FEMA Lecture for SIRC of ICAI Chennai

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The New Compounding Rules (2024) under FEMA

- 1. Foreign Exchange Management Act,1999(FEMA) was passed by the Parliament
- 2. Rules were framed by the Central Government (GoI) and several regulations were issued by the Reserve Bank of India(RBI) on the 3rd of May,2000
- 3. Foreign Exchange (Compounding Proceedings) Rules,2000 vide Notification GSR 383(E) dated 03 May,2000.

The New Compounding Rules

On the 12th of September,2024, vide Notification GSR 566(E), GoI has notified the Foreign Exchange (Compounding Proceedings) Rules,2024, in supersession of the Notification of 03 May,2000

01 October,2024

RBI has issued AP(DIR Series) Circular No.17/2024-25 dated 01 October,2024

On the New Rules

1] Enhancement of Delegated Powers

Designation of RBI Official	Earlier Limit of Sum Involved in Contravention(as per Rules 2000)	New Limit of Sum Involved in Contravention(as per Rules 2024)
Asst.General Manager	Not exceeding ₹ 10 Lakhs	Not exceeding ₹ 60 Lakhs
Dy.General Manager	Not exceeding ₹ 40 Lakhs	Not exceeding ₹ 250 Lakhs
General Manager	Not exceeding ₹100 Lakhs	Not exceeding ₹ 500 Lakhs
Chief General Manager	Above ₹ 100 Lakhs	Above ₹ 500 Lakhs

2] A Compounding Application may now be filed either physically or online:

"The PRAVAAH Portal".

"Platform for Regulatory Application, Validation And AutHorization"(PRAVAAH)

“The PRAVAAH Portal”.

- To facilitate online applications by stakeholders residing abroad(such as NRIs, PIOs/OCI Cardholders, foreign investors).
- Compounding applications can also be filed at the Portal.

Submitting Compounding application...online & Physically at Compounding desks ....

- 3] The Compounding Application Fee has been increased from ₹ 5,000/- to ₹ 10,000/- plus GST @ 18%.
- 4] The application fee as well as the Compounding Charges levied may now be paid not only by Demand Draft, but also by electronic means(NEFT, RTGS etc.).

5. The pre-requisites for a compounding application

- The pre-requisites for a compounding application **continue to be broadly the same as in the Rules of 2000:**
- A] the contravention must be quantifiable;
- B] 3 years must have elapsed since a similar contravention was compounded;
- C] the contravention is not serious, such as PMLA offences;

5. The pre-requisites for a compounding application....contd.....

- D] Adjudication order has not yet been passed;
- E] Administrative actions have been taken;

Contraventions that cannot be compounded:

- A] Non-quantifiable contraventions;
- B] Serious offences, such as money laundering, terror financing or any other act against the sovereignty and integrity of the country; interestingly, a failure to pay .....is "serious"
- C] A contravention will not be compounded within 3 years from the date on which a similar contravention was compounded;

Contraventions that cannot be compounded:

- D] Where a penalty order has already been passed;
- E] Transaction attracting action u/s 37A of FEMA; S.37A empowers the Enforcement Authorities to attach properties in India of a person holding properties/assets abroad in violation of S.4 of FEMA.

Done away with....

Under the old Rules, a compounding application could not have been filed during the pendency of an appeal u/s 17 or u/s 19 of FEMA. Under the new Rules, that restriction has been done away with.

1] Penalties under the Income Tax Act & FEMA: A Comparison:

IT Act : No. of Penalty Provisions: 49

FEMA : Do : 1

Examples of Defaults & Penalties under the IT Act:

A] S.271FA: Failure to furnish the Annual Information Return;

Penalty ₹ 500/-;

B]S.271A: Failure to maintain books of a/c u/s 44AA:

,,₹ 25,000/-;

C] S.271AA(2): Failure to furnish info./docs u/s.92D(4):

,, ₹ 5,00,000/-

D] S.271(1)(c): Concealment/Inaccurate Particulars of Income:

Penalty: Min.100% to Max.300% of *Tax sought to be evaded*

(Not Income Concealed)

Examples of Defaults & Penalties under the FEMA: Penalty

A] Serious offences such as hawala transactions,

Currency smuggling, dealing in foreign exchange otherwise than through an authorised person,

Holding foreign exchange in violation of S.4 etc.; :

Penalty upto 300% of the amount involved in the contravention.

B] Procedural Contraventions if quantifiable,

such as :

***Violation of Pricing Guidelines for Issue of Shares,**

***Failure to issue shares within 60 days of inflow/**

to refund share application money within 75 days of inflow under the FEM(NDI) Rules,

***Failure to obtain a valuation certificate for ODI**

exceeding US$ 5 Million, failure to receive the share certificates for ODI within 60 days;

***drawdown of ECB without obtaining an LRN etc.**

Penalty upto 300% of the amount involved in the contravention.

C] Reporting Contraventions such as delay in filing FC-GPR Return/FC-TRS Return for FDI, APR for ODI, ECB-2 Monthly Return for ECB, Annual FLA Return etc.

Penalty upto 300% of the amount involved in the contravention.

RBI's Interpretation of S.13

Quantifiable vs. Non- Quantifiable Contraventions

- Only a Quantifiable Contravention is Compoundable

Compounding a relief from the Damocle's Sword of Section 13. The facility is provided in S.15 (1).

G] RBI to examine the contravention and decide if it is “material” enough to warrant compounding or “sensitive/serious” enough for being referred to the ED;

But see AP(DIR Series) Circular No.06 dated 17 Nov.2020 on “cautionary advice”.

Compounding Application and Proceedings – Personal Hearing

Penalty made Automatic on 26th May 2016.

Nature of Penalty : Hindustan Steel Ltd V. State of Orissa [1972] 83 ITR 26 (SC)

Standardization of Compounding Charges -

- AP DIR Circular No 73 / 26 MAY 2016

Rates of LSF:

Amount involved in reporting (in Rs.)	Late Submission Fee (LSF) as % of amount involved *	Maximum amount of LSF applicable
Up to 10 million	0.05 percent	Rs.1 million or 300% of the amount involved, whichever is lower
More than 10 million	0.15 percent	Rs.10 million or 300% of the amount involved, whichever is lower
* The % of LSF will be doubled every twelve months The floor (minimum applicable amount) for LSF will be Rs 100		

Guidelines for Compounding Charges:

Type of contravention	Existing Formula
1] Reporting Contraventions A) 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 : Rs10,000/- (applied once for each contravention in a compounding application) + Variable amount as under: Up to 10 lakhs : 1,000 per year Above Rs.10 lakhs & below Rs. 40 lakhs : 2,500 per year Rs.40 lakhs or more and below Rs. 100 lakhs :7,000 per year Rs.1-10 crore 50,000 per year Rs.10 -100 Crore : 1,00,000 per year Above Rs.100 Crore : 2,00,000 per year
B) FEMA 3 Non submission of ECB statements	
C) FEMA 120 Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern	
D) Any other reporting contraventions (except those in Row 2 below)	