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FAQs on creating Entity Master & reporting in SMF

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Version 02.09.2018

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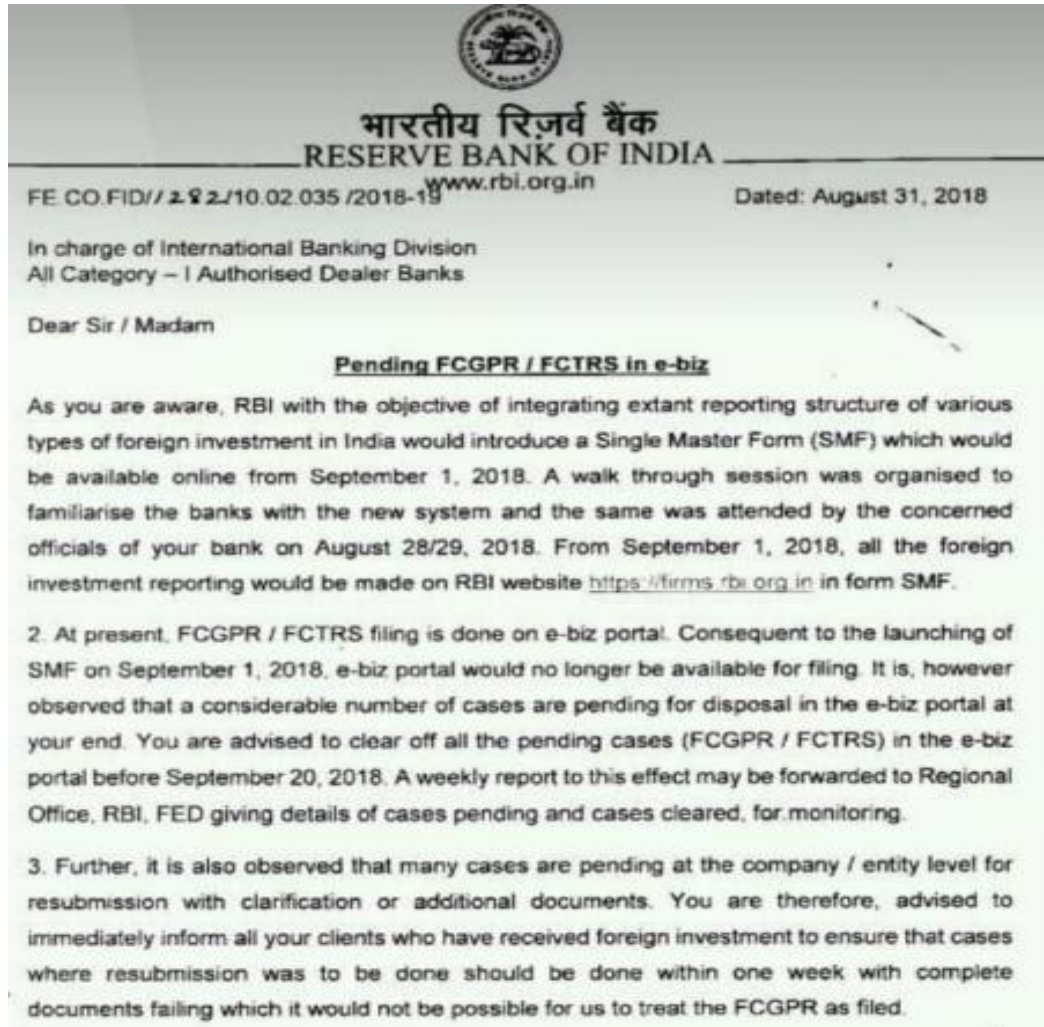
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Disclaimer: Kindly note the below set of FAQs is based on our research, conducted in good faith, relying on materials/ provisions of law as available to us. Clients acting on the same must exercise their own discretion. We disclaim liability for any losses/ liabilities/ damages that may arise relying on the same.

Part I – Single Master Form

RBI, vide notification dated August 31, 2018 has directed AD Banks that all the foreign investment reporting would be made on RBI website in form SMF. RBI has also issued User Manual for SMF¹.



The FAQs explains the basics of the same.

1. Which all forms are subsumed as part of SMF?

SMF subsumes 9 reporting formats, viz.:

- **FC-GPR: Foreign Currency – Gross Provisional Return** filed for issue of capital instruments to person resident outside India. **Advance Remittance Form (ARF):** Reporting of amount of consideration received for issue of capital instruments. Know

¹ <https://rbidocs.rbi.org.in/rdocs/FEMAMASTER/PDFs/SMF-FIRMS347E34AF5938415DAD0904E0584FB5A1.PDF>

Your Customer (KYC) Form is also submitted along with the same. **This has been subsumed with FC-GPR;**

- **Form Foreign Currency – Transfer of Shares (FC-TRS):** filed for transfer of capital instruments from PROI to resident or from resident to PROI.
- **Form LLP-I - FDI in LLP through capital contribution and profit shares;**
- **Form LLP-II - Disinvestment/ transfer of capital contribution and profit shares in LLP**
- **Form ESOP - issue of ESOPs / sweat equity shares/ shares against exercise of ESOP by an Indian company to an employee resident outside India.**
- **Form CN - issue or transfer of convertible notes • Form DRR - issue/transfer of Depository Receipts**
- **Form DI – Reporting of downstream investment (indirect foreign investment) in a company or LLP**
- **Form InVi- Reporting of investment by a person resident outside India in an Investment vehicle**

Following forms have not been subsumed and will be reported separately:

- **Annual Return on Foreign Liabilities and Assets (FLA):** Submitted annually on or before the 15th day of July of each year. This is submitted by way of an email to fla@rbi.org.in
- **Form LEC(FII):** The AD banks have to ensure that the FPIs registered with SEBI who are purchasing various securities (except derivative and IDRs) should report all such transactions details (except derivative and IDRs) in the Form LEC (FII) to Foreign Exchange Department, Reserve Bank of India, Central Office.
- **LEC(NRI):** The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (NRI) the purchase/ transfer of capital instruments by Non-Resident Indians or Overseas Citizens of India stock exchanges in India.

Rest all other forms not included in the list will continue to be reported from e-biz portal of RBI, except FLA Return, which is filed through e-mail.

2. Which all Forms can be presently reported through SMF?

At present five forms viz., FC-GPR, FC-TRS, LLP-I, LLP-II and CN are being made available for filing in SMF. The other four forms viz., ESOP, DI, InVi and DRR would be made available subsequently

The other four forms viz., ESOP, DI, InVi and DRR would be made available subsequently.

3. What is the pre-condition for being able to report in SMF?

The Entity should create entity master on FIRMS site. The first module was made available to the public for data entry between June 28 (at 1:00 PM) and July 12, 2018. The date was extended till July 20, 2018. For those companies which could not register within the stipulated time period may register for the entity master with effect from September 01, 2018. However, they shall provide the reasons for not making registration within the time period along with the authority letter.

4. Whether entities are required to report ARF, FC-GPR and FC-TRS on ebiz portal too?

As evident from the RBI notification, e-biz portal will no longer be available. Hence, all reporting to be done through SMF.

5. Who can report on SMF for the entity?

The Business User, i.e. the person authorised by the Company at the time of creating entity master and in whose favor the authorization letter was provided, shall be reporting the transactions for the entity using his login credentials.

6. What is the pre-condition for the Business User to be able to report in SMF?

Every Business User has to be eKYC verified before any reporting in SMF. This would ensure that only genuine Logins are made available in the FIRMS application

7. What is the process for eKYC verification?

The Business User will register itself on FIRMS and select the IFSC code of the bank which would approve the eKYC and the reporting would be made in SMF. In case the IFSC details are changed., i.e BU wishes to submit the reporting to another branch or another bank, the entity being the same, he/she needs to repeat the registration process for Business user with the new IFSC code and obtain separate Login.

- Steps:
1. Go to the FIRMS website at <https://firms.rbi.org.in>
 2. At the Login box, click on Registration form for New Business User.
 3. Fill up the details in the popped up registration form for BU;
 4. Click Submit button. In case any error is displayed, rectify the same and click Submit button.
 5. A Message “Record Saved Successfully” is displayed at the top of Login box

Part II - Entity Master

RBI, by its notification dated 7th June, 2018², on reporting of foreign investment by Indian entities (including companies, LLP and startups), introduced the new reporting framework. Accordingly, Single Master Form (‘SMF’) would be made available w.e.f. 1st August, 2018.

To begin with, RBI has instructed Indian entities, that have foreign investment, to register under the Entity Master, as a single registration, the window for which was initially opened from 28th June, 2018 till 12th July, 2018 and is **further extended by 8 days till 20th July, 2018.**

Please also note that RBI has specifically allowed adding/ editing the data once submitted on Entity Master, post 20th July, 2018, until 15th August, 2018, without any change in the last date of registration.

We had covered the above notification briefly here³.

Creation of Entity Master is the first step towards reporting under Single Master Form. We hope to solve few of the concerns through these FAQs. We are open to further questions and will be happy to incorporate the same as part of this document. Feel free to write to us at corplaw@vinodkothari.com.

Scope and Applicability

8. Which all entities have to register themselves on the Entity Master?

Following Indian entities, which **have/ had received foreign investment**, must get themselves registered with Entity Master:

- A **company** within the meaning of section 1(4) of the Companies Act, 2013;

² <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11297&Mode=0>

³ <http://vinodkothari.com/blog/entities-to-report-foreign-inv-to-rbi/>

- A Limited Liability Partnership (**LLP**) registered under the Limited Liability Partnership Act, 2008;
- A **startup** which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India

In case of a company, all type of companies, whether public or private, listed or unlisted, Section 8 or For-profit, government or non-government, all are required to file the same in case it has foreign investment.

Companies covered under Section 1 (4) of Companies Act, 2013:

- companies incorporated under this Act or under any previous company law;
- insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
- banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
- companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
- any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

9. What is the relevance of Entity Master?

Entity Master is a one stop portal for foreign investment reporting, which has been introduced with the objective of obtaining data on foreign investment in an Indian entity and is the first step towards reporting under Single Master Form.

At present, the foreign direct investment is reported by the investee company in Form FC-GPR. The indirect foreign investment is reported by the investor company in Form DI

(Downstream Investment. The investee company was never required to report the indirect foreign investment received by it.

Pursuant to availability of the interface FIRMS (Foreign Investment Reporting and Management System), every entity as specified below, is required to report **direct and indirect foreign investment ('foreign investment')** received by the entity to RBI.

10. Which entities are not required to register/ report in Entity Master?

Entities that have not received any foreign investment in the past are not required to register on the Entity Master.

A company can be said to have foreign investment if:

- a. it has any non-resident shareholder; or
- b. has a corporate shareholder which is owned or controlled by person resident outside India.

11. What if an entity fails to register on/ before 20th July, 2018?

Refer to para 3 of RBI Circular dated 7th June, 2018:

*"Indian entities **not complying** with this pre-requisite **will not be able to receive foreign investment** (including indirect foreign investment) and **will be non-compliant with Foreign Exchange Management Act, 1999** and regulations made thereunder."*

12. What is the available remedy in case the entity fails to register on/ before 20th July, 2018?

Based on an informal consultation from RBI helpdesk, following is the available remedy:

You may make a separate application to:

The Chief General Manager
Foreign Exchange Department
Central Office
Mumbai

The application may clearly state the reasons for not registering within the prescribed time limits. RBI will examine the matter on receipt of the application.

13. The notification is addressed to All Category – I Authorized Dealer Banks, but the compliance is to be done by the reporting entity (as highlighted in the [User Manual](#)). Please clarify.

The notification is issued under the provisions of sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (“FEMA”), which empowers the RBI to issue directions to authorized persons, which includes Authorized Dealer Banks. The directions are routed through these persons to reporting entities. The notification suggests the authorized person to bring the contents to the notice of stakeholders, i.e. reporting entities, while the ultimate onus of reporting lies on such reporting entities, as can also be inferred from the extant discussion in the text of the notification and the User Manual.

14. Is there a requirement to do NIL reporting on the Entity Master?

If the entity has not received any foreign investment, there is no requirement of NIL reporting.

15. What is the difference between Entity Master and SMF?

Entity Master is a reporting platform provided by RBI which is open for registration for following Indian entities:

- Indian entities that have received foreign investment, must register on or before 20th July, 2018.
- Indian entities which may receive foreign investment any time after 20th July, 2018, may register accordingly.

Entity Master is a user portal.

SMF is the Single Master Form, which subsumes 9 existing reporting forms under FEMA, 1999. SMF will be available w.e.f. 1st September, 2018. Reporting of foreign investment received after current reporting in Entity Master, will be made through SMF.

While registration on Entity Master is the Phase I of the implementation, reporting in SMF is Phase II.

16. What is the cut-off date for foreign investment, which has to be reported in the Entity Master?

Reporting of foreign investment in Entity Master shall be based upon the following:

- The latest available data as per Benpos (Beneficial Position), provided by depository(s), i.e. CDSL/ NSDL, in case of shareholders holding shares in demat form in case of listed entity and unlisted entity having shares in demat form; or
- Any cut-off date as may be otherwise determined by entities falling between June 28 and July 20.

17.If an entity receives foreign investment for the first time post 20th July, how will it register/ report on Entity Master?

The current window from 28th June-20th July is applicable only in case of those entities, which have received foreign investment. For any entity, which receives such investment post 20th July, 2018, for the first time, will need to report through SMF, once the same is available.

18.How does one access the portal of Entity Master?

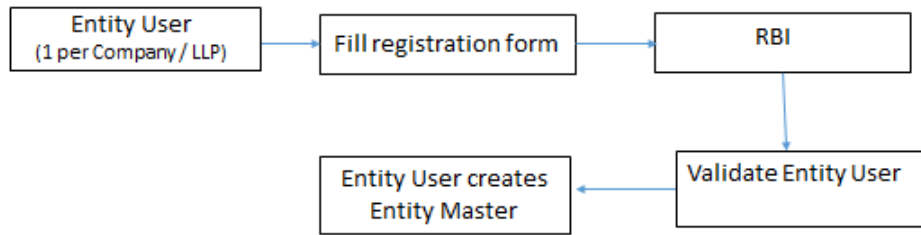
The RBI portal for registration in Entity Master can be accessed here: <https://firms.rbi.org.in>

Pre-requisites

19.What is required to complete the process of registration in Entity Master?

To register on Entity Master, the reporting Indian entity must authorize a single person to act as 'Entity User', by issuing an authority letter in his favour. Please refer to the format of authority letter at the end of the User Manual [here](#). The Entity User will be solely responsible for the information reported and shall be the point of contact for RBI, w.r.t. foreign investment in the entity.

The entity must also collate and keep all the data in relation to foreign investment, including direct and indirect foreign investment, ready.



Concepts

20. What is meant by 'Foreign Investment'?

Regulation 2(xviii) of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 defines it as follows:

“‘Foreign Investment’ means any investment made by a person resident outside India on a repatriable⁴ basis in capital instruments of an Indian company or to the capital of an LLP;”

Therefore, any investment made by a person (individuals and otherwise), resident outside India in capital instruments of an Indian entity will qualify as foreign investment. The Indian entity could be a company or an LLP.

‘Total Foreign Investment’ means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis;

21. What are capital instruments?

Capital Instruments⁵ shall include the following:

- Equity shares,
- Compulsorily Convertible Preference Shares,
- Compulsorily Convertible Debentures,
- Share Warrants,
- ESOPs,

⁴ ‘Investment on repatriation basis’ means an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated out of India, and the expression ‘Investment on non-repatriation basis’, shall be construed accordingly;

⁵ https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=11161

- Non-convertible/ optionally convertible/ partially convertible preference shares issued as on and up to April 30, 2007 and optionally convertible/ partially convertible debentures issued up to June 7, 2007 till their original maturity.

22. What is meant by 'Foreign Direct Investment'?

Regulation 2(xvii) of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 defines it as follows:

“‘Foreign Direct Investment’ (FDI) means investment through capital instruments by a person resident outside India in an unlisted Indian company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company;”

The above definition can be summarized as below:

- Direct investment in capital instruments of an unlisted company, or
- Direct investment in capital instruments of a listed company, accounting for 10% or more of post issue paid-up equity capital on a fully diluted basis⁶.

23. What is meant by the term 'fully-diluted basis'?

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

- Equity shares: As equity shares
- CCDS/ CCPS: Equivalent Equity shares (maximum)
- Share warrants: Equivalent Equity shares considering 100% exercise upfront
- 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 diluted.

24. What is meant by 'Foreign Portfolio Investment'?

Regulation 2(xix) of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 defines it as follows:

“‘Foreign Portfolio Investment’ means any investment made by a person resident outside India through capital instruments where such investment is less than 10 percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or

⁶ If the existing investment made prior to November 7, 2017 falls below 10% later on, it will continue to qualify as FDI.

less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company⁷;”

25. What is the difference between Foreign Direct Investment and Foreign Portfolio Investment?

Basis	Foreign Direct Investment (FDI)	Foreign Portfolio Investment (FPI)
Can be received by	Both listed and unlisted companies	Only listed companies.
Criterion in unlisted company	Any investment in capital instruments.	N/a
Criterion in listed company	Investment in capital instruments, accounting for 10% or more of post issue paid-up equity capital on a fully diluted basis	Investment in capital instruments, accounting for less than 10% of post issue paid-up equity capital on a fully diluted basis, or
		Investment in capital instruments, accounting for less than 10% of paid up value of each series of capital instruments
Whether reporting is required?	Yes by the Issuer in FC-GPR. In case of transfer, in Form FC-TRS.	Yes. By the AD-Bank in Form LEC (FII), Form LEC (NRI). In case of allotment by company, reporting in FC-GPR. In case of transfer, in Form FC-TRS.

26. Who are eligible to make FPI?

Following persons are eligible to make FPI in India:

- A person duly registered as a **Foreign Portfolio Investor** with SEBI, under Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014;
- A Non-Resident Indian (**NRI**) on repatriable basis;
- **Other** person resident outside India (Refer definition above).

27. How to ascertain FDI in case of LLPs?

In case of LLPs, FDI shall mean capital contribution or acquisition/ transfer of profit shares.

⁷10% limit is applicable to each foreign portfolio investor or an investor group.

28. How to ascertain FDI in case of investment vehicle?

FDI shall mean investment by person resident outside India in units issued by an investment vehicle.

29. What is 'Indirect Foreign Investment'?

'Indirect Foreign Investment' is **downstream investment** received by an Indian entity from:

- another Indian entity (IE) which has received foreign investment and which is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India; or
- an investment vehicle whose sponsor or manager or investment manager is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India.

30. How to compute Indirect Foreign Investment?

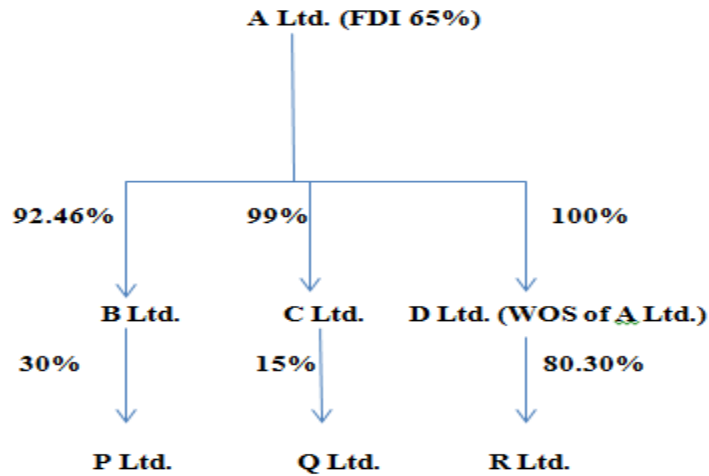
The foreign investment through the investing Indian company/LLP would not be considered for calculation of the indirect foreign investment in case of Indian companies/LLPs which are 'owned **and** controlled' by resident Indian citizens and/or Indian Companies/LLPs which are owned and controlled by resident Indian citizens.

For cases where condition above is not satisfied or if the investing company is owned **or** controlled by 'non-resident entities', the entire investment by the investing company/LLP into the subject Indian Company would be considered as indirect foreign investment, provided that, as an exception, the indirect foreign investment in only the 100% owned subsidiaries of operating-cum-investing/investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company.

This exception is made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.

Computation of Indirect Foreign Investment in a downstream entity may be understood with following illustration:

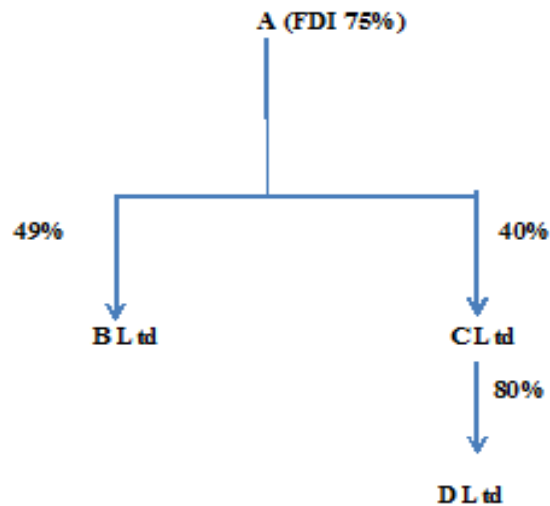
Case 1:



Following will be the computation of indirect foreign investment in the downstream entities:

- **In B Ltd.-** 92.46% (As A Ltd is an FOCC)
- **In C Ltd.-** 99% (As A Ltd is an FOCC)
- **In D Ltd (WOS)-** It will be limited to the foreign investment in A Ltd. i.e. 65%
- **In P Ltd.-** 30% (As B Ltd is also an FOCC)
- **In Q Ltd.-** 15% (As C Ltd is also an FOCC)
- **In R Ltd.-** 80.30% (As D Ltd is also an FOCC)

Case 2:



Following will be the computation of indirect foreign investment in the downstream entities:

- **In B Ltd.-** 49% (As A Ltd is an FOCC)
- **In C Ltd.-** 40% (As A Ltd is an FOCC)
- **In D Ltd –** Nil (As C Ltd is not an FOCC)

31. How to ascertain Indirect Foreign Investment in case of investment vehicle?

Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian ‘owned and controlled’ as defined in Regulation 14 of the principal Regulations as defined in RBI Notification No.362/2015-RB dated February 15, 2016.

Provided that for sponsors or managers or investment managers organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

32. How do companies ascertain Indirect Foreign Investment?

One option will be to assess the list of shareholders and identify shareholders that are companies, body corporate, LLPs, Investment Vehicles and ascertain the extent of foreign investment in the shareholder entities. However, this cannot be regarded as a realistic approach.

This is biggest challenge in filing entity master. A company can easily file details of indirect foreign investment made by it, but not of that received by it. There are listed entities having as high as 5000 to 7000 corporate shareholders.

Such companies cannot download old shareholding data from MCA and report for each such company. Cost of download from MCA is 100 per company. That means it will spend lakhs of rupees to ascertain shareholding of its shareholders.

In case of a downstream investment the investor company reports in Form DI. There is no intimation given to the investee company. That Form DI is not publicly available for Investee Company. So there is no way to ascertain indirect foreign investment received in such short span of time.

Therefore, companies should send requisite letters/ emails to their corporate shareholders seeking information from them on their status as FOCC or non-FOCC. The email shall specify a timeline within which the shareholders should respond, failing which the company may regard such shareholder as non-FOCC.

33. Under the Foreign Investment in Company / LLP Tab, the entity has to report Paid-up Capital of the entity on a fully diluted basis. Is it the entire Paid-up Capital or merely the one issued under foreign investment?

The entire Paid-up Capital of the entity must be reported, both foreign and domestic.

34. If the reporting company had a resident shareholder, named Mr. A, who subsequently became a non-resident, will this amount to foreign investment by Mr. A?

No. The said holding post transfer will be on non-repatriation basis and the resident shareholder, who subsequently became a non-resident, will continue to be treated as resident shareholder. Hence, it will not amount to foreign investment.

35. Are historical transfers to be reported, even if the entity does not have any foreign investment today?

The requirement is to report all foreign investment received by the entity. Further, the User Manual refers to both issue and transfer, from the date of incorporation.

Therefore, the entity must report all such transfers based on Form FC-TRS, irrespective of not having any foreign investment as on the date of reporting. FC-TRS is filed in case of transfer between following persons:

- Person resident outside India holding foreign investment on repatriable basis and a person resident outside India, holding foreign investment on a non-repatriable basis;
- Person resident outside India, holding foreign investment on a repatriable basis and a person resident in India.

36. Are FPI holding on stock exchange to be reported?

Yes. All foreign investment must be reported, including direct and indirect. Direct investment includes FPI held in secondary market.

37. The Company had FPI which was subsequently disposed to a resident Indian. There is no other foreign investment in the Company. Should this be reported?

All transfers, resulting in foreign investment or *vice versa* must be reported. However, such reporting is limited to the extent of information available with the Company. If the data is conveniently available, it must be reported.

38. Can one modify the data once added, post 20th July,?

The timeline has been provided to complete the registration and provide latest available information. In case of subsequent transfers/ issue post 20th July, the same can be modified on Entity Master.

39. What needs to be filled in Registration number?

The registration number received from RBI after reporting in FC-GPR for the first time shall be specified here. Not the registration number which RBI must have allotted for any specific entity like NBFC or CIC.

40. In the particulars tab, one needs to select either 'Greenfield' or 'Brownfield'. Which one should be selected and for what purpose?

Entities that have not received FDI, that don't have registration number ((received from RBI for reporting of allotments) will select Greenfield. For E.g., a Wholly-owned Subsidiary (WOS) of a Foreign Owned and Controlled Company (FOCC), will only have indirect foreign investment. Such entity never reported in FC-GPR and therefore, do not have any registration number from RBI. Such entities will select Greenfield.

Other entities that received FDI and reported the same to RBI earlier and received registration number will select Brownfield.