

Compounding of Contraventions under FEMA, 1999

(As on January 29, 2018)

These FAQs attempt to put in place the common queries that users have on the subject in easy to understand language. However, for the purposes of compounding, the Foreign Exchange Management Act, 1999 (FEMA), the Foreign Exchange (Compounding Proceedings) Rules and the '[Master Direction- Compounding of Contraventions under FEMA, 1999](#)' (FED Master Direction No.4/2015-16 dated January 01, 2016 and updated as on December 22, 2017) may be referred to.

Q.1. What is meant by contravention and compounding of contravention?

Ans. 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. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13¹ of FEMA, 1999 except the contravention under section 3(a)² *ibid*, for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, *malafide* and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank. Further, in terms of the proviso to rule 8 (2) of Foreign Exchange (Compounding Proceedings) Rules, 2000 inserted vide GOI notification dated February 20, 2017, if the Enforcement Directorate is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, such cases will not be compounded by the Reserve Bank.

Q.2. Who can apply for compounding?

Ans. Any person 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, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

Q.3 When should one apply for compounding?

Ans. 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.

Q.4. What is the procedure for applying for compounding?

Ans. The reporting and other form requirements listed in the FED Master Direction No. 18/2015-16 titled '[Master Direction – Reporting under Foreign Exchange Management Act, 1999](#)' dated January 01, 2016 (Updated as on January 24, 2018) can be used for applying for compounding. The above Master Direction can be downloaded from the Reserve Bank's website by clicking on the link https://www.rbi.org.in/scripts/FS_Notification.aspx?fn=5&fnn=2764 and the documents as applicable therein should be submitted along with the application.

Q.5. Are any fees required to be paid for seeking compounding?

Ans. Yes. The application in the prescribed format along with necessary documents and a demand draft for Rs. 5000/- (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.

Q.6. What are the details required to be filled in the application form?

Ans. Along with the application in the prescribed format, the applicant may also furnish the details as per the [Annexes](#) - relating to [Foreign Direct Investment](#), [External Commercial Borrowings](#), [Overseas Direct Investment](#) and [Branch Office / Liaison Office](#), as applicable, (annexes available in the FED Master Direction No. 18/2015-16 as mentioned in answer to Q.5 above) along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.

Q.7. Where should one apply for compounding?

Ans. The powers to compound the following contraventions of [FEMA 20/2000-RB dated May 3, 2000](#) as then applicable have been vested with the Regional Offices of Foreign Exchange Department (FED), Reserve Bank:

Sr. No.	FEMA Regulation	Brief Description of Contravention
1	Paragraph 9(1)(A) of Schedule I	Delay in reporting inward remittance for issue of shares.
2	Paragraph 9(1)(B) of Schedule I	Delay in filing form FC(GPR) after issue of shares.
3	Paragraph 8 of Schedule I	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
4	Paragraph 5 of Schedule I	Violation of pricing guidelines for issue of shares.
5	Regulation 2(ii) read with Regulation 5(1)	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
6	Paragraph 2 or 3 of Schedule I	Issue of shares without approval of RBI or FIPB respectively, wherever required.
7	Regulation 10A (b)(i) read with paragraph 10 of Schedule I	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
8	Regulation 10B (2) read with paragraph 10 of Schedule I	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
9	Regulation 4	Taking on record transfer of shares by investee company, in the absence of certified form FC-TRS.

In supersession of the earlier [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), the Reserve Bank has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 notified vide [Notification No. FEMA 20\(R\)/2017-RB dated November 07, 2017](#). Accordingly, the compounding powers have been delegated to the Regional Offices of the Reserve Bank of India to compound the following contraventions of [FEMA 20\(R\)/2017-RB](#):

FEMA Regulation	Brief Description of Contravention
Regulation 13.1(1)	Delay in reporting inward remittance received for issue of shares.
Regulation 13.1(2)	Delay in filing form FC(GPR) after issue of shares.
Regulation 13.1(3)	Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).
Paragraph 2 of Schedule I	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds, etc.
Regulation 11	Violation of pricing guidelines for issue/transfer of shares.
Regulation 2(v) read with Regulation 5	Issue of ineligible instruments
Regulation 16.B	Issue of shares without approval of RBI or Government, wherever required.
Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company.

The work of three divisions of Foreign Investment Division (FID) viz. Liaison/ Branch/ Project office(LO/ BO/ PO) division, Non Resident Foreign Account Division(NRFAD) and Immovable Property (IP) Division has been transferred to Foreign Exchange Department, Central Office Cell, Reserve Bank of India, 6, Sansad Marg, New Delhi – 110001 with effect from July 15, 2014. Accordingly the officers attached to the FED, CO, Cell at New Delhi office are now authorized to compound the contraventions as under:

Sr. No.	FEMA Notification	Brief Description of Contravention
1	FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India
2	FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India

3	FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office ,Liaison Office or project office
4	FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000

The above contraventions can be compounded by all Regional Offices of FED (except Kochi and Panaji) without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (Rs.1,00,00,000/-). The contraventions of Rupees one hundred lakh (Rs.1,00,00,000/-) and above under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto. Accordingly, applications for compounding related to the above contraventions may be submitted by the concerned entities 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, 5th floor, Amar Building, Sir P.M.Road, Fort, Mumbai 400001. The prescribed fee of Rs. 5000/- may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office where the application is being submitted and at Mumbai if the application is submitted at CEFA, Mumbai.

Q.8. Can an application for compounding be sent to the Reserve Bank pending fulfillment of certain obligations?

Ans. No. all requisite approvals should be obtained and compliances should be completed before seeking compounding of contravention. Compounding can be done only after rectifying the records by way of obtaining post-facto approvals or unwinding the transactions in cases where such transactions are not permissible under FEMA, 1999. Copies of approvals and other compliances should be enclosed along with the application.

Q.9. What action is taken by the Reserve Bank on receipt of the application?

Ans. The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are prima-facie in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If technical, the applicant will be issued a cautionary advice. If the contravention is material, it will be compounded by imposing an amount after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DoE) for further investigation/ action.

Q.10. What are sensitive contraventions?

Ans. Cases of contravention, such as, those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation are sensitive contraventions.

Q.11. Who should classify the contravention as technical, material or sensitive?

Ans. Whether contravention under the Foreign Exchange Management Act (FEMA) is to be treated as technical and/ or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves suo moto, or on the basis of external advice to decide whether a particular contravention is technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.

Q.12. When can a contravention be classified as technical?

Ans. It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and

the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

Q. 13. Is it mandatory to appear for the personal hearing?

Ans. [It is not mandatory to attend the personal hearing](#). In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. It may be noted that appearing for or opting out of the personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order.

Q.14. Can the applicant authorise another person to attend the personal hearing?

Ans. Yes, another person may be authorised by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention and the related matters. However, the Reserve Bank encourages the applicant to appear directly for the personal hearing rather than being represented/ accompanied by legal experts/consultants, etc. as the compounding is only for admitted contraventions.

Q.15. How is the compounding process brought to conclusion?

Ans. The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the amount imposed.

Q.16 Are compounding orders made public?

Ans. Compounding orders passed on or after June 1, 2016 will be published on the RBI's website. The data on the website will be updated on monthly intervals in the following format:

Sr.No.	Name of Applicant	Amount imposed	Paid / Not paid	Download order 
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[A.P. \(DIR Series\) Circular No. 73 dated May 26, 2016.](#)

Q.17 What is the criteria for calculation of compounding amount?

Ans. The guidance structure for calculating the amount to be imposed on compounding is as below:

Type of contravention	Formula
<u>1] Reporting Contraventions</u> A) FEMA 20 Para 9(1)(A), 9(1)(B), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4) B) FEMA 3 Non submission of ECB statements C) FEMA 120 Second/subsequent remittance without obtaining of UIN will be covered under Item 5 below). 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 Item 2 below)	Fixed amount : Rs10000/- (applied once for each contravention in a compounding application) + Variable amount as under: Upto 10 lakhs: 1000 per year Rs.10-40 lakhs: 2500 per year Rs.40-100 lakhs: 7000 per year Rs.1-10 crore : 50000 per year Rs.10 -100 Crore : 100000 per year Above Rs.100 Crore : 200000 per year
E) Reporting contraventions by LO/BO/PO	As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount of contravention shall be @10% of total project cost.
<u>2] AAC/ APR/ Share certificate delays</u> In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) Returns (FEMA 20) or FLA Returns (FEMA 20 (R))	Rs.10000/- per AAC/APR/FCGPR (B) Return delayed. Delayed receipt of share certificate – Rs.10000/- per year, the total amount being subject to ceiling of 300% of the amount invested.

<p>3] A] Allotment/Refunds Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/ refund after the stipulated 180 days) B] LO/BO/PO (Other than reporting contraventions)</p>	Rs.30000/- + given percentage: 1st 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% (For project offices the amount of contravention shall be deemed to be 10% of the cost of project).
<p>4] All other contraventions except Corporate Guarantees but including all contraventions of FEMA 20(R)/2017-RB dated November 07, 2017 other than FLA Returns</p>	Rs.50000/- + 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%
<p>5] Issue of Corporate Guarantees without UIN/ without permission wherever required /open ended guarantees or any other contravention related to issue of Corporate Guarantees.</p>	Rs.500000/- + given percentage: 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 (except FLAR) 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.

- (i) the amount imposed should not exceed 300% of the amount of contravention
- (ii) In case the amount of contravention is less than Rs. One lakh, 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.
- (iii) In case of paragraph 8 of Schedule I to FEMA 20/2000 RB contraventions, the amount imposed will be further graded as under:

If the shares are allotted after 180 days without the prior approval of Reserve Bank, 1.25 times the amount calculated as per table above (subject to provisos at (i) & (ii) above).

If the shares are not allotted and the amount is refunded after 180 days with the Bank's permission: 1.50 times the amount calculated as per table above (subject to provisos at (i) & (ii) above).

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 (subject to provisos at (i) & (ii) above).

- (iv) In cases where it is established that the contravenor 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.

For calculating amount under para 1 above (Reporting contraventions) the period of contravention may be considered proportionately (approx. rounded off to next higher month / 12 X amount for 1 year). The total no. of days does not exclude Sundays/holidays.

It may, however, be noted that the guidance structure as above is only for the purpose of broadly standardizing the amount imposed by the compounding authorities across offices and the actual amount imposed may vary, depending on the circumstances of the case taking into account the factors given in paragraph 7.3 of Master

Direction on Compounding of Contraventions under FEMA, 1999 ([FED Master Direction No.4/2015-16 dated January 01, 2016](#) updated upto December 22, 2017).

Q.18. When should the amount indicated in the order be paid?

Ans. The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at the Regional office which has issued the compounding order and at Mumbai if the order is issued by CEFA, Mumbai.

Q. 19. How does the application for compounding finally get disposed of?

Ans. On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority.

There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.

Q.20. What happens if the amount is not paid within 15 days of the order?

Ans. In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.

Q.21. Can there be an appeal against the order of the Compounding Authority?

Ans. As compounding is based on voluntary admissions and disclosures, there is no provision under the Compounding Rules for an appeal against the order of the Compounding Authority or for a request for reduction of amount compounded or extension of period for payment of the amount imposed.

Q.22. What is the timeframe for completing the compounding process?

Ans. The compounding process is completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank.

Q.23. Where can one get more details about compounding?

Ans. One can visit the [Master Direction on Compounding of Contraventions under FEMA, 1999](#) available on Reserve Bank's website.

¹ Section 13 - Penalties.-(1) If any person contravenes any provision of this Act, 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, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that 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 and further direct that 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.

Explanation.- For the purposes of this sub-section, "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.

² Section 3 - Dealing in foreign exchange, etc.- Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person.

