



## *My Dear Friend*

*I am presenting Thursday Article on Filing of Annual Performance Report (APR) for investment Outside India*

- 1. Any kind of non-compliance is attracting maximum penalty @300%*
- 2. It's humbly suggested to stop non-compliance for furnishing of APR up to December 31<sup>st</sup> 2022 + correct informations (both).*
- 3. I trust that you will be enriched by reading this article*

● *With best wishes from CA Satish Agarwal* ●



## **Filing of Annual Performance Report (APR) for investment Outside India**

### **1. Introduction on filling of APR for investment made Outside India**

- (i) (a) **Filing of APR is mandatory for investment made outside India by resident individual + resident non individual (both) for investment in Joint venture (JV) + Wholly owned subsidiary (WOS) both Outside India. Resident non individual is known as Indian Party (IP)**
- (b) **Separate APR to be filed for each JV + each WOS (both) under FEMA, 1999.**
- (c) **Non filling of APR up to December 31<sup>st</sup> every year be treated as violation under FEMA, 1999.**
- (d) **Exceptionally maximum penalty @ 300% to be levied on amount of investment made in JV + WOS (both)**
- (e) **Generally maximum penalty to be levied as computed under Foreign Exchange (Compounding Proceedings) Rules, 2000.**
- (ii) (a) **IP is permitted for Overseas Direct Investment (ODI) in JV + WOS (both) located Outside India**
- **Maximum ODI is permitted up to 400% of effective Net worth of IP through JV + WOS (both) located + incorporated (both) Outside India**
- (b) **Resident Individual (RI) is permitted for ODI in JV +WOS (both) located + incorporated (both) Outside India. However ODI is permitted through Liberalized Remittance Scheme (LRS) only.**
- **Maximum ODI is permitted up to USD 2.5 Lac per financial year through LRS (only).**

*(iii) Audited Financial Statements of JV + WOS (both) Outside India*

- *IP + RI (both) in India are required to file APR based on audited financial statements of JV + WOS (both) up to December 31<sup>st</sup> every year.*

*(iv) Unaudited Financial Statements of JV + WOS (both)*

- (a) IP + RI (both) are required to file APR based on unaudited financial statements of JV + WOS (both) up to December 31<sup>st</sup> every year where audit is not mandatory required in host country Outside India*

*+*

- (b) Statutory Auditors of IP is required to certify that law of host country is not mandatory required auditing of financial statements of JV + WOS (both) + figures of APR are filled in accordance with unaudited financial statements of JV + WOS (both)*

*+*

- (c) Board of Directors (BODs) of IP is required to certify that unaudited financial statements are adopted + ratified (both) by BODs*

- (d) RI is required to self-certify regarding unaudited financial statements where RI is not required to have his Statutory Auditors.*

*(v) Filling of APR with Authorized Dealer (AD) Bank*

- *IP + RI (both) are required to file APR based on audited or unaudited financial statements of JV + WOS (both) up to December 31<sup>st</sup> every year in physical mode.*

*(vi) Form for filling of APR*

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

**2. Procedure for filling of APR in Form ODI Part-II by IP + RI (both)**

*(i) Point No. 1 - Period*

- *APR period to be filled from April 01<sup>st</sup>, 2021 to March 31<sup>st</sup>, 2022 for financial year ending on March 31<sup>st</sup>, 2022.*

**(ii) Point No. 2 - Unique Identification Number (UIN)**

- (a) UIN Number as allotted by RBI to be filled. UNI number is 13 digit alphanumerical number allotted to IP + RI (both)**
- (b) Name of JV + WOS (both) to be filled.**

**(iii) Point No. 3 - Capital Structure of JV + WOS (both)**

- (a) Details of capital structure to be filled on last day of accounting year of JV + WOS (both)**
- (b) Share capital amount + percentage (both) of investment to be filled.**
- (c) Capital structure be consisting of investment by Indian IP + RI (both) + investment by foreign IP + RI (both)**

**(iv) Point No. 4 – Operational detail of JV + WOS (both)**

- (a) Operational details of JV + WOS (both) for last 2 year to be filled.**
- (b) Operational details includes:-**
  - (ba) Net profit or net loss (both)**
  - (bb) Dividend as declared + paid or not paid (both)**
  - (bc) Net worth for last 2 year**
- (c) Only 1 year operational detail to be filled where 1<sup>st</sup> year operational detail is available due to 1<sup>st</sup> year of operations of JV + WOS (both).**
- (d) Point No. 5 – Repatriations from JV + WOS (both).**
- Detail of repatriations from JV + WOS (both) to be filled under following 11 point for current year + since incorporation (both):-**

	<b>Current Year (March 31<sup>st</sup>, 2022)</b>	<b>Since incorporation of business</b>
<b>(a) Dividend</b>		
<b>(b) Repayment of Loan</b>		
<b>(c) Non-Equity Export Realized (in INR)</b>		

(d) <i>Royalties</i>		
(e) <i>Technical Know-how Fees</i>		
(f) <i>Consultancy Fees</i>		
(g) <i>Others (Please specify)</i>		
(h) <i>Profit</i>		
(i) <i>Retained Earnings</i>		
(j) <i>FDI by JV/ WOS/ SDS into India</i>		
(k) <i>Refund of excess share application money and Transaction No, if any</i>		

(v) *Point No. 6 – Investment in Wholly Owned Step Down Subsidiary (SDS) of JV + WOS (both) Outside India :-*

- *Detail of Investment in SDS of JV +WOS (both) to be filled in following table:-*

(a)	<i>Name, Level and Country name of SDS</i>			
(b)	<i>Name, Level and Country name of the parent of SDS</i>			
(c)	<i>Investment Amount in FCY and Date of investment (if any)</i>	<i>Currency: Amount:</i>		<i>Date:</i>
(d)	<i>Investment type</i>	<i>WO SDS</i>		<i>JV SDS</i>
(e)	<i>Type of Step Down Subsidiary</i>	<i>SPV/Holding company</i>	<i>Operating</i>	<i>Operating Cum SPV</i>
(f)	<i>Activity code as per 1987</i>			
(g)	<i>% stake held in SDS</i>			
(h)	<i>Is the activity of SDS into financial services (tick)</i>	<b>Yes</b>	<b>No</b>	

### **3. Certificates to be enclosed with APR**

**(i) Certificate from IP + RI (both)**

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

**(ii) Certificate from Statutory Auditors**

- **Certificate about fulfillment of legal compliances under FEMA, 1999 be printed on letterhead + be signed + be stamped by Statutory Auditor of IP or himself by RI where RI is not having his Statutory Auditors.**

### **4. Signing + Stamping + Printing (all) of APR:-**

**(i) (a) APR is signed by authorized person + by Statutory Auditors (both) of IP.**

**(aa) Every page of APR is signed + be stamped (both) by authorized person of IP**

**(ab) Last page of APR is signed + stamped (both) by authorized person of IP + by Statutory Auditors (both) of IP.**

**(b) APR is signed himself by RI where RI is not having his Statutory Auditors.**

**(ii) APR is printed on Normal A4 sheet by IP + RI (both). Hence not be printed on letterhead of IP + RI (both).**

### **5. Documents to be submitted with APR:-**

**(i) Latest Audited Financial statements of JV + WOS (both).**

**(ii) Latest Audited Financial statements of Holding Company in India.**

**(iii) APR Form be duly filled + signed (both)**

**(iv) Certificate from IP + RI (both)**

**(v) Certificate from Statutory Auditors of IP + himself by RI where RI is not having Statutory Auditors in India.**

*(vi) Copy of Share Certificate against previous equity remittance made in JV + WOS (both).*

*(vii) Covering Letter for APR*

## **6. Mode of Submission of APR**

*(i) APR with supporting documents be submitted physically in 2 set as 1<sup>st</sup> to Regional Office of Exchange Control Department of RBI + 2<sup>nd</sup> to Ministry of Commerce, EP(OI) Section, Government of India, Udyog Bhavan, New Delhi - 110 011 (both) + get acknowledgement for future reference + correspondence (both) + to AD bank*

*(ii) AD bank is required to send the APR to RBI where specifically required by RBI. Hence AD bank is not required to send the APR to RBI where not specifically required by RBI.*

# APR

## Annual Performance Report (APR) on the functioning of Indian Joint Venture (JV)/Wholly Owned

Subsidiary (WOS) abroad for the year ended      (Accounting year of the JV//WOS)

(Please read the instructions given in the Annexure before filling up this form)

### PART A - GENERAL

1. RBI Approval Number/Date :
2. Ministry of Commerce (GOI) Approval Number/Date (if any) : \_\_\_\_\_
3. Name and address of Indian Promoter Company(ies)
  - (a) Name :
  - (b) Address :
4. Name and address of the JV/WOS
  - (a) Name :
  - (b) Address :
5. Date of (for the JV/WOS)
  - (a) Incorporation :
  - (b) Commencement of operations :
6. Name of the FC Referred to in this form : \_\_\_\_\_



7. (a) Line of activity of the JV/WOS (please tick the appropriate box)
- (i) Manufacturing
  - (ii) Trading
  - (iii) Financial Services
  - (iv) Non-financial services
  - (v) Others

(b) Brief details of the products manufactured/ goods traded/services rendered by the JV/WOS:

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(Code to be filled in by RBI)

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### 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"/>	<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"/>	<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
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(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"/>	<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"/>	<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"/>	<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"/>	<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		Total
			Principal	Interest	

(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	Amount repatriated so far
		Date			
1.		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2.		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
3.		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

### PART C - PERFORMANCE PARAMETERS

	Amount		Amount
11. Operational details of the JV/WOS for the year under report <b>(Amount only in FC)</b>			
(a) Installed capacity*			
(i) Unit name		(g) Tax	
(ii) Amount ('000 omitted)		(h) Net profit (+)/Loss(-)	
(b) Capacity utilisation* (only %)		(i) Dividend	
(c) Gross sales/receipts		(j) Transfer to reserves	
(d) Operating cost (excluding depreciation & Interest)		(k) Free reserves & surplus	
(e) Depreciation		(l) Accumulated losses	
(f) Interest		(m) Net worth	

\* 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"/>	<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"/>	<input type="text"/>	<input type="text"/>
(iii) Royalty	<input type="text"/>	<input type="text"/>	<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"/>	<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"/>	<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"/>	<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"/>	<input type="text"/>	<input type="text"/>
Total :	<input type="text"/>	<input type="text"/>	<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"/>	<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"/>
(b) Value actually exported so far	<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"/>
(c) Value realised so far	<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"/>
(d) Value outstanding for realisation beyond 6 months	<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"/>

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 ( )                 | : | <input type="checkbox"/> |
|                                             |   | <input type="checkbox"/> | 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).

## DECLARATION

We hereby declare that the information furnished in this report are true and correct to the best of our knowledge & belief.

Place :

Date :

Seal	Stamp
------	-------

(Signature of authorised official / person)

Name :

Designation :

- Encls :
1. Note on functioning of the JV/WOS
  2. Annual account along with Directors Report for the year ended

3. Bank certificates in respect of repatriations
4. :



**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 submitting 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.

## *Published By*



**CA. Satish Agarwal**

*B.com (Hons) FCA*

*Practicing Chartered Accountant Since **1985***

*+919811081957*

*9/14 (First Floor) East Patel Nagar, New Delhi- 110008*

*Email: [satishagarwal307@yahoo.com](mailto:satishagarwal307@yahoo.com)*

*Website: [www.femainindia.com](http://www.femainindia.com)*

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**November-2022**