



Committee on Commercial Laws, Economic Advisory & NPO Cooperative  
**The Institute of Chartered Accountants of India**  
(Setup by an Act of Parliament)  
New Delhi

CAs' Handbook on  
INBOUND  
& OUTBOUND  
INVESTMENTS  
under FEMA



# **CAs' Handbook on Inbound and Outbound Investments under FEMA**



**Committee on Commercial Laws, Economic Advisory & NPO Cooperative**  
**The Institute of Chartered Accountants of India**  
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## Foreword

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In the dynamic realm of finance and legal practice, Chartered Accountants are essential, providing expertise, stability, and trust. As regulations evolve, technologies progress, and global markets integrate, the ability to navigate these complexities with precision is crucial.

I am delighted to note that the Committee on Commercial Law, Economic Advisory, and NPO Cooperative of the Institute of Chartered Accountants of India (ICAI) has developed publication **"CAs' Handbook on Inbound and Outbound Investments under FEMA"**.

This publication thoroughly explores the intricacies of FEMA regulations, offering detailed insights and practical guidance. From comprehending legal requirements to applying these laws effectively, this handbook equips professionals with the necessary tools to excel in this critical area of practice.

I extend my heartfelt gratitude to the Committee on Commercial Law, Economic Advisory, and NPO Cooperative for their dedication and expertise in developing this invaluable resource.

I am confident that this handbook will serve as a cornerstone for practitioners, educators and students, inspiring a new generation of skilled professionals committed to the highest standards of precision and proficiency in handling FEMA-related matters for Non-Residents.

I encourage all readers to fully utilize this resource and leverage the insights provided within.

September 9, 2024

New Delhi

**CA. Ranjeet Kumar Agarwal**

President, ICAI



## Preface

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A thorough understanding of the Foreign Exchange Management Act (FEMA) is crucial for providing accurate and compliant advisory services by Chartered Accountants in India to navigate the complexities of foreign exchange regulations..

This publication, "**CAs' Handbook on Inbound & Outbound Investments under FEMA**" offers a detailed examination of the regulations and practices related to foreign exchange management. It emphasizes the importance of regulatory compliance, accurate documentation, and a strong grasp of the legal framework.

The Committee on Commercial Laws, Economic Advisory and NPO Cooperative (CCLEANC) of ICAI is proud to present this handbook, tailored to meet the specific needs of Chartered Accountants. We believe it will significantly enhance your ability to handle FEMA-related issues effectively.

I would like to express my sincere thanks to the leadership of ICAI - CA. Ranjeet Kumar Agarwal, President, ICAI, and CA. Charanjot Singh Nanda, Vice-President, ICAI, for their invaluable support and guidance.

A special acknowledgment is due to CA. Kusai Goawala, CA. Ammar Goawala, CA. Priyanki Liya, CA. Ganesh Kakade and CA. Pooja Gupta for their crucial insights and contributions, which have greatly improved this publication. I also appreciate the hard work and dedication of the Committee's Secretariat, whose efforts were vital in bringing this handbook to completion.

I am confident that the "**CAs' Handbook on Inbound & Outbound Investments under FEMA**" handbook will serve as an essential resource for ICAI members, deepening their knowledge in foreign exchange management.

Kudos to everyone involved in the development of this handbook. Let us continue to uphold the highest standards of Chartered Accountancy with a commitment to professionalism and integrity.

Wishing you productive learning!

August 27, 2024  
Delhi

**CA. Chandrashekhar Vasant Chitale**  
Chairman, Committee on Commercial Law  
Economic Advisory, and NPO Cooperative



## Contributors to This Publication

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## Chapter 1

# Introduction

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### 1.1 Internationalisation : FDI and ODI - key policies

- In the era of globalization, the world is a global village. The growth of any business goes like the rapid-fire hike when it reaches the global platform and global identity. Internationalisation is a product of globalization.
- The process of Internationalisation necessitates gradual integration of the country into the global economy through trade (exports and imports) and investments.
- The Internationalisation process is governed by Foreign trade policies and FEMA Laws and regulations
- India's Foreign Trade Policy (FTP) particularly since the millennium, has attempted to adopt policies to augment India's economy; sustain its economic growth; and to enhance the Internationalisation process by increasing India's percentage share of global merchandise trade, employment generation, and investments.
- In the last two decades, emerging worldwide markets have been seen to be the main growth areas in the world.
- Hence, It is required to have the knowledge of inbound and outbound Investment.
- Investments can be of two Types:
  - Inbound Investment – Investment that come into a Country, which can be elucidated as a person resident outside India invests in the business of an Indian company/LLP.
  - Outbound Investment – Investment that go outside the country, which can be elucidated like Indian resident invests in business in a Country outside India - controlled by a person resident outside India or a foreign company or LLP.
- Let's have the detail discussion on the topic in next chapters.

## Chapter 2

# Inbound Investments

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## 2. Introduction

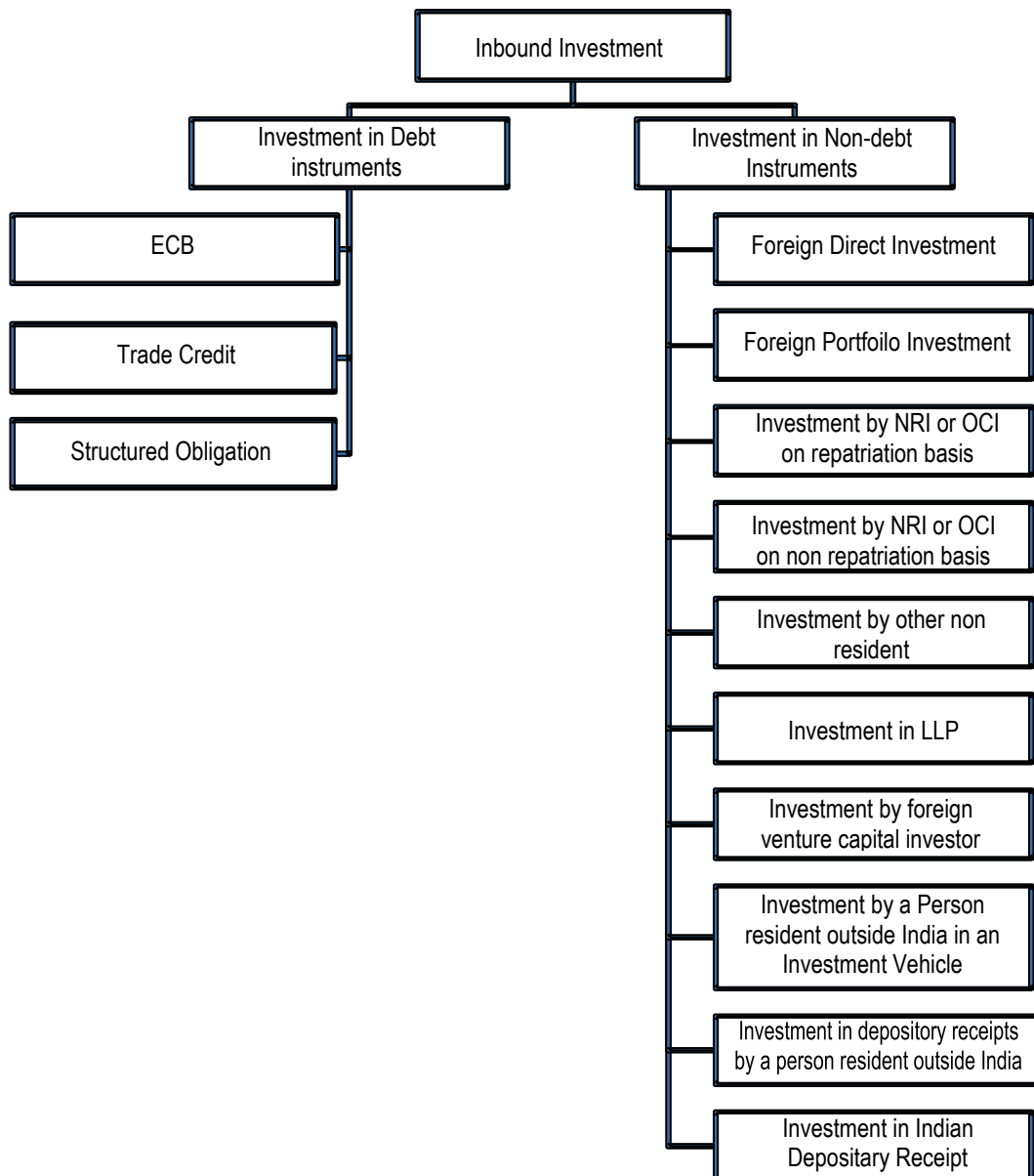
Cross border transaction an the important aspect of globalisation. One of the type of cross border transaction is Inbound Investment, where foreign entities investing in local economies bringing in foreign capital or foreign entities granting advances or loan to the local entities. Which can be described as under:

- A. Investment in non-debt instruments of Indian entity by Person resident outside India
- B. Debt Instruments i.e. Borrowing funds from outside India like External commercial borrowing (ECB), Trade Credits etc.

### 2. (A). Investment by Foreign Entities in Indian Entity in Non -Debt Instruments:

- Non debt Instruments can be explained as an investment in equity instruments, where a person resident outside India invests in the equity shares or convertible debentures or convertible preference shares of an Indian Entity.
- When a person resident outside India invests in the Indian Entity in Non debt instruments, where one of the common type investing in equity instrument i.e. FDI – Foreign Direct Investment.
- Indian entity' is an Indian company or an LLP.
- Type of Investment in Non-Debt Instruments:
  - o FDI – Purchase or sale of equity instruments of an Indian company by a person resident outside India
  - o FPI – Investment by Foreign Portfolio Investor
  - o Investment by NRI or OCI (Overseas Citizen of India) on repatriation basis
  - o Investment by NRI or OCI on Non-repatriation basis
  - o Investment by other Non-resident Investor
  - o Investment in LLP
  - o Investment by Foreign Venture Capital Investor
  - o Investment by a Person resident outside India in an Investment Vehicle
  - o Issue of Indian Depositary Receipt

## Inbound Investments



Points to keep in mind for Non-debt investment by a person resident outside India:

1. Prohibited sectors/Persons
2. Entry Routes
3. Sectoral Cap
4. Permitted investment by a person resident outside India

## **2.1 Prohibited Sectors/Persons:**

Investment by a person resident outside India is prohibited in the following sectors:

- a) Lottery Business including Government/ private lottery, online lotteries.
- b) Gambling and betting including casinos.
- c) Chit funds
- d) Nidhi company
- e) Trading in Transferable Development Rights (TDRs).
- f) Real Estate Business or Construction of farm houses. Explanation: For the purpose of this rule, 'real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.
- g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes.
- h) Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- i) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

## **2.2 Entry Routes:**

FDI under various sectors is permitted through two routes:

1. Automatic Route - The person resident outside India or Indian company does not require any approval from the Government of India
2. Government Route/Approval Route - Approval from the RBI / Government of India is required prior to investment. Proposals for foreign investment under the Government route are considered by the respective Administrative Ministry/Department

### **2.2.1 Sectoral Cap:**

Sectoral cap is the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the investee Indian entity.

### **100% Automatic route**

Agriculture & Animal Husbandry, Air-Transport Services for Non Scheduled Air Transport Service / Helicopters services/ seaplane services requiring DGCA approval, Other Services under Civil Aviation Services such as Maintenance & Repair Organizations, Airports (Greenfield + Brownfield), Asset Reconstruction Companies, Auto-components, Automobiles, Biotechnology (Greenfield), Broadcast Content Services (Up- linking & down-linking of TV channels, Broadcasting Carriage Services, Capital Goods, Cash & Carry Wholesale Trading (including sourcing from MSEs), Chemicals, Coal & Lignite, Construction Development, Construction of Hospitals, Credit Information Companies, Duty Free Shops, E-commerce Activities, Electronic Systems, Food Processing, Gems & Jewellery, Healthcare(Greenfield), Industrial Parks, IT & BPM, Leather, Manufacturing, Mining & Exploration of metals & non-metal ores, Other Financial Services, Petroleum & Natural gas, Pharmaceuticals (Greenfield), Plantation sector, Ports & Shipping, Railway Infrastructure, Renewable Energy, Roads & Highways, Single Brand Product Retail Trading, Textiles & Garments, Thermal Power, Tourism & Hospitality, White Label ATM Operations and Intermediaries & Insurance Intermediaries

### **Sectoral Cap under Automatic route**

- Infrastructure Company in the Securities Market - 49%
- Insurance - upto 49%
- Medical Devices - upto 100%
- Pension - 49%
- Petroleum Refining (By PSUs) – 49%
- Power Exchanges – 49%

### **Sectoral Cap permitted under Government route**

- Banking (Public sector) – 20%
- Broadcasting Content Services (FM Radio, up-linking of news and current affairs TV Channels)– 49%
- Uploading/Streaming of 'News & Current affairs' through digital media – 26%
- Investment by Foreign Airlines – scheduled or non-scheduled air transport Service – 49%
- Core Investment Company – 100%
- Food Products Retail Trading – 100%
- Mining & Minerals separations of titanium bearing minerals and ores, Its value addition and integrated activities – 100%



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- Multi-Brand Retail Trading – 51%
- Print Media (publications/ printing of scientific and technical magazines/speciality journals/ periodicals and facsimile edition of foreign newspapers) – 100%
- Print Media (publishing of newspaper, periodicals and Indian editions of foreign magazines dealing with news & current affairs) – 26%
- Satellite (Establishment and operations) – 100%

### **Upto 100% FDI permitted under Automatic & Government**

- Air transport services (Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline; Regional Air Transport Service) – upto 49% under automatic route (Upto 100% under automatic route for NRIs) + above 49% and up to 74% (Govt.) and Government Route beyond 49%
- Banking (Private sector) – upto 49% (auto) + above 49% and up to 74% (Govt)
- Biotechnology (brownfield) – upto 74% (auto) + above 74% (Govt)
- Defence – upto 74% (auto) + above 74% (Govt)
- Healthcare (Brownfield) – upto 74% (auto) + above 74% (Govt)
- Pharmaceuticals (Brownfield) – upto 74% (auto) + above 74% (Govt)
- Private Security Agencies – upto 49% (auto) + above 49% and up to 74% (Govt)  
Telecom services – upto 49% (auto) + above 49% (Govt)

## **2.2.2 FDI – Foreign Direct Investment in equity Instrument:**

There are following procedures as listed below:

- a) Procedure for registration on RBI FIRMS Portal
- b) Forms available for Inbound Investment
- c) Procedure to get RBI Approval for specified sectors

### **2.2.2.1 Procedure for registration on RBI FIRMS Portal**

RBI has launched filing procedures online through FIRMS portal at the website “firms.rbi.org.in”. Each Indian Entity (Company or LLP) required to get registered on this portal, who is in the receipt of Foreign inward remittance as Investment in equity instrument in Indian Company or Capital contribution in Limited Liability Partnership.

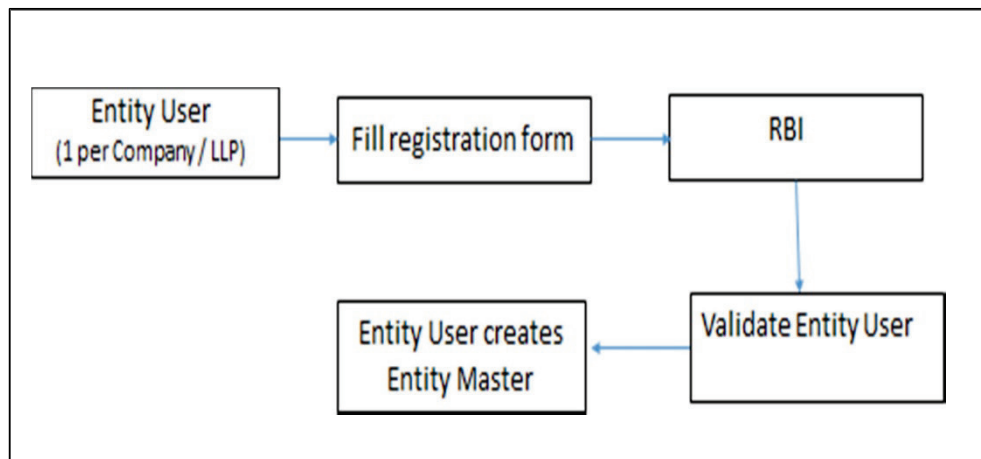
There are step by step registration process is to be followed:

1. Entity User Registration
2. Business User Registration

Entity User is only with respect to an entity which has received foreign investment and is required to provide details of foreign investment, including indirect foreign investment, in the Entity Master.

Business User is the one who would be making filing in Single Master Form, in compliance with the provisions of FEMA 20(R). Whereas the Entity user credentials are entity specific, business user credentials can be obtained by any individual/ entity who is required to make filing in SMF for FC-GPR, FC-TRS, LLP-I, LLP-II, CN, DRR, DI, ESOP and InVi

**Process flow for registration on RBI Firms Portal :**



### 2.3 Registration process for Entity User:

- Uniform Resource Locators (URL) of the application is <https://firms.rbi.org.in>
- The person, for registering as Entity User, may access the login page of the FIRMS application using the above

#### URL on the internet

- Prerequisites: Authority letter in the specified format.
- Click on Registration form for New Entity User
- Fill all the details in the Entity User Registration Form
- Field Description:

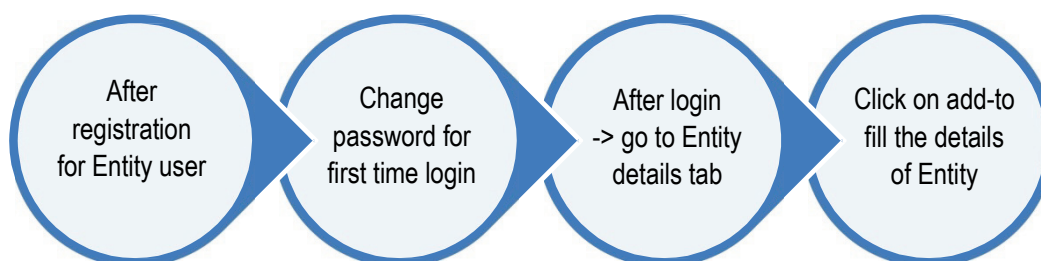
## CAs' Handbook on Inbound and Outbound Investments under FEMA

Field Name	Field Description
<b>First Name*</b>	First Name of the user
<b>Middle Name</b>	Middle Name of the user
<b>Last Name*</b>	Last Name of the user
<b>User Name*</b>	User has to enter a unique username. The user can use alphabets & numerics.
<b>Email*</b>	The user has to enter valid e-mail ID. The default password will be provided in the e-mail ID.
<b>Confirm E-mail*</b>	The user has to confirm the same e-mail ID
<b>PAN number*</b>	The user should provide their own PAN No. (not the PAN No. of the company). It consists of 10 characters (first five alphabets, next four numeric and the last alphabet).
<b>Mobile Number*</b>	The user should enter its valid 10 digit mobile number.
<b>Entity Name*</b>	Name of the company as per the certificate of incorporation (only name of the company, no prefix required)
<b>Company Type*</b>	Entity type whether Company, LLP or Start Up.
<b>CIN / LLPIN*</b>	CIN / LLPIN of the entity as available in the certificate of incorporation. If the company does not have CIN number , it may fill a dummy CIN number as below D12345(first two letters of the state where company has registered office)2010(first three letters of the companies name) (123456)

- Click on the submit button after filling in all the details.
- Message “Record Saved Successfully” pops up. The user has created its user ID
- The Authority Letter submitted by the entity user will be verified by RBI and after RBI’s approval, the user will receive the password on their registered email ID from RBI email ID autoreply- fid@rbi.org.in

(Note: If the user does not receive the mail notification for approval/rejection of the registration within the next 48 hrs, he/she may contact at helpfirms@rbi.org.in )

After registering for the Entity user, it is necessary to add the basic details of the Entities.



### Entity Master – Company/Limited Liability Partnership/Startup

There are four Tab under Entity Master:

1. Entity Details
2. Particulars
3. Foreign Investment in the Company/LLP
4. Foreign Investment Info

#### 1. Entity Details:

The fields in the Entity Details are described in the following table.

Field Name	Requirement
Name of the entity	Will be auto-populated as per the details in Registration Form
CIN/ LLPIN	Will be auto-populated as per the details in Registration Form
Date of incorporation*	As appearing in the Certificate of Incorporation (Cannot be a future date)
Permanent Account Number (PAN)*	PAN No. of the Entity
RBI Registration Number	The number provided by RBI during reporting of earlier allotments, if any, has to be entered.
Whether the company/ LLP is under	As the case may be for the entity.

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investigation by Directorate of Enforcement/ CBI or any other investigative agency for violation of FEMA, 1999*	
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**\*Denotes Mandatory fields**

### 2. Particulars Tab

The fields in the Particulars tab are described in the following table

Field name	Requirement
Address of the registered office*	As appearing in the certificate of incorporation / in case of change of address as appearing in Form INC 22
Pincode*	Choose from Dropdown
Mobile Number*	Mobile No of the authorized person e.g., Director, Company Secretary for the Company etc.
Telephone	Telephone number of the company (prefix with STD Code) e.g. 022-12345678
Email ID*	Email ID of the entity
NIC Code*	If more than one applicable, then main activity for which Foreign Investment is received
Greenfield or Brownfield	Select whether Greenfield or Brownfield

### 3. Foreign Investment in Company / LLP Tab

Field Name	Requirement
Paid up Capital of a Company	Paidup capital on a fully diluted basis
Foreign Portfolio Investment	Value of Shares and % of Holding with bifurcation of FPI, NRI and Others
Foreing Investment in Company/LLP	Value and % of holding with bifurcation of <ol style="list-style-type: none"> <li>1. Value of Equity sahres on fully diluted Baisi other than foreign portfolio Investment and Indirect Foreign Investment</li> <li>2. Foreign Portfolio Investment</li> <li>3. Indirect Foreign Investment</li> </ol> (Note – do not report Indian shareholding in this tab)

(a) If Company:

Paid-up Capital of the company on a fully diluted basis (where paid up capital on fully diluted basis = paid up shares on fully diluted basis \* face value) in INR

**Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised. It includes:**

1. Equity shares: As equity shares
2. CCDS/ CCPs: Equivalent Equity shares .(If the conversion ratio is not fixed upfront, the company may enter the maximum number of equity shares possible upon conversion in compliance with the pricing guidelines )
3. Share warrants: Equivalent Equity shares considering 100% exercise upfront
4. ESOPs: Equivalent Equity shares considering 100% exercise upfront

**Note:** If a start-up company has issued, convertible notes the same shall not be included in the paid-up capital on fully dilution basis. To report only Capital Instruments held by persons resident outside India on a repatriable basis should be reported.

5. The Indian companies who have made downstream investment in another Indian company for which it is considered as indirect foreign investment in terms of Regulation 14 of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2017 dated November 7, 2017 and as amended from time to time, shall inform the same to the Indian investee company for the purpose of providing details of indirect foreign investment in Entity Master.

(b) LLP:

Total Capital contribution in LLP (in INR)

(c) Foreign Investment

- The entity should also report indirect foreign investment received by it.
- The entity shall provide the details of all foreign investment as on date on an aggregate level as below. This will also be inclusive of all foreign investment, irrespective of the fact that the regulatory reporting to RBI for the same has been made or not or whether the same has been acknowledged or not.

The fields in the Foreign Investment in a Company/ LLP tab are described in the following table.

Field name	For Company / Start-up	For LLP / Start-up
Paid-up Capital / Capital Contribution*	Total paid up capital of the company (domestic plus	Total Capital contribution in LLP (in

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	foreign investment plus indirect foreign investment) on a fully diluted basis in INR	INR)
Foreign Portfolio Investment* (Investment that is considered as foreign portfolio investment within the meaning of regulation 2(xix) of FEMA 20(R))	Foreign Portfolio Investments made (value of shares = number of shares * face value ) by Foreign Portfolio Investors (FPI)/ Non-resident Indian (NRI). Others will include foreign portfolio investments made in the company other than by FPI/ NRI.	Will be disabled
Foreign Investment in Company/ LLP:	Value of equity shares issued by the company on a fully diluted basis	Capital contributions/ Profit shares (in INR)
Value of Equity Shares/ Capital Contributions (Investment that is considered as foreign direct investment within the meaning of regulation 2(viii))	Foreign Portfolio Investment and indirect foreign investment, where value of shares = Number of shares * face value	
Indirect Foreign Investment (please be guided by regulation 14 of FEMA 20 (R ) read with para 9 of Master Direction – Foreign Investment	Indirect Foreign Investment in the company (in value of shares )	Indirect Foreign Investment in LLP (in INR)

**\*Denotes Mandatory fields.**

### 4. Foreign Investment Info tab

(Details of each Issue / transfer (and not investor wise) have to be filled in this page, one after the other i.e. After entering the details of one issue user should click the Add Button (top right corner of the screen) and add the details of the next issue / transfer.)

The fields in the Foreign Investment Info tab are described in the following table.

Field Name	Requirement
Date of Issue / Transfer	Enter date of allotment/transfer in dd/mm/yyyy format
Description	Description of the allotment/transfer (whether Rights / Bonus / Share Swap / Merger / Demerger / ESOP/ NR to R transfer/ R to NR transfer etc).
Instrument Type / Capital Contribution / or Profit Share for an LLP	In case of Company: Equity Shares, CCPs, CCDs, Share Warrants, Partly Paid up Shares In case of LLP: Capital Contribution or Profit Share In case of start-ups – Convertible Notes
Number of Instruments / Percentage of capital contribution	In case of company, number of capital instruments issued to the foreign investors to be provided In case of LLP, percentage of capital contribution received from the foreign entity to be provided.

- **Declaration:** After all the issues / transfers have been added, user will have to click the declaration check box to enable submission of the entity master.
- **Submission:** Only after the declaration is checked, the entity user can submit the details.

Once the details of the company have been submitted it will be available on the Entity Master page. No email acknowledgement would be sent for the submission in the Entity Master

## 2.4 Registration process for Business User:

There is second step registration process – Registration of Business user, after getting registered as an entity User.

### 2.4.1 Process flow for Business User:

#### Legend:

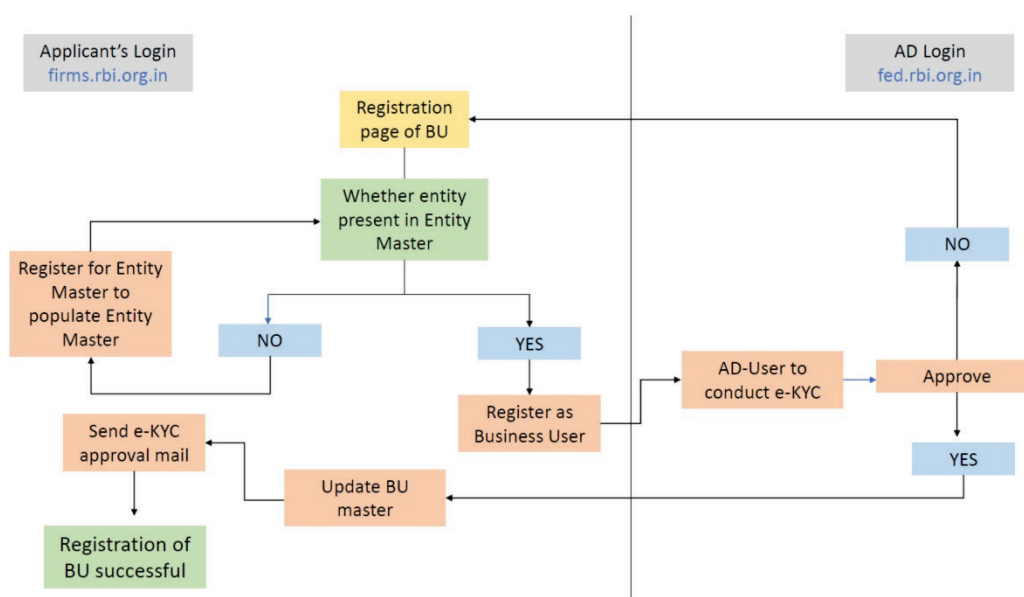
EM – Entity Master (Investee Company)

BU – Business User (Authorized person to file Forms)

FIRMSBU – portal for AD/RBI users can be accessed via “fed.rbi.org.in”

FIRMS – portal for filing forms by BU Users can be accessed over internet via <https://firms.rbi.org.in>





## 2.4.2 Process for Business User Registration on portal:

- Go to the FIRMS website at <https://firms.rbi.org.in>
- At the Login box, click on Registration form for New Business User
- Fill up the details in the popped-up registration form for BU as below

Field Name	Description
First Name	First Name of the BU
Middle Name	Middle Name of the BU
Last Name	Last Name of the BU
User Name	User name for the BU. It shall be unique.
Email	Email ID of the BU
Confirm email	
Phone No	Mobile No of the BU
Address	Correspondence Address of the BU
Whether the Business User is for Form InVi	Select YES or NO If YES is selected, then CIN/LLPIN details of the Investee Company is NOT required as Form InVi is for reporting foreign inflows in an Investment vehicle and not foreign investment in an Entity. If NO is selected, then CIN/LLPIN of the Investee Company is required for making registration.

## Inbound Investments

IFSC code	Select the IFSC code of the Bank branch to whom the reporting would be made. This field shall be carefully selected so that the reporting is made to the correct branch of the bank.  Not all branches are incorporated in the FIRMS application, but only those as specified by the respective bank.  If the applicant is unable to find its respective branch under the IFSC code, he/she may contact its AD Bank for clarification on this issue.
Bank name	Auto-populated as per the IFSC code selected.
Authority letter-Attachment	Attachment in the specified format for Authority letter. It is common for all forms filing in SMF. Attach PAN card of the individual registering as a Business User.
Company CIN/LLPIN	Select the CIN or LLPIN of the entity of which the foreign investment is being affected i.e., the Indian investee company.
PAN Number	Auto-populated based upon CIN/LLPIN selection.
Entity name	Auto-populated based upon CIN/LLPIN selection.

- Click Submit button after filling details and attach the authority letter. In case any error is displayed, rectify the same and click Submit button.
- After BU submits the registration form, the same will have to be verified by the AD Bank Branch concerned. The Approval/ Rejection of the same would be communicated through email notification to the BU.

### 2.2.2.2 Forms available for Inbound Investment:

There are various Forms available on FIRMS Portal, which required to be filed on the specific incidence, which can be listed out as below:

Forms	Description
FC-GPR	Form filing at the time of issue of equity instrument to non resident person
FC-TRS	At the time of transfer of equity instrument between resident and Non resident person
LLP-I	Report filed by LLP which is received FDI as a capital contribution
LLP-II	Report for transfer of capital contribution /profit sharing of LLP from Resident to Non resident or vice-versa

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FORM CN	Issue / transfer of convertible notes to person resident outside India
FORM ESOP	Issue of ESOP by Indian Company to an employee resident outside India
FORM DI	Reporting of downstream investment or indirect foreign investment
FORM DRR	Issue of transfer of depositary receipt
FORM INVI	Units of Investment vehicle issued to person resident outside India

Mainly there are two Forms used in regular transactions, which are Form FC-GPR and Form FC-TRS, the step by step guide to file these two Forms are reported in chapter No. 6.

### **c) Procedure to get RBI/concerned Ministry's Approval for specified sectors**

For entities requiring approval can apply at <https://fifp.gov.in/> for the approval from the concerned Ministry.

### **2. (B). Debt Instruments i.e. Borrowing funds from outside India like External commercial borrowing (ECB), Trade Credits etc**

Foreign investors may also invest in debt instruments including non-convertible or optionally convertible debentures and external commercial borrowings ("ECB") or Trade Credits. The same is governed by Foreign exchange management (Borrowing and Lending) Regulation, 2018, Latest Notification for the same referred as Notification No. FEMA.3(R)/2018-RB amended upto July 29, 2022 and Master Direction – External Commercial Borrowing, Trade credits and Structured obligations dated March 26, 2019 amended upto December 22, 2023.

**Briefly, Investment by Foreign investor in Debt instrument is bifurcated in three parts:**

1. External Commercial Borrowings
2. Trade Credits
3. Other Structured Borrowings

#### **1. External Commercial Borrowings:**

External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non- resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given apply in totality and not on a standalone basis.

##### **A) Framework of ECB:**

The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

- a) FCY denominated ECB  
b) INR denominated ECB

Parameters	FCY Denominated ECB	INR Denominated ECB
Currency of Borrowing	Any freely convertible foreign currency	Indian Rupee (INR)
Forms of ECB	Loan including Bank Loan; floating fixed rate notes, bonds, debentures (other than fully and compulsory convertible), trade credit beyond 3 Years, FCCB, FCEB, Financial Lease	Loan including Bank Loan; floating fixed rate notes, bonds, debenture/ Preference shares (other than fully and compulsory convertible), trade credit beyond 3 Years
Eligible Borrower	All the entities to receive FDI, Further following entities: Port Trusts, Units in SEZ, SIDBI, Exim bank of India	1. All entities eligible to raise FCY ECB; 2. Registered entities engaged in micro finance activities registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations

**B) Limits and leverage of ECB:**

- all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route.
- Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1 (Ratio

not applicable if total outstanding ECB including proposed one is upto USD 5 Million or its equivalent)

- Issuance of any guarantees by Indian bank, All India Financial Institutions and NBFCs relating to ECB is not permitted

**C) Parking of ECB Proceeds:**

**I) Parking of ECB Proceeds abroad:**

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation

**II) Parking of ECB Proceeds domestically:**

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively.

**D) Procedures for raising ECB:**

All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank

**2. Trade Credits:**

Trade Credits (TC) refer to the credits extended by the overseas supplier, bank, financial institution and other permitted recognised lenders for maturity, as prescribed in this framework, for imports of capital/non-capital goods permissible under the Foreign Trade Policy of the Government of India. Depending on the source of finance, such TCs include suppliers' credit and buyers' credit from recognised lenders.

**Framework:**

- a) FCY denominated TC
- b) INR denominated TC

**3. Structured Obligations:**

**a. Non-resident guarantee for domestic fund based and non-fund based facilities:**

Borrowing and lending in Indian Rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a Rupee facility which is either fund based or non-fund based (such as letter of credit / guarantee / letter of undertaking / letter of comfort) or is in the form of derivative contract by residents that are subsidiaries of multinational companies, is guaranteed by a non-resident (non-resident group entity in case of

derivative contracts), there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The arrangements shall be with the following terms:

- i. The non-resident guarantor may discharge the liability by i) payment out of rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/NRE account maintained with an AD bank in India.
- ii. In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/NRE account. However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.
- iii. General Permission is available to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee.
- iv. In cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

### **b. Facility of Credit Enhancement**

The facility of credit enhancement by eligible non-resident entities (viz. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions, direct/ indirect equity holder) to domestic debt raised through issue of capital market instruments, such as Rupee denominated bonds and debentures, is available to all borrowers eligible to raise ECB under automatic route subject to the certain conditions

## Outbound Investments

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### 3. Overseas Direct Investment

Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such inter-linkages.

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken:

Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government vide Notification No. G.S.R. 646(E) dated August 22, 2022 and

Foreign Exchange Management (Overseas Investment) Regulations, 2022 have been notified by the Reserve Bank vide Notification No. FEMA 400/2022-RB dated August 22, 2022

In supersession of the Notification No. FEMA 120/2004-RB dated July 07, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] and

Notification No. FEMA 7 (R)/2015-RB dated January 21, 2016 [Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015].

The new regime simplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

The significant changes brought in by the 2022 rules and regulations are:

Enhanced clarity with respect to various definitions;

- Introduction of the concept of “strategic sector”;
- Dispensing with the requirement of approval for deferred payment of consideration.
- Investment/disinvestment by persons resident in India under investigation by any investigative agency/regulatory body.

- Issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS).
- Write-off on account of disinvestment.
- Introduction of "Late Submission Fee (LSF)" for reporting delays.

### **3.1 Definitions:**

1. "Control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;
2. "Equity capital" means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments;
3. "Financial commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non fund-based facilities extended by such person to or on behalf of such foreign entity or entities;
4. "Net worth" shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013 (18 of 2013).

Net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, , after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

5. For the purposes of this clause, "net worth" of registered partnership firm or Limited Liability Partnership shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet.
6. "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up



equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity.

Explanation. – For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity.

7. “Strategic sector” shall include energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector or sub-sector as deemed necessary by the Central Government;
8. “Subsidiary” or “step down subsidiary” of a foreign entity means an entity in which the foreign entity has control;

### **3.2 General permission given:**

General permission has been granted to persons residents in India for purchase / acquisition of securities by the following methods: (general permission is also available to sell the shares so acquired)

- i) Purchase / acquisition out of funds held in RFC account
- ii) Any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder.
  - May invest in the equity capital issued by such entity as a rights issue
  - May be granted bonus shares subject to the terms and conditions under these rules.
- iii) Out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years.
- iv) In accordance with sub-section (4) of section 6 of the Act.- A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
- v) Any investment made outside India by a financial institution in an IFSC.

### **3.3 Points to be kept in mind while making an ODI application:**

#### **3.3.1 Restrictions and Prohibitions:**

Rule 19 of the Foreign Exchange Management (Overseas Investment) Rules, 2022 states that:

- A) Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in
- Real Estate sector (meaning buying and selling of real estate or trading in transferable development rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads, or bridges),
  - Gambling in any form.
  - Dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank sector.
- B) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.
- C) Any ODI in start-ups recognized under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.
- D) Further as per Rule 9 of the Foreign Exchange Management (Overseas Investment) Rules, 2022, Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

The restrictions do not apply to the following class of companies :

- A banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- A non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank.

- An insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and
- A Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

### **3.3.2 Mode of financial commitment in ODI:**

- i) Investment in Equity share capital
- ii) Investment in Debt instruments
- iii) Financial commitment by way of guarantee.

### **3.3.3 Quantum of investment**

As per para 3 of schedule I of the Foreign Exchange Management (Overseas Investment) rules, 2022, The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of the net worth of the Indian company or a registered partnership firm as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

If the foreign commitment in a financial year is exceeding 1 billion dollars USD, approval of RBI is required even though the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

The ceiling of 400 per cent of net worth will not be applicable where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or out of funds raised through ADRs/GDRs.

The concept of utilising the net worth of the subsidiary/holding company by the Indian entity has been discontinued henceforth.

### **3.3.4 Valuation**

The issue of shares shall be subject to a price arrived on an arm's length basis. The arms length pricing shall be derived as per any internationally accepted pricing methodology for valuation.

The company should ensure that the rule 11 UA has been complied with while making the investment.

### **3.3.5 Bonafide business activity**

Rule 9 of the foreign Exchange Management (Overseas Investment) Rules, 2022 states that any investment made outside India by a person resident in India shall be made in a foreign

entity engaged in a bona fide business activity, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations.

Provided that the structure of such subsidiary or step-down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity.

“bonafide business activity” shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be.

### **3.3.6 Mode of payment:**

- Overseas investment by way of cash is not permitted, it is only to be done through an AD Bank
- An Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/office outside India for making any overseas investment.
- A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.
- Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016.
- All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

### **3.3.7 UIN Generation**

Form FC shall be submitted along with requisite documents to AD bank for obtaining UIN on or before making initial ODI. The AD bank after due verification shall report the details in the ODI application for allotment of UIN. Any remittance towards a foreign entity shall be facilitated by the AD bank only after obtaining the necessary UIN for such entity. The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the foreign entity but only signifies taking on record of the investment for maintaining the database.

Further, with effect from June 01, 2012, an auto generated e-mail giving the details of UIN allotted to the foreign entity is forwarded to the AD bank/Indian investor as confirmation of allotment of UIN, and no separate letter is issued by the Reserve Bank.

This UIN is to be generated for each entity in which the financial commitment is made, for every subsequent ODI to the said entity the UIN allotted is to be mentioned.

### **3.3.8 Form FC**

The Indian entity is required to make an application in Form FC, the following information is required to be disclosed.

- i) Section A :
  - Basic information of the Indian entity
  - Net worth of the Indian entity
  - Sum of financial commitment done by the Indian entity
- ii) Section B:
  - Particulars of the Foreign entity
  - Bifurcation of Financial commitment w.r.t – Equity share capital, Loan and non - fund based commitment.
  - Proposed share holding after the proposed financial commitment.
  - Details of step down subsidiary of foreign entity.
- iii) Section C: Method of source of investment.
- iv) Section D: Declaration of the Indian entity with respect to:

Whether regulations have been complied in relation to pricing and valuation guidelines, financial securities acquired through gift, financial commitment in debt, submission of share certificates of previous remittance, other reporting requirements, Liberalised remittance scheme limit for individuals.

### **3.3.9 Statutory auditor certificate**

The ODI Section E – is the format for the statutory auditor certificate. The auditor has to certify the following:

The remittance is not in violation of the provisions contained in Rule 19 of foreign Exchange Management (Overseas Investment) Rules, 2022.(with respect to restriction and prohibition as mentioned in the above paragraphs)

The total financial commitment along with the proposed financial commitment does not exceed 400% of the Indian company's Networth.

Indian Entity has complied with the pricing/ valuation norms prescribed in foreign Exchange Management (overseas Investment) Rules, 2022.

If ODI in Financial service activity – whether the conditions mentioned in para 2 of the Schedule I of the Foreign Exchange Management (Overseas Investment) Rules ,2022 has been complied with.

Whether Regulation 12 of foreign Exchange Management (Overseas Investment) Regulations, 2022 has been complied with

The regulation states that a person resident in India who has previously made a financial commitment in a foreign entity shall not make any further financial commitment, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting of earlier ODI or share certificate is regularized.

If remittance is for personal guarantee given by director / promoter of one of the company of the group company of the Indian entity then – whether the mentioned guarantee together with the Financial Commitment/s of the group company, if any, are within the limit as provided in the Rules regulations and directions issued in 2022.

### **3.3.10 Board Resolution**

The Indian company should pass a board resolution approving the investment / remittance.

### **3.3.11 FATF compliance**

The financial commitment is not being made to a country which is identified by the FATF as High risk and other monitored jurisdictions. The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. It sets international standards that aim to prevent these illegal activities and the harm they cause to society. Their website can be accessed by this URL - <https://www.fatf-gafi.org/en/home.html>.

### **3.3.12 Liberalised Remittance scheme**

If the financial commitment is being done by an individual – then limit of 250000 USD under Liberalised Remittance scheme applies.

### **3.3.13 Underlying document**

The document supporting the financial commitment should be in order: a) if loan – loan agreement, b) if share purchase – share purchase agreement c) if guarantee – guarantee agreement.

### **3.3.14 The Annual Performance report (APR):**

This is the annual report with respect to each entity in which the financial commitment is made. It shall be certified by the statutory auditor, if statutory audit is not applicable, an independent chartered accountant can certify the same, It is required to be filed case of resident individuals too. Currently the due date for filing the form APR is the 31<sup>st</sup> December for each financial year 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.

### **3.3.15 Compliances of previous remittances:**

- The company should have filed the form APR of the previous reporting periods within the due date. Where more than one company has invested in the foreign entity then Indian company having maximum stake in the Subsidiary shall report the Form APR.
- The share certificate of the previous remittance should be submitted to the bank within 6 months of date remittance of the funds failing which the funds remitted overseas shall be repatriated within the said period of six months.
- Form FLA Financial assets and liabilities (disclosure of foreign assets and liabilities of the Indian entity) should be filed within the due date.

### **3.3.16 Undertaking:**

Some banks require the undertaking from the Indian entity for the following:

- The company is allowed to make the financial commitment under the automatic route.
- The business activity of the Indian entity and the foreign entity.
- The Source of Funds for this ODI Remittance is Equity or Loan.
- The Indian entity (i) is not appearing as a non-performing asset with any Bank; or (ii) is not classified as a wilful defaulter by any bank; or (iii) is not under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office.
- The investment is in "foreign entity" means an entity formed or registered or incorporated outside India, including International Financial Services Centre that has limited liability:
- The Investment is within 400% of net worth as per the last audited balance sheet. The total financial commitment is not exceeding USD 1 Billion (or its equivalent) in a financial year.
- Documentary proof of investment (in Equity shares) overseas in the form of share certificates etc. will be submitted within 6 months from the date of remittance to the AD Bank failing with the funds remitted overseas should be repatriated within the said period of six months to the AD bank.
- APR for all existing JV/ WOS have been filed to the respective designated AD bank and the APR for the current remittance will be filed within the due date.
- The overseas entity (WOS/JV) shall not offer financial products linked to Indian Rupee without the specific approval of the RBI.

- The present remittance is within the limit approved in Board Resolution.
- Foreign entity does not have any downstream investment in India and would not be investing in an entity in India either directly or indirectly, resulting in a structure with more than 2 layers of subsidiaries.
- All transactions relating to a JV / WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian Party.
- No Foreign Currency Account has been opened abroad for making overseas direct investments.
- The pricing guidelines and valuation norms as per Foreign Exchange Management (Overseas Investment) Rules 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022 have been complied with.
- There is no delay in reporting is pending for regularisation as required under Regulation 12 of Foreign Exchange Management (Overseas Investment) Regulation 2022.
- The Annual Return on Foreign Liabilities and Assets have been submitted to RBI, upto current financial year and there is no pending in reporting with respect to evidence of investment, APR, Form OPI, any other return which capture reporting of flows and non-fund based transactions and any other periodical/transactional reporting.
- The Indian entity undertakes to realise and repatriate back to India, all dues receivable from the foreign entity including the sale proceeds on sale / disinvestment as per the law of the host country within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

### 3.3.17 Delay in reporting:

In case a person resident in India has made a delay in filing/submitted the requisite form/return/document, such person may file/submit the requisite form/return/ document, etc. and pay the Late Submission Fee (LSF) through the designated AD bank in accordance with regulation 11 of OI Regulations, if the person still does not make the report / submission of the documents after delay with LSF, such person shall be liable for penal action under the provisions of FEMA, 1999.

## 3.4 ODI under the Financial Sector:

As per para 2 of Schedule I of the Foreign Exchange Management (Overseas Investment) Rules 2022 , An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely:--



- (i) the Indian entity has posted net profits during the preceding three financial years;
- (ii) the Indian entity is registered with or regulated by a financial services regulator in India;
- (iii) the Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction for engaging in such financial services:

An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years.

An Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions laid down by the Reserve Bank under applicable laws in this regard.

A foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

### **3.5 ODI under Strategic Sector:**

A significant change brought in by the Foreign Exchange Management (Overseas Investment) Rules and Regulations 2022 is the introduction of the Strategic Sector, Strategic Sector shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government.

The Central Government may, on an application made to it through the Reserve Bank, permit financial commitment in strategic sectors or geographies, above the limits laid down in these rules and subject to such terms and conditions as it considers necessary.

The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the RBI and central government.

### **3.6 Modes of financial commitment:**

An Indian entity, within the overall limit provided in schedule I of the OI Rules and subject to regulation 3 of OI Regulations, may make financial commitment by way of

- a) ODI as per schedule I of the OI Rules in equity share capital.
- b) Financial commitment by way of debt as per regulation 4 of OI Regulations
- c) Non-fund based financial commitment as per regulations 5, 6 and 7 of OI Regulations.

#### **3.6.1 Investment in Equity share capital:**

The ODI may be made or held by way of,–

- i) Subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
- ii) Acquisition through bidding or tender procedure;
- iii) Acquisition of equity capital by way of rights issue or allotment of bonus shares;
- iv) Capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
- v) The swap of securities; however both the legs of transaction shall comply with FEMA provisions, as applicable.
- vi) Merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

#### **3.6.2 Debt instruments:**

[Regulation 4 of OI Regulations]- AD bank shall facilitate an outward remittance towards financial commitment by way of debt only after obtaining the necessary agreement/documents for ensuring the bona fides of the transaction.

- An Indian entity shall not lend directly to its overseas step down subsidiary.
- A resident individual shall not make financial commitment by way of debt.
- Further, Investment can be made in the following debt instruments:
  - (i) Government bonds;
  - (ii) Corporate bonds;
  - (iii) All tranches of securitisation structure which are not equity tranche;

- (iv) Borrowings by firms through loans; and
- (v) Depository receipts whose underlying securities are debt securities;

### **3.6.3 Financial Guarantee:**

It is provided with respect to financial commitment by way of Guarantee [regulation 5 of OI Regulations] that:

- a) In the case of performance guarantee, time specified for the completion of the contract shall be treated as its validity period.
- b) No prior approval from the Reserve Bank shall be needed for remitting the funds from India on account of invocation of a performance guarantee extended in accordance with OI Rules/Regulations.
- c) Any guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based financial commitment but will be considered as financial commitment by way of debt. Such invocation shall be reported in Form FC.
- d) Roll-over of guarantee shall not be treated as fresh financial commitment. However, such roll-over shall be reported in Form FC.
- e) A group company of the Indian entity may extend a guarantee in accordance with the OI Regulations if such group company is eligible to make ODI as per the OI Rules and such guarantee shall be counted towards the utilisation of the financial commitment limit of such group company and shall be reported by the group company concerned.
- f) In case of a resident individual promoter, the same shall be counted towards the financial commitment limit of the Indian entity and accordingly be reported by the Indian entity.
- g) for computing the financial commitment limit of the group company, any fund-based exposure of such group company to the Indian entity or of the Indian entity to such group company, as the case may be, shall be deducted from the net worth of such group company.

### **3.6.4 Financial commitment by way of pledge or charge:**

Regulations 6 of OI regulations are summarized below:

- a) An Indian entity can i) pledge the equity share capital of a foreign entity or its step down subsidiary or ii) create a charge on its assets in India or iii) create a charge on its assets outside India of the foreign entity or its step down subsidiary to an AD Bank / a public financial institution in India or to an overseas lender for point i) and iii) - for availing any fund based / non fund based facility for the foreign entity or its step down subsidiary – the value of pledge or the amount of facility whichever is less will be considered the financial commitment.

- b) Overseas lender in whose favour such pledge/charge is created shall not be from any country or jurisdiction in which financial commitment is not permissible under the OI Rules.
- c) The creation/enforcement of such pledge/charge shall be in accordance with the relevant provisions of the Act or rules or regulations made, or directions issued thereunder.
- d) The assets on which charge is being created are not securitized.
- e) The period of charge, if not specified upfront, shall be co-terminus with the period of facility (like loan or other facility) for which charge has been created.
- f) In the event of enforcement of charge created on domestic assets, such domestic assets shall be transferred by way of sale to a person resident in India only.
- g) Wherever creation of charge involves pledge of shares of an Indian company in favour of an overseas lender, the pledge shall also be governed by the extant FEMA provisions contained in FEM (Non-Debt Instruments) Rules, 2019.

### **3.7 Manner of making Overseas Investment by resident individual**

Schedule III of the Foreign Exchange Management (Overseas Investment) Rules, 2022 states that:

- a) Any resident individual may make ODI by way of investment in equity capital or Overseas Portfolio Investment (OPI) in the manner provided in this Schedule and unless otherwise provided hereunder, shall be subject to the overall ceiling under the Liberalised Remittance Scheme of the Reserve Bank.
- b) A resident individual may make or hold overseas Investment by way of:
  - ODI in a foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity
  - OPI, including by way of reinvestment.
  - ODI or OPI as the case may be by way of:
    - capitalization of the amount due from a foreign entity, the realization for the dues should be within the time period specified under the act, further it should be in such nature where remittance would be permitted under the Act and does not require any prior approval of Reserve Bank of India and Central government.

- Swap of securities on account of a merger, demerger, amalgamation, or liquidation
- acquisition of equity capital through rights issue or allotment of bonus shares.
- Gift – i) A resident individual, without any limit, may acquire foreign securities by way of gift from a person resident in India who is a relative and holding such securities in accordance with the provisions of the Act. ii) A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder. Further the acquisition by gift in accordance with the rules and regulations will not be reckoned towards the Liberalised Remittance Scheme (LRS) limit and shall not require reporting under LRS.

Inheritance - a resident individual, without any limit may acquire foreign securities by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India. Further the acquisition by inheritance in accordance with the rules and regulations will not be reckoned towards the Liberalised Remittance Scheme (LRS) limit and shall not require reporting under LRS.

- acquisition of sweat equity shares
- acquisition of minimum qualification shares issued for holding a management post in a foreign entity.
- Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme: A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

Note 1 : ODI in respect of i) inheritance, ii) acquisition of sweat equity shares iii) acquisition of minimum qualification shares issued for holding a management post in a foreign entity iv) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme may be made in in a foreign entity whether or not such

foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control.

Note 2: For the purposes of this Schedule, a foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

### **3.8 Manner of making overseas Portfolio Investment (OPI) by an Indian entity**

- 1) An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet, in the manner and subject to the conditions laid down in this Schedule.
- 2) A listed Indian company may make OPI including by way of reinvestment.
- 3) Acquisition of equity capital by way of rights issue or allotment of bonus shares.
- 4) Capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made, or directions issued thereunder;
- 5) The swap of securities; however, both the legs of transaction shall comply with FEMA provisions, as applicable.
- 6) Merger, demerger, amalgamation, or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

### **3.9 No Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency**

- Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as willful defaulter or is under investigation by a financial sector regulator/ investigative agency shall obtain an NOC from the lender bank/regulatory body/investigative agency concerned in accordance with rule 10 of OI Rules, before making financial commitment or undertaking disinvestment. Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.
- Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/willful

defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.

### **3.10 ODI in startups**

Any ODI in startups in accordance with rule 19(2) of OI Rules shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.

### **3.11 ODI by Registered Trust or Society:**

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank subject to the conditions prescribed in Schedule IV of the Foreign Exchange Management (Overseas Investment) Rules, 2022

### **3.12 Transfer or liquidation–**

- (1) A person resident in India may transfer investment in equity capital if it is in compliance with the pricing guidelines, documentation and reporting requirements in the manner provided in the rules and Foreign Exchange Management (Overseas Investment) Regulations, 2022.
- (2) A person resident in India may transfer equity share capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident outside India.
- (3) In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the foreign entity, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.
- (4) Where the disinvestment by a person resident in India pertains to ODI:
  - (i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which such transferor is entitled to receive from the foreign entity as an investor in equity capital and debt.
  - (ii) the transferor, in case of any disinvestment must have stayed invested for at least one year from the date of making ODI

Note: the above conditions will not be applicable in case of a merger, demerger, or amalgamation between two or more foreign entities that are wholly owned directly or indirectly by the Indian entity, or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

(5) The holding of any investment or transfer thereof in any manner shall not be permitted if the initial investment was not permitted under the Act.

### **3.13 Restructuring:**

A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses:

Provided that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction

### **3.14 Opening of foreign currency account abroad by an Indian entity:**

An Indian entity may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of making ODI in accordance with the provisions contained in Regulation 5 (D) of Notification No. FEMA.10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015.

### **3.15 Acquisition by way of deferred payment:**

In case the remittance towards acquisition of equity capital is to be made post subscription to Memorandum of Association, the period within which such remittance is to be made shall be defined in the underlying agreement/documents/applicable laws else the remittance shall be made on or before acquisition of/setting up of the foreign entity.

The part of the payment towards consideration deferred by the person resident in India shall be treated as non-fund based financial commitment by such person and shall be reported accordingly. Subsequent payments towards deferred consideration shall be reported in Form FC as conversion of non-fund based financial commitment to equity. The valuation in accordance with pricing guidelines, wherever applicable, shall be done upfront.



## Export of Goods and Services

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### 4. Export of Goods and Services:

Export trade is regulated by the Directorate General of Foreign Trade (DGFT) and its regional offices, functioning under the Ministry of Commerce and Industry, Department of Commerce, Government of India. Policies and procedures required to be followed for exports from India are announced by the DGFT, from time to time.

AD Category-I bank may conduct export transactions in conformity with the Foreign Trade Policy in vogue and the Rules framed by the Government of India and the Directions issued by Reserve Bank from time to time. In exercise of the powers conferred by clause (a) of sub-section (1) and sub-section (3) of Section 7 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank has notified the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 relating to export of goods and services from India, hereinafter referred to as the 'Export Regulations'. These Regulations have been notified vide Notification No. FEMA 23(R)/2015-RB dated January 12, 2016.

"All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan." Indian Rupee is not a freely convertible currency, as yet.

Any reference to the Reserve Bank should first be made to the Regional Office of the Foreign Exchange Department situated in the jurisdiction where the applicant person resides, or the firm / company functions, unless otherwise indicated. If, for any particular reason, they desire to deal with a different office of the Foreign Exchange Department, they may approach the Regional Office of their jurisdiction for necessary approval.

#### 4.1 Realization and repatriation of proceeds of export of goods / software / services

The period of realization and repatriation of export proceeds is nine months from the date of export for all exporters including Units in Special Economic Zones (SEZs), Status Holder Exporters, Export Oriented Units (EOUs), Units in Electronic Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) & Bio-Technology Parks (BTPs) until further notice.

For goods exported to a warehouse established outside India, the proceeds shall be realized within fifteen months from the date of shipment of goods.

Exporters who intend to provide elongated credit terms to the buyers can do so only after the approval of RBI.

## **4.2 Manner of receipt and payment**

**4.2.1** The amount representing the full export value of the goods exported shall be received through an AD Bank in the manner specified in the Foreign Exchange Management (Manner of Receipt & Payment) Regulations, 2016 notified vide Notification No. FEMA.14 (R)/2016-RB dated May 02, 2016.

The AD Banks will update the data of exports in their Export Data Processing and Monitoring System (EDPMS) and generate Electronic Bank Realisation Certificate (eBRC) from the said data base linking the proceeds received from the buyer of the exporter to the export invoice. This EBRC is an important documentation that should be collected by the exporter from the AD Bank once the export proceeds is received.

### **4.2.2 Processing of export related receipts through Online Payment Gateway Service Providers (OPGSPs)**

Authorised Dealer Category – I (AD Category – I) banks have been allowed to offer the facility of repatriation of export related remittances by entering standing arrangements with Online Payment Gateway Service Providers (OPGSPs) subject to the following conditions –

- The AD Category-I banks offering this facility shall carry out the due diligence of the OPGSP.
- This facility shall only be available for export of goods and services of value not exceeding USD 10,000 (US Dollar ten thousand).
- Where the exporters availing of this facility are required to open notional accounts with the OPGSP, it shall be ensured that no funds are allowed to be retained in such accounts and all receipts should be automatically swept and pooled into the NOSTRO collection account opened by the AD Category-I bank. Which should be repatriated and credited to the respective exporter's account with a bank in India immediately on receipt of the confirmation from the importer and, in no case, later than seven days from the date of credit to the NOSTRO collection account.

## **4.3 Receipt of advance against exports:**

- On receipt of an advance payment from a buyer the exporter should ensure that shipment of goods is done within one year from the date of receipt of advance payment.

- The advance may be interest bearing however it should not exceed the LIBOR or any other widely accepted reference rate + 100
- The shipping documents should be routed through the same AD bank in which advance is received.
- If the exporter is unable to make the shipment, partly or fully within the time limit, the unutilized advance portion cannot be made without prior approval of reserve bank of India.
- The AD banks may permit exporters who have a satisfactory track record of three years to receive long term export advance amount up to a maximum period of 10 years to be utilized for execution of long term supply contracts for export of goods subject to the conditions as under:
  - (i) Firm irrevocable supply orders and contracts should be in place, the nature, amount and delivery timelines of the products over the years should be clearly specified.
  - (ii) Company should have capacity, systems and processes in place to ensure that the orders over the duration of the said tenure can actually be executed.
  - (iii) The facility is to be provided only to those entities, which have not come under the adverse notice of Enforcement Directorate or any such regulatory agency or have not been caution listed.
  - (iv) Receipt of such advance of USD 100 million or more should be immediately reported by the AD Bank to the Trade Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai.
  - (v) Interest rate should not exceed LIBOR / any widely accepted reference rate + 200.

#### **4.4 Extension of time**

The Reserve Bank of India has permitted the AD Category – I banks to extend the period of realization of export proceeds beyond stipulated period of realization from the date of export, up to a period of six months, at a time, irrespective of the invoice value of the export subject to the following conditions:

- The export transactions covered by the invoices are not under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies,
- The AD Category – I bank is satisfied that the exporter has not been able to realize export proceeds for reasons beyond his control,

- The exporter submits a declaration that the export proceeds will be realized during the extended period,
- While considering extension beyond one year from the date of export, the total outstanding of the exporter does not exceed USD one million or 10 per cent of the average export realizations during the preceding three financial years, whichever is higher.
- In cases where the exporter has filed suits abroad against the buyer, extension may be granted irrespective of the amount involved / outstanding.

Note:

- Cases which are not covered by the above instructions would require prior approval from the concerned Regional Office of the Reserve Bank.
- Reporting will be done in EDPMS (Export Data Processing and Monitoring System) by the AD Bank. (The Export Data Processing and Monitoring System (EDPMS) is an online software introduced by the RBI for all banks to bring their transactions with the exporters online.)

### **4.5 Third party payments for export / import transactions**

Third party payments for export / import transactions are permitted subject to conditions as under:

- Firm irrevocable order backed by a tripartite agreement should be in place.
- AD bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice / FIRC.
- The payments/ receipts should not be to/from countries restriction by the Financial Action task force (FATF).
- Third party payment / receipts should be routed through the banking channel only;
- The exporter should declare the third party remittance in the Export Declaration Form (EDF) and it would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;

### **4.6 Settlement of Export transactions in currencies not having a direct exchange rate**

Where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, it has been decided that AD Category-I banks may permit settlement of such export transactions (excluding those put through the ACU mechanism), subject to conditions as under:

- Exporter shall be a customer of the AD Bank,
- Signed contract / invoice is in a freely convertible currency,
- The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/ contract, Letter of Credit as full and final settlement,
- AD bank is satisfied with the bonafides of the transactions, and
- The counterparty to the exporter/ importer of the AD bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures.

#### **4.7 International Trade Settlement in Indian Rupees (INR)**

In order to promote global trade, broad framework of cross border transactions have been put in place, the conditions and nature of the same are as follows:

- All exports and imports under this arrangement may be denominated and invoiced in Rupee (INR). And should be supported by the documentation as per the regulations.
- Exchange rate between the currencies of the two trading partner countries may be market determined.
- The settlement of trade transactions under this arrangement shall take place in INR. The AD Banks will open special Rupee Vostro account for settlement of trade transactions. Letter of Credit (LC) and other trade related documentation may be decided mutually between banks of the partner trading countries under the overall framework of Uniform Customs and Practice for Documentary Credits (UCPDC) and incoterms.
- Set-off' of export receivables against import payables in respect of the same overseas buyer and supplier with facility to make/receive payment of the balance of export receivables/import payables, subject to the conditions.
- Issue of Bank Guarantee for trade transactions, undertaken through this arrangement, is permitted subject to adherence to provisions of the ACT.

#### **4.8 Delay in submission of shipping documents by exporters**

The exporters should submit the documents to the AD Bank within a period of 21 days from the date of export, if presented after 21 days the AD banks may accept them without prior approval of the Reserve Bank, provided they are satisfied with the reasons for the delay.

## 4.9 Reduction in invoice value

In case there is a reduction in the amount of sales invoice after the invoice is sent or at the time of collection, the AD category -1 bank can approve the reduction if it is satisfied about the genuineness of the request, provided:

- The reduction does not exceed 25 per cent of invoice value.
- It does not relate to export of commodities subject to floor price stipulations.
- The exporter is not on the exporters' caution list of the Reserve Bank.
- The exporter is advised to surrender proportionate export incentives availed of, if any.
- In the case of exporters who have been in the export business for more than three years, reduction in invoice value may be allowed, without any percentage ceiling, subject to the above conditions as also subject to their track record being satisfactory, i.e., the export outstanding do not exceed 5 per cent of the average annual export realization during the preceding three financial years. (for calculating the same) outstanding of exports made to countries facing externalization problems may be ignored provided the payments have been made by the buyers in the local currency.

Further Invoice reduction on account of cash discount is eligible to the extent of amount of proportionate interest on the unexpired period of usance, calculated at the rate of interest stipulated in the export contract or at the prime rate/LIBOR or any other widely accepted / Alternative reference rate of the currency of invoice where rate of interest is not stipulated in the contract.

## 4.10 "Write-off" of unrealized export bills

An exporter who has not been able to realize the outstanding export dues despite best efforts, may either self-write off or approach the AD banks, who have handled the relevant shipping documents, with appropriate supporting documentary evidence. The limits prescribed for write-offs of unrealized export bills are as under:

Particulars	Limit	Limit(%) in relation to
Self-write-off by an exporter (Other than the Status Holder Exporter)	5%	Total export proceeds realized during the calendar year preceding the year in which Self-write-off is being done
Self-write-off by Status Holder Exporter	10%	
Write-off by AD Category-1 Bank	10%	

The above limits of self-write-off and write-off by the AD Category-1 Bank shall be reckoned cumulatively and shall be available subject to the following conditions:

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- The said amount has remained outstanding for more than one year;
- Satisfactory documentary evidence is furnished to the AD Bank indicating that the exporter had made all efforts to realise the export proceeds;
- The exporter is a regular customer of the bank for a period of at least 6 months, is fully compliant with Know your customer's / Anti- Money Laundering (KYC/AML) guidelines and AD Category – 1 Bank is satisfied with the Bonafede's of the transaction.
- The case falls under any of the following categories:
  - (i) The overseas buyer has been declared insolvent and a certificate from the official liquidator, indicating that there is no possibility of recovery of export proceeds, has been produced.
  - (ii) The unrealized amount represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization.
  - (iii) The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country.
  - (iv) The overseas buyer is not traceable over a reasonably long period of time.
  - (v) The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding and turned out to be unrealizable despite all efforts made by the exporter.
  - (vi) The cost of resorting to legal action would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control.
  - (vii) Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges, but the amounts have remained unrealized consequent on dishonor of the bills by the overseas buyer and there are no prospects of realization

Notwithstanding anything contained in the above mentioned provisions, the AD Category-1 bank may, on request of the exporter, write-off unrealised export bills without any limit in respect of cases falling under any of the categories specified at (i), (ii) and (iii) above, provided AD Category -1 bank is satisfied with the documentary evidence produced.

- Documentary evidence towards surrendering of proportionate export incentives if any, availed of in respect of the relative export bill should be submitted to the AD Bank.
- In case of self-write-off, the AD bank shall obtain from the exporter, a certificate from Chartered Accountant indicating the export realization in the preceding calendar year

and details of the amount of write-off, if any, already availed of during the current calendar year along with the requisite details of the EDF/Export Bill under the write-off request. This certificate shall also indicate that the export benefits, if any, availed by the exporter have been surrendered.

- AD Category – I banks shall report write-off of export bills in Export Data Processing and Monitoring System (EDPMS).
- For write off of the export dues not on account of the above mentioned points, an application is required to be made to RBI.
- Note: The following cases, however, would not qualify for the “write-off” facility:
  - (i) Exports made to countries with externalization problem i.e. where the overseas buyer has deposited the value of export in local currency but the amount has not been allowed to be repatriated by the Central Bank/ authorities of the country concerned.
  - (ii) EDF/Softex which are under investigation by agencies like, Enforcement Directorate, Directorate of Revenue Intelligence, Central Bureau of Investigation, etc. as also the outstanding bills which are subject matter of civil / criminal suit.

#### **4.11 Write-off – relaxation**

If The exporter produces a certificate from the Foreign Mission of India concerned, about the fact of non- recovery of export proceeds from the buyer then the write off will be allowed by the AD Bank / RBI.

This would not be applicable in self write off cases.

#### **4.12 Set-off of export receivables against import payables.**

- The Exporter can approach the AD bank for allowing set off of outstanding export receivables against import payables from/to i) the same overseas buyer/supplier or ii) with their overseas group/associate companies either on net basis or gross basis, through an in-house or outsourced centralized settlement arrangement. The set-off shall be subject to the following conditions:
- The arrangement shall be done through one AD Category – I bank only
- The AD bank should be satisfied with the bonafides of the transactions and ensures that there are no KYC or Anti money Laundering concerns;
- The invoices under the transaction should not be under investigation by Directorate of Enforcement/Central Bureau of Investigation or any other investigative agency;
- Import/export of goods/services has been undertaken as per the extant Foreign Trade policy



- The export / import transactions with ACU countries are kept outside the arrangement;
- Set-off of export receivables against goods shall not be allowed against import payables for services and vice versa.
- AD bank shall ensure that import payables/export receivables are outstanding at the time of allowing set-off.

Further, set-off shall be allowed between the export and import legs taking place during the same calendar year.

- In case of bilateral settlement, the set-off shall be in respect of same overseas buyer/supplier subject to it being supported by verifiable agreement/mutual consent.
- In case of settlement within the group/associates companies, the arrangement shall be backed by a written, legally enforceable agreement/contract. AD Category – I bank shall ensure that the terms of agreement are strictly adhered to;
- Set-off shall not result in tax evasion/avoidance by any of the entities involved in such arrangement.
- Third party guidelines shall be adhered to by the concerned entities, wherever applicable;
- The AD bank shall ensure compliance with all the regulatory requirement relating to the transactions;
- AD bank may seek Auditors/CA certificate wherever felt necessary.
- Each of the export and import transaction shall be reported separately (gross basis) in the reporting done by the AD Bank.

#### **4.13 Netting-off of export receivables against import payments – Units in Special Economic Zones (SEZs)**

AD banks may allow requests received from exporters for 'netting off' of export receivables against import payments for units located in Special Economic Zones subject to the following:

- (i) The netting off of export receivables against import payments is in respect of the same Indian entity and the overseas buyer / supplier (bilateral netting) and the netting may be done as on the date of balance sheet of the unit in SEZ.
- (ii) Both the transactions of sale and purchase will be reported by the AD Bank separately.
- (iii) The export / import transactions with ACU countries are kept outside the arrangement.
- (iv) All the relevant documents are submitted to the concerned AD Category – I banks who should comply with all the regulatory requirements relating to the transactions.

#### **4.14 Exporters' Caution List**

An exporter would be caution-listed by the Reserve Bank based on the recommendations of the AD bank concerned, depending upon the exporters track record with the AD bank and investigative agencies.

#### **4.15 Issue of Guarantees by an Authorized Dealer**

An authorized dealer may give guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owned to a person resident outside India, where the debt, obligation or other liability is incurred by the person resident in India as an exporter, on account of exports from India if the transactions is a bonafide transaction and also the guarantee given under this clause should be covered by a counter-guarantee of a bank of international repute resident abroad;

#### **4.16 Refund of export proceeds**

There may arise situations in which the amount received on the export of goods may have to be refunded back to the purchaser on account of return of goods by the buyer on account of poor quality, The AD bank may permit the same i) after exercising due diligence regarding the track record of the exporter ii) verify the bona- fides of the transaction and documentary evidence and iii) a certificate from the DGFT / customs authority stating that the exporter has not availed / or surrendered any export incentives on the transaction. iv) The goods should be reimported back to India within 3 months from the date of refund following all the procedures of import of goods, this is subject to if the goods have been auctioned or destroyed by the Port / Customs / Health authorities/ any other accredited agency in the importing country.

#### **4.17 Consignment Exports**

There may be instances where goods may be shipped to agents in foreign countries who will sell them on consignment basis. AD Category 1 Bank should instruct the consignee to remit the sales proceeds by a specified date within the period prescribed for realization of proceeds of the export.

The consignee may deduct from the normal cost towards storage, handling charges against the sales proceeds and remit the net amount to the exporter. The deductions should be supported by documentary evidence.

Freight and marine insurance must be arranged in India for the goods sent on consignment basis.

#### **4.18 Opening / hiring of warehouses abroad**

Exporters may open / hire warehouses abroad after applying to the AD Bank subject to the following conditions:

- The exporter's export outstanding does not exceed 5 per cent of exports made during the previous financial year.
- The exporter has a minimum export turnover of USD 100,000/- during the last financial year. Period of realization should be as applicable.
- All transactions should be routed through the designated branch of the AD Banks.
- The above permission may be granted to the exporters initially for a period of one year and renewal may be considered subject to the applicant satisfying the requirement above.

#### **4.19 Change of buyer/consignee**

Prior approval of the Reserve Bank is not required if, after goods have been shipped, they are to be transferred to a buyer other than the original buyer in the event of default by the latter, provided the reduction in value, if any, involved does not exceed 25 per cent of the invoice value and the realization of export proceeds is not delayed beyond the period of 9 months from the date of export. Where the reduction in value exceeds 25%, all other relevant conditions stipulated in with respect to reduction in invoice should also be satisfied.

#### **4.20 Export of goods by Special Economic Zones (SEZs) from outside country after job work**

Units in SEZs are permitted to undertake job work abroad and export goods from that country itself subject to the conditions that:

- Processing / manufacturing charges are suitably loaded in the export price and are borne by the ultimate buyer.
- The exporter has made satisfactory arrangements for realization of full export proceeds

#### **4.21 Shipments lost in transit**

If shipments from India for which payment has not been received either by negotiation of bills under letters of credit or otherwise are lost in transit, the exporter should claim for insurance as soon as possible.

The exporter should repatriate the amounts of claims on shipments settled by shipping companies /airlines outside India due to goods lost in transit.

## **4.22 Exchange Earners' Foreign Currency Account:**

A person resident in India may open an account in foreign currency with an AD bank in India as per the rules and regulations, the exporters can credit their export earnings in the account and use it to make import payments which helps in saving in conversion cost and transaction cost, however the sum total of the accruals in the account in the month should be converted into Rupees on or before last day of the succeeding month after adjusting for utilization of the balances for approved purposes or forward commitments.

## **4.23 Project exports and service exports:**

Export of engineering goods on deferred payment terms and execution of turnkey projects and civil construction contracts abroad are collectively referred to as 'Project Exports'. Indian exporters are required to obtain the approval of the AD Category – I banks/ Exim Bank at post-award stage before undertaking execution of such contracts.

Further the following facilities are provided as under:

### **4.23.1 Inter-Project transfer of machinery**

Exporters may use the machinery / equipment for performing any other contract secured by them in any country subject to the satisfaction of the sponsoring AD Category – I bank(s) / Exim Bank and also subject to the reporting requirement and would be monitored by the AD Category – I bank(s) / Exim Bank.

### **4.23.2 Inter-Project transfer of funds**

The AD bank / EXIM Bank may permit exporters to open, maintain and operate one or more foreign currency account in a currency of their choice with inter-project transferability of funds in any currency or country. However this inter-project transfer of funds will be monitored by the AD bank / EXIM Bank.

## **4.24 Export of goods on lease / Hire basis:**

Prior approval of RBI is required to export plant and machinery on lease / hire under agreement with the lessee regarding the lease charges and ultimate reimport.

## **4.25 Export of software service / SOFTEX**

All software exporters need register with STPI and need to file the SOFTEX returns and forms.

For long duration contracts, the exporters are required to bill their client overseas periodically i.e., at least once a month or on reaching milestones as defined in the contract or arrangement. The last invoice should not be raised more than 15 days after completion of contract

Transactions involving 'one shot operation', the invoice should be raised within 15 days from date of transmission.

#### **4.26 Export of services:**

In respect of services to which no forms or reporting is prescribed, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due on such export and to repatriate the same to India as per the provisions of the Act.

#### **Case Study :**

In case of X P Ltd an exporter, an amount of 1 crore was receivable towards exports sales for more than 9 months.

In this case X P Ltd should apply to AD bank for extension which will be granted for maximum period of 6 months, at a time.

## Compounding and Penalties

### 5.1 Brief

In respect of any non compliances with the provisions of FEMA 1999 and its regulations, the same are treated as offences as under :

- Late submissions of any Forms required to be filed as per FEMA regulations
- Carrying out any transaction which are not in accordance or within the limits or in a manner as prescribed under the regulations of FEMA
- Owning any foreign exchange, security, immovable property situated outside India which is in excess of the threshold limit permissible under FEMA. (Section 37A)

### 5.2 Late Submission Fee:

**5.2.1** As per AP (Dir) Circular No 16 dated 30<sup>th</sup> September 2022, Reserve Bank of India has streamlined Late Submission Fee rules.

**5.2.2** The following categories of delays are covered (In respect of External Commercial Borrowings, Foreign Investments, Overseas Investments) :

Type of Form	Late Submission Fee
Form ODI Part II/APR/FCGPRB/FLA Returns /Form OPI which does not capture cash flows or any other periodic reporting	Rs.7500
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	Rs.7500 + $(0.025\% \times A \times n)$ (Where A refers to the amount involved, and n refers to the number of years delay. The amount of LSF is restricted to 100% of A Subject to other conditions as specified.

The facility of LSF is available upto 3 years of delay.

### **5.3 Penalty for contravention (Section 13)**

**5.3.1.** In case of any defaults in respect of contravention of any provisions of FEMA or its regulations, the Adjudicating Officer will issue a notice u/s 13 of FEMA and after giving reasonable opportunity to be heard, may levy a penalty up to three times the amount involved.

**5.3.2.** In case the amount cannot be quantifiable, the penalty will be levied at Rs.2 lacs.

**5.3.3.** In case of continuing offence apart from the above penalty, an amount of Rs.5000 per day will be levied.

The aggrieved party concerned will have a right to file an appeal against the said order before Special Director within 45 days. In the event of the order confirming the penalty by Special Director, the appeal can be filed before Appellate Tribunal and thereafter to the High Court.

**5.3.4.** In the event the penalty is not paid within a period of 90 days, a prosecution notice will be issued for civil imprisonment.

### **5.4 Offence committed as specified u/s 37A**

**5.4.1** In the event of any person found to be in possession or owning foreign exchange, security or immovable property outside India in excess of the threshold limits prescribed under relevant regulations, the said assets will be liable to be confiscated, a penalty of up to three times the amount will be levied and also liable for prosecution.

**5.4.2** This offence is not compoundable by payment of compounding fees.

### **5.5 Compounding of offences (Section 15)**

**5.5.1** Before any notice being issued by Adjudicating Officer, when the entity or any person who discovers any contravention being committed (except as provided u/s 37A), can apply suo moto to RBI in the prescribed form for Compounding of the offense.

**5.5.2** Reserve Bank of India will consider the application and after hearing the matter and on case to case basis decide the amount of compounding fee to be payable by that person.

**5.5.3** No compounding will be considered if the offense involves following: (i) Money Laundering

(ii) Terror Financing

(iii) Threat to the security and affecting sovereignty and integrity of the country

Even in the case where the defaults were willful or malafide intentions or fraudulent transactions are looked upon seriously, and composition may not be done.

**5.5.4** No compounding can be done if the offense is committed once again within a period of three years from previous compounding.

**5.5.5.** The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- a) The amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- b) The amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- c) Economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- d) The repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- e) Contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

**5.5.6** The Compounding order is required to be passed within a period of 180 days from the date of application. No appeal lies against the Compounding order.

**5.5.7** When the order for compounding is passed, the payment of the same is to be made within 15 days from the date of the order and if payment is not made within this time period, the compounding order will be null and void and action will be initiated for penalty u/s 13.

**5.5.8.** The Compounding fee criteria is laid down in Master Direction on Compounding of contraventions under FEMA 1999. It is only an indicative and actual fee will depend on case to case basis.



## Forms for Inbound and Outbound Investments

### 6. Forms for Inbound Investments:

Inbound Investments, as explained in Chapter 2, means Foreign Entities invest in the business of Indian Entities. There is Filing compliance at the time of Issue or transfer of Investments to/by Non-resident Persons. List of Various Forms are as below:

#### 6.1 Annual Return on Foreign Liabilities and Assets



RESERVE BANK OF INDIA  
Department of Statistics and Information

Management  
Section I  
(Identification Particulars)

Form for Annual Return on Foreign Liabilities and Assets as on end –

March :2024 I - Identification Details

1. Name of the Indian Company :
2. PAN Number :
3. CIN Number :
4. Contact Details

Name of the Contact Person:

Telephone no. (with extension)

Mobile No

Email (Head of institution)

Email of Contact Person

Designation

Website (if any):

Please fill the  
Identification  
Details against the  
respective heads for  
March 2022

### Forms for Inbound and Outbound Investments

5. Account closing date :
6. Nature of Business (As per National Industrial Classification (NIC) 2008 Code) :
7. Whether your company is merged/amalgamated during year :
8. Whether the Company is listed? :

Please furnish the face value of Ordinary / Equity Share on closing date of reference period in actual INR

	Classes/Type (provide number)		Face Value (in INR per share)	
	End March 2022	End March 2023	End March 2022	End March 2023
Ordinary/Share Equity				
Participating preference Share				
(Non-participating preference Share				

- 9 (I) Identification of the reporting Company (in terms of inward FDI) :  
(ii) Type of the company :
10. Whether the Company is Asset Management Company? :
11. Whether the Company has Technical Foreign collaboration? :
12. Whether the company has any business activity during latest financial year?

**SECTION - II**  
**(FINANCIAL DETAILS)**

**1. Total Paid-Up Capital of Indian Company**

Item	Shares in Actual		Amount in INR lakh	
	End March 2022	End March 2023	End March 2022	End March 2023
<b>1.0 Total Paid-up Capital (1.0 = 1.1 + 1.2)</b>				
<b>1.1 Total Equity and Participating Preference Share Capital (1.1=1.1(a) + 1.1(b))</b>				
(a) Ordinary/Equity Share				
(b) Participating Preference Share				
<b>1.2 Non-Participating Preference Share</b>				
<b>2. Non-Resident Holdings</b>				
<b>2.1 Equity and Participating Preference share capital</b>				
<b>2.1 Equity and Participating Preference share capital (Sum of item-1 to item-12)</b>				
1. Individuals				
2. Companies				
3. Foreign Institutional Investors (FIIs)				
4. Foreign Venture Capital Investors (FVCIs)				

Fill in the total paid-up capital of the Indian company for the specified periods in shares In Actual and Amt. in INR lakh

Specify the total equity and participating & Non Participating preference share capital for the given periods

Specify the total equity and participating preference share capital for the given periods relating to Non-Resident Holding.

In respect of Equity and Participating Preference share capital of Non-Resident Holding

Sum up the holdings for individuals, companies, FIIs, FVCIs, foreign trusts, private equity funds, pension/provident funds, SWFs, partnership/proprietorship firms, financial institutions, NRIs/PIOs, and others.

## Forms for Inbound and Outbound Investments

5. Foreign Trusts				
6. Private Equity Funds				
7. Pension/Provident Funds				
8. Sovereign Wealth Funds (SWF)				
9. Partnership/Proprietorship firms				
10. Financial Institutions				
11. NRIs/PIO				
12. Others non-resident holdings				

### 2.1.2 Participating Preference share capital (Sum of item-1 to item-12 )

1. Individuals				
2. Companies				
3. Foreign Institutional Investors (FIIs)				
4. Foreign Venture Capital Investors (FVCIs)				
5. Foreign Trusts				
6. Private Equity Funds				
7. Pension/Provident Funds				
8. Sovereign Wealth Funds (SWF)				
9. Partnership/Proprietorship firms				
10. Financial Institutions				
11. NRIs/PIO				
12. Others non-resident holdings				
<b>2.2 Non Participating Preference Share</b>				
<b>2.3 Non Resident Equity and</b>				

In respect of Participating Preference share capital  
- Sum up the holdings for individuals, companies, FIIs, FVCIs, foreign trusts, private equity funds, pension/provident funds, SWFs, partnership/ proprietorship firms, financial institutions, NRIs/PIOs, and others.

## CAs' Handbook on Inbound and Outbound Investments under FEMA

<b>Participating Preference Share Capital %</b>		
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### 3. Profit and Loss Account (from P/L Account)

Item	Amount in INR lakh	
	April – March 2022	April – March 2023
3.1 Profit (+) / Loss (-) before tax		
3.2 Profit (+) / Loss (-) after tax		
3.3 Dividend(Interim and Final Dividend)		
3.4 Tax on Dividend (if any)		
3.5 Retained Profit (= 3.2 - 3.3 - 3.4)		

Fill the accurate data of profit and loss account for the relevant period. This includes accurately recording profits or losses before and after tax, dividends (interim and final), and any applicable taxes on dividends

### 4. Reserves & Surplus (from Balance Sheet)

Item	Amount in INR lakh	
	End March 2022	End March 2023
4.1 Reserves and Surplus		
4.2 of which, Profit (+) and Loss (-) account balance		
4.3 Net worth of Company (= 1.1 + 4.1)		

Input the correct amounts for Reserves and Surplus for End March 20xx and End March 20xx aligning with your Balance sheet.

### 5. Sales and Purchase made during the financial year

Item	Amount in INR lakh	
	April – March 2022	April – March 2023
5.1 Domestic Sales		
5.2 Exports		
5.3 Total Sales (= 5.1 + 5.2)		
5.4 Domestic purchase		
5.5 Imports		
5.6 Total Purchase (= 5.4 + 5.5)		

Enter the Amount in INR Lakhs figures for Domestic Sales, Exports, Domestic Purchase, and Imports for the relevant periods.

## **Forms for Inbound and Outbound Investments**

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## **CAs' Handbook on Inbound and Outbound Investments under FEMA**

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### 6. Employee Information of reporting Indian company (in actual)

Item	As at the end of	
	End March 2022 I	End March 2023
6.1 No. of employees on payroll (in actual)		

Input the precise number of employees on the payroll as of End March 20xx and End March 20xx.

## Forms for Inbound and Outbound Investments

### Section - III FOREIGN LIABILITIES (Investments made in India)

#### FDI - Foreign Direct Investment

**1. Investment in India under Foreign Direct Investment (FDI) scheme (10% or more Equity Participation)**

1.a No. of foreign direct investors as on end-march of reporting year (10% or more Equity Participation)

1.a. 1 Month and Year of receiving FDI first time (in your company) :

**2. Investment in India under Foreign Direct Investment (FDI) scheme (Less than 10% Equity Holding)**

2.a No. of Countries (for each country having aggregate foreign Equity Holding less than 10%) during the year

2.b DI - Direct Investment

**3. Portfolio Investment in India**

Percentage of Equity and Participating Preference share capital holding		Enter the percentage of equity and participating preference share capital holding for End March 20xx and End March 20xx.
End March 2022	End March 2023	

Portfolio Investments	Amount in INR Lakh		Specify the amounts portfolio Investment in INR lakh for each category specified for give period.
	End March 2022 I	End March 2023	
1.0 Equity Securities(at market values)			
2.0 Debt Securities (= 2.1 + 2.2)			
2.1 Money Market Instruments (original maturity up to 1year)			
2.2 Bonds and other instruments (original maturity more than 1 year)			
3.0 Disinvestments in India during the year			



**4. Other Investment (Outstanding Liabilities with Foreign Unrelated Parties)**

Other Investment	Amount in INR Lakh	
	End March 2022 I	End March 2023
1.1 Trade Credit	0	0
1.2 Loans	0	0
1.3 Currency and Deposits	0	0
1.4 Other payable accounts	0	0
Total	0	0

Provide amounts in INR lakh for Other Investment (i.e. Outstanding liabilities with foreign unrelated parties) for End March 20xx and End March 20xx, Specifying each category.

## Forms for Inbound and Outbound Investments

### Section - IV

#### (FOREIGN

#### ASSETS)

1. **Equity Capital (PUC), Reserves & Surplus of Direct Investment Enterprise (DIE) Abroad (10% or more equity holding by Indian reporting company).**

1. **ODI - Overseas Direct Investment (10 % or more equity holding)**

1.a No. of Direct Investment Enterprises (DIE) Abroad as on End-March of reporting year

1.a. 1 Month and Year ODI made first time by your company

1.b. 1.1 ODI 1

Name of the DIE	Country of DIE	Percentage of Equity and Participating Preference share capital holding	
		End March 2022	End March 2023

Enter the name of the DIE & Specify the country where the Direct Investment Enterprise is located for both End March 20XX and End March 20XX.

Item	Amount in Foreign Currency (actual)	
	End March 2022	End March 2023
3.1 Reported Foreign currency	USD	
3.2 Total Equity of DIE (Paid Up Capital of DIE)		
3.3 Equity of DIE held by you (at face value)		
3.4 Reserves and Surplus		
3.4.1 Of which, Profit (+) and Loss (-) account balance		
3.5 Net Worth of DIE (3.5 = 3.2 + 3.4)		
3.6 Exchange rate in Rs per unit foreign currency		
3.7 Total Sales		

Specify the amounts in Foreign Currency (actual) for end of March 20xx and end of March 20xx for each category specified.

## CA's Handbook on Inbound and Outbound Investments under FEMA

3.7.1 Of which Exports		
3.8 Total Purchase		
3.8.1 Of which Imports		
3.9 No. of Employees on Payroll		

### 1.b.1.2 ODI 1

Type of Capital	Amount in Foreign Currency (actual)	
	End March 2022	End March 2023
1.0 Equity and PPS Capital (= 1.1 - 1.2)		
1.1 Claims on Direct Investment Enterprise		
1.2 Liabilities to Direct Investment Enterprise (Reverse investment)		
2.0 Other Capital (= 2.1- 2.2)		
2.1 Claims on Direct Investment Enterprise		
2.2 Liabilities to Direct Investment Enterprise (Reverse investment)		
3.0 Disinvestments abroad during the year		

In respect of Equity and PPS capital : input the respective amounts of claims on direct investment enterprises & Liabilities to Direct Investment (reverse investment) as of the end of March for both 20xx and 20xx.

In respect of Other capital : input the respective amounts of claims on direct investment enterprises & Liabilities to Direct Investment (reverse investment) as of the end of March for both 20xx and 20xx & Disinvestment abroad during the year.

## 2. DI – Direct Investment Abroad (Less than 10% equity holding)

2.a No. of Countries where your company holds less than 10 % equity shares in each under the ODI Scheme

## 3. Portfolio Investments abroad

3.a No of countries in which your company has made Portfolio investment

## Forms for Inbound and Outbound Investments

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### 4. Other Investment (Outstanding Claims on Foreign Unrelated Parties)

Other Investment (Outstanding Claims on Foreign Unrelated Parties)	Amount in Foreign Currency (actual)	
	End March 2022	End March 2023
1.1 Trade Credit	USD	
1.2 Loans		
1.3 Currency & Deposits		
1.4 Other receivable accounts		
<b>Total</b>		

Input the amounts for trade credit, loans, currency & deposits, and other receivable accounts, as of the end of March for both 20xx and 20xx, ensuring to specify that it represents outstanding claims on foreign unrelated parties.

**Section – V**  
**Variation report**

Description of Items	Previous FLA round (Amount in INR lakh)	Current FLA round (Amount in INR lakh)		Percentage Variation	
	End March 2022	End March 2022	End March 2022	Previous round	Current round
	1	2	3	$(4) = [(2)/(1) - 1] * 100$	$(5) = [(3)/(2) - 1] * 100$

Input the amounts from the previous FLA round and the current FLA round as of end March 20xx and end March 20xx, respectively. Then, calculate the percentage variation for both rounds using the formula provided.

Paid up capital (Section II – item 1.0)					
Net worth (Section II – item 4.3)					
Total sales (Section II – item 5.3)					
Total Purchase (Section II – item 5.6)					
Other Investment (Outstanding Liabilities) (Section III – item 4.5)					
Other investment (Outstanding Assets) (Section IV – item 4.5)					

Follow the same process as above, for other heard specified filling in the amounts and calculating the percentage variation for both rounds..

## Forms for Inbound and Outbound Investments

### 6.2 Statutory Auditor Certificate for ODI

Form FC-Section E Certificate by the Statutory Auditors of the Indian Entity(IE)/Group Company, as applicable (Strike out whichever is not applicable and mention Not Applicable)

<p>It is certified that the terms and conditions contained in OI Rules and OI Regulation have been complied with by the Indian Entity, _____ as applicable in respect of the _____ (equity/guarantee/loan) under report. In particular, it is certified that (strike out whichever is not applicable): as applicable</p> <ol style="list-style-type: none"> <li>1. The remittance is not in violation of the provisions contained in Rule 19 of foreign Exchange Management (Overseas Investment) Rules, 2022 or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment framework **, as stipulated by the Reserve bank from time to time.</li> <li>2. <del>The NOC as required in terms of Rules 10 of Foreign Exchange Management (Overseas Investment) Rules, 2022 has been obtained, wherever applicable.</del></li> <li>3. The remittance/transaction amount towards the equity together with earlier financial commitment is within the limit as stipulated by the Reserve bank from Time to Time. The total financial commitment of the Indian entity _____ (Name of Indian entity ) is United State Dollars _____ (Amount in USD){including proposed transaction of Equity Investment of United States Dollars _____ (Amount in USD) given by the company} (in foreign currency) the INR equivalent of which works out to INR _____ {including proposed Equity transaction of INR _____} that works out to _____ % (INR Basis) of its Net Worth which is INR _____ (Net worth in INR) /- as per last Audited Financial Statement drawn as on 31st March, _____,</li> <li>4. Indian Entity has complied with the pricing/ valuation norms prescribed in foreign Exchange Management (overseas Investment) Rules, 2022, or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment Framework**, as stipulated by the Reserve Bank from Time to time. The Valuation for the investment in _____ Shares (no. of Shares / % stake) is arrived at USD _____ (amount in CY).</li> <li>5. Indian entity has complied with the condition prescribed in para 2 of schedule I of Foreign Exchange Management (Overseas Investment) Rules ,2022 on ODI in Financial services activity, or</li> </ol>	<p>Mention the name of the company and the nature of financial commitment.</p> <ol style="list-style-type: none"> <li>1. Rule No 19 relates to restrictions and prohibitions</li> <li>2. A NOC is required, a person resident in India               <ol style="list-style-type: none"> <li>a) has an account appearing as a non performing asset or</li> <li>b) is classified as a wilful defaulter</li> <li>c) is under investigation by a Financial regulator or by an investigative agency in India eg CBI, If NA – then can strike off this point</li> </ol> </li> <li>3. The balance sheet for Net worth, should be latest applicable audited balance sheet, e.g. if September 2023 is due date for audit of financials of FY 2022-2023, In Oct, 2023 Net worth as per FY 22-23 audited BS to be taken and not FY 21-22</li> <li>4. If ODI in equity share capital then applicable otherwise strike off the same,</li> <li>5. If ODI in financial service activity, then whether regulations w.r.t it has been complied, if</li> </ol>
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<p>corresponding extant Regulation in case where transaction has been done under the earlier overseas investment Framework**, as stipulated by Reserve bank from Time to Time, wherever applicable.</p> <p>6. We have verified the records and certify that no delay in reporting is ending for regularization as required under Regulation 12 of foreign Exchange Management (Overseas Investment) Regulations, 2022.</p> <p>7. The amount of the personal guarantee(s) given by the director / promotor of one of the company of the group company of the Indian entity (as holding /subsidiary/promoter group company ), together with the Financial Commitment/s of the group company ,if any ,are within the limit as provided in Foreign exchange Management (Overseas Investment) Rules ,2022 read with the provisions contained in Foreign Exchange Management (Overseas Investment) Regulations,2022 and Foreign Exchange Management (Overseas Investment) Direction,2022.</p> <p>INR _____ of its Net Worth which is _____ as on the (date)</p> <p>Note: @valuation certificate is attached (Not applicable as not a group company)</p> <p>*Please refer to Regulation 5(2) of OI Regulation, in case guarantee extended by group company .</p> <p>^Exchange rate of INR shall be taken on date of Financial commitment or this certificate, whichever is earlier</p> <p>**Notification No.FEMA.19/RB-2000 dated 3rd May 2000 and Notification No. FEMA .120/RB-2004 dated july7,2004,as amended from Time to Time .</p> <p><b>Disclaimers</b></p> <ol style="list-style-type: none"> <li>1. Our statements / observations in this certificate are based on the information / documents to the extent furnished to us. We have relied on the information /documents furnished to us by the Indian company / officials of the Indian company.</li> <li>2. Our statements / observations in this certificate are based on leading practice / professional judgment and our reliance on representation by the management of the Indian company. However, we do not undertake tenability of our views in court of law.</li> <li>3. In no circumstances, we shall be liable, for any loss or damage, of</li> </ol>	<p>ODI in other than financial service activity – strike off the same.</p> <p>6. The regulation states that a person resident in India who has previously made a financial commitment in a foreign entity shall not make any further financial commitment, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting of earlier ODI or share certificate is regularized.</p> <p>7. If Financial commitment w.r.t guarantee then this clause applicable otherwise strike off the same and mentioned Not Applicable.</p> <p>Reasonable disclaimers should be given with the certificate.</p>
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## Forms for Inbound and Outbound Investments

what so ever nature arising from information material to our work being withheld or concealed from us or misrepresented to us by the company, directors, employees or agents or any other person of whom we made inquiries.

4. We undertake no responsibility to update this certificate for events or circumstances occurring after the date of the certificate.
5. Our observations on statutory regulations, if any, do not purport to be an opinion, expert or otherwise. It merely represents our understanding of the facts and interpretation of law. You are advised to take expert opinion before initiating any action on these observations.
6. This certificate is furnished solely for the purpose stated therein. We do not accept any responsibility whatsoever to any third party.
7. This certificate includes information not available to public. Accordingly, this certificate shall be treated as strictly confidential, and no part thereof be reproduced or used for other than intended purpose.

For \_\_\_\_\_

CHARTERED ACCOUNTANTS

ICAI Firm Reg. No. \_\_\_\_\_

**Name** \_\_\_\_\_

M. No. \_\_\_\_\_

Partner

Pune

Date:

UDIN:



### 6.3 FORM FC: Section A

**Clause III X** – Networth should be as per the latest applicable audited balance sheet

**Clause III XI** – Give Sum of the total Financial commitment including current ODI in foreign currency and INR

**Clause VI** - A UIN is created for the first ODI in each new entity

<b>Details of Indian Entity (IE) / Resident Individual (RI) / Trust/ Society</b> <b>(Along with Section A and B of this Form only the relevant section(s)</b> <b>as applicable may be used)</b>				
I.	Name, Code of Designated AD bank and Branch			
II.	Investment under (Please Tick)	Automatic Route	Yes	Approval Route
III.	Particulars of the IE/RI/Trust/Society			
i.	Name of IE/RI/Trust/Society			
ii.	PAN			
iii.	Legal Entity Identifier (LEI)			
iv.	Group company of IE (where the guarantee is extended by a group company)			
v	Activity code of IE	500 / 41001	Construction	
vi	Address of IE/ RI/Trust/Society			
vii.	City			
viii.	State			
ix.	Pin code			
x	Net worth in INR as on last audited balance sheet of the IE (In case of reporting of guarantee by a group company, the Net worth of such group company shall be reported)  Note: Please refer to Regulation 5(2) of OI Regulation in case of a guarantee extended by a group company.			As on date
xi	Sum of the financial Commitment (FC) w.r.t. all foreign entities of the IE/RI/group company/ Trust/ Society made until the date of the current transaction and FC being undertaken currently			

### Forms for Inbound and Outbound Investments

	Note: For computing the INR equivalent of the current FC the exchange rate as on date of current transaction or date of reporting , whichever is earlier, may be used.	in foreign Currency (FCY)- USD	in INR- Rs.
xii.	Contact Person		
xiii.	Designation of the contact person		
xiv.	Telephone Number		
xv.	Mobile Number		
xvi.	E-mail ID		
IV.	Status of IE/RI/Trust/Society: (Please tick appropriate category):		
I.	Public Sector Company		vi. Society
ii.	Private Sector Company	<input type="checkbox"/>	vii. LLP
iii.	Individual		viii. Others (Please specify)
iv.	Registered Partnership		
v.	Trust		
V.	Whether the IE/RI/group company/Trust/ Society making FC or undertaking disinvestment is under Investigation/ is a wilful defaulter/has account as NPA (please refer to Rule 10 of OI Rules). If yes , mention the name of the Regulator/investing agency /lender bank and the duration of investigation.- NO	From Date- NA	
VI.	Particulars of existing foreign entities of the IE/RI/group company /Trust/Society already in operation or under implementation (Attach separate sheet if required) :		
	Name of Foreign entity	Unique Identification Number (UIN) allotted by Reserve Bank	
i.			
ii.			
iii.			
iv.			

**CAs' Handbook on Inbound and Outbound Investments under FEMA**

<b>FORM FC: Section B</b>									
Details of the foreign entity / Step Down Subsidiary (SDS)									
Indicate 13 digit Unique Identification Number issued by the Reserve Bank (if applicable)									
VII	Particulars of foreign entity								
I.	Name								
ii.	Address								
iii.	Name of the country/ jurisdiction								
iv	Whether the foreign entity is start-up or has its core activity in strategic sector or is engaged in financial services		Start-up	Strategic sector	Financial services				
v	Date of incorporation of the foreign entity								
vi	Legal Entity Identifier (LEI) of the foreign entity								
vii	E-mail ID of the foreign entity								
viii.	Accounting year followed by the foreign entity								
ix.	Activity code of the foreign entity								
x	Financial commitment being made w.r.t above foreign entity (in INR and FCY )		Equity Capital- USD _____ /		Loan- USD _____				
xi	Sum of the Financial commitment (FC)by IE/RI/ group company/Trust / society w.r.t. this UIN made until the date of the current transaction and the FC being undertaken currently Note: For computing the INR equivalent of the current FC the exchange rate as on date of transaction or date of reporting, whichever is earlier, may be used.		In FCY- USD _____{Comprising of USD remittance for equity investment, Loan investments in earlier period and USD _____Current Equity remittance}						

UIN obtained during the first remittance to the foreign entity.

Basic particulars

Mention the financial commitment w.r.t to the ODI being done.

Total financial commitment made to this foreign entity including the current remittance

### Forms for Inbound and Outbound Investments

VIII.	Proposed/ Updated share-holding pattern in the foreign entity					Updated shareholding pattern of the foreign company after the ODI  Details of step down subsidiary of the subsidiary.
i.		Person resident in India	% stake	ii.	Foreign partner(s)	
IX.	Whether the person resident in India has control in the foreign entity (Refer to the definition of "control" in the OI Rules )					
X	Furnish the details of SDS of foreign entity in respect of which the FC is being undertaken, if applicable. (attach separate sheet If required) Not applicable					
i.	Name, Level and Country/ jurisdiction of SDS					
ii.	Name, Level and Country/ jurisdiction of parent SDS/ foreign entity					
iii.	Investment Amount and Date of investment (if any):				Not applicable	
iv.	Legal Entity Identifier (LEI) of the SDS				Not applicable	
v.	Type of SDS (SPV/ holding company /operating /operating cum holding )					
vi.	Activity code of SDS as per 1987 and 2008 NIC code					
viii.	% stake held by the parent in the SDS					

FORM FC: Section C											
Section C: Details of Transaction/ Remittance/ Financial Commitment (FC) of the person resident in India											
Indicate 13 digit Unique Identification Number (UIN) issued by the Reserve Bank (if applicable)											
S. No	Method or source of investment	Category of investment			Other details						
					Date	Amount					
1	Banking channel	Equity Capital	Loan	Guarantee invoked							
2	ECB	Equity Capital	Loan	Guarantee invoked							
3	ADR	Equity Capital	Loan	Guarantee invoked							
4	GDR	Equity Capital	Loan	Guarantee invoked							
5	Swap of securities	Equity Capital									
6	Capitalization-exports	Equity Capital									
7	Capitalization-others @ (specify)	Equity Capital									
8	Others -fund based (please specify) (e.g., acquisition by way of exercise of Rights)	Equity Capital		Loan							
9	Corporate or personal guarantee issued	Corporate guarantee by Indian Entity (IE)	Personal guarantee	Corporate guarantee by third party							
10	Performance guarantee issued				Issued date	Validity date					
11	Bank guarantee issued	Bank guarantee issued (Mention name of the bank )			Issued date	Validity date					
12	Rollover / Change in guarantee \$	(specify)			Rollover date	Validity date					

### Forms for Inbound and Outbound Investments

13	Pledge/creation of charge -foreign assets	Shares of foreign entity/ SDS	Movable & immovable properties of foreign entity /SDS	Other financial assets	Date of creation	Validity date	(amount to be reckoned as FC)
14	Creation of charges - domestic assets (name of the overseas lender)	Share of IE and/or its group companies	Movable & immovable properties of IE and/or its groups	Other financial assets of IE and/or its group	Date of creation	Validity date	(amount to be reckoned as FC)
15	Conversion of loan to Equity \$\$	(specify)			Date of conversion	Amount	
16	FC as result of merger of foreign entity/SDS (please specify amount in each category )	Equity Capital	Loan	Guarantee	Date of merger		
17	FC as result of sale/ transfer/merger by / of Indian entity/ group companies (please specify amount in each category )	Equity Capital	Loan	Guarantee	Date of transaction		
18	Others (specify ) (e.g., deferred payment*/gift/inheritance/by IE/ Resident individual (RI) (as the case may be)	N.A.					

**Note:**

\* to be reported as non-fund-based commitment at the time of acquisition of entity capital on deferred payment basis in compliance with Regulation 7 of the OI Regulation. Further, at the time of remittance the non-fund-based commitment shall be reported as converted to equity capital

@ Please specify the other dues being capitalized -incorporation expenses or the other dues viz., royalty, technical know-how fee, consultancy fees, etc.

## **CAs' Handbook on Inbound and Outbound Investments under FEMA**

\$ In case of rollover / change in guarantee please furnish the following details in the field a) Date of change/ Rollover of guarantee, b) Validity date of the new guarantee c) New Guarantee Amount d) 15 digit transaction number allotted by the Reserve bank when the original guarantee was reported online.			
'\$\$ In case of conversion of loan into equity please furnish the following details in the field a) Date of conversion b) Amount converted into equity/ loan c) 15 digit transaction number allotted by the reserve bank when the original remittance towards loan was reported online.			
To be filled by the AD branch (strike out whichever is not applicable)			
We hereby confirm that the remittance /transaction of (amount to be given in both in FCY and INR) _____ the provisions contained in Sub-section 5 of Section 10 of FEMA, 1999 .			
Signature of authorized official of AD bank		Stamp/seal	
Name & designation of the Authorized Official of AD bank			
Place	Date		
Telephone No.	Email		

## Forms for Inbound and Outbound Investments

<b>FORM FC: Section D</b>
Section D : Declaration by the Indian Entity (i.e.) / Resident Individual (RI) (strike out whichever is not applicable)
<p>(a) I/we have an account appearing as Non-Performing Asset (NPA)/willful defaulter ,or am/are under investigation by a financial sector regulator, or am/are under investigation by investigative agencies in India, viz., Central Bureau of investigation or Directorate of Enforcement or Serious Frauds Investigation Office</p> <p>Accordingly ,</p> <p>I. NOC has been obtained &amp; enclosed herewith as prescribed under Rule 10 of the OI rules, or  ii. The lender bank(s)/Regulatory body/ Investigative agency concerned failed to furnish the objection(s) within sixty days. From the date of receipt of application for NOC</p>
(b) wherever application share certificate /other evidence as required in Regulation 9 and other reporting requirement as required in terms of regulation 10 of OI Regulation , as stipulated by the Reserve Bank from time to time , in respect of the foreign entity under this UIN has been submitted/completed
(c) Financial commitment undertaken by means of debt is in compliance with OI Rules and OI Regulation or corresponding extract Regulation in case where the transaction has been done under the earlier overseas investment framework**, as stipulated by the Reserve Bank from time to time.
(d) Pricing and Valuation norms as per OI Rules and OI Regulation, or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment framework**, as stipulated by the Reserve Bank from time to time, where applicable, have been complied with.
(e) It is certified that no delay in reporting is pending for regularization as required under Regulation 12 of OI Regulation
(f) The foreign securities acquired by way of gift from a person resident outside India, is in accordance with the provision contained in Foreign Contribution (Regulation) Act,2010, and the rules and Regulations made thereunder and Para 2 of Schedule III of OI Rules. The Source of Funds for this ODI Remittance (Equity/ Loan) is partly own funds and partly by way of funding from the Holding Company by way of Inter corporate Deposit made out of the own funds of the Holding Company.
(g) This remittance /transaction amount together with earlier remittances/transactions relating to all the current and capital account transactions under the liberalized Remittance Scheme during this Financial Year is within the limit as provided under the scheme .The total amount of remittances/transactions done by me during the Financial Year until the date of this certificate is NIL.



**CAs' Handbook on Inbound and Outbound Investments under FEMA**

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I/we hereby certify that the information furnished above are true and correct .I/We also duly acknowledge that if any information furnished by me/us is found to be false and/or incorrect, it shall be construed that the reporting requirements under FEMA ,1999 ,have not been complied with.

Signature of authorized official of the IE/RI			
Name & designation of the Authorized Official of the IE/RI			
Place		Date	
Telephone No.		Email	
List of enclosures			
Note: **Notification No. FEMA19/RB-2000 dated 3rd May 2000 and Notification No. FEMA.120/RB-2004 dated July 7,2004, as amended from time to time.			

## Forms for Inbound and Outbound Investments

<b>6.4 ANNUAL PERFORMANCE REPORT (APR)</b>											
<b>Note: all amounts should be in actuals. All the figures should be in a single foreign currency (FCY)</b>											
I	APR for the period	From date		To Date							
II	Unique Identification Number (UIN)										
III	Capital structure as on the last day of the accounting year of the foreign entity										
		Amount				% share					
	i) Indian										
	ii) Foreign										
IV	Whether the Indian Entity (IE)/ Resident Individual (RI)/ Trust/ Society has control in the foreign entity - Yes/ No										
V	Change in the share holding pattern during the reporting year (Furnish the updated share holding pattern, if applicable, in the foreign entity)										
	Person resident in India	% Stake		Foreign partner(s)				% Stake			
(1)			(1)								
(2)			(2)								
(3)			(3)								
VI	Financial Position of the foreign entity for the last two years										
		Previous Year				Current Year					
	i) Net Profit/ (Loss)										
	ii) Dividend										
	iii) Net worth										
VII	Repatriation from the foreign entity										
		Current Year				Since commencement of business					
	(i) Dividend										
	(ii) Repayment of loan										
	(iii) Non-Equity Exports Realized (in INR)										
	(iv) Royalties										
	(v) Technical know-how Fees										
	(vi) Consultancy fees										
	(vii) Others (please specify)										
VIII	Profit										
IX	Retained earnings										

APR to be filed annually w.r.t each foreign entity, signed by the director and statutory auditor and has to be manually submitted to the bank – Acknowledgement of the same should be retained for future communications

The APR should be submitted in hard copy to the AD bank along with the  
a) Cover letter signed by the management b) Board resolution c) Audited signed financials of the foreign entity.

Amount received from the foreign entity should be disclosed here.

## CAs' Handbook on Inbound and Outbound Investments under FEMA

X	FDI by foreign entity/ SDS into India		
XI	Refund of excess share application money @Transaction No. -		
@ Furnish 15 / 17-digit transaction number allotted by Reserve Bank allotted at the time of reporting remittance in the online OID application.			
XII	Furnish the details of acquisition or setting up or winding up or transfer of step down subsidiary or subsidiaries of foreign entity during the reporting year in the format as provided, if applicable (attach separate sheet if the number of SDS is more than one)		
(i)	Name, level and country/jurisdiction name of SDS		
(ii)	Name, level and country/jurisdiction name of the parent of SDS		
(iii)	Investment amount and date of investment (if any)	Currency: Amount:	Date:
(iv)	Activity code as per 1987 Activity code as per 2008		
(v)	% Stake held in SDS	%	
(vi)	Is the activity of SDS into financial services (tick)	Yes	No
(vii)	Name, level and country/jurisdiction of SDS wound up during the reporting period, wherever applicable		
XII	Furnish the details of acquisition or setting up or winding up or transfer of step down subsidiary or subsidiaries of foreign entity during the reporting year in the format as provided, if applicable (attach separate sheet if the number of SDS is more than one)		
(i)	Name, level and country/jurisdiction name of SDS		
(ii)	Name, level and country/jurisdiction name of the parent of SDS		
(iii)	Investment amount and date of investment (if any)	Currency: Amount:	Date:
(iv)	Activity code as per 1987 Activity code as per 2008		
(v)	% Stake held in SDS	%	
(vi)	Is the activity of SDS into financial services (tick)	Yes	No
(vii)	Name, level and country/jurisdiction of SDS wound up during the reporting period, wherever applicable		
Declaration from Indian entity/ resident individual (Strike out whichever is not applicable)			

Details relating to the step down subsidiary of the foreign entity.

I/We the Indian entity/ resident individual (wherever applicable) further confirm that:

- Acquisition/ setting up/ winding up/transfer of the SDS and changes in the shareholding pattern of the foreign entity since last APR have been reported as required in terms of Regulation 10(4)(c) of OI Regulations or corresponding extant Regulations in case where the

## **Forms for Inbound and Outbound Investments**

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reporting is being done under the earlier overseas investment framework\*\* as stipulated by the Reserve Bank from time to time.

- ii. The structure of SDS is in compliance with the structural requirements of the foreign entity as provided in OI Rules.
- iii. We have received share certificate/s (or any other evidence of investment as per the applicable laws of the host jurisdiction) and submitted the same to the designated AD bank for verification within 6 months of making the remittance/s for all investments/ capitalization which are reckoned as ODI in the foreign entity under this UIN, as per Regulation 9 (1) of OI Regulations or corresponding extant Regulations in case where the reporting is being done under the earlier overseas investment framework\*\* as stipulated by the Reserve Bank from time to time.
- iv. The previous APRs for the foreign entity under this UIN, have been filed.

Repatriated to India, all dues receivable from the foreign entity under this UIN, as required under Regulation 9 (4) of OI Regulations or corresponding extant Regulations in case where the reporting is being done under the earlier overseas investment framework\*\* as stipulated by the Reserve Bank from time to time.

## CAs' Handbook on Inbound and Outbound Investments under FEMA

vi. I/ We hereby certify that the information furnished above are true and correct. I/We also duly acknowledge that if any information furnished by me/us is found to be false and/or incorrect, it shall be construed that the reporting requirements under FEMA, 1999 havenot been complied with.				<p>The Statutory auditor is required to sign the form as a certificate – the auditor should ensure all the details / figures mentioned in the form are well documented. The statutory auditor should obtain a letter of Engagement and a management representation from the management before signing APR form, UDIN should also be generated.</p>
Signature of the authorized official of the IE approved by the Board/ RI		Stamp/seal		
Name & Designation of the Authorized Official of the IE/ RI				
Place	Date			
Telephone No.	Email			
Certificate of the Statutory Auditor (in case of Indian entity) / Chartered Accountant in case of resident individuals (strike out whichever is not applicable)				
<p>We hereby certify that:</p> <p>i. APR for the year ended 31<sup>st</sup> December 20xx is prepared on the basis of audited/ unaudited balance sheet of the foreign entity for the year ended 31<sup>st</sup> December 20xx.</p> <p>ii. APR for the year ended 31<sup>st</sup> December 20xx is prepared on the basis of unaudited balance sheet of the foreign entity since audit is not mandatory in host country/jurisdiction and the IE/RI does not have 'control' in the foreign entity in compliance with explanation (a) to Regulation 10(4) of Foreign Exchange Management (Overseas Investment) Regulations, 2022.</p> <p>iii. The IE/ RI repatriated to India, all dues receivable from the foreign entity under this UIN, as required under Regulation 9 (4) of Foreign Exchange Management (Overseas Investment) Regulations, 2022 or corresponding extant Regulations in case where the reporting is being done under the earlier overseas investment framework** as stipulated by the Reserve Bank from time to time, and it has been verified from the Foreign Inward Remittance Certificate issued by the AD bank/s.</p>				
Signature of the Statutory Auditors/Chartered Accountant		Stamp/Seal		
Name of the audit firm, Registration number and UDIN				
Place	Date ;			
Email				

## Forms for Inbound and Outbound Investments

<b>Certificate by the Authorized Dealer bank</b>			
i. ....In terms of Regulation 9 (1) of OI Regulations, the AD Bank has received the share certificate/s or any other document as evidence of investment as per the applicable laws of the host jurisdiction and we are satisfied about the bona fides of the documents so received.			
ii. ....The duly filled in Form (Annual Performance Report) was submitted by the Indian entity/resident individual on.....day.....of (month) ..... (year).			
iii. All the previous year APRs submitted by the (Name of the Indian entity/ resident individual) have been reported in the online OID application.			
Signature of the Authorized Official of the AD bank		Stamp/seal	
Name and designation of the AD bank official			
Place	Pune	Date ;	

### Instructions for filling up the Annual Performance Report (APR)

- 1) A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an APR with respect to each foreign entity every year till the person resident in India is invested in such foreign entity, by December 31<sup>st</sup> and where the accounting year of the foreign entity ends on December 31<sup>st</sup>, the APR shall be submitted by December 31<sup>st</sup> of the next year.
- 2) The APRs shall not be submitted in the following cases,
  - (i) If a person resident in India is holding less than 10 per cent of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital.
  - (ii) When the foreign entity is under liquidation, from the date of initiation of the liquidation process.
  - (iii) For the broken period (i.e. full year not completed) at the time of disinvestment. However, the details of transactions if any that had been undertaken during the time from the date of submission of the last APR till the date of disinvestment/initiation of liquidation process may be duly reported in the Form FC.
- 3) The APR shall be based on the audited financial statements of the foreign entity. Where the person resident in India does not have 'control' in the foreign entity and the laws of the host jurisdiction does not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the

statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable including in case of resident individuals.

- 4) In case more than one person resident in India have made ODI in the same foreign entity, the person resident in India holding the highest stake in the foreign entity shall be required to submit APR. In case of holdings being equal, APR may be filed jointly by such person's resident in India. It is also clarified that where APR is required to be filed jointly, either one investor may be authorized by other investors, or such persons may jointly file the APR.
- 5) The person resident in India shall report the details regarding acquisition/ setting up / winding up/ transfer of an SDS or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR, failing which it shall amount to non-submission of APR.
- 6) The person resident in India shall ensure that all the previous year APRs have been submitted to the designated AD bank.
- 7) Capital structure (para III of form APR) should be in cumulative and the % stake should be a total of all the person's resident in India in the foreign entity
- 8) In Para VII the figures under "since commencement of business" should be equal to or more than the figure mentioned under current year.
- 9) In Para VII (ii), Redemption of preference shares (not in the nature of compulsorily convertible preference shares (CCPS)) should also be reported.
- 10) In Para VII (vii), other receipts which are not mentioned in the table like interest on loan or license fee etc. shall be mentioned.
- 11) In Para IX, the part of the profits of the foreign entity which is retained and reinvested in such foreign entity shall be mentioned. The retained earnings are to be calculated as per the procedure laid down by the International Monetary Fund in the latest version of their publication "Balance of Payments and International Investment Position Manual". It is to be noted that the negative retained earnings is to be treated as '0' (zero).
- 12) The level of step-down subsidiary (SDS) shall be calculated treating the foreign entity as the parent. So, an SDS directly under the foreign entity should be treated as first level SDS. Accordingly, an SDS under the first level SDS would be treated as second level SDS and so on and so forth.
- 13) In case of Para XII, the structure of SDS should be in compliance with the structural requirements of the foreign entity i.e. the structure of such subsidiary/ SDS shall also have limited liability where the foreign entity's core activity is not in strategic sector. The investee entities of the foreign entity where such foreign entity does not have control may not be treated as SDSs and therefore may not be reported.

#### **Forms for Inbound and Outbound Investments**

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- 14) In case of Para XII (vi), if the SDS is engaged in the activity of financial services, the investment shall be in compliance to the provisions contained in Para 2 of Schedule I of OI rules.
- 15) The activity code as per NIC 1987 and NIC 2008 shall be furnished.
- 16) The date may be mentioned in format DD/MM/YYYY format.
- 17) The name of the foreign currency (FCY) shall be indicated as per SWIFT code
- 18) Each page of the Form FC should be duly signed and stamped with date by the person resident in India submitting the same.
- 19) All amounts of foreign currency (FCY) and Indian Rupees (INR) should be in actuals only.



<b>FORM FC: Section E</b> Certificate by the Statutory Auditors of the Indian Entity (IE)/ Group Company, as applicable (Strike out whichever is not applicable)	
<p>It is certified that the terms and conditions contained in OI Rules and OI Regulations have been complied with by the Indian Entity/ Group Company, as applicable _____ (Name of the Indian Entity/ Group Company) in respect of the investment under report. In particular, it is certified that (strike out whichever is not applicable):</p> <ol style="list-style-type: none"> <li>i. The investment is not in violation of the provisions contained in Rule 19 of Foreign Exchange Management (Overseas Investment) Rules, 2022 or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment framework**, as stipulated by the Reserve Bank from time to time.</li> <li>ii. The NOC as required in terms of Rule 10 of Foreign Exchange Management (Overseas Investment) Rules, 2022 has been obtained, wherever applicable.</li> <li>iii. The remittance/transaction amount towards the investment together with earlier Financial Commitment is within the limit as stipulated by the Reserve Bank from time to time. The total financial commitment of the Indian entity _____ (Name of the Indian entity) is (in foreign currency) the INR equivalent<sup>A</sup> of which works out to INR_ that works out to_% of its Net Worth which is INR_____/-, as on the date of last audited balance sheet, i.e., (date _____)</li> <li>iv. Indian entity has complied with the pricing/valuation norms prescribed in Foreign Exchange Management (Overseas Investment) Rules, 2022, or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment framework**, as stipulated by the Reserve Bank from time to time. The valuation for the investment in (no of shares/% stake) is arrived at____ (amount in FCY).@</li> <li>v. Indian entity has complied with the conditions prescribed in para 2 of Schedule I of Foreign Exchange Management (Overseas Investment) Rules, 2022 on ODI in Financial services activity, or corresponding extant Regulations in case where the transaction has been done under the earlier overseas investment framework**, as stipulated by the Reserve Bank from time to time, wherever applicable.</li> <li>vi. We have verified the records and certify that no delay in reporting is</li> </ol>	<p>Name of entity making the ODI</p> <p>i) with respect to restriction and prohibition as per the Rules</p> <p>ii) If willful defaulter or under investigation from any financial sector regulator/ investigative agency.</p> <p>iii) To certify whether the total commitment including proposed commitment does not exceed 400% of Networth</p> <p>iv) if investment in equity then</p>

## Forms for Inbound and Outbound Investments

<p>pending for regularization as required under Regulation 12 of Foreign Exchange Management (Overseas Investment) Regulations, 2022.</p> <p>vii. The amount of the guarantee(s) given by the group company of the Indian entity (as holding/ subsidiary/ promoter group company), together with the Financial Commitment/s of the group company, if any, are within the limit as provided in Foreign Exchange Management (Overseas Investment) Rules, 2022 read with the provisions contained in Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022. The total financial commitment of the Indian entity (Name of the Indian entity) is (in foreign currency) the INR equivalent<sup>^</sup> of which works out to INR _____ that works out to % of its Net Worth which is INR _____/-, as on the date of last audited balance sheet, i.e., (date)</p> <p><b>Note:</b> @ Valuation certificate is attached</p> <p>*Please refer to Regulation 5(2) of OI Regulations, in case of a guarantee extended by a group company.</p> <p><sup>^</sup>Exchange rate of INR shall be taken on the date of financial commitment or this certificate, whichever is earlier</p> <p>**Notification No. FEMA.19/RB-2000 dated 3rd May 2000 and Notification No.FEMA.120/RB-2004 dated July7, 2004, as amended from time to time</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td colspan="2" style="padding: 2px;">Signature of the Statutory Auditors of the Indian entity</td> <td colspan="2" rowspan="4" style="padding: 2px; text-align: center; vertical-align: middle;">Stamp/ seal</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Name of the audit firm, Registration number and UDIN</td> </tr> <tr> <td style="padding: 2px;">Place</td> <td style="padding: 2px;">Date</td> </tr> <tr> <td style="padding: 2px;">Telephone No.</td> <td style="padding: 2px;">Email</td> </tr> </table>	Signature of the Statutory Auditors of the Indian entity		Stamp/ seal		Name of the audit firm, Registration number and UDIN		Place	Date	Telephone No.	Email	<p>applicable</p> <p>v) if ODI in Financial service activity then applicable.</p> <p>vi) if previous ODI and other reporting compliances under FEMA have been done.</p> <p>vii) If ODI under guarantee then applicable</p>
Signature of the Statutory Auditors of the Indian entity		Stamp/ seal									
Name of the audit firm, Registration number and UDIN											
Place	Date										
Telephone No.	Email										

## CA's Handbook on Inbound and Outbound Investments under FEMA

Form FC– Section F												
Reporting of restructuring of the balance sheet of the foreign entity involving diminution in the total value of the outstanding dues towards person resident in India on account of investment inequity and debt												
Note: All amounts should be in a single foreign currency and in actuals												
13 digit Unique Identification Number allotted by the Reserve Bank												
Name, AD Code and branch of the designated AD bank												
<b>S. No.</b>	<b>Particulars</b>											
I	PAN and Name of the Indian Entity (IE)											
II	Name of the foreign entity											
III	% Stake held by IE in the foreign entity											
IV	Total amount of Financial Commitment undertaken by IE in this UIN till date											
	a) Equity											
	b) Debt											
	c) Guarantee/ other non-fund based commitment											
V	Total accumulated losses (based on latest audited financial statements)											
VI	Proportionate amount of accumulated losses based on share of the IE											
VII	Date of restructuring											
VIII	Total outstanding dues towards the IE as on date of restructuring											
IX	Amount of diminution in the total value of the outstanding dues											
	a) Equity											
	b) Debt											
	c) Receivables											
	(i) Interest											
	(ii) Dividend											
	(iii) Others (Specify)											
X	Date of the valuation certificate											
XI	Total amount of financial commitment post restructuring											
	a) Equity											
	b) Debt											

UIN of the foreign entity

Particulars of the Indian entity and foreign entity

v) Total accumulated losses of the foreign entity

vi) Proportionate amount of losses of foreign entity in proportion to the share of holding of Indian entity

X) Valuation report required

XI) post restructuring details.

## Forms for Inbound and Outbound Investments

	c) Guarantee/ other non-fund based commitment		Declarations.
XII	% stake held by IE post restructuring		
<b>Declaration by the Indian Entity (IE)</b> (Strike out whichever is not applicable)			
a. The foreign entity has been incurring losses for last 2 years b. The amount of original investment is less than USD 10 million <div style="text-align: center;">OR</div> The amount of original investment is more than USD 10 million and the diminution in value has been duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013(18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction and the certificate is dated not more than six months before the date of restructuring			
c. The amount of diminution in value of the outstanding dues is less than twenty per cent of the total value of the outstanding dues towards the IE <div style="text-align: center;">OR</div> The amount of diminution in value of the outstanding dues is more than twenty per cent. of the total value of the outstanding dues towards the IE and the diminution in value has been duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction and the certificate is dated not more than six months before the date of restructuring			
I/ We hereby certify that the information furnished above are true and correct. I/We also duly acknowledge that if any information furnished by me/us is found to be false and/or incorrect, it shall be construed that the reporting requirements under FEMA, 1999, have not been complied with.			
Place		Place	
Date		Date	
(Signature and seal of authorised official of the IE/RI)		(Signature and seal of authorised official of the AD)	
Name		Name	
Designation		Designation	
Tel. No.		Tel. No.	
Email		Email	

**Note:** AD bank may ensure that the certificate furnished is in accordance with Para 14 of FEM (Overseas Investment) Directions.

**CAs' Handbook on Inbound and Outbound Investments under FEMA**

Form FC–Section G											
Reporting of disinvestment in the foreign entity by way of sale or transfer of equity capital/buyback of equity capital/closure/voluntary liquidation/winding up/merger/amalgamation											
Note: All amounts should be in a single foreign currency and in actuals											
13 digit Unique Identification Number (UIN) allotted by the Reserve Bank											
Name, AD Code and branch of the designated ADBank											
S. No.	Particulars of transaction										
I	Date of submission of last APR and period to which last APR relates										
II	Disinvestment route(tick)		Approval Route				Automatic Route				
III	Disinvestment type (tick)		Full disinvestment				Partial Disinvestment				
IV	Date of disinvestment										
V	PAN and name of the disinvesting person resident in India										
VI	% Stake held at the time of disinvestment				% stake disinvested in case of partial disinvestment						
VII	Method of disinvestment							Details to be furnished as Annex to the Form FC Section G along with relevant documentary evidence			

### Forms for Inbound and Outbound Investments

				(Please strike out whichever method is not applicable)
i.	Sale or transfer of equity capital to another person resident in India/ foreign partner/ Individual or merger/ liquidation of IE			Furnish the details of the entity buying the stake and whether the entity purchasing the stake is an existing foreign partner/ Indian partner in the foreign entity or a foreign party/ person resident in India buying stake in the concerned foreign entity for the first time.
ii.	Closure/voluntary liquidation of the foreign entity			Please attach relevant documentary evidence
iii.	Buy back by the foreign entity			Please attach relevant documentary evidence
iv.	Merger of two or more foreign entities of the same person resident in India			Furnish details of merging foreign entity and the surviving foreign entity such as name, UIN of the foreign entity and the name of the person resident in India concerned of both the foreign entities. Also
	Equity	Loan	Others (please specify)	
VIII	Summary of the financial commitment (cumulative amount) in respect of the foreign entity			
	Equity	Loan	Guarantees issued/other non-fund based financial commitment	Guarantee invoked/ Other fund based financial commitment
IX	Date wise details of remittances/ transaction (attach separate sheet if necessary)			

**CAs' Handbook on Inbound and Outbound Investments under FEMA**

	Date of remittance /transaction	Method of investment	Category of investment	Amount
X	Fair value of the total disinvestment as per the valuation report and date of valuation report, wherever applicable			
XI	Whether there is write off (i.e. the difference between the original amount (proportionate amount in case of partial disinvestment) of investment made and the amount of consideration received on account of disinvestment, where the latter is less than the former)? If yes, please provide the amount of write off			
XII	Amount repatriated on disinvestment (attach separate sheet if necessary)			
	Equity	Loan	Others (please specify)	
XIII	Amount repatriated since reporting of the last APR except the disinvestment proceeds			
	Equity	Loan	Others (please specify)	
Declaration				
(a) The transfer is subject to a price arrived on an arm's length basis. Copies of the necessary documents/ valuation as required by the AD bank have been furnished to the AD bank.				
(b) In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer, or liquidation (in case of liquidation of the foreign entity), it has the approval of the competent authority as per the laws in India and/or the host country/jurisdiction, as the case may be				
(c) the transferor, in case of full disinvestment other than by way of liquidation, does not have any dues outstanding for receipt, which the transferor is entitled to receive from the foreign entity as an investor in equity capital and debt.				
(d) the transferor has stayed invested for at least a year from the date of making ODI.				

## Forms for Inbound and Outbound Investments

(e) All the remittances/ transactions have been reported to Reserve Bank and it reconciles with the remittances / transaction details reported to the Reserve Bank.			
(f) All the guarantees issued on behalf of the foreign entity and its SDS are either no vated to another entity or the guarantees are closed.			
(g) In case any SDS has become the direct foreign entity as a result of disinvestment in the foreign entity then it is certified that relevant sections of the Form FC with respect to all such SDS are submitted to Reserve Bank through the AD bank for allotment of UIN.			
(h) I/ We hereby certify that the information furnished above are true and correct. I/We also duly acknowledge that if any information furnished by me/us is found to be false and/or incorrect, it shall be construed that the reporting requirements under FEMA, 1999 have not been complied with.			
Place		Place	
Date		Date	
Signature and seal of authorised official of the IE /RI)		(Signature and seal of authorised official of the AD)	
Name		Name	
Designation		Designation	
Tel. No.		Tel. No.	
Email		Email	



## **Bibliography**

- Bare Act Foreign Exchange Management Ac, 1999
- Reserve Bank of India and other Government publications
- Income tax Rules/FEMA regulations