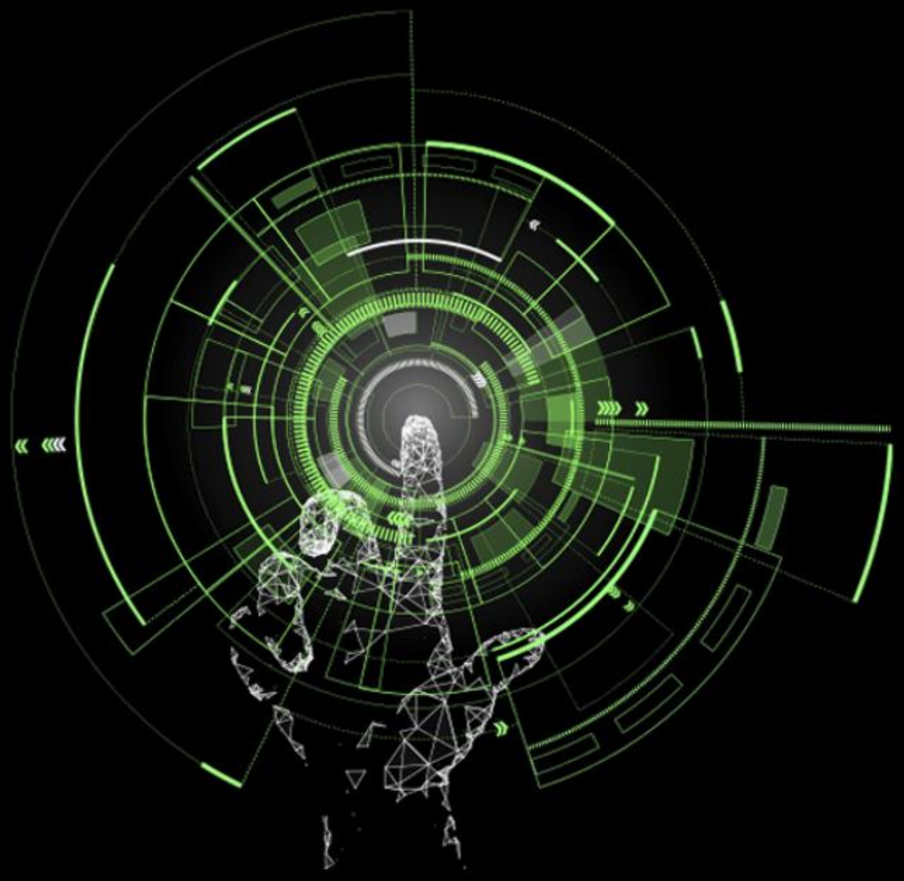
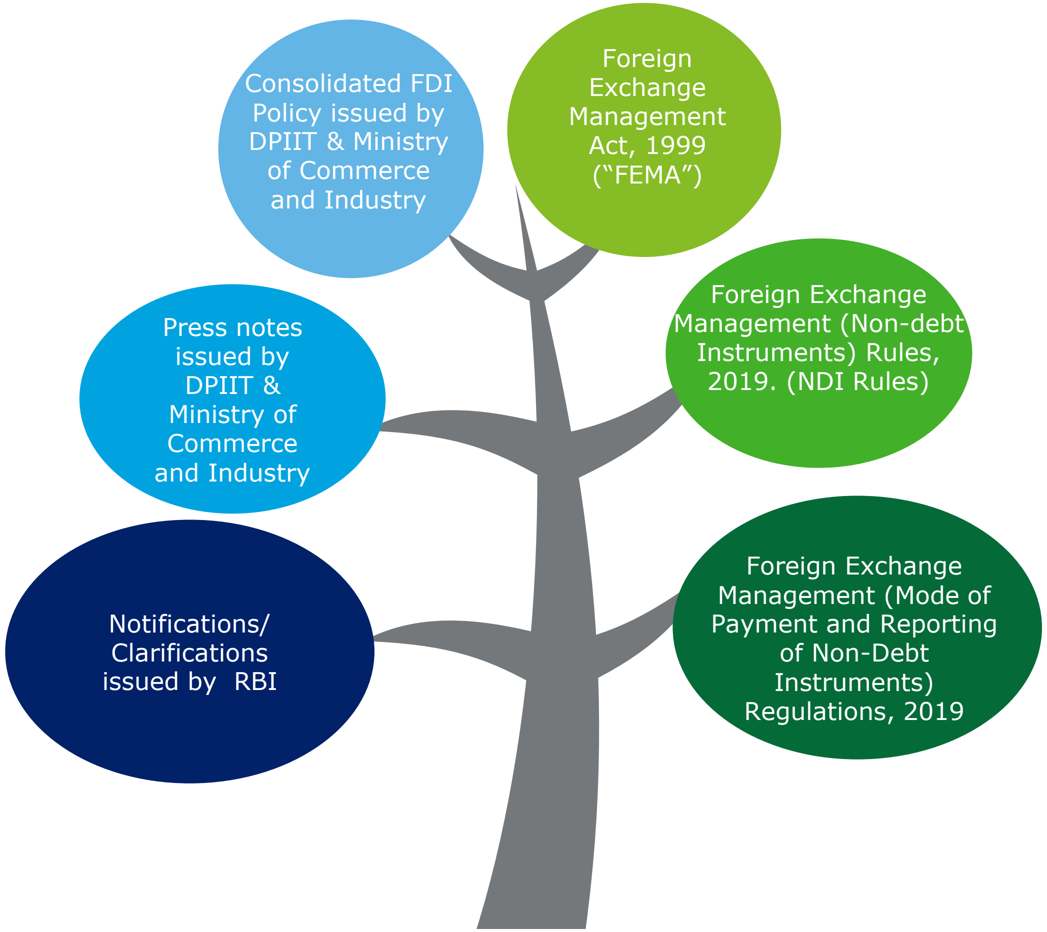


Foreign Direct Investment _ Overview

September 2023

Legislation- Foreign Direct Investment



Transfer/Sale of Equity Instrument

Optionality Clause:- A PROI holding Equity Instruments of an Indian Company containing optionality clause and exercising the option/right, may exit without any assured return subject to lock-in period of 1 year or minimum lock-in period as prescribed in these rules, whichever is higher.

Erstwhile OCB:- May transfer as per directions issued by RBI.

Transfer between R and NR on deferred consideration- upfront 75% balance 25% within 18 months. Can be settled through Escrow Arrangement.

Opening of Escrow Account: In case of transfer of equity instruments between a PRI and PROI, a PROI may open an escrow account and such escrow account may be funded by way of inward remittance through banking channels and/ or by way of guarantee issued by an AD bank subject to Foreign Exchange Management (Guarantees) Regulations, 2000.

Sale of Listed Securities: As per SEBI regulations.

Requirement of filing Form FC TRS

Transferor	Transferee	Applicability	Pricing Requirement
Resident	Resident	×	-
Resident	Non-Resident (including NRI/OCI on repatriable basis)	√	• **Listed** - Not less than the price at which preferential allotment can be made under SEBI guidelines • **Unlisted** - Not less than FV of shares arrived by CA/SEBI registered MB/Cost Accountant based on IAP on ALB
Non-Resident (including NRI/OCI on repatriable basis)	Resident	√	• **Listed** –Not to exceed the price at which preferential allotment can be made under SEBI guidelines • **Unlisted** Not to exceed FV of shares arrived by CA/SEBI registered MB/Cost Accountant based on IAP on ALB
Non-Resident/ NRI /OCI/eligible investor on non- repatriable basis	Non-Resident(including NRI/OCI on repatriable basis)	√	Same provision as applicable for transfer between Resident to Non- Resident
Non-Resident (including NRI/OCI on repatriable basis)	Non-Resident/ NRI/OCI/eligible investor on non- repatriable basis	√	Same provision as applicable for transfer between Non- Resident to Resident
Non-Resident (including NRI/OCI on repatriable basis)	Indian Company purchasing shares pursuant to buyback/ capital reduction	√	Same provision as applicable for transfer between Non- Resident to Resident
Non-Resident (including NRI/OCI on repatriable basis)	Non-Resident (including NRI/OCI on repatriable basis)	×	-
NRI /OCI/eligible investor on non-repatriable basis	Non- Resident(including NRI/OCI on non- repatriable basis)	×	-
Resident	Non- Resident(including NRI/OCI on non- repatriable basis)	×	Same provision as applicable for transfer between Resident to Non- Resident

FDI in Financial Service Sector

01 Banking

- Private Banks - FDI permitted upto 74%
  - Upto 49% - Under Automatic route
  - More than 49% upto 74% - Govt approval
- Public Banks - FDI permitted upto 20% under Govt approval route

02 Insurance

Life / non-life insurance company – FDI permitted upto 49% under automatic route

Insurance intermediaries (brokers, TPAs, surveyors and loss assessors, etc.) – FDI permitted upto 100% under automatic route (FEMA notification still awaited)

03 Financial Service Sector

- Other financial services (regulated by Financial sector regulator) – FDI upto 100% under the Automatic route
- If financial services activity is unregulated / partly regulated / there is a doubt regarding regulatory oversight - FDI permitted upto 100% under Govt approval route, subject to minimum capitalization and other conditions decided by Govt

04 Others

- ARC and Credit information company – FDI permitted upto 100% under automatic route, subject to certain conditions
- Pension Sector – FDI permitted upto 49% under automatic route, subject to condition

Pledge of shares of an Indian company

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By Resident Promoter

Can pledge shares of borrowing company or associate company against ECB subject to the condition that:

- Period of pledge is co-terminus with the maturity of ECB;
- Statutory auditor has certified that the ECB proceeds will be for the permitted end-use only; and
- No-objection has been obtained from an AD Bank on compliance of above condition.

By Person Resident outside India

Can pledge shares of Indian Company:

- To Indian banks as surety for credit facilities / Loan to the Indian Company;
- To Overseas Bank for extending credit facility to Promoter or overseas group company of Indian Company; and
- To NBFC towards surety for credit facilities / Loan to the Indian Company

In case of invocation of pledge, transfer of equity instruments of shall be in accordance with entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge

Escrow Account

- Can be opened for acquisition of equity instrument or at the time of delisting/buyback;
- Escrow is Non-Interest Bearing Escrow Accounts to be maintained only in Indian Rupees
- Opened and maintained with the AD banks / SEBI Authorized Depository Participants;
- In case of transfer of capital instruments, an escrow arrangement may be made for an amount not more than 25% of the total consideration for a period not exceeding 18 months from the date of the transfer agreement.
- **Tenure :** Remain operational for a maximum period of 6 months only and to be closed immediately after completing the requirement or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.
- Permitted credits to the Account would relate to foreign inward remittance/ rupee consideration towards sale consideration;
- Permitted debits to the Account would relate transfer into the bank account of the beneficiary (in India or overseas) or refund / remittance to the initial remitter in case of failure/non-materialization of the transaction (including balance if any post completion of all formalities);
- The underlying transaction to be compliant with Foreign Exchange Management Act, 1999 (FEMA) / SEBI regulations.

Merger / Demerger / Amalgamation of Indian Companies – Issue of shares to non resident

Issue of shares by the new / resultant company to foreign shareholders pursuant to the approved scheme of merger / reconstruction / demerger by National Company Law Tribunal (NCLT) is permitted subject to compliance with the following conditions:

- shareholding percentage of persons resident outside India in the transferee or new company does not exceed the sectoral cap;
- where investment limit breach the sectoral caps or the attendant conditionalities, necessary approval from the Central Government has been obtained;
- transferor company or the transferee or new company shall not e in any sector prohibited for FDI;
- where any of the companies involved is listed on a recognized stock exchange in India, then the scheme of arrangement shall be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015; and
- the transferee or the new company files Form FC GPR within 30 days of allotment of shares with RBI giving full details of the shares allotted pursuant to the Scheme to non resident shareholders.

Investment Avenues for FPI’s

- Government securities/ treasury bills;
- NCDs/ bonds issued by an Indian company;
- Commercial papers issued by an Indian company;
- Units of domestic MFs or ETFs which invest less than or equal to 50 % in equity;
- Security Receipts (SRs) issued by ARC;
- Debt instruments issued by banks, eligible for inclusion in regulatory capital;
- Credit enhanced bonds;
- Listed non-convertible/ redeemable preference shares or debentures issued;
- Securitized debt instruments, including any certificate or instrument issued by a SPV set up for securitization of asset/s with banks, FI or NBFCs as originators;
- Rupee denominated bonds/ units issued by Infrastructure Debt Funds;
- Municipal Bonds

Investment Avenues for FPI’s

Limit up to which Foreign Portfolio Investor may invest in capital instruments on a recognized SE	Holding of each FPI or an investor group having meaning as defined in SEBI FPI regulations – < 10% of paid up equity on a fully diluted basis; or – < 10% of paid up value of each series of debentures or preference shares or share warrants issued by an Indian Company; and – the aggregate limit shall be the sectoral caps applicable to the Indian company (with effect from the 1st April, 2020)
If investee company seeks to cross the limit of 24%	Obtain Board/ Shareholder Resolution. However, the maximum limits as per sectoral cap / statutory ceiling would apply
If 10% is exceeded, then the total investment made by FPI will be classified as FDI – then	Reporting requirements as per Regulation 13 with respect to FDI will be applicable to the investee company
Mode of Investment by FPI	Public Offer Private Placement
Pricing in case of Public Offer	Not less than the price at which the shares are issued to residents
Pricing in case of Private Placement	Not less than the fair price worked out as per internationally accepted pricing methodology for valuation of shares on arms’ length basis
Short selling, lending or borrowing	Is allowed but subject to such conditions as may be stipulated by SEBI and / or RBI

Investment By Overseas Corporate Bodies (OCBs)

- OCBs are company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by NRI’s and includes overseas trust in which not less than 60% beneficial interest is held by NRI’s directly or indirectly but irrevocably and was eligible to undertake transactions pursuant to the general permission granted under FEMA Regulations.

- From September 16, 2003, RBI derecognized OCBs as an investor class.

- OCBs holding investment prior to September 16, 2003 can transfer share to NRI and for transfer to PROI, specific approval of the DPIIT/ RBI

- Existing holders of OCBs can renounce the shares offered on rights basis after seeking specific approval of the FIPB/SIA in case of investments under the Govt Route or specific approval of RBI in case of investments under Automatic route.

- OCBs making fresh investment post September 16, 2003 are considered as non resident entities subject to the condition that they are not adverse notice of RBI

States/UTs Attracting Highest FDI Equity Inflow upto June 2023

F. STATES/UTs ATTRACTING HIGHEST FDI EQUITY INFLOW

Rank	*Sector*	Amt. in Rupees Crores/ Amt. in USD Million	*2021-22 (April-March)*	*2022-23 (April-March)*	*2023-24 (April-June)*	*Cumulative Equity Inflow * (April, 2000-June, 2023)*	*%age out of total FDI Equity inflow (in terms of USD)*
1	MAHARASHTRA	Rupees Crores	1,14,964	1,18,422	36,634	4,43,961	
		USD Million	15,439	14,806	4,461	58,432	29%
2	KARNATAKA	Rupees Crores	1,63,795	83,628	12,046	3,47,103	
		USD Million	22,072	10,429	1,467	45,928	23%
3	GUJARAT	Rupees Crores	20,169	37,059	5,993	2,45,018	
		USD Million	2,706	4,714	730	32,631	16%
4	DELHI	Rupees Crores	60,839	60,119	15,358	2,05,451	
		USD Million	8,189	7,534	1,868	27,061	14%
5	TAMIL NADU	Rupees Crores	22,396	17,247	5,181	69,268	
		USD Million	3,003	2,169	631	9,133	5%
6	HARYANA	Rupees Crores	20,971	20,735	4,056	63,528	
		USD Million	2798	2,600	494	8,316	4%
7	TELANGANA	Rupees Crores	11,964	10,319	6,829	42,595	
		USD Million	1,607	1,303	831	5,576	3%
8	JHARKHAND	Rupees Crores	48	44	79	19,371	
		USD Million	6	6	10	2,666	1%
9	RAJASTHAN	Rupees Crores	5,277	7,218	785	16,643	
		USD Million	707	910	96	2,174	1%
10	WEST BENGAL	Rupees Crores	3,195	3,217	438	11,335	
		USD Million	428	394	53	1,482	1%

Note: i. Cumulative State-wise/UT-wise FDI equity inflow (from October, 2019 to June, 2023) are at – Annex-'C'.

ii. %age worked out in USD terms & FDI inflow received through Government Route + Automatic Route + acquisition of existing shares only.

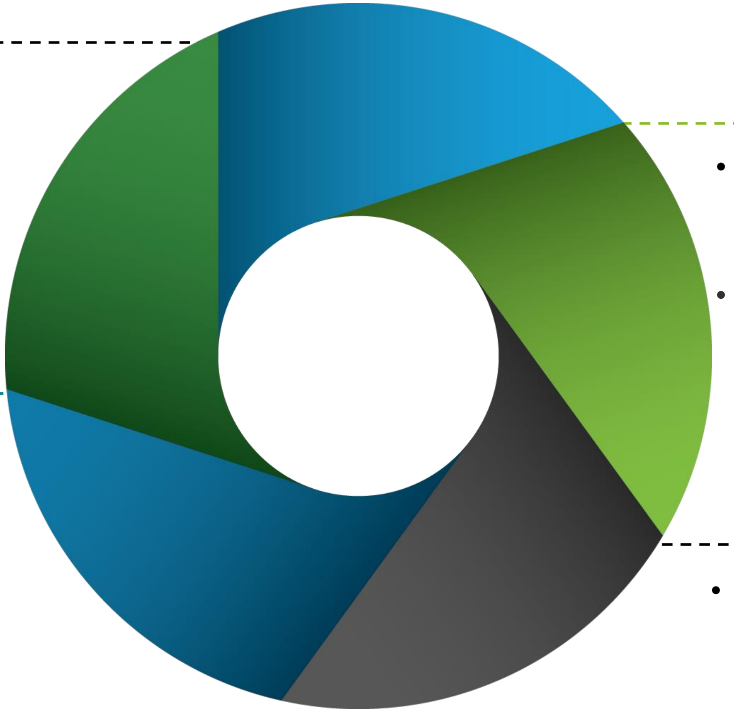
iii. State wise data is maintained w.e.f. October, 2019. Figures are provisional.

Contravention under FEMA, 1999

Late Submission Fees ('LSF') & Compounding

Late Submission Fee _ Overview

- For Contraventions in case of:
  - FDI/ ODI/ ECB



- Delays in the reporting made in respect of FDI/ ODI/ ECB in India would attract late submission fees (LSF).
- Reporting are conditionally acknowledged subject to payment of LSF

- No claim for refund in any manner for the amount already deposited as LSF

- Option to regularize reporting delays without undergoing the compounding procedure

LSF Calculation- FDI

- LSF for reporting delays shall be calculated as per the following matrix:

Type of Reporting delays	LSF amount (INR)
Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500/-
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	[7500 + (0.025% x A x n)]

- "A" is the amount involved in the delayed reporting;
- "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- Period of contravention shall be considered proportionately:

  *(approx. rounded off to next higher month /12) * amount for 1 year*

- Months shall include Sundays/Holidays.
- The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.
- In case of incomplete reporting form, the delay will continue till such time the form is received complete in all respects.
- LSF may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office concerned.
- The facility for opting LSF shall be available up to 3 years from the due date of reporting or submission.

Compounding

Power of the Reserve Bank of India to compound contravention under FEMA

Compounding of Contraventions

Regional Office of RBI

- Delay in reporting inward remittance received for issue of shares.
- Delay in filing form FC(GPR) after issue of shares.
- Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).
- Delay in issue of shares/refund of share application money beyond 60/180 days, mode of receipt of funds, etc.
- Violation of pricing guidelines for issue/transfer of shares.
- Issue of ineligible instruments.
- Issue of shares without approval of RBI/FIPB or Government, wherever required.
- Delay in submission of form FC-TRS
- Taking on record transfer of shares by investee company.
- Delay in reporting the downstream investment to Secretariat for Industrial Assistance, DPIIT.
- Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by Limited Liability Partnerships (LLPs)/ delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice-versa) in case of LLPs.
- Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the Reserve Bank of India.

FED CO Cell, New Delhi

- Contraventions relating to acquisition and transfer of immovable property outside India;
- Contraventions relating to acquisition and transfer of immovable property in India;
- Contraventions relating to establishment in India of Branch office, Liaison Office or project office;
- Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000

Note:

Kochi and Panaji Regional offices can compound the contraventions for an amount of below INR 1,00,00,000/-. The contraventions for amounts of INR 1,00,00,000/- or more under the jurisdiction of Panaji and Kochi Regional Offices shall be compounded at Mumbai RO and Thiruvananthapuram RO respectively.

Pre-requisite for Compounding Process and Indicative Factors for CA

Pre-Requisite

- No compounding for similar contravention before expiry of 3 years;
- Post facto approval from RBI/GOI/Concerned authority or unwinding of transaction is must before considering compounding;
- DOE to compounding relating to: a. Suspected Money Laundering, b. Terror financing, affecting sovereignty and integrity of the nation; and c. non-payment of compounding sum within time limit,

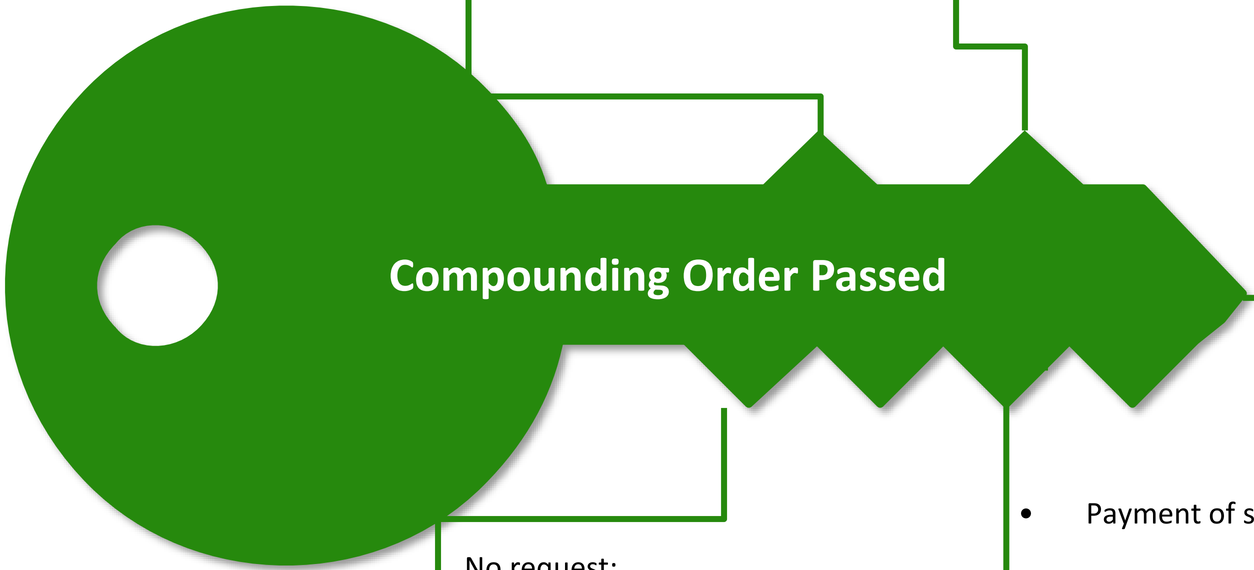
Indicative Factors

- Gain/ unfair advantage, wherever quantifiable, made as a result of the contravention;
- Loss caused to any authority/ agency/ exchequer as a result of the contravention;
- Economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- 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

Effect of Compounding Order

Time Bound completion (Within 180 days)

No suo-motto investigation



No further proceedings for contravention so compounded

No request:
- For withdrawal of Order;
- To hold that order is void;
- To review the order.

- Payment of sum of contravention (within15 days);
- Failure to make payment, application shall be returned as if no application filed and matter referred to DOE for adjudication.

Withdrawal of application before compounding order is permitted

Discussion

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