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Note on Compounding of Contraventions under FEMA

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NOTE

If law imposes sanction and does not have repercussion for violation of such law, it amounts to granting impunity and defeat the very purpose of making law.

Smoking is banned in public places in India and the penalty for violating this is Rs. 200/-. But the smokers are really not bothered because the rules and punishments are too weak. But, when it comes to foreign exchange related offences, the Indian Law Makers have made certain that the lawbreakers cannot escape punishments.

Any person, who contravenes any provision of Foreign Exchange Management Act, 1999 (“**FEMA**”) 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 of India (“**RBI**”), is liable for penalties as prescribed under section 13(1) of the FEMA. These contraventions are compoundable by virtue of Foreign Exchange (Compounding Proceedings) Rules, 2000. The said Rules were framed to empower the RBI to compound contraventions under FEMA. Also, section 15 of FEMA permits compounding of contraventions and empower the Compounding Authority to compound any contravention as defined u/s 13 of FEMA.

RBI has issued its Master Circular on Compounding of Contraventions under FEMA, 1999¹ as on January 20, 2012 which has been *updated* recently as on July 2, 2012² incorporating therein various modifications made between the two dates. This circular will stand withdrawn on July 1, 2013 and be replaced by an updated Master Circular on the subject.

Before looking at the procedure for compounding and the latest modifications made, one must understand the concept behind it.

Meaning of compounding:

As per the Black’s Law Dictionary, “Compound” means “to settle a matter by a money payment, in lieu of other liability”. In short, compounding of an offence is a settlement mechanism, by which, one is given an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation.

The term “*Compounding of Offence*” has nowhere been defined under FEMA or under the Companies Act. However, its meaning may be inferred from the detailed reading of

¹ The Master Circular issued as on July 1, 2011 is available at:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/08MC08C290611.pdf>

² The updated Master Circular is available at:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/357MC200112.pdf>

³ The updated Master Circular as on July 2, 2012 is available at:
http://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=7314

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relevant provisions of the Acts. Precisely speaking, compounding is a voluntary process, whereby the person who has contravened any provision of the Act, admits the commission of the contravention done either *suo moto* (on his own motion) or on receipt of notice of such contravention being made.

In a country like India, where there are lots and lots of cases pending for years in the courts, compounding is a good way of settling disputes or matters and hence saving from the aggravate of spending lots of money, time and energy in lengthy legal proceedings.

Compoundable offences:

Only those contraventions that do not attract imprisonment as a mandatory penalty are compoundable. In other words, offences that are specifically punishable with imprisonment only or imprisonment and fine are not compoundable. Further, if the amount involved in the contravention is not quantifiable, then the contravention shall not be compounded.

Procedure of making application for Compounding:

RBI has been vested with the power to compound the contraventions of all the Sections of FEMA except that relating to *hawala* transactions [clause (a) of Section 3]. For contraventions relating to *hawala* transactions, the power of compounding lies with Directorate of Enforcement.

An application for compounding of a contravention under FEMA, 1999 together 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 with relevant facts and supporting documents is to be submitted to: The Compounding Authority (CA), [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 5th floor, Amar Building, Sir P.M. Road, Fort, Mumbai- 400001.

The compounding authority will conclude the proceedings within 180 days of receipt of the application. The case will be decided on merits upon consideration of the records and submissions and at the absolute discretion of the CA.

New elements in updated Circular:

- **DELEGATION OF POWERS:** With a view to facilitate operational convenience and extend better customer service it has been decided to delegate the power of RBI to various Regional Offices of RBI. The delegation has been made in respect to specific contraventions of FEMA.

The table provides a list thereof:

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Nature of Contravention	Relevant Provisions	Monetary limit	Regional Offices
Delay in reporting of inward remittance, delay in filing of form FC-GPR after allotment of shares.	Paragraphs 9 (1) (A) and 9 (1) (B) (respectively) of Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000	Amount of contravention below Rs. 1,00,00,000/-	Bhopal, Bhubaneswar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji
Delay in reporting of inward remittance, delay in filing of form FC-GPR after allotment of shares and delay in issue of shares beyond 180 days.	Paragraphs 9 (1) (A), 9 (1) (B) and 8 (respectively) of Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000	No such limit.	Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi

The applications for compounding of the specified contraventions may be submitted by the Companies falling under the jurisdiction of the above-stated Regional Offices directly to the Regional Office concerned, together with the prescribed fee of Rs. 5000/- by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at the concerned Regional Office. Applications other than these specified contraventions are to be submitted to RBI as per the general procedure.

- **FURNISHING OF ADDITIONAL DETAILS:** The application for compounding shall be accompanied with the following:

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1. The details relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, may be furnished in the format specified.
2. An undertaking that the applicant is not under investigation of any agency such as Directorate of Enforcement., Central Bureau of Investigation, etc.
3. A copy of the Memorandum of Association and latest audited balance sheet.

The intention of RBI behind this modification in the compounding rules is to ease the procedures relating to compounding while maintaining the tightened norms relating to disclosure of information.