



India's integration with the global market has played a big role in the economic growth and development of India. For facilitating the cross-border investments and maintain transparency in foreign capital flows, the Securities and Exchange Board of India ("SEBI") and the Reserve Bank of India ("RBI") have made it easy for global players to enter the Indian capital market.

These developments have not only enabled Indian start-ups, fund houses and all the Indian-resident entities by receiving fundings from over the world through Foreign Direct Investment ("FDI"), but have also encouraged the Indian investors to diversify their portfolios by gradually expanding their investment horizons beyond domestic markets and increasing their investment in foreign securities and overseas business ventures through Overseas Direct Investment ("ODI").

With this growing movement of capital across borders, regulatory reporting has become equally important to the Indian resident entities which have outstanding FDI and/or ODI as on end-March of the previous year, including current year. The Foreign Liabilities and Assets ("FLA") return under FEMA 1999 can be filed on the Foreign Liabilities and Assets Information Reporting ("FLAIR") portal of the RBI at <https://flair.rbi.org.in/> by July 15 of reporting year based on the entity's audited or unaudited financials.

In this article, We will talk about few common mistakes that companies make while filing the FLA returns on FLAIR portal. Some of these mistakes may be unknown to the companies as they often arise from viewing the return as a simple financial reporting exercise of extracting figures from their Balance Sheet. However, to keep things streamlined the RBI needs reporting to be done in a proper manner not just based on the company's interpretation. The reality is that the FLAIR is more complex and requires an understanding of investment structures, foreign holding patterns, FDI, ODI and RBI reporting instructions.

Here are some areas where reporting mistakes are frequently observed:

1. Disinvestments during the year are often missed.

In the FLA return most companies focus on the investment position as of March. However, they are also supposed to report disinvestments made during the year. Not just that, Indian companies are also required to report disinvestments made by them in their overseas subsidiaries or joint ventures.

It happens at times that companies overlook the disinvestment made during the reporting period.

2. Preference shares are reported without considering the diluted position.



Another area of mistake is the reporting of preference shares. Companies sometimes report preference shares based on the existing position reflected in their records. However, FLAIR reporting requires consideration of the diluted position.

3. Equity capital is treated as equity shares.

Many companies think that equity capital is the same as equity shares held by investors. The concept is broader. Foreign direct investment is not restricted to investment in equity but also to contributions made through assets such as land, plant and machinery buildings. So, while reporting Equity capital the contribution made in assets of the company is also to be reported

4. Insufficient attention is given to the other capital component.

Among all sections of the FLAIR Return the Other Capital component is perhaps one of the frequently misunderstood. Companies generally focus on foreign shareholding details and fail to review inter-company balances, loans, trade credits, receivables, payables, financial leases, debt securities and share application money involving related foreign entities.

5. It is assumed that filing is required only if fresh FDI was received.

A common misunderstanding is that FLAIR filing is necessary only when foreign investment has been received during the financial year. The filing requirement is not linked to fresh investment alone. The key consideration is whether foreign assets or foreign liabilities exist as of March.

6. Filing is done merely because a non-resident holds shares.

The presence of a non-resident shareholder does not automatically trigger FLAIR reporting. In cases companies proceed with filing solely because shares are held by a person resident outside India. However, investments made on a non-repatriation basis are generally not treated as foreign investment for FLAIR purposes.

7. Incorrect classification of CCDs and CCPS.

Compulsorily Convertible Debentures and Compulsorily Convertible Preference Shares continue to create confusion during reporting. Many companies simply include these instruments within paid-up share capital. However, the reporting treatment may differ depending on the circumstances and the relationship between the investor and the reporting entity.

8. Reporting the country of the parent instead of the immediate investor.

This issue is frequently seen in group structures. For example, an Indian company may receive investment from a Singapore-based holding company that is ultimately owned by a parent



entity situated in Japan. During reporting companies sometimes mention Japan as the country of investment on the assumption that ultimate ownership should determine the reporting country.

However, we have to report based on the country of immediate investor i.e. Singapore entity.

9. Ignoring financial year-end dates of overseas subsidiaries.

Where overseas subsidiaries or joint ventures are involved their accounting periods may not always align with the financial year. Companies often rely entirely on the available audited financial statements of the overseas entity. However, FLAIR requires information as of March. So internal assessment is required to be done.

10. Reporting the date of first FDI receipt.

The field relating to the receipt of FDI appears straightforward but frequently results in errors. Companies sometimes mention the date of allotment, the latest investment round or the entry of a foreign investor. The requirement however is to disclose the month and year in which foreign direct investment was received for the first time by the entity.

11. Incorrect reporting of sales and purchases.

Errors are also frequently observed in the Sales and Purchases section. Some companies consider revenue transactions while compiling these figures. However, RBI guidance requires purchases to include both revenue expenditure and capital expenditure. Similarly, transactions relating to both goods and services need to be considered.

12. Reporting listed investments at historical cost.

Where an overseas subsidiary or joint venture is listed investments are sometimes reported at their original acquisition cost year after year. The prescribed valuation methodology for listed entities generally requires consideration of the market value based on the closing price as of the reporting date. Continuing to report cost may therefore result in significant deviations, from the value that should actually be disclosed.

13. Failure to Revise the FLA Return after Finalization of Audited Accounts.

Many entities file the FLA Return based on unaudited financial statements before the due date. However, after the accounts are audited, material changes may arise in net worth, reserves, profit figures, investments, or liabilities. Companies often overlook the requirement to revise the return based on audited figures, resulting in inconsistencies between the audited financial statements and the FLA Return.

14. Ignoring Indirect Foreign Investment Structures.



Companies often consider only direct foreign shareholders while determining foreign ownership. However, indirect foreign investment through intermediate holding companies may also require consideration under certain circumstances. Failure to properly analyse the ownership chain can lead to incorrect reporting.

15. Mismatch between FLA Return and FEMA Reporting Forms.

The information reported in the FLA Return should broadly align with earlier FEMA filings such as FC-GPR, FC-TRS, ODI filings, and ECB reporting. Inconsistencies between these filings may attract scrutiny and requests for clarification from the RBI.

16. Confusion Between Foreign Portfolio Investment (FPI) and FDI.

Foreign investors holding listed securities are sometimes incorrectly reported as FDI investors. The distinction between FPI and FDI is critical for accurate reporting and classification.

Suppose a listed Indian company has:

- A Singapore company holding 25% equity stake and having board representation: this would generally be reported as **FDI**.
- An overseas mutual fund registered as an FPI holding 2% shares through the stock exchange: this would generally be reported as **FPI**.

If the company reports the entire foreign holding as FDI, the foreign liability position may be incorrectly classified in the FLA Return.

17. Incorrect Unit Conversion While Reporting Financial Figures:

Another frequently observed mistake is reporting financial figures in the same unit as they appear in the company's financial statements without considering the reporting unit prescribed in the FLA Return. Many companies prepare their financial statements in thousands, millions, or absolute figures, whereas the FLAIR portal requires most financial information to be reported in INR lakhs.

As a result, figures are sometimes uploaded without proper conversion, leading to significant overstatement or understatement of foreign assets, liabilities, sales, purchases, and other financial information. Companies should therefore carefully verify the unit of measurement prescribed in the FLAIR portal and ensure that all figures are appropriately converted before submission.



Conclusion

The FLAIR is something which cannot be taken lightly. Companies need to carefully assess the financials and align the same with the reporting requirements of the RBI. As discussed above, many reporting mistakes arise not because of intentional non-compliance, but due to a lack of understanding of the RBI's reporting framework and the tendency to treat the return as a simple extraction of figures from the Balance Sheet.

If you take a little time to go through these commonly overlooked areas and understand the reporting requirements in the right perspective that people often miss, you can significantly improve the accuracy of their filings and will ensure that the RBI gets a clear picture of the company's foreign assets and liabilities.

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