

Detailed Overview of Foreign Liabilities and Asset (FLA) Return

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OVERVIEW

FLA (Foreign Liabilities and Asset) return is a return filed with RBI on annual basis depending on the applicability of certain provisions of Foreign Exchange Management Act, 1999 (FEMA) on below entities:

- (a) Any entity which has received Foreign Direct Investment (FDI) whether in terms of shares and/or External Commercial Borrowing (ECB); and/ or
- (b) Any entity which has invested in any foreign company either through a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) i.e. known as Overseas Direct Investment (ODI).

In other words, if any entity holds foreign assets or/and liabilities in its balance sheet, it shall file Foreign Liabilities and Asset (FLA) Return with Reserve Bank of India (RBI).

Further even if an eligible entity has not received any fresh FDI and/or made ODI in the latest year but the company has outstanding FDI and/or ODI, then that entity would be still required to file FLA.

ELIGIBLE ENTITIES

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.

Entities those are not required to file FLA annual return

An Indian company without having any outstanding investment in respect of inward and outward FDI.

If an Indian company has received only share application money and does not have any FDI or ODI outstanding as on end March of the reporting year i.e. allotment has not been made till the end of financial year.

Companies which have issued the shares to non-resident only on non-repatriable basis

In case non-resident shareholders of an eligible entity has transferred their shares to the residents during the reporting period and the eligible entity does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, then the company need not submit the FLA Return.

REPORTING – DUE DATE AND REQUIREMENTS

- An eligible company shall file its FLA return on or before **15th July** of every year in respect of previous financial year.
- If the company does not have audited account before **15th July**, they need to file FLA annual return based on unaudited accounts.

- Once the accounts get 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 of September.
- The reporting company need to take approval from RBI in case of revision of submitted FLA form.
- If account closing period of the company is different from the reference period, then information should be reported for all the reference period, i.e. Previous (April-March period) and Latest (April-March period).
- Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the reporting year, then they are required to send a request mail to get a dummy CIN number which will enable them to file the Excel based FLA Return. If any entity has already got the dummy CIN number from the previous survey, they should use the same CIN number in the current survey also.

DEFAULT IN FILING OF FLA RETURN

Non-filing of the return before due date will be treated as a violation of FEMA and penalty will be levied on defaulters which shall be three (3) times the sum involved in contravention or Rs. 2,00,000 and if the contravention is continuing every day, Rs. 5,000 for every day for defaulting period.

COMPOUNDING FOR DELAY IN FILING

The powers to compound the contraventions have been delegated to all Regional Offices of RBI (except Kochi and Panaji) without any limit on the amount of contravention.

PROCEDURE FOR SUBMISSION OF THE FLA RETURN AND ACKNOWLEDGEMENT THEREFORE

The format and email-based reporting system has been replaced by the web-based formats for submission of annual FLA return from June 2019. In this web-based reporting system of FLA, companies first need to create business-user through "**Entity-User Registration form**". The format is available on <https://flair.rbi.org.in>.

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Creation of Business user: Every company first must create a business user on the FLAIR portal <https://flair.rbi.org.in> and submit the necessary information/documents for creating the business user.

Prepare Online Return, Verify and Submit: Once the companies create a business user successfully on FLAIR portal and get the password from RBI on registered email ID, Company will prepare the FLA return online, download and re-check and submit the return online. The FLA return is divided into 5 Sections.

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Acknowledgment: after submission of online return on FLAIR portal, an acknowledgement will be generated in the name of the entity "*The annual return on Foreign Liabilities and Assets submitted by your company for the year has been processed successfully*"

CREATION OF BUSINESS USER

Go to Uniform Resource Locator (URL) of the application, i.e. <https://flair.rbi.org.in>. Then click on "Registration Form for New Entity User" and fill details in USER Registration Form. Keep ready with the following information/documents before creating FLA User registration Form:

a. Entity Details:

- i. CIN/Registration Number of the Company.
- ii. Company Name.
- iii. PAN Number of the Company
- iv. Complete registered address alongwith PIN number.
- v. Mobile Number and Email ID.
- vi. Confirm whether CIN/registration number of the company has changed during the latest financial year ending March.
- vii. Confirm whether name of the company has changed the latest financial year ending March, if yes, details of pervious name and date of change to be filled.

b. Authorized Persons Details

- i. Name of the authorized person.
- ii. PAN number of the authorized person.
- iii. Mobile number and email id of the authorized person.

c. Verification letter and authority letter alongwith the PAN card of the entity and authorized person.

Note:

The password and OTP (every time, whenever the entity logs-in) will be sent to this email id, therefore it should be correct.

If case there is any change in email id and name of the entity during in the reporting period, the entity first need to deactivate the current account by sending the request to RBI on email id surveyfla@rbi.org.in and then create a new account by following the above said steps for filing of FLA return for the current year. The RBI cannot make any changes from their end.

If the CIN/registration number is same as that used in the old account, then previously filled data will be updated on the new account.

PREPARE FLA RETURN ONLINE, RE-CHECK AND SUBMIT WITH RBI

For preparing FLA return, the RBI has divided the FLA return into 5 Sections:

SECTION I - IDENTIFICATION PARTICULARS

- **Prefilled details:** The name of the Company, PAN Number, CIN Number and Email (Head of institution) get automatically filled, once entity user created successfully.
- **Contact Details:** fill the Name of the Contact Person, Telephone no. (with extension), mobile number, email ID of the contact person, designation, web site, account closing date etc.
- **NIC Code:** 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,
https://udyogaadhaar.gov.in/UA/Document/nic_2008_17apro9.pdf.

If a company has more than one activity during the year, then company can select that activity, from which, they have earned major revenue.

- Confirm whether company is Listed and Assets Management Company, is there any Technical Foreign Collaboration, has any business activity etc during the latest financial year.
- **Identification of the reporting Company (in terms of inward FDI):** If an entity has only Outward Investment and no inward FDI, then Option '**Others**' can be selected.

SECTION II - FINANCIAL DETAILS

- **Total Paid-Up Capital of Indian Reporting Company:** In these fields, required to provide the total paid up capital of the company.
- Non-Participating share capital is treated as debt investment therefore the Non-Resident Equity and Participating Preference Shares Capital holding (%) is being calculated on the basis of Non-Resident Equity and participating Preference Shares Capital holding.
- Convertible Preference Share should be taken on Fully diluted preference share.
- Premium on issue of Equity Share Capital is a part of Reserve, which should be reported under the head of Reserves and Surplus.
- **Profit and Loss Account (from Profit/Loss Account):** in these fields, required to provide the details of Profit / Loss before tax, Profit / Loss after tax, Dividend both Interim and Final Dividend, Tax on Dividend if any relating from the statement of accounts made during the period of April - March.
- **Reserves & Surplus (from Balance Sheet):** In these fields, required to provide the information relating to all reserves in the sub head of Reserves and Surplus and accumulated profit/loss separately to be mentioned in sub head of Profit/ Loss account balance.
- **Sales and Purchase made during the financial year:** In these fields, required to provide the information relating to all purchases including capital (from balance sheet) and revenue of goods and services/sales made domestically as well as foreign during the period of April - March.
The detailed information to be furnished in Sales and Purchase are as follows:
 - All expenses (excluding depreciation) / sales shown in profit and loss account to be taken as total purchases / total sale.
 - Both goods and services are to be included.
 - All foreign purchases/ sales i.e. imports and exports, should be captured from P& L Account.
- **Employee Information:** Number of employees to be mentioned in these filed on payroll only of the Indian reporting company (in actual).

SECTION III - FOREIGN LIABILITIES (INVESTMENTS MADE IN INDIA)

- **Investment in India under Foreign Direct Investment (FDI) scheme (10% or more equity participation):** In these fields, required to provide the following information:
 - number of foreign direct investors as on end-march of reporting year;
 - Month and Year of receiving FDI (Settlement date/allotment date) first time irrespective of number of investors reported;

- Name of the Non-Resident Company/Individual;
- Country of Investor;
- % Percentage of Equity and Participating Preference share capital holding
- Liabilities to Direct Investor: auto calculated ie
Networth X % of Equity and Participating Preference share capital holding of Foreign Investor
- Other Capital (Liabilities to Direct Investor): In these filed details to be given of:
 - Non-participating preference shares;
 - Fully/Partially/Non-convertible debentures and
 - share application money is received from the existing non-resident shareholder.
in the % of equity & participating preference share held by foreign investor at nominal value.

Non-participating preference shares and Fully/Partially/Non-convertible debentures are treated as debt securities.
- Disinvestments in India during the year
Separate detailed to be filed for each investor having more than 10% equity participation in the Indian Company by click in add button.
- **Investment in India under Foreign Direct Investment (FDI) scheme (less than 10% equity holding):** In these fields, required to provide the following information:
 - No. of Countries (for each country having aggregate foreign Equity Holding less than 10%) during the year;
 - Country Non-Resident Investor;
 - Percentage of Equity and Participating Preference share capital holding
 - Liabilities to Direct Investor: auto calculated ie
Networth X % of Equity and Participating Preference share capital holding of Foreign Investor.
 - Other Capital (Liabilities to Direct Investor): In these filed details to be given of:
 - Non-participating preference shares;
 - Fully/Partially/Non-convertible debentures and
 - share application money is received from the existing non-resident shareholder.
in the % of equity & participating preference share held by foreign investor at nominal value.
 - Disinvestments in India during the year
- **Portfolio investment in India:**
 - % of Equity and Participating Preference share capital holding to be given if any.
 - Equity Securities (at market values): the outstanding equity investments (secondary / stock market investment) by non-resident investors, other than those made under Foreign Direct Investment Scheme in India.
 - Debt Securities: Following items are included in Debt Securities:
 - Money Market Instruments and Bonds & Other instruments are invested by non-resident investors
 - Non-participating preference shares and debentures are held by foreign investor who is not holding equity share, then the same should be reported at Bonds & other instruments at nominal value.
 - Disinvestments in India during the year: any disinvestments made by non-resident direct investor of the reporting Indian company during the year should be reported in this filed.
- **Other investment (outstanding liabilities with foreign unrelated parties):**
 - All financial outstanding liabilities (Trade Credit, Loans, Currency & Deposits, and other receivable & payable accounts) with foreign unrelated Parties should be reported here.
 - Any domestic liabilities (even if it is in foreign currency) should not be reported in the FLA return.

- Further, if the share application money is received from foreign investor who does not hold equity shares, then outstanding share application money should be disclosed under the Other Investment in Other receivable and payable accounts.
- EEFC account with Bank is not creating any external Assets and Liabilities. Therefore, it will not come under this field.
- Any domestic liabilities or assets (even if it is in foreign currency) should not be reported.

SECTION IV - FOREIGN ASSETS

Companies are required to furnish the information on outstanding external liabilities and assets as on end-March of previous and latest year.

In case if the accounting period of overseas subsidiaries/ joint venture of Indian reporting company is different from the reference period, then the information for end-March should be given on internal assessment basis.

- **Overseas Direct Investment (ODI) 10% of more equity holding:** In these fields, required to provide the following information:
 - Number of Direct Investment Enterprises (DIE) abroad as on end-march of reporting year.
 - Month and Year of ODI made first time by the Indian reporting company.
 - Name and Country of the Investor.
 - % of Equity and Participating Preference share capital holding.
 - Select the Reported Foreign Currency.
 - Total equity of DIE (paid up capital) and Equity of DIE held by Indian Reporting Company at face value.
 - Reserve and surplus and separately mention the profit and loss account balance.
 - Exchange rate in Indian Rupees.
 - Totals Sales (Exports) and Total Purchase (Imports): The detail information to be furnished:
 - All expenses/sales of DIE abroad shown in profit and loss account to be taken as total purchases/total sale.
 - Both goods and services of DIE abroad are to be included.
 - All foreign purchases/ sales of DIE abroad i.e. imports and exports, should be captured from P& L Account
 - Number of employees on payroll (actual)
 - Claim on Direct Investment Enterprises: auto calculated i.e. Network X % of Equity and Participating Preference share capital holding by Indian reporting company.
 - Other Capital (Claim on Direct Investment Enterprises): includes all other liabilities and claims at nominal value ie trade credit, loan, debenture, non participating capital, other accounts receivables and payables etc.
 - Disinvestments in abroad during the year.
- **Direct investment abroad (less than 10% equity holding):** In these fields, required to provide the following information:
 - No. of Countries where the reporting Indian Company holds less than 10% equity shares in each under the ODI.
 - Country of Investor.
 - % of Equity and Participating Preference share capital holding
 - Liabilities to Direct Investor: auto calculated ie Network X % of Equity and Participating Preference share capital holding of Foreign Investor.

- Claim on Direct Investment Enterprises: auto calculated i.e. Networth X % of Equity and Participating Preference share capital holding by Indian reporting company.
- Other Capital (Claim on Direct Investment Enterprises): includes all other liabilities and claims at nominal value ie trade credit, loan, debenture, non participating capital, other accounts receivables and payables etc.
- Disinvestments in abroad during the year.
 - **Debt securities and Portfolio Investment Abroad:** Money Market Instruments and Bonds & Other instruments are invested by reporting company are included in the Debt Securities under Portfolio Investment Abroad.
 - **Other investment (outstanding claims on foreign unrelated parties):** All financial outstanding assets ie Trade Credit, Loans, Currency & Deposits, and other receivable & payable accounts) with foreign unrelated Parties should be reported here. Any domestic assets should not be reported here.

SECTION V - VARIATION REPORT: It is auto generated variation report, the company cannot amend/edit any information in this report. Basically, it is a variation report of the information submitted in previous year with current year by an Indian Reporting Company.

RE-CHECK AND SUBMIT THE RETURN WITH RBI

The Company can download the draft return and re-check the return before submitting with RBI.

ACKNOWLEDGEMENT:

The reporting Indian Company will receive the system-generated acknowledgement of FLA data submitted by company at the time of final submission itself. No separate mail will be sent by RBI in this regard.

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(Source: Taxmann.com)