



भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
www.rbi.org.in

RBI/FED/2015-16/1  
FED Master Direction No.4/2015-16

January 1, 2016  
(Updated as on May 26, 2016)

To,

All Authorised Dealer Category – I banks and Authorised banks

Madam / Sir,

**Master Direction- Compounding of Contraventions under FEMA, 1999**

The provisions of section 15 of Foreign Exchange Management Act, 1999 (42 of 1999) hereinafter referred to as 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, 1999, except the contraventions under section 3 (a) of FEMA, 1999, on an application made by the person committing such contravention. Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules), as amended from time to time, lays down the basic framework for the compounding process.

2. Instructions issued on "**Compounding of Contraventions under FEMA, 1999**" have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in the Appendix. All AD Category – I banks and Authorised banks may bring the instructions contained in this Master Direction to the notice of their constituents.

3. The Master Direction will be updated from time to time as and when fresh instructions are issued.

Yours faithfully,

(Shekhar Bhatnagar)  
Chief General Manager in Charge

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## **1. General**

**1.1** In terms of Section 15 of the FEMA 1999, any contravention under section 13 of FEMA 1999 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the officers of the Reserve Bank as may be authorized in this behalf by the Central Government in such manner as may be prescribed.

In terms of Section 13(1), if any person contravenes any provision of FEMA, 1999, or 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 the amount is quantifiable or up to Rupees Two lakhs, where the amount is not directly quantifiable and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues.

**1.2** 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 had made the Foreign Exchange (Compounding Proceedings) Rules, 2000 relating to compounding contraventions under chapter IV of FEMA, 1999.

**1.3** In terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, effective from June 1, 2000, RBI is empowered to compound contraventions relating to Section 7, 8 and 9 and the third schedule to FEMCAT Rules. Vide GSR 609 (E) dated 13-09-2004, RBI was empowered to compound all the contraventions of FEMA 1999 except Section 3(a) with a view to providing comfort to individuals and corporate community by minimizing transaction costs, while taking severe view of willful, *malafide* and fraudulent transactions.

## **2. Power to compound by Reserve Bank**

**2.1** If any person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of that Act.

(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 one 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.

**2.2** Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India (Compounding Authority) shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

### **3. Delegation of Powers to Regional Offices**

As a measure of customer service and in order to facilitate the operational convenience, compounding powers have been delegated to the Regional Offices of the Reserve Bank of India to compound the following contraventions of FEMA, 1999.

<b>FEMA Regulation</b>	<b>Brief Description of Contravention</b>
Paragraph 9(1)(A) of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Delay in reporting inward remittance received for issue of shares.
Paragraph 9(1)(B) of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Delay in filing form FC(GPR) after issue of shares.
Paragraph 8 of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
Paragraph 5 of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Violation of pricing guidelines for issue of shares.
Regulation 2(ii) read with Regulation 5(1) of <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.

Paragraph 2 or 3 of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Issue of shares without approval of RBI or FIPB respectively, wherever required.
Regulation 10A (b)(i) read with paragraph 10 of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
Regulation 10B (2) read with paragraph 10 of Schedule I to <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident.
Regulation 4 of <a href="#">FEMA 20/2000-RB dated May 3, 2000</a>	Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.

#### 4. Authorisation to compound the contraventions by FED CO Cell, New Delhi

4.1 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 FED, CO Cell, New Delhi 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:

<b>FEMA Notification</b>	<b>Brief Description of Contravention</b>
<a href="#">FEMA 7/2000-RB, dated 3-5-2000</a>	Contraventions relating to acquisition and transfer of immovable property outside India
<a href="#">FEMA 21/2000-RB, dated 3-5-2000</a>	Contraventions relating to acquisition and transfer of immovable property in India
<a href="#">FEMA 22/2000-RB, dated 3-5-2000</a>	Contraventions relating to establishment in India of Branch office ,Liaison Office or Project office
<a href="#">FEMA 5/2000-RB, dated 3-5-2000</a>	Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000

**4.2** The powers to compound the contraventions at Paragraph 3 and Paragraph 4 above have been delegated to all Regional Offices (except Kochi and Panaji) and FED, CO Cell, New Delhi respectively without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the contraventions at paragraph 3 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/-) or more under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai, as hitherto.

**4.3** 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, 5<sup>th</sup> floor, Amar Building, Sir P.M.Road, Fort, Mumbai 400001.

## **5. Application for Compounding**

**5.1** All applications for compounding may be submitted 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 and by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at Mumbai for cases submitted to the Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai.

**5.2** The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000

**5.3** Along with the application in the prescribed format, the applicant may also furnish the details as per [Annex-II](#) relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc. as per [Annex-III](#) in order to complete the compounding process within the time frame.

**5.4** In case the application has to be returned where required approvals are not obtained from the authorities concerned or in case of incomplete application for any other reason, the application fees of Rs.5000/- received along with the application will be returned by crediting the same to the applicant's account through NEFT as per the ECS mandate and details of their bank account as per [Annex IV](#) furnished along with the application. The Annexes relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as given in [A.P.\(Dir Series\) Circular No.57 dated December 13, 2011](#), have also been modified to include the details of income-tax PAN and the activity as per NIC codes – 1987 in terms of [A.P.\(Dir Series\) Circular No.20 dated August 12, 2013](#). The application will be treated as incomplete without these details.

**5.5** The applicants are also advised to bring to the notice of the compounding authority change, if any, in the address/ contact details of the applicant during the pendency of the compounding application with Reserve Bank.

## **6. Pre-requisite for Compounding Process**

**6.1** 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.

**6.2** 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.

**6.3** 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 Directorate 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.

**6.4** In this connection, 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.

## **7.Scope and procedure for compounding**

**7.1** On receipt of the application for compounding, the Reserve Bank shall examine the application based on the documents and submissions made in the application and assess whether contravention is quantifiable and, if so, the amount of contravention.

**7.2** The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings. 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.

**7.3** 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:

a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;



- b) the amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- c) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- d) the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- e) contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

7.4 <sup>1</sup> As per provisions of section 13 of FEMA the amount imposed can be up to three times the amount involved in the contravention. However, the amount imposed is calculated based on guidance note given below. It may, however, be noted that the guidance note is meant only for the purpose of broadly indicating the basis on which the amount to be imposed is derived by the compounding authorities in Reserve Bank of India. The actual amount imposed may sometimes vary, depending on the circumstances of the case taking into account the factors indicated in the foregoing paragraph.

#### I. Guidance Note on Computation Matrix

Type of contravention	Existing Formula
<p><b>1] Reporting Contraventions</b></p> <p><b>A) FEMA 20</b> Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4)</p> <p><b>B) FEMA 3</b> Non submission of ECB statements</p> <p><b>C) FEMA 120</b> Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern</p> <p><b>D) Any other reporting contraventions (except those in Row 2 below)</b></p>	<p>Fixed amount : Rs10000/- (applied once for each contravention in a compounding application) +</p> <p>Variable amount as under:</p> <p>Up to 10 lakhs: 1000 per year</p> <p>Rs.10-40 lakhs: 2500 per year</p> <p>Rs.40-100 lakhs: 7000 per year</p> <p>Rs.1-10 crore 50000 per year</p> <p>Rs.10 -100 Crore : 100000 per year</p> <p>Above Rs.100 Crore : 200000 per year</p>
<p><b>E) Reporting contraventions by LO/BO/PO</b></p>	<p>As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.</p>

<sup>1</sup> Inserted vide [AP \(DIR Series\) Circular No. 73 dated May 26, 2016](#). Accordingly, existing para 7.4 has been re-numbered as 7.5

<p><b>2] AAC/ APR/ Share certificate delays</b> In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) Returns (FEMA 20)</p>	<p>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>
<p><b>3]</b> <b>A] Allotment/Refunds</b> Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/ refund after the stipulated 180 days)  <b>B] LO/BO/PO</b> <b>(Other than reporting contraventions)</b></p>	<p>Rs.30000/- + given percentage:  1<sup>st</sup> year : 0.30% 1-2 years : 0.35% 2-3 years : 0.40% 3-4 years : 0.45% 4-5 years : 0.50% &gt;5 years : 0.75%  (For project offices the amount of contravention shall be deemed to be 10% of the cost of project).</p>
<p><b>4] All other contraventions except Corporate Guarantees</b></p>	<p>Rs.50000/- + given percentage: 1<sup>st</sup> year : 0.50% 1-2 years : 0.55% 2-3 years : 0.60% 3-4 years : 0.65% 4-5 years : 0.70% &gt; 5 years : 0.75%</p>
<p><b>5] Issue of Corporate Guarantees</b> without UIN/ without permission wherever required /open ended guarantees or any other contravention related to issue of Corporate Guarantees.</p>	<p>Rs.500000/- + given percentage: 1<sup>st</sup> year : 0.050% 1-2 years : 0.055% 2-3 years : 0.060% 3-4 years : 0.065% 4-5 years : 0.070% &gt;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.</p>

## II. 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:
  - a. 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).
  - b. 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).

- c. 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.
- (v) 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%.

III. For calculating amount in respect of reporting contraventions under para I.1 above, 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.

7.5 In case where adjudication has been done by the Directorate of Enforcement and an appeal has been file under section 17 or section 19 of FEMA, 1999, no contravention can be compounded in terms of Rule 11 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

## **8. Issue of the Compounding Order**

**8.1** The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application 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.


**8.2** The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.

**8.3** If the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions. Appearing for or opting out of personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order. If the authorized representative of the applicant is unavailable for the personal hearing, the Compounding Authority may pass the order based on available information/ documents.

**8.4** 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 contravention.

**8.5** 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.

<sup>2</sup>8.6 To ensure more transparency and greater disclosure, it has been decided to host the compounding orders passed on or after June 1, 2016 on the Bank's website ([www.rbi.org.in](http://www.rbi.org.in)). The data on the website will be updated at monthly intervals in the following format:

Sr.No.	Name of Applicant	Amount imposed under the compounding order	Whether the amount imposed has been paid	Download order 
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## **9. Payment of the amount for which contravention is compounded**

**9.1** The sum for which the contravention is compounded as specified in the order of compounding 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 manner in which the demand draft has to be drawn and deposited shall be indicated in the compounding order.

**9.2** 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.

**9.3** 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 that the contravener had never made an application for compounding of any contravention under these Rules.

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<sup>2</sup> Inserted vide [AP \(DIR Series\) Circular No. 73 dated May 26, 2016](#)

**9.4** In respect of the contraventions of the FEMA, 1999 which are not compounded by the Compounding Authority, other relevant provisions of FEMA, 1999 dealing with contraventions shall apply accordingly.

**9.5** 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.

## **10. Directions to Authorised Dealers**

**10.1** In terms of Section 11 (2) of FEMA, 1999, the Reserve Bank may, for the purpose of ensuring the compliance with the provisions of the Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit. Accordingly, RBI has entrusted to the Authorised Dealers (ADs) the responsibility of complying with the prescribed rules/ regulations for the foreign exchange transactions and reporting the same as per the directions issued from time to time. Authorised Dealers have, therefore, advised to take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions so that contraventions of provisions of FEMA, 1999 attributable to the Authorised Dealers do not occur.

**10.2** In this connection, it is reiterated that in terms of Section 11(3) of FEMA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank.

## **11. Reporting requirements.**

**11.1** Reporting requirements in respect of Compounding of Contraventions under FEMA, 1999 are included in FED Master Direction No. 18/2015-16 dated January 1, 2016.

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## Appendix I

### List of Rules/ A.P. (DIR Series) Circulars consolidated

Rules Sl. No	Rules No.	Date
1	Foreign Exchange (Compounding Proceedings) Rules, 2000	May 3, 2000
2	Foreign Exchange (Compounding Proceedings) Rules, 2002 (Amendment)	November 2, 2002
3	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	September 13, 2004
4	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	August 27, 2008

	A.P. (DIR Series) Circular	
1	<a href="#">31</a>	February 1, 2005
2	<a href="#">56</a>	June 28, 2010
3	<a href="#">57</a>	December 13, 2011
4	<a href="#">11</a>	July 31, 2012
5	<a href="#">76</a>	January 17, 2013
6	<a href="#">20</a>	August 12, 2013
7	<a href="#">117</a>	April 4, 2014
8	<a href="#">36</a>	October 16, 2014
9	<a href="#">73</a>	May 26, 2016

[Press Release 2012-2013/1215 dated January 18, 2013](#)