


# FEMA ke FUNDAE

## Annual Performance Report (APR)

**#FamiliarwithFEMA**

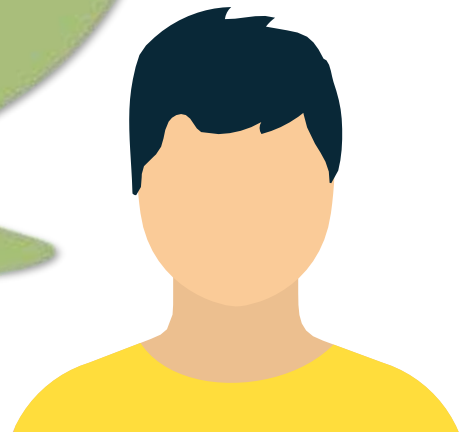
**Date : December 21 ,2022**

**Issue No. : 28**




Hello Mr. FEMA Gyani, Yesterday I had received a notice from AD bank for Filing Form APR .But I don't Know about APR And Why should I file it ?

**Sahil**  
**A Resident Individual**




Hello Sahil . Don't worry. Let me help you . Firstly , tell me Whether you have any Foreign investment ?

**The FEMA Gyani**



Yes , FEMA Gyani . Last Year, I have invested in a foreign entity .

**Sahil**



Okay . Now I tell you the reason of such notice .

**The FEMA Gyani**

Sahil, As per the **Foreign Exchange Management (Overseas Investment) Regulations, 2022** . If a Resident person acquire any Equity Capital in a Foreign Entity , shall require to submit an Annual performance Report (APR) .



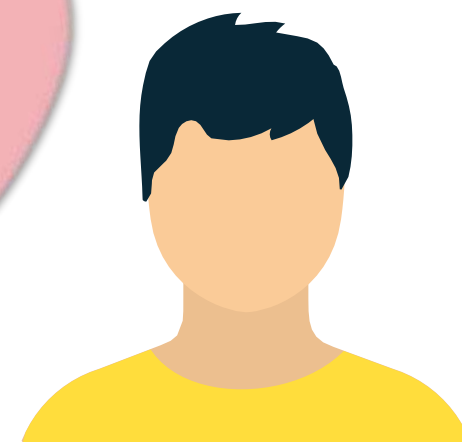
**The FEMA Gyani**

Ohh! That's why I received the notice. Now I will submit APR . So, FEMA Gyani, what is due date of submitting the Form APR . Is it require to file just after the Investment made ?



**Sahil**

No, Sahil , APR is require to submit by **31<sup>st</sup> December**. Like if the Accounting year of the foreign entity in which you have invested ends on 31<sup>st</sup> December , then the APR shall be submitted by 31<sup>st</sup> December of the Next Year .Otherwise Late Submission Fee **Rs. 7,500** will be charged .



**The FEMA Gyani**



Sahil

Okay, FEMA Gyani . But is it mandatory for all to Submit APR ?

No, Sahil , there are few cases where APR is not require to submit.



The FEMA Gyani

The APRs shall not be submitted in the following cases:

- If a Resident person holds **less than 10 percent of equity capital without control** in Foreign Entity and **don't have other Financial Commitment** other than by way of Equity Capital .
- If the **Foreign Entity is under Liquidation** .
- When **full year is not completed for Disinvestment** . However, if any transaction has been undertaken during the time from the date of submission of the last APR till the date of disinvestment/initiation of liquidation process may be duly **reported in the Form FC.**



Sahil

Okay, FEMA Gyani . Is there any **Important point** which is required to keep in mind while submitting Form APR.



The FEMA Gyani

Yes, Sahil . There are few points which should be kept in mind while submitting Form APR .

If more than one Resident person in India have invested in the same Foreign Entity , then the **person holding Highest stake in Foreign Entity require to Submit APR** . If Holdings are equal , APR may be Filed jointly.

Foreign Entity Financial statements should be **Audited** .

Resident person shall report the details regarding **acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern** in the foreign entity during the reporting year.



Sahil

But FEMA Gyani. The Foreign Entity in Which I have Invested , their Financials are not Audited . Because the Country in which the Foreign Entity situated do not provide for mandatory Auditing of the Books of Accounts . Can I still submit the APR with the unaudited Financials .

Sahil, As per the new Provision, the Financials of the Foreign Entity Should be Audited . But there is **one Exemption** of it . If you satisfy **all the Conditions** then you can submit the APR with the Unaudited Financials of the Foreign Entity . The Conditions Are :



The FEMA Gyani

If the Resident person **does not have Control** in the Foreign Entity

AND

The laws of the host country **do not provide for mandatory auditing** of the books of accounts.

AND

This statements shall be **certified by the statutory auditor of the Indian entity** or by a **chartered accountant** where the statutory audit is not applicable



**Sahil**

FEMA Gyani , I am not fulfilling all the Conditions because I am Holding 100% Stake in the Foreign Entity and have control on it . So, Can I get the Financials of the Foreign Entity Audited by the Indian CA ?

Sahil, if we see the requirements . It refers to Audited Financials , but does not specifically state Audit in the Host country Alone, even when case Audit is not mandatory under laws of Host Country . So, in that case we can assume that Audit of the Financials of Foreign Entity can be Done by Indian CA also .



**The FEMA Gyani**



**Sahil**

Thank You , FEMA Gyani . Now I fully understood about APR.

Welcome Sahil.  
It was pleasure helping you.



**The FEMA Gyani**

# Thank You!

Let's meet every  
Wednesday.

To make you more familiar with FEMA,  
we are happy to listen to your

Comments

Feedbacks

Suggestions



**The FEMA Gyani**

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