

# COMPOUNDING OF CONTRAVENTIONS UNDER FEMA

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# WHAT IS COMPOUNDING

A voluntary process by which an entity committing a contravention can make an application and seek regularization by admitting the contraventions under FEMA on payment of the amount imposed.

# WHO CAN COMPOUND

RBI is empowered to compound all contraventions of FEMA except clause (a) of section 3 of the Act, dealing essentially with hawala transactions.

# FRAMEWORK FOR COMPOUNDING PROCESS

- ❖ Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules), as amended from time to time, lays down the basic framework for the compounding process.
- ❖ Procedure for Compounding is prescribed in FED Master Direction No.4/2015-16 dated January 01,2016 updated as on December 20, 2017.

- ❖ Compounding is guided by FEMA Notification No. FEMA 20/2000-RB dated May 03, 2000 as amended from time to time
- ❖ RBI has issued Foreign Exchange Management (Transfer or Issue of Security by a person Resident Outside India) Regulations 2017 vide notification 20(R)/2017 RB dated November 07, 2017 in supersession to FEMA Notification No. 20.

# FEMA REGULATIONS 20(R)

FEMA Regulation	Brief Description of contravention
Regulation 13.1(1)	Delay in reporting inward remittance received for issue of shares
Regulation 13.1(2)	Delay in filing form FC(GPR) after issue of shares
Regulation 13.1(3)	Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA)
Paragraph 2 of Schedule 1	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds etc.
Regulation 11	Violation of pricing guidelines for issue/transfer of shares
Regulation 2(v) read with Regulation 5	Issue of ineligible instruments
Regulation 16.B	Issue of shares without approval of RBI or Government, wherever required
Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-resident or vice-versa
Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company

# HOW ARE CONTRAVENTIONS DETECTED

- ❖ Voluntary Disclosure
- ❖ AD Correspondence
- ❖ Market Intelligence
- ❖ RBI Scrutiny at the time of reporting, seeking approvals for refund etc.
- ❖ Media

# HOW ARE CONTRAVENTIONS CLASSIFIED

- ❖ Technical
- ❖ Material
- ❖ sensitive



# WHEN IS A TECHNICAL CONTRAVENTION TREATED AS MATERIAL

If a transaction is without proper approval of the concerned Government/Statutory authority under the relevant laws/regulations as envisaged under FEMA it may be treated as material even though it is technical otherwise,

# WHAT ARE SENSITIVE CONTRAVENTIONS

Undertaking of an activity which is abinitio not permitted. Aspects considered being the amount, intent, national importance, security, nexus to money laundering etc. Any activity undertaken with malafide/wilful or fraudulent intent.

# WHAT IS RBI ROLE IN CASE OF MATERIAL CONTRAVENTION

The concerned entity is advised suitably regarding the option available to them for compounding if they so desire. In case they don't respond, the case would be directly referred to DoE for investigation under section 37 of the Act.

# WHAT IF APPROVALS OF OTHER AUTHORITIES/RBI ARE PENDING

The approvals or permissions from the Government or any statutory authority need to be obtained before compounding the contravention(s) of the entity.

# WHAT ARE THE TRANSACTIONS TO BE COMPLETED BEFORE A CONTRAVENTION CAN BE COMPOUNDED

All administrative compliances such as filing of ARF/FCGPRs etc. are reported as per requirement and approvals of Government or statutory authority are obtained.

# WHAT IS RULE 4 OR 5 OF THE COMPOUNDING APPLICATION

Power of Reserve Bank to compound has been defined in Rule 4 i.e., the power of AGM to CGM/RD

Rule 5 says no contravention shall be compounded unless the amount involved in such contravention is quantifiable

# AMOUNT IMPOSED UNDER COMPOUNDING

As per the provisions of Section 13 the amount imposed can be upto three times the amount involved, however the amount imposed is calculated based on the guidance note on computation of matrix.

# CONTRAVENTIONS COMPOUNDED AT RO

- ❖ Paragraph 9(1)(A)
- ❖ Paragraph 9(1)(B)
- ❖ Paragraph 8
- ❖ Paragraph 9(2)
- ❖ Paragraph 5
- ❖ Paragraph 5(i)
- ❖ Regulation 2(ii) read with Regulation 5(1)
- ❖ Paragraph 2 or 3
- ❖ Regulation 10(A)(b)(i) and 10B(2) read with Paragraph 10
- ❖ Regulation 4 of Schedule 1 to FEMA 20



# CONTRAVENTIONS COMPOUNDED AT FED CO CELL NEW DELHI

- ❖ FEMA: Acquisition of immovable property outside India
- ❖ FEMA 21: Acquisition of immovable property in India
- ❖ FEMA 22: Establishment of LO,PO,BO
- ❖ FEMA 5: Foreign exchange deposit regulations

# CONTRAVENTIONS COMPOUNDED AT CEFA FED,CO, MUMBAI

All other contraventions will be compounded by CEFA(Cell for effective implementation of FEMA).

# COMPOUNDING ORDER

- ❖ Order issued not later than 180 days from the date of receipt based averments made in the application as well as submissions made in the personal hearing.
- ❖ Appearing for personal hearing is not mandatory. However, RBI would encourage the applicant(the directors etc.) to appear personally rather than being represented by consultants
- ❖ Appearing for personal hearing does not have any bearing whatsoever on the amount imposed in the order.

# PAYMENT OF PENALTY AND ISSUE OF CERTIFICATE

1. By way of DD in favour of Reserve Bank of India within 15 days from the date of the order.
2. Certificate of receipt of compounded amount is issued on realization.

# WHAT HAPPENS IF COMPOUNDED AMOUNT IS NOT PAID

If the compounded amount is not paid within the time specified in the compounding order, it shall be deemed that the contravener had never made an application was never made application for compounding of any contraventions under these Rules.

# WHETHER ORDERS ONCE ISSUED CAN BE AMENDED

No, the provisions do not confer any right after an order is passed to withdraw or hold the order as void or request for review of the order

# HOSTING OF COMPOUNDING ORDERS ON RBI WEBSITE

To ensure transparency and greater disclosure compounding orders issued after June 01, 2016 are uploaded on the RBI website at monthly intervals.