

RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office
Mumbai-400 001

RBI/2004-05/355

A.P.(DIR Series) Circular No.31

February 1, 2005

To,

All Authorised Dealers in Foreign Exchange

Madam/Sir,

Compounding of Contraventions under FEMA 1999

Attention of Authorised dealers is invited to the Foreign Exchange (Compounding Proceedings) Rules, 2000 published by the Government of India vide G.S.R.No.383 (E) dated 3rd May 2000 as amended vide G.S.R. No. 443 (E) dated 2nd November 2002 (copy enclosed). In terms of these rules Reserve Bank was empowered to compound contravention under the provisions of following sections of FEMA, 1999.

- a) Section 7 (Export of goods and services),
- b) Section 8 (Realisation and repatriation of foreign exchange),
- c) Section 9 (Exemption from realisation and repatriation of foreign exchange in certain cases),
- d) Third Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

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 application made by the person committing such contravention either before or after the institution of Adjudication Proceedings.

2. With a view to provide comfort to the citizens and corporate community by minimizing transaction costs, while taking severe view of wilful, *malafide* and fraudulent transactions, it has been decided to put in place the procedures for compounding of contravention under FEMA. The Government of India has, therefore, in consultation with Reserve Bank placed the responsibilities of administering compounding of cases with the Reserve Bank, except under Section 3 (a) of FEMA.

3. Accordingly, the Government has notified amendment to the Foreign Exchange (Compounding Proceedings) Rules, 2000 vide G.S.R. No.609 (E) dated September 13, 2004. A copy of the said rules is given in Annex -I. As a result of the amendment, the compounding powers of Reserve Bank and Directorate of Enforcement respectively, have been modified 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 continue to exercise powers of compounding under clause (a) of Section 3 of FEMA (dealing essentially with Hawala transactions).

4. For effective implementation of compounding process under FEMA, the Reserve Bank has framed the procedures for compounding of contravention as detailed in the Annex -II. 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.

5. **Process for Compounding**

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

5.2. Application for compounding any contravention in prescribed form together with a copy of the memorandum, wherever applicable, with the prescribed fee [as given in the Foreign Exchange (Compounding Proceedings) Rules, 2000] has to be submitted with relevant facts and supporting documents to The Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 11th Floor, Central Office Building, S. B. Singh Road, Fort, Mumbai-400001.

5.3. On receipt of the application for compounding, the proceedings would be concluded and order issued by the Compounding Authority within 180 days from the date of the receipt of the application for compounding.

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- 5.4. The sum for which the contravention has been compounded shall be paid within fifteen days from the date of the order of compounding.
- 5.5. The payment towards application fee and the sum for which contravention has been compounded shall be paid by demand draft in favour of the Compounding Authority i.e. " Reserve Bank of India" and payable at Mumbai.
6. The process and procedures for Compounding under the revised Compounding Rules may be reviewed after six months.
7. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.
8. The directions contained in this circular have been issued under sections 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,

F. R. Joseph
Chief General Manager

Annex-I
[A.P.(DIR Series) Circular No.31
dated February 1, 2005]

Foreign Exchange (Compounding Proceedings) Rules 2000

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

As amended vide

G.S.R. No.443(E) dated 2nd November 2002 and

G.S.R. No. 609 (E) dated September 13, 2004

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 five lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;

¹ Substituted vide GSR 609 (E) dated September 13, 2004.

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

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

(d) in case the sum involved in such contravention is rupees fifty 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.]*

(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;

² Substituted vide GSR 609 (E) dated September 13, 2004.

(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 and not later than 180 days from the date of application.

9. Payment of amount compounded -

³*The 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 of 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

³ Substituted vide GSR 443 (E) dated 2nd November 2002.

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 thereunder 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.

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
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)

Annex-II

[A.P.(DIR Series) Circular No.31
dated February 1, 2005]

Compounding Process

1. Foreign Exchange (Compounding Proceedings) Rules 2000 as amended from time to time would be the basic framework for the Compounding process. As per sub-rule (3) of Rule 4 of the Rules the compounding process would be subject to the direction, control and supervision of the Governor of the Reserve Bank of India.
2. Once the application for compounding any contravention committed under FEMA 1999 (i.e. w.e.f. June 1, 2000) is received by the Compounding Authority (CA), the proceedings would be initiated by the CA. In accordance with the rules the process would be concluded by the CA within 180 days. This time limit would be reckoned from the date of the receipt of the application for Compounding to the date of issue of compounding order. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings and will hold the proceedings.
3. Where additional information/document is called for, such additional information/document shall be submitted within 30 days or such additional period as may be given by the Compounding Authority from the date of the said letter. In case, the contravener fails to submit the additional information/ documents called for within the specified period , the application for compounding will be liable for rejection.
4. The Compounding Authority shall consider the application and take an appropriate decision in the matter. The Compounding Authority shall pass an order of compounding after affording the contravener and other concerned an opportunity of being heard. The compounding 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.
5. The contravener would have to pay the sum specified for compounding within fifteen days from the date of the order of compounding of such contravention. In case a person

fails to pay the sum within the time specified therein, it would be construed that the entity had not made an application for compounding of the said contravention.

6. Application for compounding any contravention may be filed with the CA, including those which are under adjudication process and have not been disposed off. No contravention would be compounded which has been finally adjudicated and disposed off by the Adjudicating Authority.
 7. Cases of contravention having a money-laundering, national and security concern involving serious infringements of the regulatory framework including cases where application for compounding has not been filed within the stipulated period in the memorandum issued by the Reserve Bank may be referred to Directorate of Enforcement for further investigation and necessary action under Section 37 of the Act or to the Anti Money Laundering Authority instituted under Prevention of Money Laundering Act, 2002 or to any other agencies as deemed fit.
 8. As mentioned in sub rule (2) of Rule 4, 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 may be referred to Directorate of Enforcement under Section 37 of the Act.
 9. Contraventions related to any transaction without proper approval or permission from the concerned Government or any Statutory Authority as the case may be under the relevant laws/regulations as envisaged under FEMA, would not be compounded unless the required approval is obtained from the concerned authorities.
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