

Second phase of firms notified User Manual of SMF Provided

written by Mohana Roy | September 13, 2018

Introduction

The Reserve Bank of India ("RBI") in its First Bi-monthly Policy Review dated April 5 2018, made an announcement to introduce a Single Master Form("SMF") through online application Foreign

Investment and Management System('FIRMS') integrating the extant reporting structures of various

types of foreign investment in India. Further to which RBI decided to implement the same in two

phases in the first phase, the first module which was notified on June 7 2018, the Entity Master was

made available so that the Indian entities can input the data on total Foreign Investment in the

specified format. Now on September 1 2018 RBI has notified the second phase under which the

second module on the implementation of SMF has been made available.

Reporting in Single Master Form

RBI in pursuance to ease of doing business in India has introduced the SMF Reporting which will clearly

lessen the compliance burden upon the Indian Entities receiving foreign investment. Prior to the

introduction of SMF the Indian Entities have to file various separate forms through eBiz filing platform.

Now the FIRMS has replaced the eBiz platform and hence all the reporting shall be made through SMF only.

Previously the reporting of Foreign Direct Investment was a two-step procedure comprising of

Advance Remittance Form ('ARF') and Form FC-GPR, however under SMF the requirement of filing ARF

has been done away with by merging both ARF & FC-GPR in to single revised FC-GPR.

Presently the following five forms are made available for SMF filing

1. Form FC-GPR: Issue of capital instruments by an Indian company to a person resident outside India;
2. Form FC-TRS: Transfer of capital instruments between a person resident outside India and a person resident in India;
3. Form LLP-I: Foreign direct investment in an LLP through capital contribution and profit shares;
4. Form LLP-II: Disinvestment or transfer of capital contribution and profit shares in an LLP; and
5. Form CN: Issue or transfer of convertible notes

And the remaining four forms i.e. ESOP, DI, InVi and DRR shall be made available on a later date

Further RBI has also allowed those companies which could not register for the entity master when the

first module was made available to the public for data entry to register

themselves however such companies shall have to provide reasons for not being able to register previously along with the authority letter.

Along with the notification of the second phase RBI has also provided a detailed manual explaining the procedure for making SMF Reporting. Brief procedure for filing SMF is as follows:

1. A Business user ("BU") as defined under the manual shall report the relevant transaction in the SMF through FIRMS. A BU has to get registered in FIRMS before making reporting.
2. After submitting the registration form the BU must also submit an authority letter, authorizing the relevant AD Bank to conduct the eKYC (eKYC is a type of verification which every BU must complete before filling SMF). The AD banks shall have 3 working days to verify the eKYC of BU;
3. On completion of eKYC one shall be able to file SMF. When the BU starts filling SMF a unique reference number shall be generated and SMF shall be filled through the procedure set out for each of the five available forms however in all the cases, a common investment details has to be filled along with shareholding patterns, transfer details, buyer seller details, declaration by the entity's authorized representative and a certificate from the entity's company secretary in relation to compliance with laws and a certificate indicating the manner of arriving at the price, from a merchant banker or chartered accountant, and a cost accountant or approved valuer.
4. After submitting & filling all the details, BU shall submit the form for AD Banks Verification. A checklist shall be provided to the AD Bank, which will set out the details to be verified for acknowledging the filed SMF, based upon which the AD Bank shall accept or reject the form. And the AD Bank has to accept or reject the form within a period of 5 days from the date of submission. Once the AD Bank accepts the form it shall send an acknowledgment to the BU and then the SMF Filling procedure will be completed.

Implication of non-compliance

The RBI has mandated that the entities have to make the reporting through SMF only from September 1

2018 onwards. In case of any non-compliance it shall be considered as non-compliant under Foreign

Exchange Management Act 1999 & the regulations thereunder. Consequently, the Indian Entity shall

be barred from receiving any future foreign investments.

Conclusion

The RBI has introduced an entirely new procedure for filings under FEMA; the

intention behind this is to
lessen the compliance burden upon the Companies and the investors and making
FDI in India a
seamless procedure also if the FIRMS remain free of all the glitches such as
crashing of the website etc.
then it might prove to be a significant change which may also change the
point of view of the
investors when it comes to investment in India. Further, the role of AD Banks
has also been increased as
now whatever the RBI was responsible for is now AD Bank's responsibility and
AD Banks are provided
with strict timelines for completion of the same. AD Bank has been provided
with one of the
quintessential power of scrutinizing the forms. Thus, now the scrutinizing
power is provided at a ground
level to ensure right and tight scrutiny.

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