

UNIFORMITY IN IMPOSITION OF LATE SUBMISSION FEE IN REPORTING UNDER FEMA

Reserve Bank of India (“**RBI**”) has issued circular A.P. (DIR Series) Circular No. 16 dated 30th September, 2022¹ (“**Circular**”) with the aim of bringing uniformity in imposition of Late Submission Fee against delayed reporting’s under Foreign Exchange Management Act, 1999 (“**FEMA**”), Directions, Regulations, Circulars, Rules issued from time to time.

Before the said circular, the late submission fee on delay reporting was being levied as specified in respective Master Directions, issued and amended by RBI from time to time.

The new late submission fees provisions shall come into effect immediately for the delayed filings made on or after the date of the circular.

Revised late fee structure on various types of reporting is as under:

S.No.	Directions / Regulations / Circulars	Type of Reporting	Due date	Late Fee Submission on delay in Reporting
1	<p>Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad read with Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms</p> <p>[Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/10MD06102016E550559916C346E0BC93720658286729.PDF]</p> <p>ODI From-https://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP.PDF]</p> <p>[Note: Form ODI is replaced by Foreign Exchange Management (Overseas Investment) Directions, 2022 w.e.f. August 22, 2022]</p>	Form ODI Part-II [ANNUAL PERFORMANCE REPORT (APR)]	APR is to be certified by statutory auditors of the Indian Party and submitted, through the designated AD bank every year by December 31st as long as the JV / WOS is in existence	INR 7500

¹ Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999 (FEMA)-
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIRSERIES16B175DFF736684DCA87CB5546DCF4DA27.PDF>

S.No.	Directions / Regulations / Circulars	Type of Reporting	Due date	Late Fee Submission on delay in Reporting
2	Foreign Exchange Management (Overseas Investment) Regulations, 2022 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FEMA400E3410E8B6F384DF982443E53E6688627.PDF]	Annual Performance Report (APR)	Every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year	INR 7500
4	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Annual return on Foreign Liabilities and Assets [FLA] Returns	on or before the 15th day of July of each year [If the FLA is filed based on provisional figures up to 15 th July and there are changes in figures after audit, then the Company is required to submit revised FLA return by 30 th September]	INR 7500
5	Foreign Exchange Management (Overseas Investment) Directions, 2022 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT110B29188F1C4624C75808B53ADE5175A88.PDF]	Form OPI	Form OPI is to be submitted by a person resident in India other than a resident individual within 60 days from the end of the half-year (i.e., September or March end as the case maybe) in which such OPI or transfer by way of sale is made.	INR 7500

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6	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Evidence of investment or any other return which does not capture flows or any other periodical reporting	Due date would depend on type of return(s)	INR 7500
7	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	FC-GPR	Not later than thirty days from the date of issue of the equity instruments.	[INR 7500 + (0.025% × A × n)] a) A in above calculation stands for amount involved in the delayed reporting b) n in above calculation stands for number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points

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8	<p>Master Direction – Reporting under Foreign Exchange Management Act, 1999</p> <p>[Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]</p>	<p>FCTRS</p> <p>[Apart from transfer of equity instruments, Form FCTRS is also required to be filed by the Indian company buying back shares in a scheme of merger/ de-merger/ amalgamation of Indian companies approved by NCLT/ competent authority.]</p>	<p>Within sixty days of transfer of equity instruments or receipt/ remittance of funds whichever is earlier.</p> <p>[It should be noted that In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis, within a period not exceeding eighteen months from the date of the transfer agreement]</p>	<p>[INR 7500 + (0.025% × A × n)]</p>
9	<p>Master Direction – Reporting under Foreign Exchange Management Act, 1999</p> <p>[Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]</p>	<p>Form ESOP</p>	<p>Within 30 days from the date of issue of ESOPs</p>	<p>[INR 7500 + (0.025% × A × n)]</p>

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10	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form LLP(I)	Within 30 days from the date of receipt of the amount of consideration	[INR 7500 + (0.025% × A × n)]
11	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form LLP(II)	Within 60 days from the date of receipt of funds	[INR 7500 + (0.025% × A × n)]
12	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form CN	Within 30 days of issue OR transfer of Convertible Notes	[INR 7500 + (0.025% × A × n)]
13	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form DI	Within 30 days from the date of allotment of equity instruments	[INR 7500 + (0.025% × A × n)]

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14	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form InVi	Within 30 days from the date of issue of units	[INR 7500 + (0.025% × A × n)]
15	Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad read with Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms	Form ODI-Part I	Before executing any ODI transaction	[INR 7500 + (0.025% × A × n)]
16	[Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/10MD06102016E550559916C346E0BC93720658286729.PDF] ODI Form- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP.PDF] <i>[Note: Form ODI is replaced by Foreign Exchange Management (Overseas Investment) Directions, 2022 w.e.f. August 22, 2022]</i>	Form ODI-Part III	within 30 days of disinvestment in Share / Securities in Part III of the Form ODI [Form ODI Part III is to be submitted by the Indian Party to the designated AD bank which in turn shall be reported the same in the online ODI application through their nodal office through online ODI application within 30 days of the disinvestment.]	[INR 7500 + (0.025% × A × n)]

S.No.	Directions / Regulations / Circulars	Type of Reporting	Due date	Late Fee Submission on delay in Reporting
17	Foreign Exchange Management (Overseas Investment) Regulations, 2022 read with Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FEMA400E3410E8B6F384DF982443E53E6688627.PDF] [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Form FC	Form FC is to be submitted (Sections A,B,C,D &E) by a person resident in India making a financial commitment in the foreign entity at the time of undertaking outward remittance or financial commitment, whichever is earlier	[INR 7500 + (0.025% × A × n)]
18	Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations	Form ECB	Before any draw-down in respect of an ECB	[INR 7500 + (0.025% × A × n)]
19	[Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/5MD2603201979CA1390E9E546869B2A9A92614DEDBF.PDF]	Form ECB-2	On monthly basis through AD Bank within seven working days from the close of month to which it relates	[INR 7500 + (0.025% × A × n)]
20	Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/5MD2603201979CA1390E9E546869B2A9A92614DEDBF.PDF]	Revised Form ECB	To be filed by a. Untraceable Entities; and b. Other entities for changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower not later than 7 days from the changes effected	[INR 7500 + (0.025% × A × n)]

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21	Master Direction – Reporting under Foreign Exchange Management Act, 1999 [Link- https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF]	Any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	Due date would depend on type of return(s)	[INR 7500 + (0.025% × A × n)]

Notes:

- c) “n” is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- d) “A” is the amount involved in the delayed reporting
- e) LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN will be treated as one instance for the fixed component. Further, ‘A’ for any ECB-2 return will be the gross inflow or outflow (including interest and other charges), whichever is more.
- f) Maximum LSF amount will be limited to 100 per cent of ‘A’ and will be rounded upwards to the nearest hundred.
- g) Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of “n”.

- h) The facility for opting for LSF shall be available up to three years from the due date of reporting/ submission. The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of Foreign Exchange Management (Overseas Investment) Regulations, 2022.
- i) In case a person responsible for any submission or filing under the provisions of FEMA, neither makes such submission/filing within the specified time nor makes such submission/filing along with LSF, such person shall be liable for penal action under the provisions of FEMA, 1999.
- j) Form FCGPR (B) has been discontinued w.e.f. 15 March, 2011- <https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/FLAS150311F.pdf>

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