

RBI/2010-11/7
Master Circular No.07/2010-11

July 01, 2010

To,

All Authorised Dealer Category - I banks and Authorised Banks

Madam / Sir,

Master Circular on Compounding of Contraventions under FEMA, 1999

The compounding of contraventions under Foreign Exchange Management Act (FEMA), 1999 is a voluntary process available to the citizens of India, by which an applicant can seek compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the FEMA, 1999.

2. This Master Circular consolidates the existing instructions on the subject of "**Compounding of Contraventions under FEMA, 1999**" at one place. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2011 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Dr.Sujatha Elizabeth Prasad)
Chief General Manager

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1 General

1.1 If any person contravenes any provision of FEMA, 1999, 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 the amount is quantifiable or up to Rupees Two lakh, where the amount is not quantifiable and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues (Section 13(1), Chapter IV of FEMA, 1999).

1.2 Foreign Exchange (Compounding Proceedings) Rules, 2000 have been published by the Government of India empowering the Reserve Bank to compound contraventions under FEMA, 1999. The provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention either before or after the institution of adjudication proceedings.

1.3 The Government of India has, in consultation with the Reserve Bank placed the responsibilities of administering compounding of cases with the Reserve Bank, except under Section 3(a) of FEMA, 1999. Accordingly, the procedure for compounding of contraventions under FEMA, 1999 have been framed with a view to provide comfort to the citizens and corporate community by minimizing transaction costs, while taking severe view of willful, *malafide* and fraudulent transactions.

2. Compounding Powers

2.1 The compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE), respectively, are as under:

- (a) Reserve Bank has been empowered to compound the contraventions of all the Sections of FEMA, 1999, except clause (a) of Section 3 of the Act, *ibid*.
- (b) Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA, 1999 (dealing essentially with Hawala transactions).

2.2 For effective implementation of compounding process under FEMA, 1999, the Reserve Bank has framed the procedure for compounding of contravention. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener.

3. Process of Compounding

3.1 An application for compounding of a contravention under FEMA, 1999 may be submitted to the Compounding Authority (CA) on being advised of a contravention under FEMA, 1999, either through a memorandum or *suo moto* on being made or on becoming aware of the contravention. The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Annex).

3.2 The application for compounding any contravention in prescribed form together with a copy of the memorandum, wherever applicable, with the prescribed fee of Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at Mumbai may be submitted with relevant facts and supporting documents to: The Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 3rd floor, Amar Building, Sir P.M. Road, Fort, Mumbai- 400001.

3.3 On receipt of the application for compounding, the proceedings would be concluded and order issued by the CA within 180 days from the date of the receipt of the application for compounding. The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank. The CA may call for any information, record

or any other documents relevant to the compounding proceedings and will hold the proceedings. The Compounding Order will be passed by the CA after affording the contravener and others concerned, an opportunity of being heard.

3.4 The application will be examined based on the documents and submissions made in the application, in terms of sub rule (1) of rule (4) of the Foreign Exchange (Compounding Proceedings) Rules, 2000 and assess whether the contravention is compoundable and if so, the amount of contravention is accordingly quantified.

3.5 The nature of contravention is ascertained keeping in view, inter alia, the following indicative points :

- a. whether the contravention is technical and / or minor in nature and needs only an administrative cautionary advice;
- b. whether the contravention is serious in nature and warrants compounding of the contravention; and
- c. whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringement of the regulatory framework.

3.6 The disposal of the compounding application is made by issue of a Compounding Order specifying the provisions of FEMA,1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999, in respect of which contravention has taken place.

3.7 The CA may call for any additional information, record or any other document relevant to the compounding proceedings. Such additional information/ document are required to be submitted within the period as may be specified by the CA and the application may be rejected if such information/document is not submitted within the prescribed time.

3.8 Where there is sufficient cause for further investigation, the Reserve Bank may refer the matter to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999, as deemed fit by them or to the Anti-

Money Laundering Authority instituted under the Prevention of Money Laundering Act (PMLA), 2002 or to any other agencies, as deemed fit. Such applications will be disposed of by returning the application to the applicant since the compounding application will have to be disposed of within 180 days.

4. Scope and Manner of Compounding

4.1 The CA will exercise jurisdiction in respect of the contraventions alleged to have been committed in relation to any of the provisions of the FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999.

4.2 The CA will form an opinion on the basis of the application, together with the documents submitted and on the basis of submissions made during the personal hearing on the nature of the contravention.

4.3 The application for compounding will be disposed of on merits, upon consideration of the records and submissions and at the absolute discretion of the CA. The following factors, which are only indicative, may be taken into consideration for the purpose of passing the Compounding Order 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.

5. Issue of the Compounding Order

5.1 An opportunity for personal hearing is given to the applicant for further submission of documents in person in support of the application within a specified period. If the contravener or its authorized representative fails to appear in person or make any submissions before the CA for personal hearing, the CA may proceed with the processing of the compounding application on the basis of information and documents available in the application for compounding.

5.2 The Compounding Authority will pass a compounding order on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings, if any.

5.3 Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of FEMA, 1999 as the case may be, one copy of the compounding order made under sub rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 will be supplied to the applicant (the contravener) and also to the Adjudicating Authority.

6. Post-compounding procedure

6.1 The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 is payable by way of a demand draft in favour of the "Reserve Bank of India" within fifteen days from the date of the order of compounding of such contravention. The demand draft has to be deposited in the manner as directed in the compounding order.

6.2 The provisions of the Rules do not confer any right on the contravener, after a compounding order is passed, to seek to withdraw the order or to hold the compounding order as void or request a review of the order passed by the CA.

6.3 In case of failure to pay the sum compounded within the time specified in the compounding order, it shall be deemed in terms of Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, that the contravener had never made an application for compounding of any contravention under these Rules.

6.4 On realization of the sum for which contravention is compounded a certificate in this regard shall be issued by the Reserve Bank subject to the specified conditions, if any, in the order.

6.5 In respect of the contraventions of FEMA, 1999 (as defined in section 13 of the FEMA, 1999), which are not compounded by the Compounding Authority, other relevant provisions of FEMA, 1999, shall apply.

7. Pre-requisites for compounding process

7.1 In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded. Such contravention would be dealt with under relevant provisions of the FEMA, 1999 for contravention. 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.

7.2 Contraventions relating to any transaction where proper approvals or permission from the Government or 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 authorities concerned.

7.3 Cases of contravention, such as, those having a money laundering angle, national security concern and / or involving serious infringements of the regulatory framework 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 Prevention of Money Laundering Act 2002, (PMLA) or to any other agencies, for necessary action , as deemed fit.

7.4 The Reserve Bank generally advises the persons concerned of their choice and option to make an application for compounding as and when such contraventions come to its notice. The facts constituting such contraventions will be brought to the notice of the Directorate of Enforcement in case no application for compounding is made within the time indicated by the Reserve Bank.

Foreign Exchange (Compounding Rules), 2000

Notification No. G.S.R.383(E) dated 3rd May 2000

As amended vide

G.S.R.443(E) dated November 2, 2002

G.S.R. 609 (E) dated September 13, 2004 and

G.S.R. 613 (E) dated August 27, 2008

In exercise of the powers conferred by section 46 read with sub-section (1) of section 15 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Central Government hereby makes the following rules relating to compounding contraventions under chapter IV of the said Act, namely:-

1. Short title and commencement –

(1) These rules may be called the Foreign Exchange (Compounding Proceedings) Rules 2000.

(2) They shall come into force on the 1st day of June, 2000.

2. Definitions - In these rules, unless the context otherwise requires -

(a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) 'authorised officer' means an officer authorised under sub-rule (1) of rule 3;

(c) 'applicant' means a person who makes an application under section 15 (1) of the Act to the compounding authority;

(d) 'Compounding Order' means an order issued under sub-section (1) of Section 15 of the Act;

(e) 'Form' means a form appended to these rules;

(f) 'section' means a section of the Act;

(g) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. (1) 'Compounding Authority' means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely;

(a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA).

(b) An officer of the Reserve Bank of India not below the rank of the Assistant General Manager.

4. Power of Reserve Bank to compound contravention -

¹[(1) *If any Person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of the Act.*]

(a) in case where the sum involved in such contravention is ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;

(b) in case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India ;

(c) in case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees hundred lakhs by the General Manager of Reserve Bank of India;

(d) in case the sum involved in such contravention is rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India;

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

Explanation: For the purposes of this rule, 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.

(3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai along with a fee of Rs. 5000/- by Demand Draft in favour of compounding authority.

5. The Power of Enforcement Directorate to compound contraventions -

² [(1) *If any Person contravenes provisions of Section 3(a) of Foreign Exchange Management Act.*]

¹ GSR 613(E) dated August 27, 2008

² GSR 609 (E) dated September 13, 2004

(a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;

(b) in case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;

(c) in case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;

(d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;

(e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

Explanation: For the purposes of this rule, 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.

(3) Every officer of the Directorate of Enforcement specified under sub-rule (1) of this rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Director of Enforcement.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000 by DD in favour of the Compounding Authority.

6. 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.

7. 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.

8. 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.

9. Payment of amount compounded -

³The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, 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.

10. In case a person fails to pay the sum compounded in accordance with the rule 9 within the time specified in that rule, 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.

11. No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

12. Contents of the order of the Compounding Authority -

(1) Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contravention.

(2) Every such order shall be dated and signed by the Compounding Authority under his seal.

13. Copy of the order - One copy of the order made under rule 8(2) shall be supplied to the applicant and the Adjudicating Authority as the case may be.

³ GSR 443(E) dated November 2, 2002

Format of Application

Form (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
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

Appendix

List of Rules/ A.P. (DIR Series) Circulars consolidated in the Master Circular Compounding of contraventions of FEMA, 1999

Rules

SI No	Rules No.	Date
1	Foreign Exchange (Compounding Proceedings) Rules, 2000	May 3, 2000
2	Foreign Exchange (Compounding Proceedings) Rules 2002	November 2, 2002
3	Foreign Exchange (Compounding Proceedings) Rules, 2004	September 13, 2004
4	Foreign Exchange (Compounding Proceedings) Rules, 2004	August 27, 2008

A.P. (DIR Series) Circulars

SI No	Circular No	Date
1	AP (DIR Series) Circular No. 31	February 1, 2005
2	AP (DIR Series) Circular No. 56	June 28, 2010