



Compounding

Presentation at WIRC

What is compounding of contravention ?

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.

The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) *ibid*, for a specified sum after offering an opportunity of personal hearing to the contravener.

It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs.

Willful, *malafide* and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.



Who can apply for compounding?

Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] 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, can apply for compounding to the Reserve Bank.

Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement

Procedure for applying for compounding

- The form given as Annex – I to the A.P.(DIR Series) Circular No. 56 dated June 28, 2010 issued by the Reserve Bank of India, can be used for applying for compounding. The same can also be downloaded from the Reserve Bank's website by clicking on the link i.e. http://www.rbi.org.in/Scripts/BS_ApCircularsDisplay.aspx.
- The application in the prescribed format along accompanied with necessary documents and a demand draft for Rs. 5000/- drawn in favour of the "Reserve Bank of India".
- Along with the application in the prescribed format, the applicant may also furnish the details as per the Annexes- relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, (attached to the A.P. (DIR Series) Circular No. 57 dated December 13, 2011) alongwith an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.



What action is taken by the Reserve Bank on receipt of the application?

The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are prima-facie in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant.

On the admission of applications, the Reserve Bank will examine and decide if the contravention is material or sensitive in nature.

If the contravention is material, it will be compounded by imposing a sum after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing.

If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DoE) for further investigation/ action.



Classifying the contravention as technical, material or sensitive

- Whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to 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;
 - (ii) whether it is material and, hence, 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).
- However, 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.
- Kindly refer to A.P.(DIR Series) Circular No. 11 dated July 31, 2012



Prerequisites for Compounding

- Para 7.2 of AP DIR Circular 56 dated 28/06/2010 :
- “Contraventions relating to any transaction where proper approvals or permission from the Government or any statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.”



Prerequisites for Compounding

From the foregoing we understand that the following are essential to process the application:

1. It should be a material contravention;
2. Contravention is quantifiable;
3. Contravention must be admitted unequivocally;
4. The contravention should be either regularised or reversed;
5. The administrative approvals should be in place.



Personal Hearing

- Appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. The applicant may enclose full information relating to the case as prescribed in [AP \(Dir series\) Circular Nos. 56](#) and [57](#) dated June 28, 2010 and December 13, 2011, respectively, with the application or thereafter and may exercise his discretion with regard to appearing for hearing.
- If the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions.
- Appearing for or opting out of personal hearing does not have any bearing whatsoever on the amount of penalty involved in the compounding order.
- Kindly refer to Press Release dated January 18, 2013.



Deciding the amount imposed

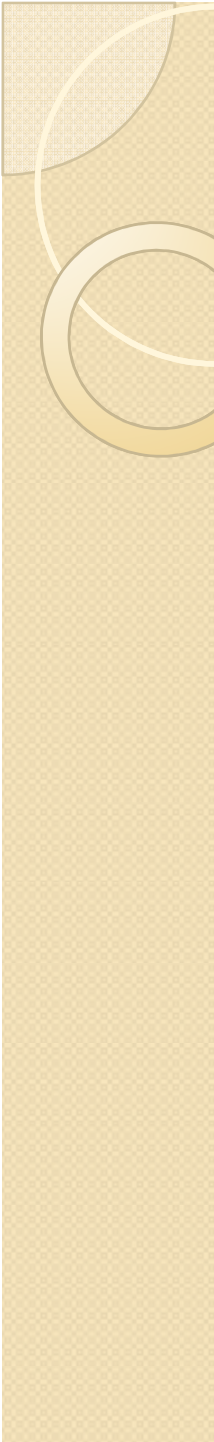
The following factors, which are only indicative, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- i. the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- ii. the amount of loss caused to any authority/agency/exchequer as a result of the contravention;
- iii. economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- iv. the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- v. contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing;
- vi. any other factor as considered relevant and appropriate.



Bringing a compounding process to the conclusion

- The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the penalty imposed.
- The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at the Regional office which has issued the compounding order and at Mumbai if the order is issued by CEFA, Mumbai.
- On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority.



Bringing a compounding process to the conclusion

- There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.
- In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.
- As compounding is based on voluntary admissions and disclosures, there cannot be an appeal against the order of the Compounding Authority.



Issues for discussion

- Who can apply for compounding?
- When should one apply for compounding?
- Where should one apply for compounding?
- Can an application for compounding be sent to the Reserve Bank pending fulfillment of certain obligations?
- What action is taken by the Reserve Bank on receipt of the application?



Issues for discussion

- What are sensitive contraventions?
- Who should classify the contravention as technical, material or sensitive?
- Is it mandatory to appear for the personal hearing?
- Can the applicant authorise another person to attend the personal hearing?



Issues for discussion

- How is the compounding process brought to the conclusion?
- When should the amount indicated in the order be paid?
- What happens if the amount is not paid within 15 days of the order?
- Can there be an appeal against the order of the Compounding Authority?
- What is the timeframe for completing the compounding process?



Thanks

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