

CELL FOR EFFECTIVE IMPLEMENTATION OF FEMA (CEFA)

Compounding of contraventions under FEMA, 1999

**Foreign Exchange Department
Hyderabad Regional Office
(Presented by Mrs Managala Shenoy, Manager**

Framework

- Foreign Exchange Regulation Act, 1973 (FERA, 1973) was replaced by the Foreign Exchange Management Act, 1999 (FEMA, 1999). FEMA, 1999 brought foreign exchange contraventions within the ambit of civil law (previously treated as criminal violations)
- The Foreign Exchange (Compounding Proceedings) Rules, 2000 effective from June 1, 2000, only empowered the RBI to compound contraventions relating to Section 7, 8 and 9 and 3rd schedule of the FEMCAT Rules. Vide GSR 609 (E) dated 13-09-2004, RBI was empowered to compound all the contraventions of FEMA 1999 except Section 3(a) which deals with money laundering.
- To provide comfort to the citizens & corporate community by minimizing transaction costs, while taking a serious view of the wilful, malafide & fraudulent transactions.

Regulatory Provisions

Foreign Exchange Management Act, 1999

Section 15 - Power to compound contravention

- (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorized in this behalf by the Central Government in such manner as may be prescribed.
- (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the committing such contravention under that section, in respect of the contravention so compounded.

Regulatory Provisions

Foreign Exchange Management Act, 1999

Section 13 - Penalties

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Classification of contraventions

- All foreign exchange transactions are permissible either under Automatic Route or under Approval Route
- GoI / RBI issue directions from time to time imposing limits on permissible transactions under Automatic Route.
- Any violation of limits set under Automatic Route / failure to obtain RBI/GoI permission under Approval Route classifies as a FEMA contravention.
- The RBI reserves the right to classify contraventions as “Technical” or “Material” or “Sensitive”
- While the “Technical” or “Material” contraventions may be compounded, the “sensitive” contraventions will be forwarded to the Directorate of Enforcement.

Compounding Authority

- The Compounding Authority shall exercise the powers to compound any contravention subject to the direction, control & supervision of the Governor of Reserve Bank.
- Compounding Authority as defined under Rule 4 of Compounding Rules, means an Officer of the RBI not below the rank of AGM.
- The Compounding Authority becomes *functus officio* once he/she passes the compounding order and it is communicated to the applicant. In other words, once a compounding order is communicated to the applicant, even the compounding authority cannot amend, rescind, or revoke the order.

Compounding Authority

Determination of Compounding Authority based on the quantum of contravention

- Assistant General Manager – Rs.10 lakhs or below
- Deputy General Manager - more than Rs.10 lakhs but less than Rs.40 lakhs
- General Manager - Rs.40 lakhs or more but less than Rs.100 lakhs
- Chief General Manager - Rs.100 lakhs or more.

Compounding Authority is determined based on the quantum of contravention. In case multiple contraventions are covered under a single compounding application, the Compounding Authority is decided based on the highest amount of contravention.

Compounding Authority - delegation of powers

For Regional Offices

FEMA Regulation	Brief Description of Contravention
Paragraph 9(1)(A) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in reporting inward remittance received for issue of shares.
Paragraph 9(1)(B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in filing form FC(GPR) after issue of shares.
Paragraph 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc .

.....Contd

Compounding Authority - delegation of powers

FEMA Regulation	Brief Description of Contravention
Paragraph 5 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Violation of pricing guidelines for issue of shares.
Regulation 2(ii) read with Regulation 5(1) of FEMA 20/2000-RB dated May 3, 2000	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
Paragraph 2 or 3 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Issue of shares without approval of RBI or FIPB respectively, wherever required .
Regulation 10A (b)(i) read with paragraph 10 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.

.....Contd

Compounding

FEMA Regulation	Brief Description of Contravention
Regulation 10B (2) read with paragraph 10 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
Regulation 4 of FEMA 20/2000-RB dated May 3, 2000	Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.

In supersession of the earlier [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), the Reserve Bank has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide [Notification No. FEMA 20\(R\)/2017-RB dated November 07, 2017](#). (Compounding application may be filed both quoting the above paras of contraventions or as per new paras in terms of the above Notification.)

Compounding Authority - delegation of powers

FE, CO Cell, New Delhi - with effect from July 15, 2014.

FEMA Regulation	Brief Description of Contravention
FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India
FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India
FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office ,Liaison Office or Project office
FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000

Compounding Authority - delegation of powers

For Central Office

The above contraventions can be compounded by all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (Rs.1,00,00,000/-). The contraventions above Rupees one hundred lakh (Rs.1,00,00,000/-) under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

Compounding and Adjudication


- Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.
- Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.
- Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.
- No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

Process

Part II

Pre-requisites

- Contraventions committed within three (3) years from the date of compounding of similar contraventions cannot be compounded.
- Compounding of contraventions relating to any transactions which require regulatory approval/permission from Government or any statutory authority cannot be compounded unless the approval is obtained.
- Cases of contravention, such as, those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation

- 
- In case where adjudication has been done by the Directorate of Enforcement and an appeal has been filed under section 17 or section 19 of FEMA, 1999, no contravention can be compounded in terms of Rule 11 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

Essentials of Compounding

- The application must be accompanied with a fee of Rs.5000/- by way of a Demand Draft drawn in favour of RBI.
- The applicant must voluntarily admit the contravention.
- The contravention is crystallised i.e. the rule/regulation contravened is identified, the amount of contravention and the period of contravention are clear.
- In case the contravention cannot be quantified, it cannot be compounded.
- The process is deemed to be completed upon payment of the amount imposed in a compounding order.
- Once a contravention is compounded, no further prosecution for the same contravention.

Disposal Desk

- Once the Compounding Order duly signed and stamped (on all pages) is received in triplicate, it is forwarded to the applicant through registered post and by FAX/EMAIL. The order must be communicated to the applicant on the same day.
- On receipt of the amount imposed, the DD is sent for collection and credit of Government of India. On realisation of the DD, a certificate is issued to the applicant signifying closure of the compounding process.
- In case the amount is not received within 15 days from the date of compounding order, it is deemed that the applicant has opted out of the compounding process and the case is forwarded to the Directorate of Enforcement.

Compounding Procedure

Procedure for Compounding -

- (1) The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.
- (2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application.

Payment of amount compounded -

- The sum for which the contravention is compounded as specified in the order of compounding shall be paid by demand draft in favour of the Compounding Authority within fifteen days from the date of the order of compounding of such contravention.
- In case a person fails to pay the sum compounded within the time specified in the rules, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.


Late submission fees

- The person/ entity responsible for filing the reports provided in Part IV of this Master Direction shall be liable for payment of late submission fee (LSF) for any delays in reporting
- The LSF shall be applicable for the transactions undertaken on or after November 7, 2017 and the payment of LSF is an option for regularising reporting delays without undergoing the compounding procedure.

Matrix

Amount involved in reporting (Rs)	Late Submission Fee (LSF) as % of amount involved *	Maximum amount of LSF applicable
Up to 10 million	0.05 percent	Rs.1 million or 300% of the amount involved whichever is lower
More than 10 million	0.15 percent	Rs.10 million or 300% of the amount involved whichever is lower

* The % of LSF will be doubled every twelve months

- 
- For calculating the LSF amount, the period of contravention shall be considered proportionately {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}
 - For the purpose of calculation, “months” shall include Sundays/ Holidays
 - For the purpose of calculation, the period shall begin from the day after the 30th day (from the date of receipt of funds/ allotment or transfer of shares) and end on the day preceding the day on which the transaction report is received in the Reserve Bank The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respect.
 - In case the reporting form (whether in physical or electronic form) is incomplete then the delay will continue till such time the form is received complete in all respect.
 - The applicant cannot claim a refund in any manner for the amount already deposited as LSF. It will, therefore, be in the applicant’s own interest to ensure compliance with the reporting norms and timelines.



T

Thank You