

**Reserve Bank of India**

**Department of Statistics and Information Management**

**Central Office Mumbai**

**Frequently Asked questions (FAQs) 1 for Annual Return on** **Foreign Liabilities and Assets (FLA): General Instructions and Definitions**

The Reserve Bank’s Co-ordinated Direct Investment Survey (CDIS) and Co-ordinated Portfolio Investment Survey(CPIS) are conducted under the auspices of the International Monetary Fund (IMF), wherein information is collected from Indian resident companies/ LLPs / Others [(include SEBI registered Alternative Investment Funds (AIFs), Partnership Firms, Public Private Partnerships (PPP)] on their foreign financial liabilities and assets position as at end-March of the previous financial year (FY) and end-March of the latest FY. This information is also used in the compilation of India’s Balance of Payments (BoP) and International Investment Position (IIP).

**Confidentiality Clause:** The company-wise information so provided will be kept confidential and only consolidated aggregates will be released by the Reserve Bank.

**Q 1**. 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?

**Ans**: Annual return on Foreign Liabilities and Assets has been notified under FEMA 1999 and it is required to be submitted by all the India-resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including current year. 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 (A.P. (DIR Series) Circular No. 29, dated February 02, 2017)

**Q 2**. What information should be reported in FLA return, if balance sheet of the company is not audited before the due date of submission?

**Ans**: Company should fill the FLA returns within the due date with the provisional/unaudited numbers. Thereafter, once the audited numbers are ready, request for approval to revise the previously filed return to RBI. Once you receive the approval, you can revise the previously filed return with audited numbers and re-submit the same to RBI via FLAIR portal.

**Q 3**. In case where account closing period of the company is different from reference period (end-March), can we report the information as per account closing period?

**Ans**: No, the company 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 company’s internal assessment.

**Q 4**. If the old/new company fails to file the FLA form before the due date; can the company submit the FLA form?

**Ans**: Yes, company can file the FLA return after due date by taking approval from RBI.

**Q 5.** If an old/new company wants to file the previous year FLA form; can the company file the previous year FLA form?

**Ans**: Yes, company can file the previous year FLA form (through online FLA portal only) by taking approval from RBI. For taking approval, they need to send mail to [surveyfla@rbi.org.in](mailto:surveyfla@rbi.org.in).

**Q 6.** If an old/new company wants to delete the previous version of FLA form or modify; can the company delete/modify the FLA return?

**Ans:** Yes, company can delete/modify the FLA return after taking the approval from RBI.

**General Definitions**

**Q 7**. What is meant by “Residence of Enterprises”?

**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.

**Q 8**. 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.

**Q 9**. 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).

**Q 10**. 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’.

Identification of the Indian company (Item 9, Section-I).

**Q 11**. What are definitions of “Foreign Subsidiary”, “Foreign Associate” and “Special Purpose Vehicle”

**Ans**:

Foreign Subsidiary:

An Indian company 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 company 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.

**Eligible Companies / Entities to Submit the FLA Return**

**Q 12**. 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.]

**Q 13**. If a company / LLP / Others 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 an Indian company / LLP / Others does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, the company need not submit the FLA Return.

**Q 14**. Whether a company needs to submit the FLA Return, if it has received only share application money?

**Ans**: If a company has received only share application money and does not have any outstanding foreign direct investment or overseas direct investment as on end-March of the reporting year, then the company is not required to fill-up the FLA return.

**Q 15**. If the company has not received any inward FDI / made overseas investment in the latest year, do they need to submit the FLA Return?

**Ans**: If the company has not received any fresh FDI and/or overseas direct investment (ODI) in the latest year but has outstanding FDI or/and ODI, it is required to submit the FLA return each year by July 15. It needs to submit FLA return till it continues to have any outstanding FDI or/and ODI in its balance sheet.

**Q 16**. 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 loss accounts need to be submitted. Only annual return on FLA through online web-based reporting portal needs to be submitted before due date.

**Q 17**. 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)?

**Ans**: Yes, 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.

**Q 18**. If non-resident shareholders of a company have transferred their shares to the residents during the reporting period, then whether that company is required to submit the FLA Return?

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

**Q 19**. If company had issued the shares to non-resident on non-repatriable basis, whether that company is required to submit the FLA Return?

**Ans**: Shares issued by reporting company to non-resident on non-repatriable basis is not considered as foreign investment; therefore, such companies are not required to submit the FLA Return.

**Q 20. How does the company report data and submit the FLA return to the RBI?**

**Ans: All the steps, one by one for online web-based reporting of annual return on FLA are provided in user manuals and FAQ 2 for FLA.**

A company should read

* User manual on “FLA User Registration Form”
* User manual on “Filling Online FLA Form”
* FAQ - 2 for FLA

for all sections for step by step procedure for filling the FLA return.

**System Requirement for the FLA Return**

**Q 21**. What is the system requirement at company’s side for filling the FLA Return through web-based online portal?

**Ans**: Entities can submit the online Annual Return on FLA through the online web-based portal having address <https://flair.rbi.org.in>. To access the URL <https://flair.rbi.org.in> any of the browsers viz; Internet Explorer, Google chrome, Firefox etc. can be used, as all of these would support this application.

**Q 22**. Where can company / LLP / Others get the format of Annual Return on Foreign Liabilities and Assets (FLA Return)?

**Ans**: The format and email-based reporting system has been replaced by the web-based format for submission of annual FLA return from June 2019 (refer to circular Annual Reporting of Foreign Liabilities and Assets (FLA) –Move to FLAIR web-portal dated June 28, 2019 available on RBI website https://rbi.org.in ).

**Q 23**. 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.

**Q 24**. 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.

**Q 25**. How the Net Worth of the company is calculated?

**Ans**: Formula for Net Worth is = Total Equity & Participating Preference Share capital + Reserves and Surplus (this field is automated in FLA form section-II, companies are not required to compute it separately).

**Q 26**. Whether equity participation includes equity shares as well as compulsorily convertible debentures (CCD)?

**Ans**: Compulsorily convertible debentures (CCD) issued by the company should not be included in the paid-up capital while furnishing the information in Paid-up capital (in Section II 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 1.b FDI or 2.b DI (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 3. Portfolio Investment in India (in Section-III). Similar treatment should be considered while reporting the compulsory convertible preference shares also.

**Q 27**. What is Foreign Direct Investment (FDI) in India?

**Ans:** If the Indian company has issued the shares to non-resident entities under the FDI scheme in India, then it should be reported under the Foreign Direct Investment in India (Liabilities), Section III of the return. If the non-resident entity holds the 10 per cent or more equity plus participating preference shares together, in the reporting Indian company, then it should be reported under 1.b FDI of section III. However, if non-resident entity holds less than 10 per cent of the equity plus participating preference shares capital of reporting Indian company, then it should be reported under 2.b DI of section III. In both the cases, the non-resident entity is called as the Direct Investor (DI) while the reporting Indian company is called as Direct Investment Enterprise (DIE).

If the reporting Indian company also holds the equity shares in its DI company abroad and if its shareholding is less than 10 per cent of equity capital of DI company, then it is called as reverse investment and same should be reported under item 1.2 (claims on direct investor) of the respective blocks, i.e. 1.b FDI and 2.b DI of section III.

**Q 28**. What valuation guidelines are used while reporting foreign equity investment for unlisted companies?

**Ans**: This field will be automatically calculated in online web-based reporting (item 1.1, Section III). Companies are not required to compute it separately. However, for your information, calculation of market value of equity capital for unlisted companies (using the OFBV method) is 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)

**Q 29**. What valuation guidelines are used while reporting foreign equity investment for listed companies?

**Ans**: This field will be automatically calculated in online web-based reporting (item 1.1, Section III). Companies are not required to compute it separately. However, for your information, If the Indian reporting company is listed then closing share price as on reference period, i.e. end-March of previous and current year should be used for valuation of non-resident equity investment.

**Q 30**. What constitute the ‘Other Capital’ component of FDI?

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

(a) Other capital, item 2.1 & 2.2 of Section III (1.b FDI) 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 per cent equity.

(b) Other capital, item 2.1 & 2.2 of Section III (2.b Direct Investment) 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.).

**Q 31**. 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.

**Q 32**. In the FLA Return, whether FDI should be reported based on the country of immediate investor or country of ultimate holding company? Where should we report the receivable/ payables with non-resident ultimate holding company?

**Ans**: Above situation is better explained with following case:

Example: A company incorporated in Mauritius has invested into Indian company. The parent company of Mauritian company is incorporated in USA. So, whether claims and liabilities of Indian company with parent company incorporated in USA also needs to be disclosed in the FLA Return and if yes, where?

Solution: 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 2.b DI under Section III.

In respect of the above example, claims and liabilities of Indian company with the parent USA Company will be reported at ‘Other capital’ component of 2.b DI under Section III.

**Q 33**. 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.

**Q 34**. 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 should be reported under Section IV of the FLA return. If the Indian company holds 10 per cent or more equity plus participating preference shares together, in overseas company, then it should be reported under 1.b ODI (item 1.1, claims on direct investment enterprise). However, if the Indian company holds less than 10 per cent of the equity plus participating preference shares capital of overseas company, then it should be reported under 2.b DI (item 1.1, claims on direct investment enterprise). In both the cases, the Indian company is called as the Direct Investor (DI) while the overseas company is called as Direct Investment Enterprise (DIE).

**Q 35**. If the overseas subsidiaries/ joint venture company’s accounting period is different from the reference/reporting period (i.e. April-March) in the Return, then what information should we furnished in Section IV?

**Ans**: 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.

**Q 36**. What constitute the ‘Other Capital’ component of ODI?

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

(a) Other capital, item 2.1 & 2.2 of 1.b ODI section IV, 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 1.b ODI.

(b) Other capital, item 2.1 & 2.2 of 2.b DI section IV, 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.).