in case of FC-GPR, if single allotment is done for multiple inward remittances, the user can provide details of only one remittance. In an inevitable circumstance, only date of one remittance can be mentioned in ‘date of remittance’ field and may provide sum of all remittances in ‘amount received’ field and mentioning all FIRC numbers in ‘FIRC Number’ field. This is not yet rectified. It may prove to be a challenge if more than five remittances are clubbed for a single allotment.

6. Additional fields for attaching the files in case of clarifications:

FIRMS Portal has provided separate fields for attaching the mandatorily required documents to the form, i.e., ‘FIRC Doc’, ‘KYC Doc’, ‘Valuation Report Doc’ and ‘Certificate from Practicing Company Secretary (CS)/ Other Attachment’. In case the applicant wants to submit any additional clarificatory documents, he should attach the same along with CS Certificate as no separate field is available. With 1 MB restriction to each field, it would be difficult to attach documents as per wish.

In addition, FDI Declaration, delay letter, Board resolution extracts and such other documents also need to be attached under this field only, with restriction on overall file size mentioned above. As some of the aforesaid documents are mandatory for some forms, it would be helpful in case separate fields are given for such mandatory documents in such forms or **“Add attachment”** option.

7. Status of Forms:

FIRMS Portal has been designed in such a way that on the dashboard summary of forms approved, rejected and pending approval can be viewed. In case form has been forwarded to RBI for approval or any clarifications, status of form still shows as pending approval. It does not specify whether the same is pending at AD Bank or RBI. It would be beneficial if the status of form is displayed as *pending approval at AD Bank* or *pending approval at RBI* or in similar mode, which may help the applicant for proceeding further.