


COMPOUNDING OF OFFENCES, LATE FILING FEE, CONDONATION



 **CA. Deepender Kumar**
DEEPENDER ANIL & ASSOCIATES
(Chartered Accountants)


 Mob No: 9910099584

 deepanilassociates@gmail.com

 www.deepanilassociates.com



HEAD OFFICE

 101 , E-36
Jawahar Park,
Laxmi Nagar,
Delhi-110092



BRANCH OFFICE

 Plot-5A, IInd Floor, Sector-3A,
Rachna, Vaishali, Ghaziabad
(UP) -201010



BRANCH OFFICE

 48, First Floor, Tolstoy Road,
Janpath, Connaught Place,
Behind Sarvana Bhawan
New Delhi-110001



Compounding
of Offences



Late Filing
Fee



Condonation



Timely Compliance,
Better Governance

COMPOUNDABLE OFFENCES

Key Principles

Compounding allows voluntary admission of contravention to settle the issue without rigorous litigation.

- ✓ **Eligibility:** Most reporting and procedural delays are compoundable.
- ✓ **3-Year Rule:** Similar contraventions within 3 years cannot be compounded again.
- ✓ **Regularization:** Contravention must be regularized before applying for compounding.

Non-Compoundable?

Serious violations involving:

- Money Laundering (PMLA)
- Terrorism financing
- Contraventions with malafide intent
- Unauthorized Hawala transactions

EXECUTIVE ROADMAP



Framework

Compoundable vs Non-compoundable offences under the 2024 Rules.



Efficiency

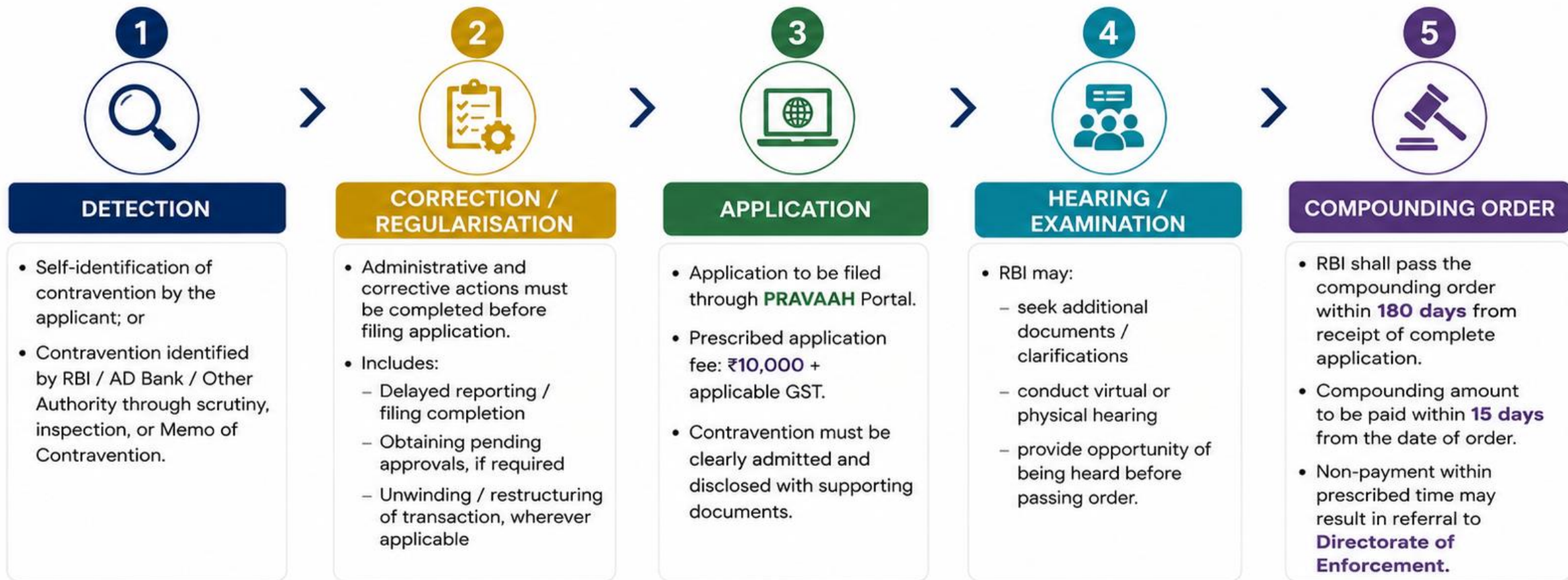
New Late Filing Fee (LFF) system for procedural lapses.

Enforcement

EDs role, Adjudication limits, and Appellate Tribunal pathways.

COMPOUNDING PROCESS MAP

(FEMA COMPOUNDING RULES, 2024)



PROFESSIONAL TIP

“Admitted Contravention” is a prerequisite for compounding. A person cannot simultaneously seek compounding and dispute the existence of the contravention.



IMPORTANT

Repeat contraventions within **3 years** of a previously compounded contravention are generally not compoundable.



SERIOUS CASES

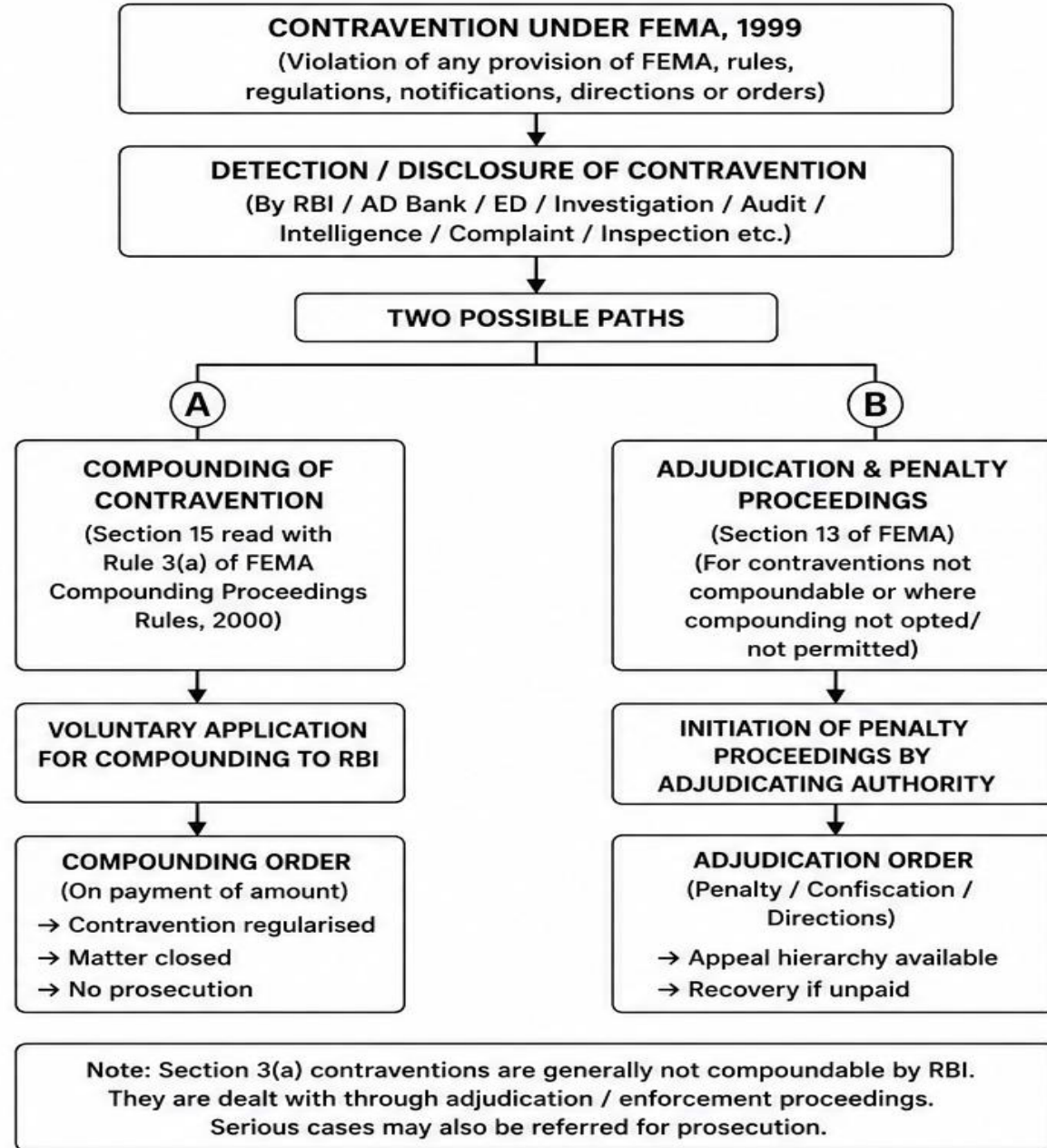
Cases involving money laundering, national security concerns, or serious regulatory violations may be referred to **Enforcement Directorate** instead of being compounded.

Governing Law

- Section 13 of FEMA, 1999 - Penalties
- Section 15 of FEMA 1999 – Power to compound contravention
- Foreign Exchange (Compounding Proceedings) Rules, 2000
- Master Direction – Compounding of Contraventions under FEMA, 1999

1. CONTRAVENTION UNDER FEMA, 1999

(OVERVIEW FLOW CHART)



2. PART A – COMPOUNDING OF CONTRAVENTION (SECTION 15 READ WITH RULE 3(a) OF FEMA)

1. LEGAL BASIS

- Section 15 of FEMA, 1999
- FEMA (Compounding Proceedings) Rules, 2000
- Rule 3(a)

2. APPLICABILITY

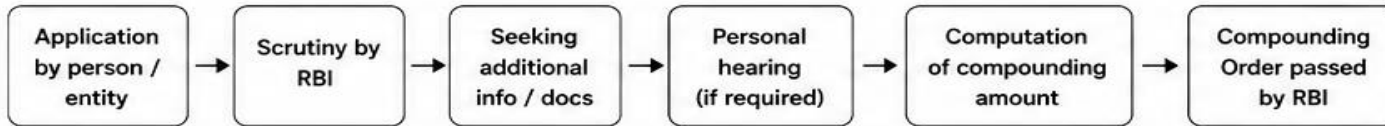
- Any contravention of FEMA, rules, regulations, notifications, directions or orders.
- Except contraventions under Section 3(a)
- Serious / national security / money laundering cases, and cases under ED investigation may not be compounded.

3. COMPOUNDING AUTHORITY & MONETARY POWERS

Authority (Appointed by RBI)	Monetary Limit (Amount Involved)
Assistant General Manager	Up to Rs. 10,00,000
Deputy General Manager	Above Rs. 10,00,000 up to Rs. 40,00,000
General Manager	Above Rs. 40,00,000 up to Rs. 1,00,00,000
Chief General Manager	Above Rs. 1,00,00,000

Note: RBI may, from time to time, vary the above monetary limits and appoint / remove compounding authorities.

4. PROCESS FOR COMPOUNDING



5. TIME LIMIT



Compounding order shall, as far as possible, be passed within 180 days from the date of receipt of the application.

6. FACTORS CONSIDERED FOR AMOUNT

- Nature and gravity of contravention
- Amount involved
- Duration of contravention
- Repetitive default / previous history
- Gain made / loss caused
- Reporting delays
- Conduct during proceedings
- Any other relevant factor

7. REPORTING REQUIREMENT CONTRAVENTIONS (EXAMPLES)

- | | |
|----------|---------------------------------|
| • FC-GPR | • ECB |
| • FC-TRS | • FLA |
| • ODI | • LLP Forms |
| • APR | • Delay in reporting under FEMA |

8. EFFECT OF COMPOUNDING



Compounding avoids litigation and prolonged adjudication.



IMPORTANT NOTE

Section 3(a) contraventions are generally not compoundable by RBI. They are dealt with through adjudication / enforcement proceedings. Serious cases may also be referred for prosecution.

3. PART B – ADJUDICATION & PENALTY PROCEEDINGS (SECTION 13 OF FEMA)

1. DETECTION OF CONTRAVENTION

- By RBI
- By Enforcement Directorate (ED)
- By Authorised Dealer Bank
- Through Inspection / Audit
- Intelligence / Complaint
- Investigation by Agencies

2. PENALTY UNDER SECTION 13

- Penalty which may extend to:
- Up to 3 times the sum involved in such contravention; OR
 - Up to Rs. 2,00,000 where amount is not quantifiable; AND
- In case of continuing contravention, additional penalty up to Rs. 5,000 for every day after the first day during which it continues.

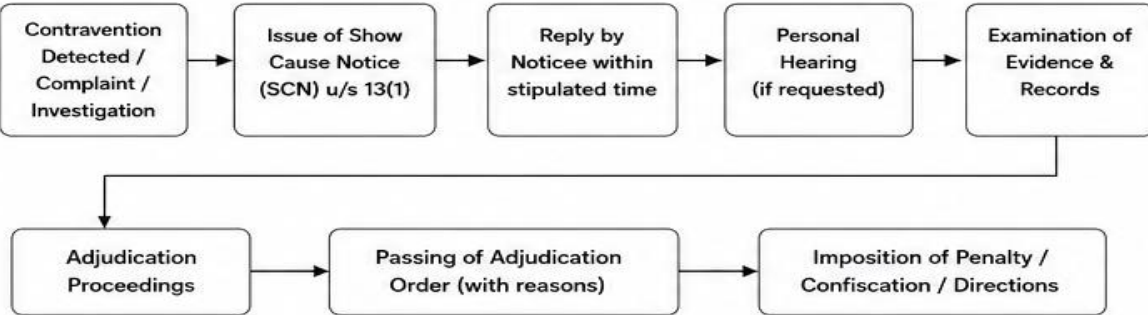
3. APPOINTMENT OF ADJUDICATING AUTHORITY (Appointed by Central Government)

Authority	Monetary Jurisdiction (Amount Involved)
Assistant Director	Up to Rs. 50,00,000
Deputy Director	Above Rs. 50,00,000 up to Rs. 2,00,00,000
Director	Above Rs. 2,00,00,000 up to Rs. 10,00,00,000
Special Director	Above Rs. 10,00,00,000

4. POWERS OF ADJUDICATING AUTHORITY

- Summon any person and enforce attendance
- Call for documents and records
- Examine persons on oath
- Receive evidence on affidavits
- Examine evidence and documents
- Impose penalties u/s 13
- Confiscate property u/s 37A
- Issue directions for compliance

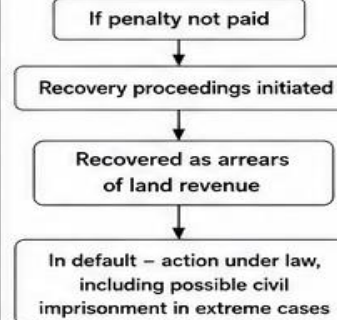
5. PROCEDURE OF ADJUDICATION



6. ADJUDICATION ORDER – TYPES

- Penalty Order
- Warning
- Compounding (if any stage compounding permitted)
- Confiscation of Property
- Directions for Compliance
- Closure of Proceedings

7. RECOVERY OF PENALTY



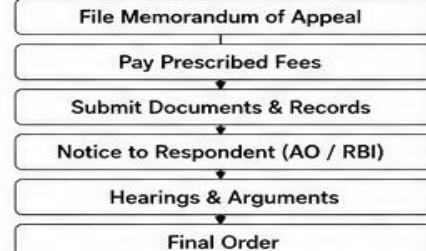
8. APPEAL HIERARCHY & TIME LIMITS



9. APPELLATE TRIBUNAL FOR FEMA

- Quasi-judicial independent body
- Considers facts, law and evidence
- Powers:
 - Confirm the order
 - Reduce the penalty
 - Enhance the penalty
 - Set aside the order and remand
 - Pass any other appropriate order

10. PROCEDURE OF APPEAL



11. JURISDICTION

- Nature of contravention
- Amount involved
- Territorial jurisdiction
- Authority notified by Central Government

12. APPEAL TO HIGH COURT

- Appeal lies on "question of law" only
- To be filed within 60 days from the date of order of Appellate Tribunal
- High Court may:
 - Confirm / set aside / remand
 - Pass any appropriate order

13. ENFORCEMENT / OTHER ACTIONS

- Search & Seizure u/s 37
- Attachment of Property u/s 37A
- Arrest u/s 37(3) (in certain cases)
- Investigation by ED
- Prosecution before Court (if required)
- Cross-border cooperation

Note: Proceedings under Section 13 are independent of compounding proceedings. Serious and willful contraventions may also lead to prosecution under FEMA and other applicable laws.

Compounding of Contravention

The Foreign Exchange (Compounding Proceedings) Rules, 2024

The provisions of section 15 of Foreign Exchange Management Act, 1999, enable compounding of contraventions and, 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. Government of India vide Notification G.S.R. 566 (E). dated September 12, 2024, has notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 in supersession of the Foreign Exchange (Compounding Proceedings) Rules, 2000.

COMPOUNDING AUTHORITY



The **Director of Enforcement** or any of the following officers authorised by the Central Government shall be the compounding authority for the purposes of these rules, namely :-



DIRECTORATE OF ENFORCEMENT

An officer of the Directorate of Enforcement not below the rank of

**Deputy Director or
Deputy Legal Adviser.**



RESERVE BANK OF INDIA

An officer of the Reserve Bank not below the rank of the









Assistant General Manager.

POWER TO COMPOUND BY RESERVE BANK

(Rule 4 of FEMA (Compounding of Contraventions) Rules, 2000)



If any person contravenes any provision of the Foreign Exchange Management Act, 1999 (FEMA), the contravention can be compounded by the Reserve Bank of India (RBI) depending on the amount involved, as under:

AMOUNT INVOLVED IN CONTRAVENTION		COMPETENT AUTHORITY (RBI)	
A	 Up to ₹10 lakhs (inclusive)	→	 Assistant General Manager Reserve Bank of India
B	 More than ₹10 lakhs but less than ₹40 lakhs	→	 Deputy General Manager Reserve Bank of India
C	 ₹40 lakhs or more but less than ₹100 lakhs	→	 General Manager Reserve Bank of India
D	 ₹100 lakhs or more	→	 Chief General Manager Reserve Bank of India



Provided further that no contravention shall be compounded unless the amount involved in such contravention is **quantifiable**.



DIRECTION, CONTROL & SUPERVISION

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.



GOVERNOR
RBI



KEY TAKEAWAY: The compounding power is delegated in a graded manner based on the monetary threshold involved, ensuring proportionality, efficiency and accountability in enforcement.

Role of Enforcement Directorate

The ED is the premier agency for investigation and adjudication. In FEMA, their focus is on civil contraventions, but the 'Practical Aspects' involve high-stakes intelligence gathering, surveys, and seizure of evidence.

Key Function: To consolidate and facilitate external trade while promoting orderly development of foreign exchange markets in India.

COMPOUNDING AUTHORITIES OF DIRECTORATE OF ENFORCEMENT

• To Compound Various Contraventions under FEMA •



If any person contravenes the provisions of clause (a) of section 3 of the Act, the contravention may be compounded by the Directorate of Enforcement, based on the amount involved, as per the authorities specified below.

GENERAL PROVISIONS



No contravention shall be compounded if committed by any person **within a period of three years** from the date of a similar contravention compounded under these rules.



Explanation: The contravention committed after the expiry of three years from the date on which the previous contravention was compounded shall be deemed to be a first contravention.



Compounding Fees: Every application for compounding shall be made in the prescribed Form, accompanied by a fee of ₹10,000 plus applicable goods and services tax, by demand draft / NEFT / other permissible electronic or online modes, in favour of the compounding authority.

COMPETENT AUTHORITY BASED ON AMOUNT INVOLVED IN CONTRAVENTION

 AMOUNT INVOLVED	 COMPETENT AUTHORITY	 DESIGNATION
1 Up to ₹5 lakh (inclusive)	> Deputy Director of the Directorate of Enforcement	—
2 More than ₹5 lakh but less than ₹10 lakh	> Additional Director of the Directorate of Enforcement	—
3 More than ₹10 lakh but less than ₹50 lakh	> Special Director of the Directorate of Enforcement	—
4 ₹50 lakh or more but less than ₹1 crore	> Special Director along with the Deputy Legal Adviser of the Directorate of Enforcement	—
 ₹1 crore or more	> Director of Enforcement along with the Special Director of the Directorate of Enforcement	—

KEY POINTS



COOLING PERIOD
3 years from the date of compounding of a similar contravention.



FIRST CONTRAVENTION
Post 3 years from the date of previous compounding is treated as first contravention.



APPLICATION FEE
₹10,000 + GST in the prescribed form via DD / NEFT / other modes.



OBJECTIVE
To ensure accountability, consistency and timely resolution of contraventions.



NOTE: These powers are delegated for efficient disposal of cases and to reduce burden on higher authorities while ensuring fair and effective enforcement of FEMA provisions.

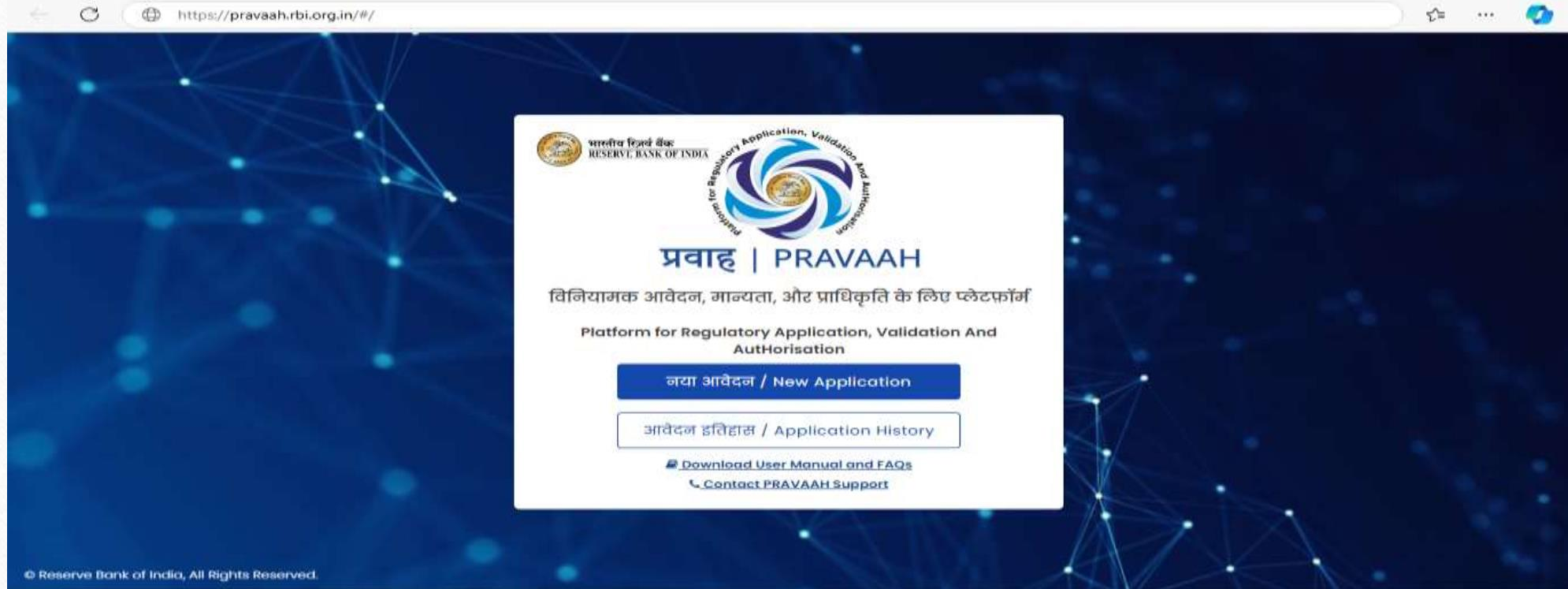
COMPOUNDING FEES

- Every application for compounding any contravention under this rule shall be made in the prescribed Form to the Foreign Exchange Department, Reserve Bank, along with a **fee of Rs. 10,000 plus GST@18%**, (i.e. INR 11,800) as applicable, by demand draft, or National Electronic Fund Transfer (NEFT), or other permissible electronic or online modes of payment, in favour of the compounding authority.

Discharge on compounding of contravention.

- 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 compounding authority specified in rule 4 or rule 5, in writing, to the notice of the Adjudicating Authority and on such notice, the person in relation to whom the contravention is so compounded shall be discharged.

Submission of Compounding Application through PRAVAAH portal



The screenshot shows the homepage of the PRAVAAH portal. The browser address bar displays <https://pravaah.rbi.org.in/#/>. The page features a dark blue background with a network of glowing blue nodes and lines. In the center, there is a white box containing the following elements:

- Reserve Bank of India logo and text: भारतीय रिज़र्व बैंक / RESERVE BANK OF INDIA
- PRAVAAH logo: A circular emblem with a blue and white swirl, surrounded by the text "Platform for Regulatory Application, Validation And Authorisation".
- Text: प्रवाह | PRAVAAH
- Text: विनियामक आवेदन, मान्यता, और प्राधिकृति के लिए प्लेटफॉर्म
- Text: Platform for Regulatory Application, Validation And Authorisation
- Buttons and links:
 - [नया आवेदन / New Application](#) (highlighted in blue)
 - [आवेदन इतिहास / Application History](#)
 - [Download User Manual and FAQs](#)
 - [Contact PRAVAAH Support](#)

At the bottom left of the page, there is a copyright notice: © Reserve Bank of India, All Rights Reserved.

COMPOUNDING APPLICATION AND RELATED DOCUMENTS

—• A well-prepared application with complete documentation builds credibility and ensures smoother compounding. —•



COMPOUNDING APPLICATION – KEY POINTS



Admission of Contravention:

Clear and unconditional admission of the contravention is mandatory.



Full and True Disclosure:

All material facts must be completely and truly disclosed.



Root Cause & Responsibility:

Explain the root cause, responsibility and steps taken to address the lapse.



Corrective Actions:

Detail the corrective/ remedial actions taken and compliance improvements.



Undertaking & Cooperation:

Provide undertaking to comply with FEMA provisions in future and cooperate in the process.



APPLICATION PROCESS OVERVIEW



1. Prepare

Prepare the application with all details and supporting documents.



2. File

File online through PRAVAAH Portal (Compounding Module).



3. Review

RBI reviews the application and may seek clarifications / additional documents.



4. Hearing

Opportunity of personal/ online hearing, if required.



5. Order

Compounding order passed within 180 days of receipt of complete application. Payment within 15 days.



Important: Incomplete, incorrect or misleading information / documents may lead to rejection of application or referral for enforcement action.



DOCUMENTS NORMALLY REQUIRED

1. Basic Documents

- Covering Letter
- Compounding Application (Form on PRAVAAH Portal)
- Board Resolution / Authorisation
- Power of Attorney (if applicable)
- KYC / Incorporation Documents

2. Contravention Details

- Detailed Note on Contravention (facts, timeline, value, parties involved)
- Relevant FEMA provisions contravened
- How the contravention occurred (root cause analysis)
- Whether any past contravention compounded in last 3 years

3. Corrective Actions

- Steps taken to regularise the contravention
- Approvals / Permissions obtained, if any
- Reporting / filings completed (e.g., FC-GPR, APR, ECB returns, etc.)
- Unwinding / restructuring documents (if applicable)

4. Financial & Transactional

- Transaction documents (agreements, invoices, bank advices, etc.)
- Inward / Outward remittance details
- Financial statements (as applicable)
- Calculation of amount involved in contravention

5. Declarations & Undertakings

- Declaration of true and complete disclosure
- Undertaking to comply with FEMA in future
- No pending investigation in related matter (or details thereof)
- Any other declaration as required

ADDITIONAL NOTES



All documents should be self-attested and in English.



Documents in other languages should be accompanied by certified English translation.



Maintain a complete document trail and evidence of regularisation.



Accuracy, consistency and transparency are critical for a successful compounding outcome.



A complete and well-documented application demonstrates good faith, strengthens your case and facilitates timely compounding.

RELATED DOCUMENTS IN CASE OF CONTRAVENTION

Key documents required to be submitted with the compounding application in different cases



1. CONTRAVENTION IN ECB

When there is a contravention related to External Commercial Borrowings.

-  Compounding Application (Form FC)
-  Board Resolution / Authorization
-  Details of ECB (loan agreement, sanction letter, disbursement details, end-use, etc.)
-  Evidence of Contravention (calculations, notes, internal records)
-  RBI / Government Approvals (if applicable)
-  Other Relevant Documents (KYC, financial statements, auditor certificate, etc.)



2. CONTRAVENTION IN ODI







When there is a contravention related to Overseas Direct Investment.

-  Compounding Application (Form FC)
-  Board Resolution / Authorization
-  Details of ODI (investment route, amount, date, country, etc.)
-  Evidence of Contravention (internal note, correspondence, calculations)
-  RBI Approvals (if applicable – FDI / ODI prior permission, etc.)
-  Other Relevant Documents (KYC, financial statements, auditor certificate, etc.)



3. CONTRAVENTION IN BRANCH / LIAISON OFFICE IN INDIA

When there is a contravention related to Branch / Liaison Office activities.

-  Compounding Application (Form FC)
-  Board Resolution / Authorization
-  RBI Approval (Branch / Liaison Office approval letter, conditions, etc.)
-  Details of Operations & Contravention (nature of activities, transactions, contravention details)
-  Correspondence with RBI / Authorities (if any) (letters, emails, clarifications, etc.)
-  Other Relevant Documents (KYC, financial statements, auditor certificate, etc.)



REMEMBER



Submit complete and true documents.



All documents should be self-attested.



Pay the compounded amount within 15 days of the order.



Incomplete / false information may lead to rejection and action under FEMA, 1999.

Authorities Empowered to Compound

S.No.	Amount of Contravention	Compounding Authority
1	Rs. Sixty Lakhs or less	Not below the rank of Assistant General Manager
2	More than Rs. Sixty Lakhs and upto Rs. Two Hundred Fifty Lakhs	Not below the rank of Deputy General Manager
3	More than Two Hundred Fifty Lakhs and upto Rs. Five Hundred Lakhs	Not below the rank of General Manager
4	More than Rs. Five Hundred Lakhs	Not below the rank of Chief General Manager

PRE-REQUISITE FOR COMPOUNDING PROCESS

—• Key Conditions to be fulfilled before contraventions can be compounded under FEMA —•

01 THREE-YEAR COOLING PERIOD

Contraventions committed within 3 years of a similar contravention already compounded, will not be compounded.

Any subsequent contravention after 3 years shall be treated as a first contravention.



02 REQUIRED APPROVALS / PERMISSIONS

Contraventions involving transactions without necessary approvals or permissions from Government or statutory authorities will not be compounded unless such approvals are obtained.



03 SERIOUS CONTRAVENTIONS - REFERRED FOR ACTION

Cases involving money laundering, terror financing, impact on sovereignty & integrity of India, or failure to pay compounded amount within the specified period, shall be referred to:



Directorate of Enforcement (ED)



PMLA Authority or other agencies



PRINCIPLE

Compounding is an exception, not a right. It is subject to specific conditions and safeguards.

04 PENDING ADJUDICATION / APPEALS

If adjudication is done by ED and appeal is filed under Section 17 or 19 of FEMA, no contravention can be compounded.

Applicant must confirm (Annex III undertaking) that no such appeal has been filed.



05 EXAMINATION BY RESERVE BANK

When a contravention is identified or brought to the notice of RBI, it shall examine:

- i Whether it is material and requires compounding (follow procedure); or
- ii Whether the issue is sensitive / serious and needs referral to ED.



06 PROVISIONS NOT ELIGIBLE FOR COMPOUNDING

- If ED opines the matter involves serious contravention (money laundering, terror financing, sovereignty & integrity), the compounding authority shall remit the case to the Adjudicating Authority (Sec. 13).
- Contraventions under Section 3(a) or cases under Section 37(A) (assets held outside India in contravention of Sec. 4) are not eligible for compounding by RBI.



KEY TAKEAWAY



Compounding is discretionary and conditional.



Timely compliance, approvals & payments are essential.



Serious or sensitive matters are excluded from compounding.



These safeguards ensure integrity, compliance and effective enforcement of FEMA, 1999.

Contraventions not to be compounded in certain cases

- No contravention shall be compounded, -

a) where the amount involved is not quantifiable; or

(b) where the provisions of section 37A of the Act are applicable; or

(c) where the Directorate of Enforcement is of the view that the proceeding relates to a serious contravention suspected of money-laundering, terror financing or affecting the sovereignty and integrity of the nation, the compounding authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under section 13; or

(d) where the Adjudicating Authority has already passed an order imposing penalty under section 13 of the Act; or

(e) where the compounding authority is of the view that the contravention involved requires further investigation by the Directorate of Enforcement to ascertain the amount of contravention under section 13 of the Act.

PAYMENT OF THE AMOUNT FOR WHICH CONTRAVENTION IS COMPOUNDED

Key Rules to be followed under FEMA Compounding Proceedings

TIMELY PAYMENT, FINAL COMPLIANCE

Adherence to payment conditions ensures validity of the compounding and closure of the matter.

01



PAYMENT WITHIN 15 DAYS

The sum specified in the compounding order shall be paid by demand draft in favour of "Reserve Bank of India" within 15 days from the date of the order. The manner of drawing and depositing the demand draft will be mentioned in the order.

02



NO RIGHT TO WITHDRAW OR SEEK REVIEW

The Rules do not confer any right to the contravener, after a compounding order is passed, to withdraw the order, treat it as void, or seek review from the Compounding Authority.

03



FAILURE TO PAY – APPLICATION DEEMED NEVER MADE

If the compounded amount is not paid within the time specified in the compounding order and the Rules, it shall be deemed that the contravener had never made an application for compounding.

04



OTHER PROVISIONS TO APPLY

If a contravention is not compounded by the Compounding Authority, the other relevant provisions of FEMA, 1999 relating to contraventions shall apply.

05



CERTIFICATE ON REALISATION

On realisation of the compounded amount, the Reserve Bank shall issue a certificate to this effect, subject to any conditions specified in the order.



KEY TAKEAWAY

Payment within the stipulated time is essential to give effect to the compounding order. Non-payment nullifies the compounding application and attracts other provisions of FEMA, 1999.



Compounding Matrix

Type of contravention	Formula
<u>i.1] Reporting/ submission Contraventions under provisions of FEMA 20/ FEMA 20(R)/ FEMA 395</u>	Fixed amount: INR 10,000/- (applied once for each regulation/ rule contravened, in a compounding application) plus Variable amount:
ii. FEMA 3/ FEMA 3(R)	
iii. FEMA 120/ FEMA 400	
iv. Any other reporting contraventions (except those in Row 2 below and of LO/BO/PO)	
Amount under Contravention (in INR)	Compounding amount that may be imposed (in INR)
Less than 10 lakh	1,000 per Year
10 lakhs or more and below 40 lakhs	2,500 per year
40 lakhs or more and below 100 lakhs	7,000 per year
1 crore or more and below 10 crore	50,000 per year
10 crore or more and below 100 Crore	100,000 per year
100 crores and above	200,000 per year
v. Reporting contraventions by LO/ BO/ PO	As above, subject to ceiling of INR 2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.

<p>v. Reporting contraventions by LO/ BO/ PO</p>	<p>As above, subject to ceiling of INR 2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.</p>
<p><u>i.2] Submission of AAC/ APR/ FLAR/ Share certificate</u></p> <p>Non-submission/ delayed submission of APR/ share certificates (FEMA 120/ FEMA 400) or</p> <p>ii.AAC (FEMA 22/ FEMA 22(R)) or</p> <p>iii.FCGPR (B) or FLA Returns - FEMA 20 / FEMA 20 (R) / FEMA 120/ FEMA 395/ FEMA 400</p>	<p>INR 10,000 per AAC/ APR/ FCGPR (B) / FLA Return delayed.</p> <p>Delayed/Non receipt of share certificate – INR.10000/- per year, the total amount being subject to ceiling of 300% of the amount invested.</p>

3]

A] Allotment/ Refunds

Non-allotment of shares or allotment/ refund after the stipulated period for Foreign Investment

Fixed Amount: INR 30,000/- (applied once for each regulation/ rule contravened, in a compounding application) **plus**

B] Contraventions

(Other than the reporting contraventions mentioned in Para 1(v) above) by **LO/ BO/ PO**

Variable amount:

Period of delay/ non submission, as applicable	Variable amount that may be imposed as percentage of "amount under contravention"
Less than 1 year	0.30%
1 year and above but less than 2 years	0.35%
2 years and above but less than 3 years	0.40%
3 years and above but less than 4 years	0.45%
4 years and above but less than 5 years	0.50%
5 years or more	0.75%

(For project offices the amount of contravention shall be deemed to be 10% of the cost of project).

4] Any contravention pertaining to issuance of any guarantee (other than reporting contraventions)

Fixed Amount: INR 5,00,000/- (applied once for each regulation/ rule contravened, in a compounding application) **plus**

Variable amount:

Duration of contravention	Variable amount that may be imposed as percentage of "amount under contravention"
Less than 1 year	0.050%
1 year and above but less than 2 years	0.055%
2 years and above but less than 3 years	0.060%
3 years and above but less than 4 years	0.065%
4 years and above but less than 5 years	0.070%
5 years or more	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.

5] All other non-reporting contraventions

Fixed Amount: INR 50,000/- (applied once for each regulation/ rule contravened, in a compounding application) **plus**

Variable amount:

Duration of contravention	Variable amount that may be imposed as percentage of "amount under contravention"
Less than 1 year	0.50%
1 year and above but less than 2 years	0.55%
2 years and above but less than 3 years	0.60%
3 years and above but less than 4 years	0.65%
4 years and above but less than 5 years	0.70%
5 years or more	0.75%

-
- II. The above amounts are presently subject to the following provisos, viz.
 - i. The compounding amount payable shall not exceed 300% of the sum involved in contravention.
 - ii. In case the sum involved in contravention is less than Rupees one lakh, the total compounding amount payable shall not be more than amount of simple interest @5% p.a. calculated on the sum involved in contravention and for the period of 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 compounding amount payable 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 contravener 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 matrix above.
- ~~v. If an applicant against whom a compounding order had been passed earlier and applicant didn't pay the compounding amount as mentioned in such order and reapplies for compounding of contravention relating to the same transaction, the amount calculated as above may be enhanced by 50% of earlier compounding amount subject to sub-para (i) above. **DELETED vide A.P Dir series circular No. 02/2025-26 dated April 22, 2025**~~
- vi. Subject to satisfaction of the compounding authority, based on the nature of contravention, exceptional circumstances/ facts involved in case, and in wider public interest, the maximum compounding amount imposed may be capped at INR 2,00,000/- for contravention of each regulation/ rule (applied in a compounding application) with respect to contraventions under row 5 of the above computation matrix. **INSERTED vide A.P (DIR Series) Circular No. 04 dated April 24, 2025**
- III. For calculating compounding amount in respect of reporting contraventions under para I.1 of above matrix, 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.

Section 37A of FEMA: Most Important

Finance Bill 2015 – insertion of Sec.37A of FEMA 1999

- **Section 37A has contained the special provisions relating to assets held outside India in contravention of section 4 of FEMA, 1999**
- *Section 4: Holding of foreign exchange, etc.—Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.*

Section 37A

- 1) *Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated **within India**, of such foreign exchange, foreign security or immovable property.*

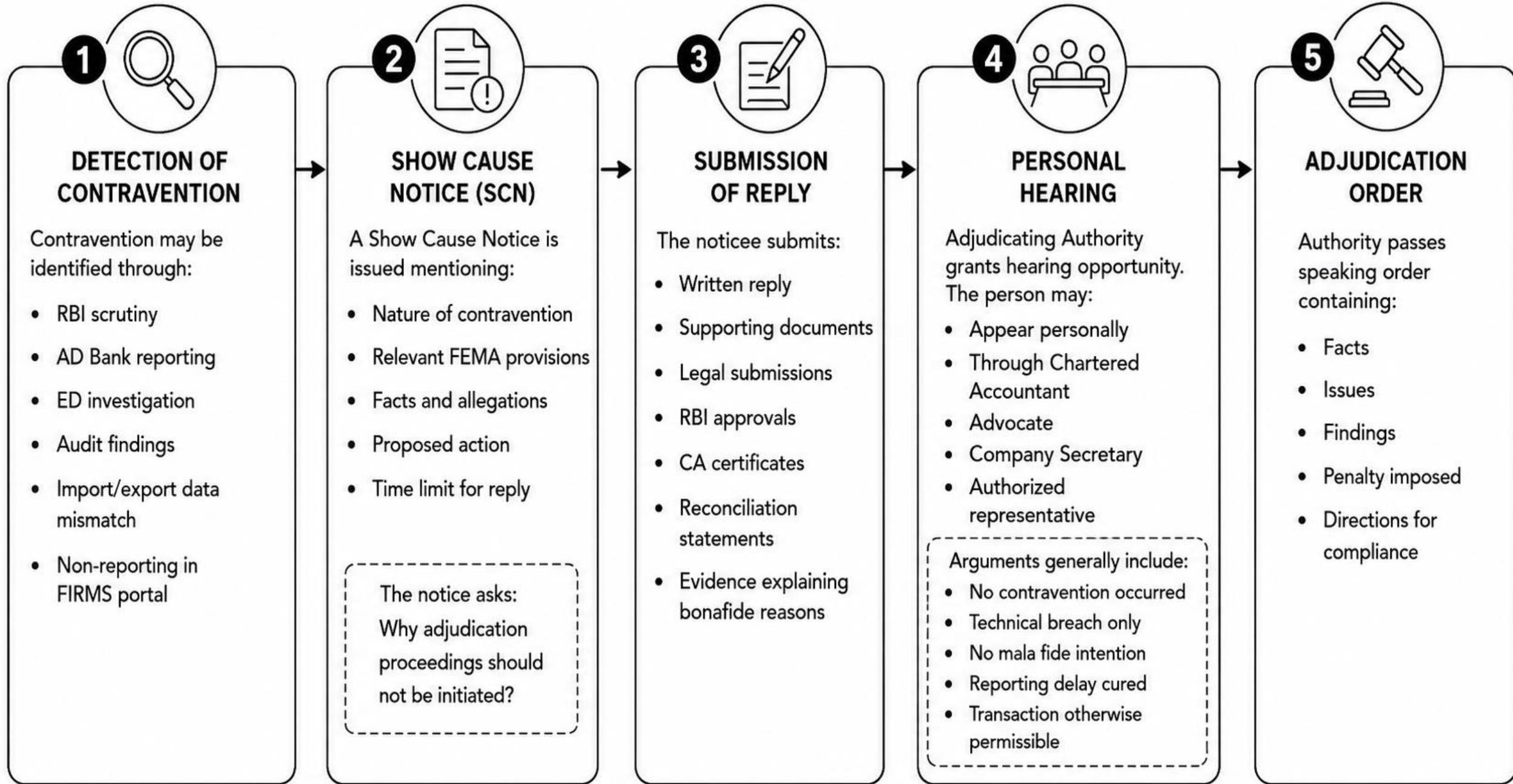
-

Proviso to Sec. 37A(1) - However threshold limit has been fixed to transactions to fall under the ambit of Sec.37A, in terms of Proviso to Sec. 37 A (1) of FEMA 1999. By notification GSR 701 E dated 16th September 2015, the aggregate value of foreign exchange, foreign security or any immovable property situated outside India shall **not be less than one crore** rupees to attract Sec.37A.

ADJUDICATION



ADJUDICATION PROCEDURE UNDER FEMA



APPEAL AGAINST ADJUDICATION ORDER

APPEAL HIERARCHY

FIRST APPEAL



BEFORE:
Special Director
(Appeals)



GENERALLY WITHIN:
45 DAYS

SECOND APPEAL

















BEFORE:
Appellate Tribunal
for FEMA











FURTHER APPEAL
may lie before
HIGH COURT
on question of law.

PRACTICAL EXAMPLES OF FEMA ADJUDICATION







CONTRAVENTION	COMMON ISSUE
 ODI	 Delay in APR / Form FC
 ECB	 ECB utilization violation
 EXPORT	 Non-realization of export proceeds
 FDI	 Delayed FC-GPR
 IMMOVABLE PROPERTY	 Acquisition without approval
 BRANCH OFFICE	 Activities beyond approval
 LRS	 Exceeding remittance limit

IMPORTANT FEMA SECTIONS RELATED TO ADJUDICATION




	SECTION	SUBJECT
	Section 13	Penalties
	Section 14	Enforcement of penalties
	Section 15	Compounding
	Section 16	Adjudicating Authority
	Section 17	Appeal to Special Director
	Section 18	Appellate Tribunal
	Section 37	ED investigation powers
	Section 37A	Seizure of foreign assets


KEY PRACTICAL STRATEGY IN FEMA MATTERS

 IN PRACTICE, THE MOST IMPORTANT ASPECTS ARE

- 1**  Early identification of contravention
- 2**  Proper documentation
- 3**  Timely reply to SCN
- 4**  Maintaining transaction trail
- 5**  Demonstrating bona fide intent
- 6**  Seeking compounding wherever possible before adjudication escalates

 FOR REPORTING CONTRAVENTIONS, RBI GENERALLY PREFERS

 **REGULARIZATION** THAN  **LATE SUBMISSION FEES (LSF)** THAN  **COMPOUNDING ROUTE**

 **RATHER THAN PROLONGED ADJUDICATION, PROVIDED THE TRANSACTION ITSELF IS OTHERWISE PERMISSIBLE.**

Discontinuation of adjudication.

- Where any contravention is compounded before the adjudication of such contravention under section 16, no inquiry or further inquiry shall be initiated or continued, as the case may be, for adjudication of such contravention against the person in relation to whom that contravention is so compounded.

**LATE SUBMISSION FEE FOR REPORTING DELAYS UNDER
FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

RBI/2022-23/122 September 30, 2022 A.P. (DIR Series) Circular No. 16

INTRODUCTION

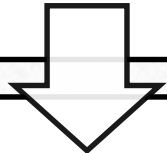
If a resident of India has missed the deadline for filing or submitting a required form, return, or document, they may still do so with payment of Late Submission Fee (LSF) through the designated AD bank in accordance with regulation 11 of the OI Regulations.

If a resident of India who is responsible for filing forms, returns, reports, or other documents required by the OI Regulations/earlier regulations fails to do so within specified time or delayed filing which doesn't include LSF as required by regulation 11 of the OI Regulations, that person shall be liable for penal action under the provisions of FEMA, 1999

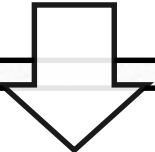
PROCEDURE TO APPLY

At first Person Resident in India has to make an

Application of LSF along with the original delayed filing of Forms/Documents to AD Bank for onward submission to Reserve Bank of India (RBI).



AD Bank after being satisfied with the application shall forward it to RBI. RBI will send conditional acknowledgment email to Applicant



AD Bank including Amount and manner of payment of LSF within 30 days from the date of this email.

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in Reporting of Form ODI/Form FC for remittance

Transactions prior to 22nd August, 2022

For remittance done Due Date of Reporting

Up till 13 th April, 2016	30 days from the date of remittance
After 13 th April, 2016	either before or on the date of remittance

Transactions after 22nd August, 2022

Due date of submission of Form FC is at the time of sending outward remittance or making a Financial Commitment, whichever is earlier.

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in Reporting of Evidence of Investment (Share Certificate /other relevant document of evidence)

Transactions prior to 22nd August, 2022

Transactions after 22nd August, 2022

Due Date of Reporting

Within 6 months from the remittance date

Due Date of Reporting

Within 6 months from the remittance date

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in reporting of restructuring of balance sheet of foreign entity

Due date	Within 30 days from the date of restructuring
-----------------	---

Delay in reporting of Form FLA i.e. Annual return on foreign assets and liabilities

Transactions prior to 22nd August, 2022	Transactions after 22nd August, 2022
Due Date of Reporting	Due Date of Reporting
15 th July Every Year	15 th July Every Year

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in reporting of APR

Note: All APRs from 2021 onwards are to be submitted based on audited financials only.

Transactions prior to 22 nd August, 2022		Transactions after 22 nd August, 2022	
Accounting Year Ending	Due Date of Reporting	Accounting Year Ending	Due Date of Reporting
On or Before 30 th June 2012	Within 60 days of the expiry of the Statutory period for the finalization of the audited annual accounts	*31 st March	31 st December of the relevant year
On or after 1 st July, 2012 till 30 th December, 2015	Next 30 th June	*31 st December	Next 31 st December
On or after 31 st December, 2015	Next 31 st December		

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in reporting of Investment / Disinvestment in SDS

***Note: Non-reporting shall be treated as non-submission of APR of relevant year**

!

Transactions prior to 22 nd August, 2022	Transactions after 22 nd August, 2022
Due Date of Reporting	* Reporting should be made in the Form
30 days from the date of setting up or acquisition or winding up or transfer	APR of the relevant year

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Delay in reporting of Disinvestment in Foreign Entity

Transactions prior to 22 nd August, 2022		Transactions after 22 nd August, 2022
Nature of Disinvestment	Due Date of Reporting	* Reporting should be made in Form FC Section G within 30 days of repatriation of Disinvestment proceeds
With repatriation	30 days from the date of receipt of disinvestment proceeds	
Without repatriation	30 days from the date of disinvestment	

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022

A.P. (DIR Series) Circular No.16

The Nature of transaction can be categorised into two types

Fund Based Transactions	Non-Fund Based Transactions
Delay in Submission of Form ODI/Form FC for Remittance	Delay in reporting of evidence of investment
Delay in Submission of Form ODI/Form FC for Change in Guarantee or category of Investment	Delay in reporting of APR
Delay in Reporting of Disinvestment in Foreign Entity	Delay in reporting of FLA
Delay in reporting of restructuring of balance sheet of foreign entity	Delay in reporting of Investment / Disinvestment in SDS
	Delay in reporting of Alteration of Shareholding pattern of Foreign Entity

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

Calculation of LSF for late reporting of transactions

S. No.	Type of Reporting Delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7,500
2	Form ODI-Part I, Form ODI-Part III, Form FC, or any other return which captures flows or returns which capture reporting of non-fund based transactions or any other transactional reporting	$[7,500 + (0.025\% \times A \times n)]$

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

WHERE

- “n” is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- “A” is the amount involved in the delayed reporting. It should be in INR equivalent to FCY and the conversion rate should be taken as on the date of remittance done)
- LSF amount is per return.
- Maximum LSF amount will be limited to 100 per cent of ‘A’ and will be rounded upwards to the nearest hundred.
- LSF should be paid within 30 days of receipt of the conditional acknowledgment, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted.
- If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of LSF.
- The option of LSF shall be available up to three years from the date of notification of OI Regulations, 2022 i.e., 22th August, 2022.

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

In case of Non-fund based transactions

- If there is delay in submission of APR for 1 years (say 2009) then LSF payable for APR would be for INR 7,500/- per instances i.e., INR 7,500/-
- If there is delay in submission of evidence of Investment for 4 remittances then LSF payable would be INR 7,500/- per instance i.e., INR 30,000/- (7,500 + 7,500 + 7,500 + 7,500)
- If there is delay in submission of FLA for 3 years (2010, 2015 & 2018) then LSF payable for APR would be for 3 instances i.e., INR 22,500/- (7,500 + 7,500 + 7,500)

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

In case of Fund Based Transactions:-

If there is a delay of 1 day then it would be taken as 1 Month

“n” would be $1 / 12$ Years = 0.08 Years

If there is a delay of 4 years and 2 days then

“n” would be 4 years + $2 / 12$ Years

= 4 + 0.17 Years

= 4.17 Years

If LSF amount works out to INR 15261 then it would be rounded upwards to the nearest 100 and LSF to be paid would be INR 15300.

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

LSF can be paid by following ways

Draft made out to "Reserve Bank of India" and due at the relevant Regional Office (in line 1. Demand e with UIN mapping shown in the table below) may be used to pay the LSF:-

S. No.	UIN with prefix	UIN mapped to
1.	AH	RO Ahmedabad
2.	BG	RO Bengaluru
3.	BL or BY or PJ	RO Mumbai
4.	BN or CA or GA or GH	RO Kolkata
5.	CG or JM or JR or KA or ND or PT or WR	RO New Delhi
6.	HY	RO Hyderabad
7.	KO or MA	RO Chennai

Late Submission Fee for reporting delays under Foreign Exchange Management Act, 1999

RBI/2022-23/122 September 30, 2022
A.P. (DIR Series) Circular No.16

LSF can be paid by following ways

2. NEFT/RTGS can be made using the Account details of concerned Regional offices of RBI as mentioned in the Conditional Acknowledgment email from RBI. Within 2 hours of making payment through NEFT/RTGS, an email should be sent in response to the Conditional Acknowledgment email.

THANKYOU

CA. Deepender Kumar

DEEPENDER ANIL & ASSOCIATES

(Chartered Accountants)

Head Office:-

**101/E-36,
Jawahar Park,Laxmi Nagar,
Delhi-110092
Phone : +91-9910099584,
+91-11-42487277**

Branch Office:

**48, First Floor, Tolstoy Road,
Janpath, Connaught Place,
Behind Sarvana Bhawan,
New Delhi-110001
Phone: +91-9910099584**

Branch Office:-

**Plot-5A, IInd Floor,
Sector-3A, Rachna,
Vaishali, Ghaziabad,
Uttar Pradesh-201010
Phone : +91-9910099584
+91-120-4221261/62/63**