



My Dear Friend

I am presenting Thursday's Article - 21 FAQs on Annual Performance Report (APR) for investments Outside India

- 1. Any kind of non-compliance attracting **Financial Penalties + imprisonment (both)**.*
- 2. It's humbly suggested to stop non-compliances for furnishing of legal documents + correct information's **(both)**.*
- 3. I trust that you will be enriched by reading this article*

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● *With best wishes from CA Satish Agarwal, New Delhi* ●



21 FAQs on Annual Performance Report (APR) for investments Outside India

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21 FAQs on Annual Performance Report (APR) for investments Outside India

1. Meaning for **filling of APR** for outside India (**overseas**) investments by Resident

- (i) Filling for APR required (**mandatory**) for investments made outside India by resident individuals + resident non individuals (**both**) in Joint venture (JV) + Wholly owned subsidiary (WOS) both located outside India commonly known Indian Party (IP).
- (ii) Separate APR be filed for each JV + each WOS (**both**) under FEMA, 1999.

2. Meaning for **penalty for non filing APR** for ODIs by IP or RI (**any**)

- (i) Non filling for APR (up to December 31st) be treated violation under FEMA, 1999.
- (ii) Maximum penalty @ 300% be levied (**exceptionally**) on investments made in JV + WOS (**both**)
- (iii) Maximum penalty be levied (**generally**) through computed amount referred under Foreign Exchange (Compounding Proceedings) Rules, 2000.

3. Meaning for **maximum limit** for ODIs by Indian Parties (IPs)

- (i) IPs permitted for Overseas Direct Investments (ODI) in JV + WOS outside India
- (ii) Maximum ODI permitted up to 400% of effective IP's Net worth through JV + WOS (**both**) located + incorporated (**both**) Outside India

4. Meaning for **maximum limit** for ODIs by Resident Individuals (RIs)

- (i) RIs permitted for ODI in JV + WOS (**both**) located + incorporated (**both**) Outside India
- But**
- (ii) RI permitted for ODI through Liberalized Remittance Scheme (LRS) **only**.
- (iii) Maximum RI permitted for ODIs up to USD 2.5 Lac per financial year + also per person through LRS (**only**).



5. Meaning for Audited financial statements for ODIs for JV + WOS (both)

- IPs or RIs (mandatory) required to file APR (up to December 31st) based on (audited) financial statements for JV + WOS (both) located outside India.

6. Meaning for Unaudited financial statements for ODIs for JV + WOS (both)

(i) IPs or RIs (any) permitted to file APR (up to December 31st) based on (unaudited) financial statements of JV + WOS (both) when audit not (mandatory) required in host country (outside India)

+ (plus)

(ii) Also Statutory auditors for IP (in India) required to certify that host country's law not (mandatory) required auditing of financial statements for JV + WOS (both) + also to satisfy figures for APR filled based on (unaudited) financial statements of JV + WOS (both)

+ (plus)

(iii) Also Board of Directors (BoDs) for IPs required to certify that (unaudited) financial statements already adopted + ratified (both)

+ (plus)

(iv) Also RI required to self certify for (unaudited) financial statements when RI (in India) not (mandatory) required auditing his financial statements.

7. Meaning for filling of APR for ODIs with Authorized Dealer (AD) Bank (in India)

- IPs or RIs (any) required to file APR (up to December 31st) in physical mode based on audited financial statements or unaudited financial statements (as case may be).

8. Meaning for form for filling of APR for ODIs with AD Bank (in India)

- APR be filled in Form ODI Part-II available on RBI's website for each JV + WOS (both) separately



9. Meaning for *period for filling of APR for ODIs in Form ODI Part-II* by IP or RI

- APR be filled from April 01st, 2022 to March 31st, 2023 for financial year ending on March 31st, 2023.

10. Meaning for *Unique Identification Number (UIN) for ODIs in Form ODI Part-II*

- (i) (a) UIN Number already allotted by RBI be filled.
- (b) UIN number be 13 digit alphanumerical already allotted by RBI
- (ii) Name for JV + WOS (both) be filled.

11. Meaning for *Capital Structures for ODIs for JV + WOS in Form ODI Part-II*

- (i) Details for capital structure be filled (as on last day for accounting year)
- (ii) Share capital's amount + percentage (both) for investments be filled.
- (iii) Capital structure be consisting (separately) for investments by Indian IP or RI + also for investments by foreign IP or RI (any) separately.

12. Meaning for *Operational details for ODIs for JV + WOS in Form ODI Part-II*

- (i) Operational details for last 2 year be filled.
- (ii) Operational details includes:-
 - (a) Net profit or net loss (both)
 - (b) Dividend declared + also paid or not paid (both)
 - (c) Net worth for last 2 year
- (iii) 1 year (only) operational detail may be filled when 1st year's operational details available due to 1st year's operations (only) for JV + WOS (both).



13. Meaning for Repatriations for ODIs from JV + WOS in Form ODI Part-II

- Repatriation's details (from JV + WOS) be filled in 11 points for current's year + also since incorporation (both):

	Current Year (March 31 st , 2023)	Since incorporation of business
(a) Dividend		
(b) Repayment of Loan		
(c) Non-Equity Export Realized (in INR)		
(d) Royalties		
(e) Technical Know-how Fees		
(f) Consultancy Fees		
(g) Others (Please specify)		
(h) Profit		
(i) Retained Earnings		
(j) FDI by JV/ WOS/ SDS into India		
(k) Refund of excess share application money and Transaction No, if any		

14. Meaning for investments in Wholly Owned Step Down Subsidiary (SDS) for ODIs

- Details for investments in SDS of JV +WOS (both) be filled in following table:

(a)	Name, Level and Country name of SDS			
(b)	Name, Level and Country name of parent of SDS			
(c)	Investment Amount in FCY and Date of investment (if any)	Currency: Amount:	Date:	
(d)	Investment type	WO SDS	JV SDS	
(e)	Type of Step Down Subsidiary	SPV/Holding company	Operating	Operating Cum SPV



(f)	Activity code as per 1987		
(g)	% stake held in SDS		
(h)	Is the activity of SDS into financial services (tick)	Yes	No

15. Meaning for *certificates* for ODIs to be enclosed with Form ODI Part-II

(i) *Certificate from IP or RI (any)*

- Certificate for fulfillment of legal compliances under FEMA, 1999 be printed on IP or RI (any) letterhead + be signed + be stamped (all) by authorized person for IP or by RI (himself).

+ (plus)

(ii) *Certificate from Statutory Auditors*

- Certificate for fulfillment of legal compliances under FEMA, 1999 be printed on letterhead + be signed + be stamped (all) by Statutory Auditors of IP or RI (himself) when RI don't have Statutory Auditor.

16. Meaning for *signing + Stamping + Printing (all)* by IP in Form ODI Part-II

(i) APR be signed by authorized person + by Statutory Auditors (both) for IP.

(ii) Each page for APR be signed + be stamped (both) by authorized person for IP

(iii) Last page for APR be signed + be stamped (both) by authorized person for IP + by Statutory Auditors (both) for IP.

(iv) APR be printed on normal A4 sheet by IP + RI (both) therefore not be printed on letterhead.

17. Meaning for *signing + Stamping + Printing (all)* by RI in Form ODI Part-II

(i) APR be signed by RI (himself) when RI doesn't have Statutory Auditor.

+ (plus)

(v) Also APR be printed on normal A4 sheet by IP + RI (both) therefore not be printed on letterhead.



18. Meaning for documents to be submitted for ODIs by IP or RI in Form ODI Part-I

- (i) Latest Audited Financial statements for JV + WOS (both).
- (ii) Latest Audited Financial statements for Holding Company.
- (iii) APR form duly filled + also be signed (both)
- (iv) Certificate issued by IP or RI (any)
- (v) Certificate issued by Statutory Auditors for IP or RI (himself) when RI don't have Statutory Auditor.
- (vi) Copies for Share Certificates for latest share's investments (remittance) made to JV + WOS (both).
- (vii) Covering letter for APR

19. Meaning for mode of Submission for ODIs by IP or RI in Form ODI Part-II

- (i) APR (with supporting documents) be submitted physically in 2 set 1st for Regional Office of Exchange Control Department of RBI + 2nd for Ministry of Commerce, EP (OI) Section, Government of India Udyog Bhavan, New Delhi - 110011 + to AD bank + to get acknowledgement for future reference + also for future correspondence (all)
+ (plus)
- (ii) Also AD bank required to send APR to RBI when specifically asked by RBI therefore AD bank not (mandatory) required to send APR to RBI when not specifically asked by RBI.



PART - B FINANCIAL STRUCTURE

8. (a) Capital structure Of the JV/WOS:	Total amount approved			Actual amount held		
	% of the total equity	FC	INR	% of the total equity	FC	INR
(i) Indian equity	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Foreign equity	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(b) Equity structure of the JV/WOS:

Name of Indian promoters	Equity percentage	RBI holding licence (No. & date)	Name of the foreign collaborators	Country to which they belong	Equity percentage
(i)					
(ii)					
(iii)					

(c) Method of acquiring equity shares by Indian promoters

	Total amount approved		Actual amount acquired/held	
	FC	INR	FC	INR
(i) Cash remittance	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Capitalisation of:-				
(I) Export of plant and machinery/goods	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(II) Technical know-how fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(III) Royalty	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(IV) Engineering/Technical services Fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(V) Consultancy/Management fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(VI) Selling agency commission	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iii) GDR/Foreign currency loans raised abroad	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iv) Bonus shares				
(v) Other methods () Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total :	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

9. Position of term/working capital loans/guarantees: (Amount only in FC)

	Total amount approved	Outstanding amount	Overdue amount		
			Principal	Interest	Total
(a) Term loans from :					
(i) Indian promoters	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Banks/financial Institutions (Fis)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iii) Others () Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>



(b) Working capital loans from :
(please see Item 'H' of the Annexure) :

(i) Indian promoters	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Banks/FIs	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iii) Others () Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(c) Guarantees from :

	Total amount approved/extended	Total amount invoked/claimed	Date of invocation	Amount paid so far
(i) Indian promoters	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Banks/FIs	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iii) Others () Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

10. Amount of foreign exchange released to the Indian promoter company(ies) on repatriation basis for different purposes: (Amount only in FC) - (please see Item 'I' of the Annexure)

Sr. No.	Purpose	Date and amount of remittance		Amount repatriated so far
		Date	Amount	
1.		<input type="text"/>	<input type="text"/>	<input type="text"/>
2.		<input type="text"/>	<input type="text"/>	<input type="text"/>
3.		<input type="text"/>	<input type="text"/>	<input type="text"/>

PART C - PERFORMANCE PARAMETERS

11. Operational details of the JV/WOS for the year under report
(Amount only in FC)

	Amount		Amount
(a) Installed capacity*		(g) Tax	<input type="text"/>
(i) Unit name	<input type="text"/>	(h) Net profit (+)/Loss(-)	<input type="text"/>
(ii) Amount ('000 omitted)	<input type="text"/>	(i) Dividend	<input type="text"/>
(b) Capacity utilisation* (only %)	<input type="text"/>	(j) Transfer to reserves	<input type="text"/>
(c) Gross sales/receipts	<input type="text"/>	(k) Free reserves & surplus	<input type="text"/>
(d) Operating cost (excluding depreciation & Interest)	<input type="text"/>	(l) Accumulated losses	<input type="text"/>
(e) Depreciation	<input type="text"/>	(m) Net worth	<input type="text"/>
(f) Interest	<input type="text"/>		

* applicable to manufacturing concerns only



12. (a) Entitlements (E) & Repatriations (R) (net of taxes) by the JV/WOS: **(Amount only in FC - INR equivalent to be given in brackets for repatriations only)** (please see Item 'I' of the Annexure)

Items	Year under report		Since commencement of business by JV/WOS		Total outstanding entitlements due for repatriation
	(E)	(R)	(E)	(R)	
(i) Dividend	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(ii) Technical know-how fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iii) Royalty	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(iv) Engineering/Technical service fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(v) Consultancy/Management fees	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(vi) Selling agency commission	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(vii) Others () Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Total :	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

(b) Break-up of outstanding entitlements (Amount only in FC) - (please see Item 'J' of the Annexure)

Accounting year for which outstanding	Dividend	Technical know-how fees	Royalty	Engineering/ Technical service fees	Consultancy/ Management fees	Selling agency commission	Others () Please specify
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

13 Position of non-equity exports to the JV/WOS: **(Amount only in INR)**

	Year under report	Since the commencement of business by JV / WOS
(a) Projected value	<input type="text"/>	<input type="text"/>
(b) Value actually exported so far	<input type="text"/>	<input type="text"/>
(c) Value realised so far	<input type="text"/>	<input type="text"/>
(d) Value outstanding for realisation beyond 6 months	<input type="text"/>	<input type="text"/>

14. If the performance of the JV/WOS has not been satisfactory, indicate the principal reason(s) by ticking (û) the appropriate box(es):

- | | | | |
|---|----------------------------|----------------------------------|----------------------------|
| (a) Non-cooperation of foreign collaborator | : <input type="checkbox"/> | (e) Management problems | : <input type="checkbox"/> |
| (b) Liquidity problems | : <input type="checkbox"/> | (f) Obsolescence of technology | : <input type="checkbox"/> |
| (c) Competition from importers | : <input type="checkbox"/> | (g) Marketing problems | : <input type="checkbox"/> |
| (d) Change in Law/policy of host country | : <input type="checkbox"/> | (h) Others ()
please specify | : <input type="checkbox"/> |

15. A note on the basic features of the progress and achievements of the JV/WOS on the basis of original/revised projections should be attached to this APR (please see Item 'K' of the Annexure before preparing the note).



21. Meaning for instruction for filling form ODI Part-II with AD bank by IP or RI

ANNEXURE INSTRUCTIONS FOR FILLING OF THE APR

(This portion should be detached and retained by the Indian promoter company submitting the APR)

- A. (i) This form, duly filled in, should be submitted within 30 days of the expiry of the statutory period for the finalisation of the audited annual accounts applicable in the host country of the JV/WOS. A certificate indicating the statutory period from an independent Chartered Accountant / Public Accountant of the host country should be attached.
(ii) In case, there is no such statutory period, this form should be submitted within 6 months from the close of relevant accounting period.
(iii) In case there are more than one Indian promoter company, the principal promoter company has to submit the APR on behalf of all other promoter companies.
- B. The Indian promoter company of the JV/WOS should submit this form in duplicate to the concerned Regional Office of Exchange Control Department of Reserve Bank of India and another copy to Ministry of Commerce, EP(OI) Section, Government of India, Udyog Bhavan, New Delhi - 110 011.
- C. (i) All amounts of Foreign Currency (FC) and Indian Rupee (INR) should be rounded off to the nearest thousand and the same should be indicated after omitting '000, e.g. 10,499 and 10,500 should be shown as 10 and 11 respectively.
(ii) Capital letters should be used for filling up this form.
- D. Additional sheets may be attached if the space available against a particular item is not sufficient.
- E. Equivalent INR in respect of FC should be given as on the date of actual conversion.
- F. Wherever boxes are provided in items requiring date, the first two boxes are meant for the date, next two for the month and next four for the year.
- G. In respect of any item [excepting items 1,3(a) and 4(a)] if the contents have not undergone any change vis-à-vis the last APR, then indicate "NO CHANGE" in the relative boxes/against the particular item.
- H. In item 9(b) if separate break up of overdue amount as principal and interest is not available then the total figure may only be indicated under "Total" column.
- I. In respect of all repatriations [c.f. Items 10 and 12(a)] supporting bank certificates (in form BCI) should be enclosed. If such certificates have already been submitted along with the Annual Return of Foreign Currency Shares or otherwise the reference thereof should be cited.
- J. The total of year-wise break-up of outstanding entitlements given under Item 12(b) should tally with total outstandings as indicated under Item 12(a).
- K. The note as per Item 15 of the APR should include the following -
(i) In case of non-satisfactory performance of the JV/WOS, the reasons cited at Item 14 should be briefly explained along with the necessary corrective steps taken/proposed to be taken to bring about a turnaround.
(ii) The reasons for outstanding entitlements, if any, and the steps being taken to realise the same should be indicated.
(iii) The reasons for not meeting the target of non-equity exports, if any, and non-realisation of proceeds of such exports beyond 6 months, if any, should be explained.
(iv) The reasons for the overdue outstandings in term/working capital loan accounts, if any, and steps taken to square up the same should be furnished. The circumstances leading to invocation of guarantees and non-payment of claim, if any, should also be explained.
(v) In respect of JV/WOS set up abroad for attracting foreign investment into India, information on the amount of foreign investment brought into India vis-a-vis the projections made in the application in Form ODI should be highlighted & reasons for shortfall should be explained.
(vi) Any special feature which is of importance to the functioning of the JV/WOS including information/developments relating to disinvestment (partial or full), liquidation, etc. and does not figure elsewhere in this APR should also be highlighted.



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