



COMPOUNDING OF OFFENCES UNDER FEMA

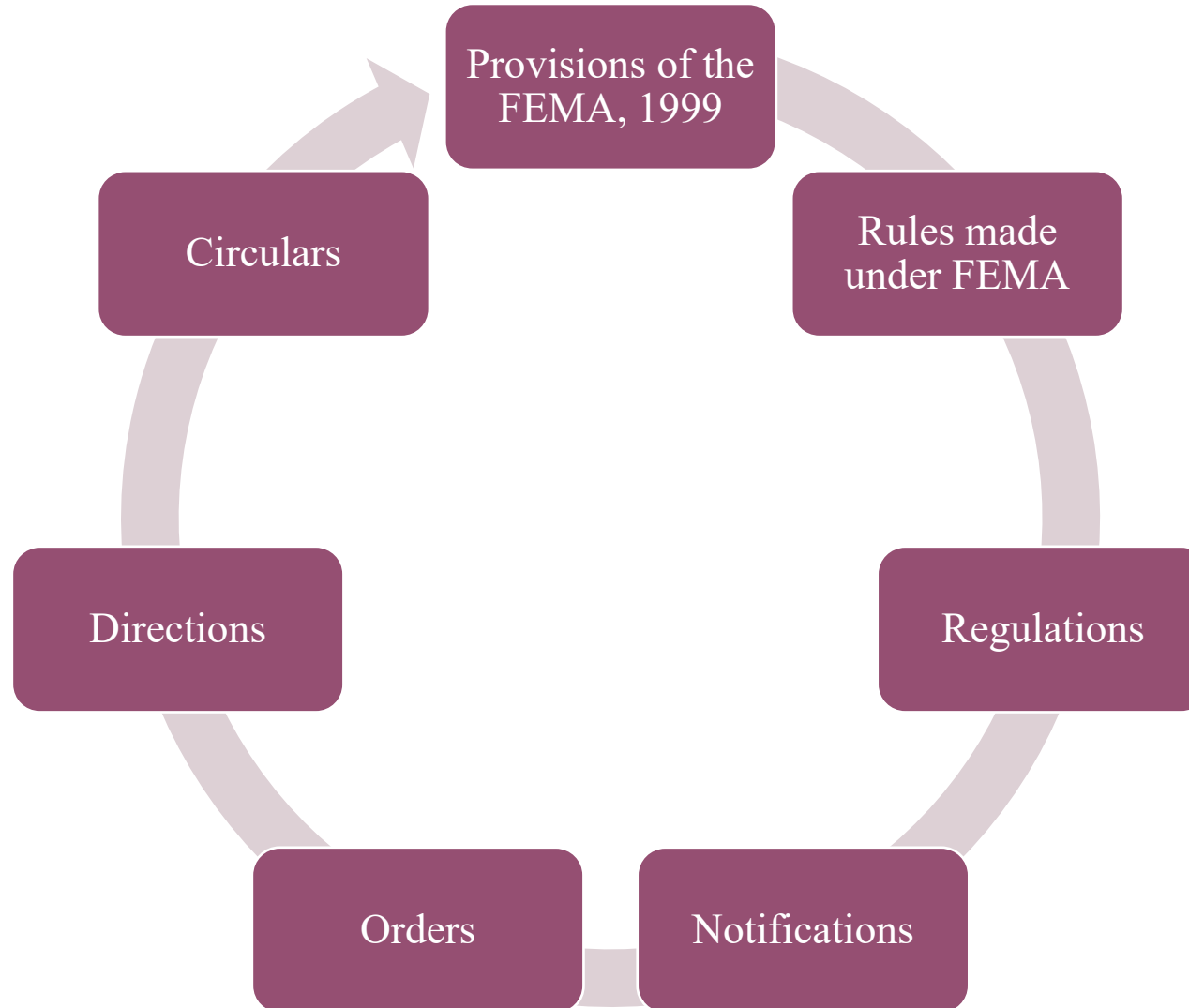
Governing Regulations

Compounding of contraventions is governed by following section and rules:

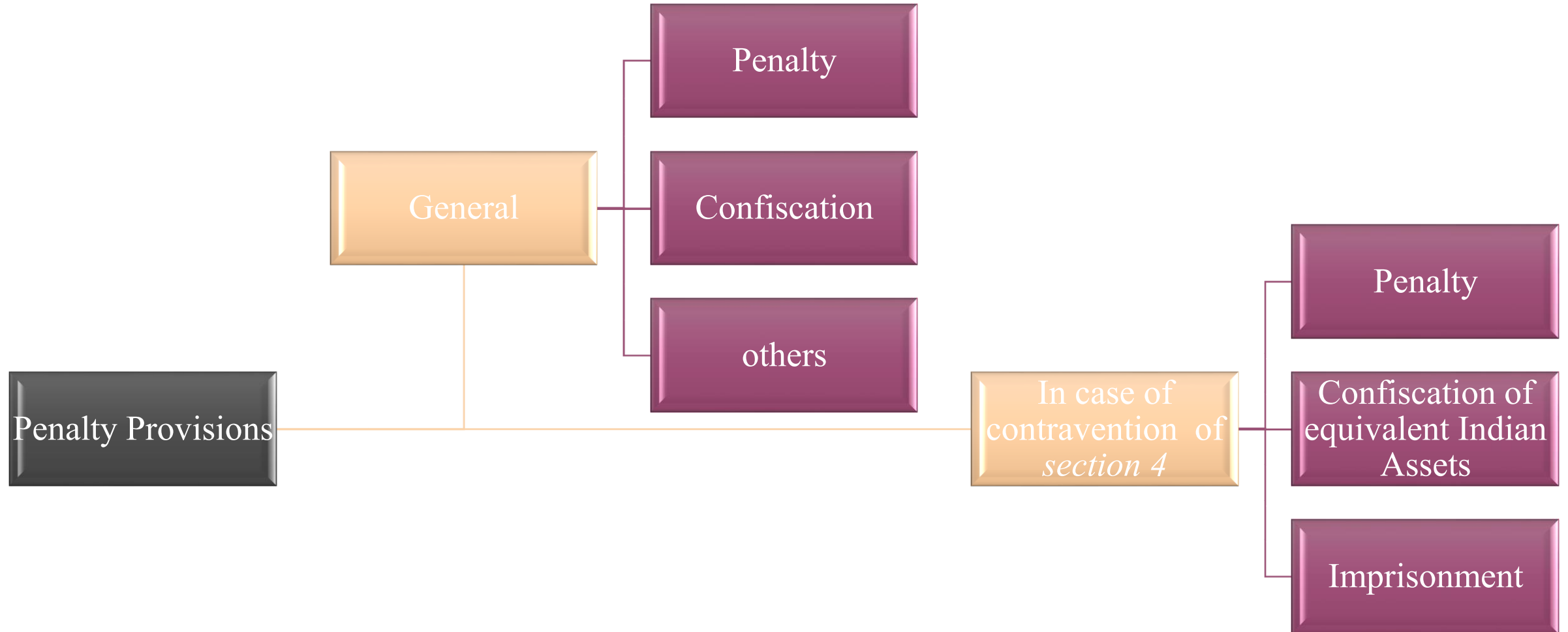
- FEMA, 1999 brought foreign exchange contraventions within the ambit of civil law.
- Section 13,14 and 15 of FEMA Act, 1999
- Master Direction – Reporting under Foreign Exchange Management Act,1999
- Master Direction- Compounding of Contraventions under FEMA, 1999
- Foreign Exchange (Compounding Proceedings) Rules, 2000
- FAQ Issued by RBI

Meaning of contravention

Contravention of following :



Meaning of Penalty



Penalty

i. Penalty:

- a) Where amount is quantifiable: up to thrice the sum involved in such contravention where such amount is quantifiable;
- b) Where amount is not quantifiable: up to Rs. 2,00,000 where the amount is not quantifiable and
- c) Continuing offence: where such contravention is a continuing one, further penalty which may extend to Rs. 5000 for every day after the first day during which the contravention continues.

Confiscation and other s

ii. Confiscation:

any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

iii. Others:

the foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

"property" in respect of which contravention has taken place, shall include:

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency and
- (c) any other property which has resulted out of the conversion of that property.

Section 4

- FEMA, 1999 prohibits the acquisition, holding, owning, possession or transfer of any foreign exchange, foreign security or any immovable property situated outside India by a person resident in India. Such an acquisition, holding, etc, can be only in terms and conditions as specified in regulations made by the RBI under s 6 read with s 47.
- Save as otherwise provided in this Act, resident person shall not:
 - acquire
 - hold
 - own
 - possess; or
 - transfer (i)any foreign exchange, (ii) foreign security; or (iii)any immovable property situated outside India.

Section 37A have been recently introduced under the Act via Finance Act, 2015 which provides that if a person holds a property in contravention of this section, his property of equal value in India shall be liable to seized.

Contravention of Section 4

Government for the first time, vide Finance Act, 2015, brought in provisions for contravention in relation to foreign exchange, foreign security or any immovable property situated outside India.

As per the provisions of Act, if any person is found to have acquired any foreign asset, of the aggregate value exceeding the threshold prescribed under the provisions of this Act (*no such limit has been prescribed till now*) in contravention of the Act, he shall be liable to:-

- **Penalty:**

Penalty up to three times the sum involved in such contravention.

- **Confiscation:**

Confiscation of the assets situated in India, of the value equivalent, of the foreign exchange, foreign security or immovable property.

- **Imprisonment:**

Imprisonment for a term which may extend to five years and with fine.

Meaning of Compounding

- Compounding of contraventions under FEMA is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA under s 13(1) of FEMA. Compounding saves the person from legal proceedings being initiated against him. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- 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 (refer Annexure X for cases of contravention under FEMA).

Generally Committed Contraventions

Under Overseas Direct Investment

- Non submission of form ODI after investment and UIN not allotted.
- Not permitted method of funding.
- Not obtaining share certificate within stipulated time period from the date of remittance.
- Non-submission of Annual Performance Report (APR) every year.
- Contravention of other regulations of notification No. FEMA 120/ RB-2004 dated July 7, 2004.

Generally Committed Contraventions

Under Foreign Direct Investment

- Not reporting of inward remittance within 30 days.
- Not submitting form FC-GPR within 30 days from the date of allotment.
- Non submission of form FCTRS on transfer of shares.
- **Issue of instruments other than permitted instruments.**
- **Contravention of other Rules**
- Non filing of ECB, ECB2
- **Not allotting equity instruments** or not refunding the amount within 60 days.

LATE SUBMISSION OF FEES (LSF)

The concept of LSF was **first introduced in November 7, 2017**, which in effect replaces the need for compounding for delay in “**Reporting requirements**” which are committed on or after November 7th 2017.

Any delay in reporting under part IV of “Reporting requirements”

Compounding only

Transaction on or after
Nov. 7, 2017

LSF or Compounding ??

LATE SUBMISSION OF FEES (LSF)

For all other Non compliances



LATE SUBMISSION OF FEES (LSF)

1. The % of LSF will be doubled every twelve months of delay. {(approx. rounded off to next higher month \div 12) X amount for 1 year}
2. The floor (minimum applicable amount) for LSF will be INR 100
3. “Months” shall include Sundays/ Holidays
4. Period shall begin from the day after the 30th day (from the date of receipt of funds / allotment or transfer of shares) and end on the day preceding the day on which the transaction report is received in the Reserve Bank. The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects
5. In case the reporting form is incomplete then the delay will continue till such time the form is received complete in all respects.
6. If amount is low, then LSF is good, In case the amount is high, Compounding is good .
7. No claim for refund in any manner for the amount already deposited as LSF.

LATE SUBMISSION OF FEES (LSF)

RBI FAQ: Whether compounding option is available for reporting delays

Answer: The payment of LSF is an additional facility for regularising reporting delays without undergoing the compounding procedure. However, this does not mean that the applicant cannot apply for compounding. Both options are available to the applicant for the transactions undertaken on or after November 7, 2017

COMPOUNDING AND ITS LEGAL PROVISIONS

Compounding is where the contravention is already exist and that too have been made good

Benefits of Compounding

It is a voluntary process

Comforts of citizens and corporate community

Personal hearing is not mandatory

Minimising transaction costs

Time –bound disposal(180 Days)

Simple and hassle – Free procedure

No proceeding or further proceedings initiated or continued

Absolutely transparent

It saves time and energy One application – One hearing – One order for one notification.

Who Can Apply for Compounding

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

When should one apply for compounding

- When a person is **made aware of the** contravention of the provisions of FEMA, 1999 **by the Reserve Bank or any other statutory authority or the auditors or by any other means**, she/he may apply for compounding.
- One can also make an application for compounding, **suo moto**, on becoming aware of the contravention..

Pre-requisites For Compounding

- The applicant must voluntarily admit the contravention.
- The contravention is crystallized i.e. Period of contravention, Amount of contravention and Regulation contravened. (PAR).... **In terms of period separate LSF and compounding will be applied by RBI**
- In case the contravention cannot be quantified, it cannot be compounded.(Rule 4(1)).
- The process is deemed to be completed when the certificate is issued to the applicant upon payment of the amount imposed in a compounding order (Rule 9).
- Once a contravention is compounded, no further prosecution for the same contravention. (Rule 6 – Compounding Rules).

Pre-requisites For Compounding

- **Default has to be made good before** the application for compounding of Contravention.
- There should not be **no compounding** for the same offence in **last three years** of making the application for compounding of contravention. For such **repeat offences** within the period of three years, **relevant provisions of the FEMA, 1999** shall apply and penalties shall be levied in such cases.
- For 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, it shall be **deemed to be a first contravention**.
- Contraventions relating to any transaction where proper **approvals from the Government** or any statutory authority concerned, have been required, such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.

Pre-requisites For Compounding

- **Serious contraventions** - Proviso added to Rule 8(2) of Compounding Rules February 20, 2017 - (money laundering, terror financing, affecting sovereignty and integrity of the nation) including non-payment of penalty in the compounding order Cases referred to DoE
- **Failure of payment of penalty i.e.** compounding fee, within the time limit (15 days) the matter will be referred to the Directorate of Enforcement.
- In case where adjudication has been done by the DoE and an appeal has been filed under section 17 or 19 of FEMA, no contravention can be compounded in terms of Rule 11 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

Competent Authority

Regional Offices, RBI, amount without any limit

The application for compounding should be moved to the competent authority as summarized in the Table below:

Delay in filing form FC(GPR) after issue of shares.

Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).

Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds, etc.

Violation of pricing guidelines for issue/transfer of shares.

Issue of ineligible instruments

Issue of shares without approval of RBI or Government, wherever required.

Competent Authority

The application for compounding should be moved to the competent authority as summarized in the Table below:

Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident or from Non-Resident to Resident.

Receiving investment in India from non-resident or taking on record transfer of shares by investee company.

Delay in reporting the downstream investment made by an Indian entity or an investment vehicle in another Indian entity

Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by Limited Liability Partnerships (LLPs)/

Delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice-versa) in case of LLPs.

Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the Reserve Bank of India.

Competent Authority

FED CO CELL, NEW DELHI, amount without any limit

Contraventions relating to acquisition and transfer of immovable property outside India

Contraventions relating to acquisition and transfer of immovable property in India

Contraventions relating to establishment in India of Branch office, Liaison Office or Project office.

Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000

Competent Authority

For all other applications

However, in case of:

Panji Regional Office RBI	Up to INR 100 lacs	More than INR 100 lacs	By Mumbai Regional Office
Kochi Regional Office RBI	Up to INR 100 lacs	More than INR 100 lacs	By Thiruvananthapuram Regional Office

Accordingly, applications for compounding related to the above contraventions may be submitted to the respective Regional Offices under whose jurisdiction they fall or to FED, CO Cell, New Delhi, as applicable.

For **all other** contraventions, applications may continue to be submitted to CEFA, Foreign Exchange Department, Reserve Bank of India, 5th floor, Amar Building, Sir P. M. Road, Fort, Mumbai 400001.

Application, Scope and Procedure for Compounding:

At the time of submission of application by the Applicant	Preliminary enquiry /scrutiny of application by the department	Replying to the queries raised by the department and hearing	Order
<ul style="list-style-type: none"> - Application fee INR 5000 - The format as specified: - ECS mandate and details as per <u>Annexure - II</u> of Part XI reporting Regulations. - a copy of the Memorandum of Association - a copy of latest audited balance sheet - an undertaking as per <u>Annexure - III</u> that they are not under any enquiry/investigation/adjudication by any agency such as DOE, CBI etc. as on the date of the application - any change in the address/contact details during the pendency of application has to be reported. 	<ul style="list-style-type: none"> - the application and the application fees of Rs.5000/, received will be returned if: <ul style="list-style-type: none"> - where, required approvals are not obtained from the authorities concerned or - in case of incomplete application - Calling information, record or any other documents 	<p>Providing information, record or any other documents if fails to provide information, record or any other documents the application will be liable for rejection.</p> <p><u>Not mandatory to attend the personal hearing.</u> The application would be disposed of on the basis of documents submitted</p>	<p>Time limit to disposing-off the compounding application: 180 days</p> <p>Penalty/Compounding fees to be paid within 15 days, if not paid it shall be deemed that the contravener had never made an application for compounding of any contravention under these Rules.</p> <p>if paid, a certificate shall be issued</p> <p>Amount imposed can be up to 3 times of the amount involved in contravention</p>

Format of Application

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

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 / 2008)
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

Table A

Sl.No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Reported to RBI on*	Delay if any
	Total				

* date of reporting to RBI and not AD

Branch Office / Liaison Office

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

- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Date of approval for opening of Liaison Office/ Branch Office
- Validity period of the approval
- Income and expenditure of the LO/BO
- Dates of submission of Annual activity Certificates
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

Guidance Note On Computation Matrix

Sl. No.	Contravention	Existing Formula
1A	FEMA 20 Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4)	Fixed amount: INR 10000 (applied once for each contravention in a compounding application) + Variable amount as under:
1B	FEMA 3 Non submission of ECB statements	Up to 10 lakhs 1000 per year Above Rs.10 lakhs & below Rs. 40 lakhs 2500 per year
1C	FEMA 120 Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern	Rs.40 lakhs or more and below Rs. 100 lakhs: 7000 per year Rs.1-10 crore 50000 per year Rs.10 -100 Crore 100000 per year
1D	Any other reporting contraventions (except those in Row 2 below)	Above Rs.100 Crore 200000 per year
1E	Reporting contraventions by LO/BO/PO	As above, subject to ceiling of INR 2 Lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.

Guidance Note On Computation Matrix

Sl. No.	Contravention	Existing Formula
2	In case of non-submission/ delayed submission of APR/ share certificates In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) 3or FLA invested. Returns - FEMA 20 / FEMA 20 (R) / FEMA 120	Rs.10000/- per AAC/APR/FCGPR (B) /FLA Return delayed. Delayed receipt of share certificate – Rs.10000/- per year, the total amount being subject to ceiling of 300% of the amount invested.
3A	Allotment/Refunds	INR 30,000 + given percentage:
3B	LO/BO/PO (Other than reporting contraventions)	1 st year : 0.30% 1-2 years : 0.35% 2-3 years : 0.40% 3-4 years : 0.45% 4-5 years : 0.50% >5 years : 0.75%
4	All other contraventions except Corporate Guarantees but including all contraventions of FEMA 20 other than FLA.	(For project offices the amount of contravention shall be deemed to be 10% of the cost of project). INR 50,000 + given percentage: • 1st year : 0.50% • 1-2 years : 0.55% • 2-3 years : 0.60% • 3-4 years : 0.65% • 4-5 years : 0.70% • > 5 years : 0.75%

Guidance Note On Computation Matrix

Sl. No.	Contravention	Existing Formula
5	Issue of Corporate Guarantees without UIN/ without permission wherever required /open ended guarantees or any other contravention related to issue of Corporate Guarantees.	Rs.500000/- + given percentage: <ul style="list-style-type: none">• 1st year : 0.050%• 1-2 years : 0.055%• 2-3 years : 0.060%• 3-4 years : 0.065%• 4-5 years : 0.070%• >5 years : 0.075% In case the contravention includes issue of guarantees for raising loans which are invested back into India, the amount imposed may be trebled.

* The contraventions of FEMA 20 existing and continuing as on November 07, 2017 (i.e. the starting date of contraventions prior to November 07, 2017) will be compounded as per 1(A) above.

The above amounts are presently subject to the following provisos, viz.

1. Maximum Amount should not exceed 300% of the amount involved.
2. If amount is less than INR 1,00,000, the total amount imposed should not be more than amount of simple interest @5% p.a. calculated on the amount of contravention and for the period of the contravention in case of “Reporting” contraventions and @10% p.a. in respect of all other contraventions.

Guidance Note On Computation Matrix (Master Direction)

3. In case below mentioned contraventions, the amount imposed will be further graded as under:

If the shares are allotted after 180 days	Without prior approval RBI	1.25 times*
If the shares are not allotted and the amount is refunded after 180 days	With Bank Permission	1.50 times*
If the shares are not allotted and the amount is refunded after 180 days	without the Bank's permission	1.75 times*

* the amount calculated as per table above and (subject to provisos at (i) & (ii) above).

4. **In cases where it is established that the contravener has made undue gains, the amount thereof may be neutralized to a reasonable extent by adding the same to the compounding amount calculated as per chart.**
5. If a party who has been compounded earlier applies for compounding again for similar contravention, the amount calculated as above may be enhanced by 50%. This means that the same contravention even after a period of three years, the compounding fees may be enhanced by 50 %.

Amount Imposed Under Compounding Basis

- Compoundable offences are those where the amount of penalty is quantifiable and can be compounded by RBI and if the amount is not quantifiable in that case the matter will be transferred to Enforcement Directorate. As the non-quantifiable nature requires investigation and RBI is not an investigating agency.
- Compounding is the voluntary acknowledgement of mistake and even if the penalty is on the higher side and well within the ambit of 300 percent, in that case one cannot challenge the same as it has been applied voluntarily.
 - The amount of contravention
 - The period of contravention
 - Amount of gain or unfair advantage
 - Amount of loss to any authority, agency, exchequer
 - Economic benefits accruing to the contravener from delayed compliance
 - The repetitive nature of the contravention
 - Maximum of 3 times the amount of contravention.
- The track record and/or history of non-compliance of the contravener;
- Submissions made during the personal hearing; and

Few Issues

1. Can a compounding application be returned if matter is under DoE investigation?

Asrani Inns & Resorts Private Limited -

Contravention - related to availing ECB from shareholders for purchasing land and construction of hotel - loan not adhering to ECB guidelines under automatic route.

RBI returned application on the ground that the matter was under DoE investigation (action as advised by the DoE).

Few issues

2. Can the amount imposed under compounding order be reviewed?
 - **JVL Agro Industries private Limited** –
 - Contraventions under FEMA 120 – Delay in **obtaining UIN, delay in submission of APRs** and delay in reporting issue of Corporate Guarantee.
 - **Aggrieved** with the **amount imposed**, the applicant **did not pay the penalty** within the prescribed time period
 - Matter was **referred to DoE** for investigation
 - Applicant's plea in the Writ Petition:
 - Contravention was **not quantifiable** and
 - **Proper reasons were not stated** in the Order to conclude that the contraventions had been committed.
 - The **WP was rejected by the Court** and the applicant was directed to abide by the terms of the Compounding Order.

Few issues

3. Can the amount imposed be accepted after 15 days of date of the Order?

- Rule 9 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 provides that the amount imposed in the compounding order should be paid within 15 days of the date of the order, failing which it shall be deemed that the compounding application was never made.
- As an exception, however, in the matter of JVL Agro Industries Private Limited, the Court was of the view that as the **petitioner had shown an unconditional willingness** to comply with the compounding order, the ends of justice would be met if the Compounding Authority considered the request of the petitioner to pay the penalty even after the expiry of the prescribed period, subject to costs.

4. Is it mandatory for RBI to compound?

Brentfield Travels Company Private Limited

Contravention : Shares were issued by the company to two non-residents against which, inward remittance was directly received in the NRO account of resident investor and not in the account of the Company. The amount was not received through normal banking channels. The money was utilized for purchase of immovable property.

- Matter was referred to DoE for further investigation and compounding application was returned.
- Aggrieved, the company filed a Writ Petition in the HC at Bombay.
- The Court accepted the plea that where a contravention is of sensitive nature and, prima facie, involves money laundering, national and security concerns involving serious infringements of the regulatory framework, RBI may recommend the matter to DoE for further investigation. This is a reasonable and bonafide exercise of power.

Orders Passed under FEMA

Athenese – DX Pvt Ltd. (ECB)

Facts of the Case:

- The Lender was not recognised under the ECB Framework.
- Drawdown on ECB loan before obtaining Loan Registration Number from the RBI
- Non-Compliance with reporting requirements for ECB.

The above were in contravention of Regulation 6(1) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3 /2000-RB dated May 3, 2000, as amended from time to time (hereinafter referred to as Notification No. FEMA 3 /2000-RB).

it stands to reason that payment of an amount of Rs. 3,33,111/- (Rupees Three lakhs thirty three thousand one hundred and eleven only) will meet the ends of justice in the circumstances of this case.

Orders Passed under FEMA

Lephone Technology Private Limited

Facts of the Case:

The contraventions sought to be compounded are as below:

- delay in reporting foreign inward remittances received for issue of shares,
- delay in filing Form FC-GPR after issue of shares,
- delay in refund of excess share application money, and
- taking on record in its books by the applicant company, the transfer of shares by residents to non-resident without obtaining certified Form FC-TRS from the AD bank,
- delay in filing Annual Return in respect of the Foreign liabilities and assets.

The above were in contravention of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

it stands to reason that payment of an amount of *Approx 11 lacs* will meet the ends of justice in the circumstances of this case.

Orders Passed under FEMA

Laqshya Media Limited

Facts of the Case:

The contraventions sought to be compounded are as below:

- Breach of the net worth limit for total financial commitment under Overseas Direct Investment (ODI) regulations.
- Delay in filing Form ODI with respect to reporting of issuance of gurantee
- Issuance of open ended guarantee
- Issuance of guarantee on behalf of step-down subsidiary (SDS) when it was not enabled under the ODI regulations
- Non reporting of setting up of SDS within the stipulated time period
- Non-submission of Annual performance reports (APR) within stipulated time period and
- Disinvestment with write-off without prior approval of RBI

The Above where in contravention of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.

it stands to reason that payment of an amount of Rs. 1,20,67,671/- (Rupees one crore twenty lakh sixty seven thousand six hundred and seventy one only) will meet the ends of justice in the circumstances of this case.

Orders Passed under FEMA

Amneal Pharmaceuticals Pvt. Ltd

Facts of the Case:

The contraventions sought to be compounded are as below:

- Foreign investment in brownfield pharmaceutical sector **without prior government approval**
- Transfer of shares from **one non-resident company** to another **non-resident company** - in a sector under government approval route, without the approval of the erstwhile Foreign Investment Promotion Board (FIPB)

The above where in contravention of:

- Paragraph 25.2 of Annexure B to Schedule I -read with Regulation 5(1) of FEMA 20/2000 – RB dated May 3, 2000 (from 19.10.12 to 13.11.14) and Paragraph 17.2 of Annexure B to Schedule -read with Regulation 5(1) of FEMA 20/2000 – RB dated May 3, 2000 (from 14.11.2014 to 06.11.2017) and Regulation 16(B) (Sl. No.16.2) of FEMA 20(R)/2017 dated November 7, 2017 (from 07.11.2017 to 16.01.2018) and
- Regulation 3 of FEMA 20/2000 – RB dated May 3, 2000.

In terms of section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. Therefore, after considering the submissions made by the applicant with regard to the contraventions and the entire facts and circumstances of the case, it stands to reason that payment of an amount of **Rs.3,10,40,959/-** (Rupees three crore ten lakhs forty thousand nine hundred and fifty nine only) will meet the ends of justice in the circumstances of this case.

Orders Passed under FEMA

Tata Communications Limited (Current account transaction, post facto approval and compounding)

Facts of the Case:

The contraventions sought to be compounded are as below:

- Contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder, for not obtaining necessary prior approval from the Government of India (GoI) for making payments to overseas entities with respect to transponder hiring charges.

This amounts to violation of Rule 4 read with Item no 6 (a) of Schedule II to Foreign Exchange Management (Current Account Transactions) Rules, 2000, dated May 03, 2000 amended from time to time (hereinafter referred to as FEMCAT Rules, 2000).

Orders Passed under FEMA

Details of the Case

The applicant had hired services of **two foreign satellite service providers** and had remitted transponder hiring charges by way of multiple remittances to the Satellite Service Providers during the period **September 2004 to December 2012**, through EEFC and non-EEFC accounts. The payment towards transponder charges by TV Channels/ Internet Services Provider using **non-EEFC account amounts** to contravention of Rule 4 of FEM (CAT) Rules, 2000, read with Item No. 6(a) of Schedule II of the said Rules.

As per Rule 4 of FEM (CAT) Rules, 2000, no person shall draw foreign exchange for a transaction included in the Schedule II without prior approval from GoI. Further, as per Item No. 6(a) of Schedule II, any remittance towards hiring charges of transponders by TV channels **shall require prior approval from GoI**. In the instant case, **prior approval from GoI was not obtained**.

TCL made an **application on June 02, 2015 seeking post-facto approval from the Ministry of Information and Broadcasting (MIB), GoI**. MIB vide letter dated **April 08, 2019 granted post-facto approval** to TCL for remittances / payment from applicant's non-EEFC account amounting to USD 43,564,501.84 (INR 196,87,00,133/-), subject to compounding.

Orders Passed under FEMA

Penalty levied under this case:

In terms of Section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. After considering the submissions made by the applicant and the entire facts and circumstances of the case, it stands to reason that payment of an amount of **Rs. 1,48,15,250/-** (Rupees one crore forty eight lakh fifteen thousand two hundred and fifty only) will meet the ends of justice in the circumstances of this case.



Thankyou !!
Your Queries please
Sudha@taxpertpro.com
+91 9769033172