



भारतीय रिजर्व बैंक
विदेशी मुद्रा विभाग, बेंगलुरु कार्यालय

Instructions to Authorized Dealer (AD) Banks

1. Approval subject to inappropriate regulations/rules/notifications

It is observed that, while approving various forms reported on FIRMS portal, the timeline of notification/s under which the transaction/s fall, is not adhered to.

In this regard, the timeline of the frequently referred FEMA notifications/Rules are as mentioned below:

Notifications/ Rules	Timeline
Notification No. FEMA.20/2000-RB dated 3rd May 2000	From May 03, 2000 to November 06, 2017
Notification No. FEMA 20(R)/2017-RB dated November 7, 2017	From November 07, 2017 to October 16, 2019
Notification No. FEMA. 395/2019-RB	From October 17, 2019 onwards.
FEM (Non -Debt Instruments) Rules, 2019	From October 17, 2019 onwards.

Accordingly, it is advised to ensure that, while scrutinizing the reports on FIRMS, the following contraventions are determined only after verifying the transaction dates with the respective notifications as per the above timeline, before approving the same, subject to compounding-

Type of contravention	Date to be considered to decide the notification under which the transaction falls
Delay in reporting receipt of inward remittance/s	Date of receipt of inward remittance as per FIRC
Delay in Issue of shares/ refund of excess amount/ Allotment prior to receipt of remittance	
Delay in reporting FCGPR	Date of share allotment as per Board Resolution
Delay in reporting FCTRS	Date of transfer as per Form SH-4/ Transfer Agreement
Taking on record the transfer of share prior to obtaining FCTRS	Date of board resolution of investee company, taking the share transfer on record

Further, the exact rules/regulations and the paragraphs contravening them under the above notifications shall be quoted (*not the Master Directions*), while approving the reporting's either subject to compounding/ payment of LSF.

2. Issues with respect to FCTRS

- a. ~~With regard to delayed reporting of form FCTRS, apart from contravention of delayed reporting, it is advised to check if the investee company has taken on record, the concerned transfer of shares (either from Resident to Non-resident or vice-versa) prior to reporting the transfer in form FCTRS. Accordingly, if there is a contravention of the same, the reporting shall also be approved subject to compounding of the relevant rules/regulations (e.g. Regulation 4 of Notification No. FEMA.20, Rule 4 of FEM NDI rules etc.)~~
- b. Determining the contravener:
 - i. The onus of reporting form FCTRS is on part of the resident transferor or transferee (*Note: even if the form is reported by the company on behalf of the transferor/ transferee, application to compound the contravention of delay in filing FCTRS should be filed by resident transferor/ transferee, as the case may be*)
 - ii. ~~The onus of taking on record the transfer of shares prior to reporting Form FCTRS, is on part of the investee company.~~

3. Pricing guidelines

FEM (NDI) rules prescribe compliance with pricing guidelines for certain transactions involving issuance/ transfer of non-debt instruments. Adherence of the same is verified based on a CA valuation certificate uploaded, for reporting of such transactions. In multiple reports filed on FIRMS, it is observed that the date of signing/ issue of the valuation certificate is verified to check if the same is within 90 days prior to the date of transaction and if not, the form is approved subject to compounding.

In this regard, it is clarified that-

- a. For ensuring adherence to the pricing guidelines, the "valuation date" (i.e. the date as on which the valuation is arrived/obtained by the CA), specified in a valuation certificate should be verified to check if the same is not older than ninety days as on the date of the transaction.

- b. If the valuation date is older, the applicant shall be asked to provide a revised CA certificate indicating the fair value of shares arrived at a date not older than 90 days of the transaction.
- c. The fair value obtained in the revised CA certificate shall then be verified for its adherence to the pricing guidelines. If there is no contravention, the concerned FCGPR/ FTCRS shall be approved.
- d. If there is a shortage, the applicant shall be advised to bring the amount through inward remittance and only after the same is received and verified, the concerned report (FCGPR/ FCTRS) shall be approved subject to compounding of contravention of pricing guidelines under Rule 21 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

4. Receipt of consideration amount post transfer of equity instrument/ capital instrument/ shares under FEM (NDI) Rules/ FEMA 395/ FEMA 20(R)

It is observed that in some cases the amount of consideration has been paid post transfer of equity instrument/ capital instrument between person resident of India and person resident outside India without any agreement for deferred payment as per Rule 9 (6)(i) of FEM (NDI) Rules, 2019/ applicable regulations under FEMA 20(R).

In this regard it is informed that,

- a. For transactions undertaken during NDI Rules, 2019 / FEMA 20(R) regime, receipt of consideration beyond 60th day from the transfer of equity instrument/ capital instrument may be treated as contravention of Rule 9 of NDI Rules, 2019 read with Regulation 4(3) of FEMA 395 / Regulation 10 read with Regulation 13.1 (4) of FEMA 20(R), as the case may be.
- b. Receipt of consideration within 60 days of the transfer is not to be treated as contravention.

5. Jurisdiction on compounding of contraventions of Foreign Investment provisions under FEMA, 1999

Compounding cases involving contravention of regulations/rules delegated to Regional Offices of RBI, including cases involving share transfers or downstream investment are processed by the Regional Office of RBI having jurisdiction over the registered office of the investee Indian company/entity (entity receiving Foreign Investment / Indirect foreign investment as the case may be).

Accordingly, the same may be conveyed to concerned applicant upon approving the forms reported on FIRMS portal, subject to compounding.

6. Insistence on compounding of previous reporting's, thereby refusing to process the current forms filed

On several instances it is observed that AD banks are refusing to process the current reporting's done by the applicants citing that the previous reporting's which were approved subject to compounding have not been compounded.

In this regard, it is informed that compounding is a voluntary process. If the applicant does not submit a compounding application, wherein the reporting was approved subject to compounding, it shall be deemed that they do not wish to avail the facility of compounding, and hence other provisions of FEMA, 1999, shall apply. Even if the applicant files for compounding, the Compounding Order is passed within 180 days of the receipt of complete application by RBI/ DoE as the case may be.

In view of the above, it is advised that AD banks do not insist on compounding order pertaining to past reporting's, if approved for compounding, for processing the forms currently filed on FIRMS portal.

7. Scrutiny of documents on FIRMS

- a. All forms filed on FIRMS must be processed by the AD banks within the prescribed time of five working days.
- b. While verifying, the AD must select the concerned "Regional Office name" of RBI in whose jurisdiction the Investee Company lies.
- c. The forms should be verified by the AD user based on the uploaded mandatory documents (as prescribed in the FIRMS manual) and ensure that the same are following the extant guidelines.
- d. Before approving the forms, it must be ensured that the submitted forms are complete in all aspects. However, intrusive scrutiny is best avoided while verifying the forms.

8. Due diligence

It has been observed that many times cases/ requests of applicants are forwarded by AD banks without carrying out due diligence and without their comments/ observations

in the matter. As such, AD banks are advised to carry out proper due diligence before forwarding any cases along with their comments/ recommendations in the matter.

9. Provision for alternative documents

It has been brought to our notice by some applicants/companies that ADs continue to reject the forms multiple times for non-submission of documents, even when applicants/companies express their inability to obtain such documents, particularly for older transactions now being reported through FIRMS. In cases where applicants/companies declare their inability to obtain certain mandatory documents like KYC, FIRC etc., especially for old reportings, it is advised that ADs promptly refer such cases to RBI for guidance so that alternative documents, where possible, can be prescribed. This will facilitate a more efficient process for the applicants to comply with the reporting requirements under FEMA.

10. Delay in issuance of FIRC and KYC

It has been observed that complaints have been received from individuals/ companies regarding, delay in issuance of FIRC & KYC documents of the foreign remitter, by the AD banks. In this regard, AD Banks are advised to ensure timely disposal of such cases and there should not be any undue delay and all necessary assistance should be provided to the customers for quick resolution.

11. Additional clarification/guidance required related to FIRMS reporting.

Any references or requests received from the companies should not be unreasonably delayed at the AD's end. Where additional clarification or guidance is required on the existing instructions, ADs are encouraged to promptly refer the matter to RBI along with their comments and recommendations. Further, ADs should refrain from forwarding references to RBI in cases where clear instructions have already been provided.

In this regard, for applicants/companies that are under the jurisdiction of Bengaluru RO, you may write to us on-

- firmsbengaluru@rbi.org.in (080-22180-237/245/249)
For clarification/ guidance related to FIRMS reporting.
- cefablr@rbi.org.in (080-22180 -266/235/278)
For clarification/ guidance related to compounding.