

Compounding of contraventions

Dr. S.Durai Rajan, M.Sc., CAIIB, MBA, Ph.D

Professor of International Finance

Formerly Dy.G M, Reserve Bank of India

Framework for the compounding process

- Section 15 of FEMA 1999, permit compounding of contraventions
- It empowers RBI to compound any contravention as defined under section 13 of the FEMA, 1999 **except** the contraventions under section 3 (a) of FEMA, 1999
- Foreign Exchange (Compounding Proceedings) Rules, 2000 lays down the basic framework for the compounding process.
- **FED Master Direction No.4/2015-16 January 1, 2016**

Compounding - General

- be compounded within 180 days from the date of receipt of application by the officers of the Reserve Bank
- If any person contravenes any provision of FEMA, 1999, or 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 the amount is quantifiable or up to Rs. 2.00 lakhs, where the amount is not directly quantifiable and
- where the contravention is a continuing one, further penalty which may extend to Rs. 5000 per day after the first day during which the contravention continues.

Compounding rules and RBI powers

- As per sec. 46 read with section 15 (1) of FEMA 1999 GoI had made the Foreign Exchange (Compounding Proceedings) Rules, 2000 relating to compounding contraventions under chapter IV of FEMA, 1999.
- RBI is empowered to compound contraventions relating to Section 7, 8 and 9 and the third schedule to FEMCAT Rules.
- RBI was empowered to compound all the contraventions of FEMA 1999 except Section 3(a) with a view to providing comfort to individuals and corporate community by minimizing transaction costs
- while taking severe view of willful, *malafide and fraudulent transactions*.

Delegated to RBI Officials

- Compounding can be done only if the amount involved in contravention is quantifiable.
- If the sum involved in contravention is \leq Rs. 10 lakhs, Compounding can be done by the AGM of Reserve Bank of India;
- $>$ Rs. 10 lakhs but $<$ Rs. 40 lakhs, by the DGM
- \Rightarrow Rs. 40 lakhs but less than Rs. 100 lakhs by the General Mgr.
- \Rightarrow Rs. 100 lakhs, by the Chief General Manager of the RBI.
- Above officials (Compounding Authority) shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017. :

- Measure of customer service and in order to facilitate the operational convenience, compounding powers were delegated to the Regional Offices of the Reserve Bank of India in respect of following contraventions:
- Some areas (as in third slide from here) were delegated to CO Cell, New Delhi RBI RO.

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 I	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds.
Regulation 11	Violation of pricing guidelines for issue/transfer of shares.
Reg2(v)read with Reg 5	Issue of ineligible instruments
Regulation 16.B	Issue of shares without approval of RBI or Government

FEMA Regulation	Brief Description of Contravention
Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident or from Non-resident to Resident.
Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company.
Regulation 13.1(11)	Delay in reporting the downstream investment made by an Indian entity or an investment vehicle in another Indian entity to Secretariat for Industrial Assistance, DIPP.
Regulations 13.1(7) and 13.1(8)	Delay in reporting receipt of amount for capital contribution and acquisition of profit shares by LLPs/ delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a NR(or vice-versa) in case of LLPs.
Regulation 10(5)	Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the RBI.

FEMA Notification	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 dt 3.5.2000	Contraventions relating to acquisition and transfer of immovable property in India
FEMA 22/2000-RB dt 3.5.2000	Contraventions relating to establishment in India of Branch office, Liaison Office or Project office
FEMA 5/2000-RB dt 3.5.2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000

Delegated powers of ROs

- Powers to compound the above contraventions delegated to all Regional Offices (except Kochi and Panaji) and FED, CO Cell, New Delhi respectively without any limit on the amount of contravention.
- Kochi and Panaji Regional offices can compound the contraventions for amount below Rs. One crore. Above this amount, these contraventions will be compounded at Thiruvananthapuram RO and Mumbai RO respectively.
- Accordingly, applications for compounding related to the above contraventions may be submitted to the respective Regional Offices/FED, CO Cell, New Delhi, as applicable.
- For all other contraventions, applications may continue to be submitted to CEFA, Foreign Exchange Department, Reserve Bank of India, Amar Building, Sir P. M. Road, Fort, Mumbai 400001.

Application for Compounding

- All applications may be submitted together with DD for Rs.5000/- in favour of RBI and payable at the concerned R.O.
- DD in favour of “Reserve Bank of India” and payable at Mumbai for cases submitted to CEFA, FED, RBI, Central Office, Mumbai.
- The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000
- Annex-II on FDI, ECB, ODI ,LO as applicable and details of PAN and the activity as per NIC codes–1987
- Undertaking as per Annex III that they are not under any enquiry/investigation/adjudication by any agency such as Directorate of Enforcement, CBI etc as on the date of the application

Pre-requisite for Compounding Process

- If any contravention committed by a person within a period of 3 years from the date on which a similar contravention committed by him was compounded, such contraventions would not be compounded.**
- Any second or subsequent contravention committed after the expiry of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.**
- Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.**

REFERENCE TO ED

If an appeal has been filed under section 17 or section 19 of FEMA, 1999, after adjudication by the ED no contravention can be compounded in terms of Rule 11 of Foreign Exchange (Compounding Proceedings) Rules. The applicant shall confirm in the undertaking furnished as per Annex III along with the compounding application that they have not filed any appeal under section 17 or section 19 of FEMA, 1999.

Contraventions, having serious nature, suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999 or to the authority instituted for implementation of the PMLA 2002, or necessary action.

Reference to RBI other than through prescribed application

- Contravention is identified by the RBI /brought to its notice by the entity involved in contravention by way of any other reference, the Bank will decide
- (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated
- (ii) whether it is material and is required to be compounded for which the necessary compounding procedure has to be followed or
- (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE).
- iv) If the ED opines that the matter under compounding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to ED under section 13.

Scope and procedure for compounding

- RBI examines the application based on the documents and submissions and assess whether contravention is quantifiable and, if so, the amount of contravention.
- may call for any information, record or any other documents relevant to the compounding proceedings.
- A personal hearing also is afforded to contravener before passing the order.

Factors considered for passing compounding order

- a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- b) the amount of loss caused to any authority/ agency/ exchequer;
- c) economic benefits accruing to the contravener from delayed/avoided compliance;
- d) the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- e) contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing;

Penalties

- As per sec. 13 of FEMA the amount imposed can be up to three times the amount involved. Amount imposed is calculated based on a guidance note:
- Please see the chart
- [penalty structure](#)
- [PENALTY EXAMPLES.docx](#)

Compounding Order

- Compounding Order after affording an opportunity of being heard not later than 180 days from the date of application on the basis of the averments, other documents and submissions made by the contravener during the personal hearings.

Specimen of Compounding orders issued by RBI

- [KAVERI KUMAR.PDF](#)
- [Noble Tech Industries Private Limited.PDF](#)

Payment of the amount

- shall be paid by way of demand draft in favour of the “Reserve Bank of India” within 15 days from the date of the order of compounding of such contravention
- Not possible to seek to withdraw the order/to hold that the compounding order is void/ request review of the order passed by the Compounding Authority.
- Failed to pay the amount, RBI will treat there was no application for compounding.
- On realization of the sum for which contravention is compounded a certificate in this regard shall be issued by the Reserve Bank

Any Questions?

Thank you!

drrajanprof@gmail.com