



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

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 3rd 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contained in the compounding of contravention/s issued vide A.P. (DIR Series) Circular No.31 dated February 1, 2005 are superseded by this circular.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 Department 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

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,
G.S.R. No. 609 (E) dated September 13, 2004 and
G. S. R. No. 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.]²

(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 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.

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

² Notification No. GSR 613(E), dated August 27, 2008

5. The Power of Enforcement Directorate to compound contraventions -

³[(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;

(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

³ Substituted vide GSR 609 (E) dated September 13, 2004.

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 -

⁴The 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 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.

⁴ Substituted vide GSR 443 (E) dated 2nd November 2002.

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)
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. 56
dated June 28, 2010]

Compounding Process – Indicative Operational Check Points

The FEMA 1999 provides for an opportunity of seeking compounding of contraventions, in terms of which a contravener has a *suo moto* opportunity of making an application to the compounding authority seeking the contravention, as defined in Section 13 of the FEMA, to be compounded.

- (i) Contraventions which are wilful, intentional or having *malafide* and fraudulent intentions shall not be considered for compounding in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000.
- (ii) The compounding application has to be made in the Format as in "Form" appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000, duly completed in all respect in duplicate, together with copy of the memorandum, wherever applicable, with the prescribed fee and all supporting documents to The Compounding Authority, The Reserve Bank of India, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 5th Floor, Amar Building, Sir P M Road, Fort, Mumbai- 400001 or as advised in the memorandum issued by the office of the Reserve Bank.
- (iii) The Demand Draft towards the application fee as well towards the sum for which contravention is compounded should be in favour of the "Reserve Bank of India" and payable at the centre where the application shall be processed/was processed and the compounding order was issued.
- (iv) The applicant must indicate the following information about the authorized person of the entity who would be handling the complete process of the compounding :
 - Name and Designation of the authorised person for the contravener
 - Telephone/Fax/Email of the authorized person.

- In column-6 of the Form (Brief facts of the case) details of the contravener e.g. date of incorporation, ownership pattern, activity, transaction etc. may be provided.
- (v) The contravener/applicant shall specify the details of the contraventions sought to be compounded in column-5 [according to sub-section (1) of Section 13] explicitly and expressly i.e. the provision of the FEMA, or Rule, Regulation, Direction or order issued in exercise of the powers under the FEMA, or condition subject to which an authorisation was issued by the Reserve Bank.
- (vi) The contravener/applicant shall also specify / describe in the application the details/facts (e.g. date, amount (in Indian Rupees), parties involved etc.) of the transaction for which the contravention has occurred.
- (vii) The compounding applications found incomplete by the Reserve Bank shall be rejected and appropriate action for the contravention of the FEMA shall be taken accordingly.
- (viii) The contravener/applicant shall submit all the required information/document together with the application, on the basis of which the gravity and nature of the contravention would be assessed by the compounding authority and accordingly the sum for which the contravention shall be compounded would be determined.
- (ix) Non-submission of relevant information/document during the processing of the compounding application would be considered as willful and intentional suppression of the material fact and the compounding application would be liable for rejection and appropriate action for contravention under the FEMA.
- (x) Communications and orders issued under the compounding process shall be served on the authorised person in any of the following manners, which are to say by fax/Courier/Registered Post by sending it to the address/information given in the compounding application.
