



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

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**RBI/2009-10/508**  
**A.P. (DIR Series) Circular No. 56**

**June 28, 2010**

To

All Category - I Authorised Dealer Banks

Madam / Sir,

**Foreign Exchange Management Act, 1999 (FEMA)**  
**Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) -**  
**Compounding of Contraventions under FEMA, 1999**

The provisions of section 15 of FEMA, 1999 permit compounding of contraventions and, as such it empowers the Reserve Bank to compound any contravention as defined under section 13 of the FEMA, except the contraventions under section 3 (a) of FEMA, on an application made by the person committing such contravention. Attention of all the Authorised Dealer Category - I (AD Category - I) banks and their constituents is invited in this regard to the Foreign Exchange (Compounding Proceedings) Rules, 2000 notified by the Government of India vide G.S.R.No.383 (E) dated 3<sup>rd</sup> May 2000 as amended from time to time (copy as on date given at Annex – I) and the A.P. (DIR Series) Circular No.31 dated February 1, 2005.

2. The compounding of the contravention under the FEMA, 1999 was implemented by the Reserve Bank by putting in place the simplified procedures for compounding with effect from February 1, 2005 with a view to providing comfort to the citizens and corporate community by minimizing transaction costs, while taking a serious view of the wilful, *malafide* and fraudulent transactions. It has been decided to put in place an updated procedure for compounding of contravention/s under FEMA on the basis of observations made over the last few years on the compounding process on a continuous basis and the experience gained in dealing with compounding applications. The objective is rationalization

and streamlining of the process and the procedure for compounding and to enhance transparency and effect smooth implementation of the compounding process. The directions contained in the compounding of contravention/s issued vide A.P. (DIR Series) Circular No.31 dated February 1, 2005 are superseded by this circular.

### **3. Application for Compounding**

3.1 Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules), 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.

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

3.3 On receipt of the application for compounding, the proceedings would be initiated in accordance with the Foreign Exchange (Compounding Proceedings) Rules, 2000 and the compounding order shall be issued by the Compounding Authority 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.

3.4 On receipt of the application for compounding, the Reserve Bank shall examine the application 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 contravention is quantifiable and, if so, the amount of contravention.

3.5 The Reserve Bank shall examine the nature of contravention 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 and warrants compounding of the contravention; and
- c. whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringements of the regulatory framework.

If, before disposal of the compounding application by issue of a compounding order the Reserve Bank finds that there is sufficient cause for further investigation, it may recommend the matter to the Directorate of Enforcement (DoE) for further investigation and necessary action under FEMA, 1999 by them or to the Anti Money Laundering Authority instituted under the Prevention of Money Laundering Act, 2002 or to any other agencies, as deemed fit. Since the compounding application will have to be disposed of within 180 days, the application will be disposed of by returning the application to the applicant in view of such investigation required to be conducted.

3.6 The Compounding Authority at the Reserve Bank may call for any additional information, record or any other document relevant to the compounding proceedings. Where additional information/document is called for, such additional information/ document shall be submitted within the period as may be specified by the Compounding Authority. 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.

3.7 The Compounding Authority at the Reserve Bank shall consider the application and shall pass an order of compounding after affording the contravener an opportunity of being heard as expeditiously as possible but not later than 180 days from the date of receipt of the completed application.

3.8 The Compounding Order shall specify the provisions of the 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 along with details of the alleged contravention.

3.9 Operational checkpoints for submission of a compounding application and the related matters are given in Annex – II.

#### **4. Scope and Manner of Compounding**

4.1 The Compounding Authority (CA), as defined under the Foreign Exchange (Compounding Proceedings ) Rules 2000, shall 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 the FEMA, 1999.

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

4.3 The application for compounding shall be processed further and 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 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; and
- (vi) any other factor as considered relevant and appropriate.

## **5. Issue of the Compounding Order**

5.1 The applicant/ contravener shall be given an opportunity for personal hearing for further submission of documents in person in support of the application within a specified period. If the contravener or its authorised representative fails to appear in person or make any submissions before the CA for personal hearing, the CA shall proceed with the processing of the compounding application on the basis of available information and documents submitted alongwith the application for compounding.

5.2 The CA shall 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.

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

## **6. Payment of the amount for which contravention is compounded**

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, 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. 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 to the contravener, after a compounding order is passed, to seek to withdraw the order or to hold that the compounding order is void or request review of the order passed by the Compounding Authority.

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

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

6.5 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.

## **7. Prerequisite for Compounding Process**

7.1 In terms of sub rule (2) of Rule 4 of Foreign Exchange (Compounding Proceedings) Rules, 2000, 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 and relevant provisions of the FEMA, 1999 shall apply. 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 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.

7.3 Cases of contravention, such as, those having a money laundering angle, national security concerns 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, 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 the contraventions come to its notice. The facts constituting such contraventions will be brought to the notice of the DoE for further necessary action in case no application for compounding is made within the time indicated by the Reserve Bank.

8. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.

9. 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).

Yours faithfully,

**(Dr. Sujatha Elizabeth Prasad)**

**Chief General Manager**