



Compounding Process under FEMA

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BACKGROUND : FERA, 1973

- Shortage of Foreign exchange
- There were instances of misuse of Foreign exchange.
- Parking of Funds Abroad by illegal means



FEMA 1999

- FERA was scrapped. FEMA, 1999 was enacted.
- From “Regulation” of foreign exchange it has now become “Management” of Foreign Exchange.
- No Mechanism of condoning

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- Under FEMA, the person is presumed innocent unless he is proved guilty. Further, no imprisonment has been prescribed for contraventions of law, not even as an alternative punishment.
 - Contraventions under FEMA are dealt with under the civil law procedures;
 - Separate administrative procedure and mechanism have been established in the form of compounding rules, Adjudicating Authority, Special Directors (Appeals) and Appellate Tribunal.



Compounding of Offences

- What is Compounding of Offences :
- ➤ Admitting before the authority about the contravention. It is like compromise or settling the matter.
- ➤ Admitting before the authority about the intention and interpretation of the rules and regulation which lead to contravention



Why Compounding

- Compounding helps in regularising the mistakes and contravention
- The procedure is simple and faster
- No legal proceedings
- Saving of amount as penalty is far higher than the compounding fees



Compounding Issues

- Types of Contraventions
- Contravention of Act
- Contravention of Rules and Regulations
- Contravention of Conditions / Directions
- Contravention further classified as
- Procedural Contravention
- Technical Contravention



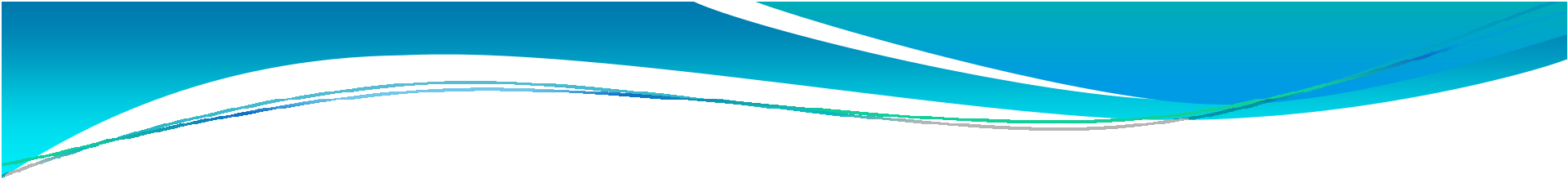
Non Compounding Contravention

- Money Laundering (PMLA) / Hawala Transaction
- Matter already subject matter of show cause before ED
- Identical matter compounded within three years
- Pending at any level in appeal
- Prior Permission required from other Govt. Dept. or Ministry



DELEGATION TO REGIONAL OFF

- FEMA Regulation.....
- 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.)

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- 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.)



Compounding Authority

- Reserve Bank of India through Designated Officers
- Amount Involved
- Upto 10 Lacs AGM
- Above 10 and Upto 40 Lacs DGM
- Above 40 and upto 100 Lacs GM
- Above 100 CGM



Application process

- Voluntarily on Identifying the contravention
- On information received from AD
- On being advised by RBI
- Application Form containing facts and matter to be compounded
- Filing Fees Rs 5000
- Application to Reserve Bank of India
- Application address to CGM , CEFA, RBI



Hearing

- After application, the hearing within 4 to 5 months
- RBI scrutinise the total application and identify other contravention
- Request to redraft the application
- Hearing in one sitting... No Adjournment granted



Format of Application

- (See Rule 4 or 5)
- **(To be filled in duplicate and shall be accompanied by certified copy of the Memorandum issued)**
- 1. Name of the applicant (in BLOCK LETTERS)
- 2. Full address of the applicant (including Phone and Fax Number and email id)
- 3. Whether the applicant is resident in India or resident outside India [Please refer to Section 2(v) of the Act]
- 4. Name of the Adjudicating Authority before whom the case is pending



Format of Application

- 5. Nature of the contravention [according to sub-section (1) of Section 13]
- 6. Brief facts of the case
- 7. Details of fee for application of compounding
- 8. Any other information relevant to the case
- I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief and that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/our case.
- Dated :
- (Signature of the Applicant)
- Name



Format of Application

- **Annex III**
- **ELECTRONIC CLEARING SERVICE (ECS)**
- **MANDATE FORM**
- 1. Name of the Party (Beneficiary) -
- 2. Particulars of the Bank Account -
- Name of the Bank
- Name of the Branch -
- Address:
Telephone No:
- 9 Digit MICR Code Number:
(as appearing on the cheque issued by the Bank)
- IFSC Code



Format of Application

- Type of Account : SAVINGS / CURRENT
- Account No. :
(as appearing on the cheque book issued by the Bank)
- (Please attaché photocopy of a blank cheque for verification of the bank account details)
- I/We hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I/We would not hold the user institution responsible.
- Signature of the Authorised Signatory
(Name of the Authorised Signatory)
- Date :
Place :



Format of Application

- **Annex II- ECB**
- **Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing**
- **Annex II- ODI**
- **Details to be furnished along with application for compounding of contravention relating to Overseas Investment**



Format of Application

- **Annex-II- FDI**
- **Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India**
- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date



Format of Application

- **Annex II - Branch Office / Liaison Office**
- **Details to be furnished along with application for compounding of contravention relating to Branch/Liaison Office in India**



Compounding order

- Order is passed within 180 days
- The compounding fees to be paid within 15 days of order and not within 15 days of receipt of order
- If amount paid.. Pay order to be submitted to RBI and ask for final Order
- If payment not made... the whole compounding process lapse



Method of computing

- The application for compounding will be disposed of on merits,
- and for arriving at 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 disclosure of full facts in the application and submissions made during the personal hearing; and
 - (vi) any other factor considered relevant and appropriate.



Reference to Enforcement

- Matter of serious nature
- PMLA
- Payment not made as mentioned in Compounding Order
- Appeal against the order lies only in the form of WRIT Petition and not in any other form



Do's and Dont's of Compounding

- Spell out the each contravention correctly
- Give the reasons of contravention
- Amount to be stated
- Delays in number of days to be stated
- If any default identified after making application, request for modification
- Enclose all the supporting documents relying upon



Do's and Dont's of Compounding

- Keep all the papers ready for hearing as no adjournments are granted
- Language of the application should be polite and the content should give the message of accepting the default
- No arguments at the time of hearing but informing about the situation and circumstances that lead to contravention



Do's and Dont's of Compounding

- No case laws to be cited
- No previous order on the identical issues to be cited
- Letter of authority on plain paper to be submitted
- Not to irritate the authority
- Plead ignorance



Legal Effect of Compounding

- No further penalty or proceedings on the issues compounded
- The procedure which were pending shall be taken on record
- All contraventions compounded stands regularised

PENALTIES

Penalties are leviable for following contraventions/violation :

- Contravention of the Act.
- Contravention of Rules, Regulations.
- Contraventions of any of the conditions



NATURE OF PENALTY PROCEEDINGS

a)

Penalty Proceedings not criminal in nature.

b) Penalty cannot be based on guess work, conjecture or surmise.

c) The powers of enforcement officers is quasi judicial.

d) Doctrine of Double Jeopardy:

Punishment by imposition of penalty as well as imprisonment for non payment of penalty would not amount to double jeopardy.

Monetary Ceiling on Penalty

a) Sum involved is quantifiable :

Upto three times of the sum involved in the
contravention.

b) Sum involved is not quantifiable :

Upto Rs. 2 Lakhs only.

Over and above the aforesaid penalty, a
recurring penalty of Rs. 5,000 per day can also
be levied during the continuance of the offence.



Prosecution

Penalty has been paid – no prosecution can be initiated.

Penalty is not paid – prosecution can be initiated.

No specified time limit for imposition of penalty.

:::::THANK YOU:::::