

Uniform ISF applicable on reporting delays under FEMA

Introduction

The Reserve Bank of India (**RBI**) for the first time introduced the concept of Late Submission Fee (**LSF**) vide its Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 (**RBI Notification**), in respect of the Foreign Investment (**FI**) transactions undertaken on or after November 7, 2017. Thereafter, LSF was made applicable to the reporting delays concerning External Commercial Borrowings (**ECB**) vide RBI A.P. (DIR Series) Circular No. 17 dated January 16, 2019 (**ECB Circular**), and Overseas Investment (**OI**) vide RBI A.P. (DIR Series) Circular No. 12 dated August 22, 2022 (**OI Circular**). Recently, RBI vide its A.P. (DIR Series) Circular No. 16 dated September 30, 2022 (**LSF Circular**) superseded the LSF calculation matrix given under RBI Notification, ECB Circular and OI Circular and brought uniformity in imposition of LSF across functions (i.e. FI, ECB and OI).

Prior to introduction of LSF, the reporting person/entity (**Applicant**) had no choice but to go through the cumbersome process of filing a compounding application and paying the penalty for delayed reporting after the compounding order was passed, which could take up to 180 days after the submission of compounding application. To save time and efforts of the Applicants and downsize the workload of the compounding authority, LSF was launched as an alternative mechanism. It simplified the process of paying the penalty to the RBI to a great extent, where delayed reporting is done by the Applicant.

It is imperative to note that the payment of LSF is an option (and not compulsion) for regularising reporting delays without undergoing the compounding procedure. LSF is made known to the Applicant along with the conditional approval of the respective report filed. The final acknowledgement/communication is given after LSF is paid by the Applicant. The Applicant cannot claim a refund in any manner for the amount already deposited as LSF. However, if the Applicant is not satisfied with LSF amount calculated by the RBI, it need not pay the LSF and can proceed to file compounding



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application before the compounding authority for adjudication of the penalty.

LSF - Reporting Delays Concerning FI

The RBI Notification provides that the Applicant responsible for filing the reports [FC-GPR, FC-TRS, FLA, ESOP, DRR, Form LLP(I), Form LLP (II), LEC(FII), LEC(NRI), Form DI, Form CN or Form InVi] would be liable for payment of LSF for any reporting delays.

The LSF calculation matrix for reporting delays concerning FI is as under:

Amount involved in reporting (in INR)	Late Submission Fee (LSF) as % of amount involved *	Maximum amount of LSF applicable (in INR)
Up to 10 million	0.05 percent	1 million or 300% of the amount involved, whichever is lower
More than 10 million	0.15 percent	10 million or 300% of the amount involved, whichever is lower
* The % of LSF will be doubled every twelve months The floor (minimum applicable amount) for LSF will be INR 100		

The RBI Notification further provides that for calculating the LSF amount:

- the period of contravention would be considered proportionately {(approx. rounded off to next higher month ÷ 12) x amount for 1 year}, and “months” would include Sundays/Holidays.
- the period would begin from the day post the completion of stipulated time period (from the date of receipt of funds/allotment or transfer of shares) and end on the day preceding the day on which the transaction report is received in the RBI. The date of reporting to the Authorised Dealer Bank would deem to be the date of reporting to the RBI provided the prescribed documentation is complete in all respects.

Under the RBI Notification, the minimum LSF amount payable is INR 100 and thereafter, the LSF amount is payable on ad valorem basis, subject to the maximum amount of LSF applicable.

LSF - Reporting Delays Concerning ECB

The ECB Circular provides that any borrower, who is otherwise in compliance of ECB guidelines, can regularise the reporting delay of drawdown of ECB proceeds before obtaining the Loan Registration Number (LRN) or delay in submission of Form ECB 2 returns, by paying LSF.

The LSF calculation matrix for reporting delays concerning ECB was as under:

Type of Return/Form	Period of Delay	Applicable LSF
Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000

Form ECB 2/Form ECB	Up to 3 years from due date of submission/date of drawdown	INR 50,000 per year
Form ECB 2/Form ECB	Beyond 3 years from due date of submission/date of drawdown	INR 100,000 per year

Under the ECB Circular, the minimum LSF amount payable is INR 5,000 and thereafter, a fixed LSF amount is payable every year depending upon the number of years for which default has taken place. There is no cap on the LSF amount payable in respect of reporting delays concerning ECB.

LSF - Reporting Delays Concerning OI

The OI Circular provides that the reporting delays in respect of OI related transactions can be regularised by paying LSF.

The LSF calculation matrix for reporting delays concerning OI is as under:

Type of Reporting Delays	LSF Amount (in INR)
Form ODI Part-II/APR, FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7,500
Form ODI-Part I, Form ODI-Part III, Form FC, or any other return which captures flows or returns which capture reporting of non-fund-based transactions or any other transactional reporting	$[7500 + (0.025\% \times A^{\wedge} \times n^*)]$
[^] ‘n’ is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points. * ‘A’ is the amount involved in the delayed reporting.	

Under the OI Circular, the minimum LSF amount payable is INR 7,500 and thereafter, the LSF amount is imposed on ad valorem basis, subject to the maximum of 100% of ‘A’ which would be rounded upwards to the nearest hundred.

Uniformity in imposition of LSF across Functions

The LSF Circular superseded the LSF calculation matrix given under RBI Notification, ECB Circular and OI Circular and brought uniformity in imposition of LSF across functions.

With effect from September 30, 2022, the following LSF calculation matrix became applicable for reporting delays concerning FI, ECB and OI:

Type of Reporting Delays	LSF Amount (in INR)
Form ODI Part-II/APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7,500

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	$[7500 + (0.025\% \times A^{\wedge} \times n^*)]$
<p>\wedge 'n' is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.</p> <p>* 'A' is the amount involved in the delayed reporting.</p>	

The LSF Circular also provides that:

- (a) LSF amount is per return. However, for any number of Form ECB-2 returns, delayed submission for each LRN would be treated as one instance for the fixed component. Further, 'A' for any ECB-2 return would be the gross inflow or outflow (including interest and other charges), whichever is more.
- (b) Maximum LSF amount would be limited to 100% of 'A' and would be rounded upwards to the nearest hundred.
- (c) Where advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice would be considered as null and void and any LSF received beyond this period would not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application would be treated as the reference date for the purpose of calculation of "n".
- (d) The option of LSF would be available up to 3 years from the due date of reporting/submission. The option of LSF would also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to 3 years from the date of notification of OI Regulations.
- (e) In case a person responsible for any submission or filing under the provisions of Foreign Exchange Management Act, 1999 (**FEMA**), neither makes such submission/filing within the specified time nor makes such submission/filing along with LSF, such person would be liable for penal action under the provisions of FEMA.

With the implementation of the LSF Circular, the minimum LSF amount (in case of FI and ECB) has increased to INR 7,500. Resultantly, the Applicants who were earlier subjected to minimum LSF amount of INR 100 (in case of FI) and INR 5,000 (in case of ECB), will now be subjected to minimum LSF amount of INR 7,500, irrespective of the amount involved in Reporting. However, on the flip side, the good news is that the maximum LSF amount (in case FI and ECB) has been restricted to 100% of the amount involved in the delayed reporting, which is a welcome step as it will reduce the financial burden of lot of Applicants falling thereunder.