

Late Submission Fee - An alternate to compounding under FEMA

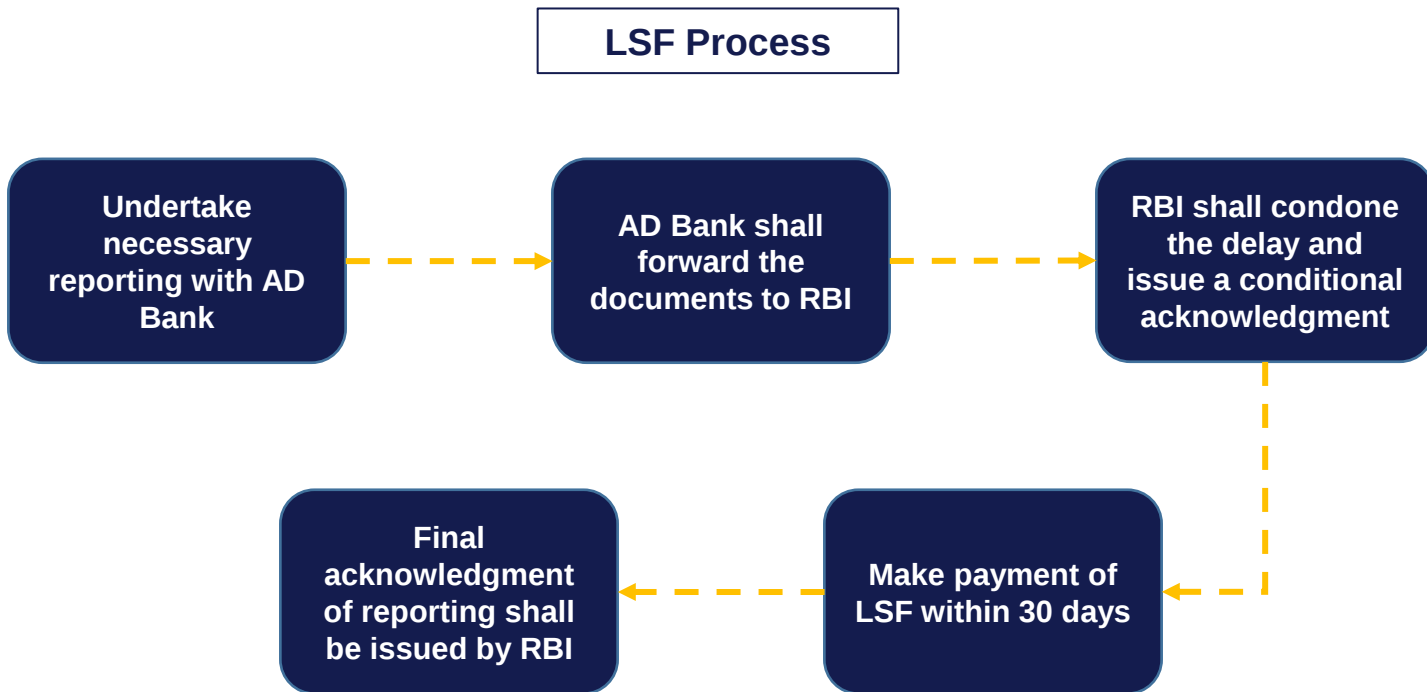
Recently, the Reserve Bank of India ('RBI') vide A.P. (DIR Series) Circular No. 16 dated September 30, 2022¹ had revised the Late Submission Fee ('LSF') computation matrix for reporting delays under the Foreign Exchange Management Act, 1999 ('FEMA'), to bring uniformity in imposition of LSF across functions.

Brief Background:

- The reporting obligations under FEMA are complex requiring coordination with the AD Bank, which may sometimes result in reporting of such transactions beyond the statutory timeframes.
- While reporting delays are mere procedural lapses, the party in default had no other option but to undergo a cumbersome process of compounding to regularize such delays. This was a time-consuming exercise and could take up to 6 month's time to pay the penalty and obtain the compounding order.
- Additionally, it was a huge administrative burden on the regulators requiring a person to go for compounding to regularize the procedural lapses. To address this, the RBI introduced LSF as an alternate mechanism.
- LSF has been a welcome initiative to deal with procedural lapses in a much faster and effective manner. This has not only helped RBI to de-clog the compounding cell from such trivial matters but also allowed the authorities to focus on serious contraventions under FEMA.

What is LSF?

- LSF mechanism is a simple process to regularize reporting delays of cross border investment transactions by paying a prescribed late fee and without undergoing the compounding procedure.
- LSF applies only for the reporting delays, and any other contraventions under the would still be subject to adjudication or compounding with the RBI.



LSF Amount

- LSF amount is distinguished on periodical-based and transactional-based filings. Broadly, the filings which do not represent any fund flows (i.e. inward or outward remittances) are treated as periodical-based and those which involves fund remittances or reporting of any non-fund are treated as transactional-based filings.
- While periodical-based filing delays are made subject to one fixed amount, transactional-based filing delays shall attract a fixed cum variable amount based on the amount involved in reporting and the period of delay.
 - Accordingly, in case of transactional-based filing delays, longer the delay and higher the amount involved, higher the LSF.

Type of Reporting delays	LSF Amount (in INR)
Form ODI Part-III/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$7500 + (0.025\% \times A \times N)$

"n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points

"A" is the amount involved in the delayed reporting

The maximum LSF amount cannot exceed the amount involved in the delayed reporting

Time-lines to avail LSF facility

- The reporting party shall have the maximum time frame of 3 years from the due date of such reporting to opt for LSF. Beyond this, it would be subject to compounding with the RBI.
- Separately, the LSF facility has also been extended to the reporting delays of overseas investments prior to the notification of new overseas investments regulations for a period of 3 years from the date of notification i.e. 22 August 2022.
 - This has come as a welcome opportunity for the Indian entities to regularize any previous filings of overseas investments by merely paying LSF, without having to undergo the compounding process.

Way forward...

- LSF is one important step towards ease of doing business in India and provides a great opportunity to the entities with cross border investments to clean-up all reporting lapses and become FEMA compliant with a less cumbersome process.
- Considering the timeframe prescribed to opt for LSF facility, it is advisable to promptly undertake the required due diligence to identify any reporting lapses under FEMA and regularize the reporting lapses by availing with the benefit of LSF facility.