



"Compounding, Appeal and Prosecution under FEMA

CA. Deepender Kumar

Statistical Facts

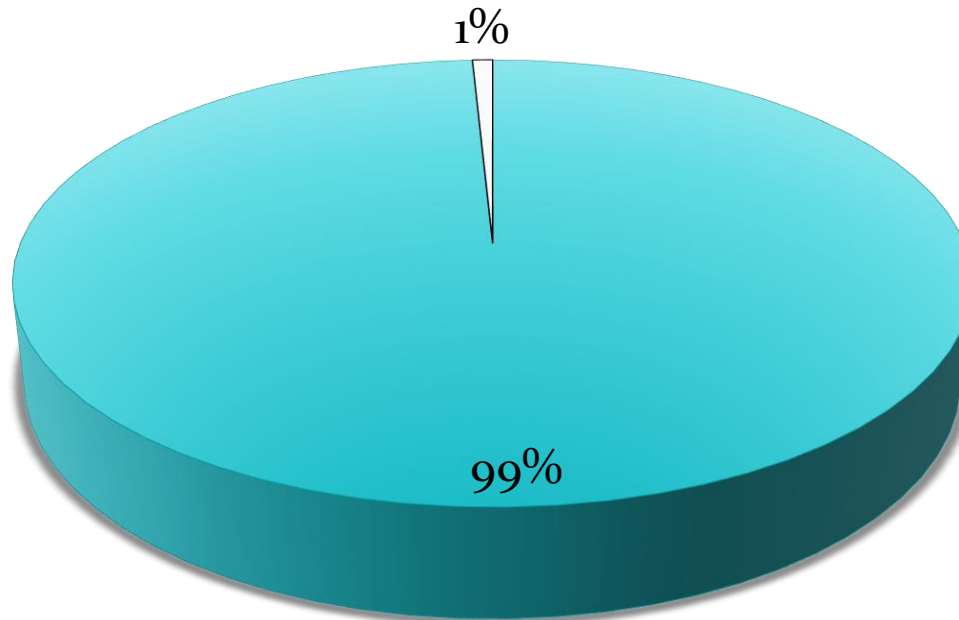
- Total compounding order passed by RBI from 1/06/2016 to till 28/10/2020

Area	No. of Order	%
Foreign Direct Investment(FDI)	1938	82.47
Overseas Direct Investment(ODI)	278	11.83
External Commercial Borrowing(ECB)	68	2.89
Establishment in India of LO/PO/BO	18	0.68
Acquisition /transfer of immovable property	15	0.55
Current Account Transactions Rules, 2000	12	0.51
Export of Goods and Services Regulations, 2000	07	0.30
Foreign currency account	05	0.21
LRS	04	0.17
Deposit Regulations, 2000	04	0.13
Realisation, Repatriation & Surrender of Foreign Exchange	03	0.13
Remittance of Assets Regulations, 2000	1	0.04
Manner of Receipt and Payment Regulations, 2000	1	0.04
Regularization of assets held abroad by a person resident in India Regulations, 2015	1	0.04
Total	2355	100

Statistical Facts

- The amount imposed under compounding has been paid in 2336 orders out of 2355 till 28.10.2020.

■ Amount Paid □ Amount not paid



Governing Law

- Section 13 of FEMA covers penalties in respect contraventions which are compounded.
- Section 14 of FEMA Enforcement of order of adjudication Authority.
- Section 15 of FEMA 1999 covers powers to compound contraventions and empowers the Compounding Authority to compound the contraventions
- Master Direction – Reporting under Foreign Exchange Management Act,1999 (Updated as on April 04, 2019)
- Master Direction- Compounding of Contraventions under FEMA, 1999 (Updated as on April 04, 2019)
- Foreign Exchange(Compounding Proceedings) Rules, 2000 (the Rules) as amended time to time, lay down the basic framework for compounding process.

Index

S.No.	Particulars	Slide No.
1	Meaning of contravention	8
2	Generally Committed Contraventions	9-10
3	Meaning of compounding of contravention	11
4	Benefits of compounding	12
5	Legal empowerment	13
6	Who can apply for compounding	14
7	When should one apply for compounding	15
8	Who can compound	16
9	Fees for seeking compounding	17
10	Pre-requisite for Compounding Process	18

S.No	Particulars	Slide No.
11	Compounding process	19-21
12	Compounding application and related documents	22-34
13	Power to compounding by designation in RBI	35
14	Power to compound to Regional Offices of RBI	36-44
15	Action is taken by the RBI on receipt of application	45
16	Type of contraventions	46
17	Contravention not be classified as technical	47
18	When a contravention is classified as Material	48
19	compounding Order(CO)	49
20	Factor- considered at time of passing CO	50
21	Calculation of compounding amount	51-55

S.No	Particulars	Slide No.
22	Penalties-Quantum of penalty (section 13)	56
23	Time limit for payment of contravention compounding amount	57
24	How does the application finally get disposed of	58
25	Appeal against the Compounding order	59
26	Cases in which Application fees will be return	60
27	Late Submission Fees (LSF)	61
28	Calculation of LSF	62
29	Late Submission Fees (LSF) v/s Compounding	63
30	Adjudication And Appeal of Foreign Exchange Management Act,1999	64-82

Meaning of contravention

- Contravention is a breach of the following:

- Provisions
- Rules
- Regulations
- Notifications
- Orders
- Directions
- Circulars

issued under the Foreign Exchange Management Act (FEMA), 1999.

Generally Committed Contraventions

- Under Overseas Direct Investment
- ❑ Non submission of form ODI after investment and UIN not allotted.
- ❑ Not permitted method of funding.
- ❑ Not obtaining share certificate within stipulated time period from the date of remittance.
- ❑ Non-submission of Annual Performance Report (APR) every year.
- ❑ Contravention of other regulations of notification No. FEMA 120/ RB-2004 dated July 7, 2004.

- Under Foreign Direct Investment
- ❑ Not reporting of inward remittance within 30 days.
- ❑ Not allotting equity instruments or not refunding the amount within 60 days.
- ❑ Not submitting form FC-GPR within 30 days from the date of allotment.
- ❑ Non submission of form FCTRS on transfer of shares.
- ❑ Issue of instruments other than permitted instruments.
- ❑ Contravention of other regulations of notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017.

Meaning of compounding of contravention

- Meaning of the word ‘compound’ or ‘compounding’ not defined in the Act or in the Rules.
- Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking Redressal.
- 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 {except Section 3(a) of the Act}.

Benefits of compounding

- It is a voluntary process
- Comforts of citizens and corporate community
- Personal hearing is not mandatory
- Minimising transaction costs
- Time –bound disposal(180 Days)
- Changing dynamics of our economy
- Simple and hassle – Free procedure
- No proceeding or further proceedings initiated or continued
- Absolutely transparent
- It saves time and energy One application – One hearing – One order for one notification.

Legal empowerment

Power to compound contravention under section 15 of FEMA 1999

- *Any contravention under section 13 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 Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorized in this behalf by the Central Government in such manner as may be prescribed.*
- *Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.*

Who can apply for compounding

- 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.

When should one apply for compounding

- 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.

Who can do compounding of Contravention

- All the cases can compounded by Reserve Bank of India, except under section 3(a) of FEMA, 1999, dealing essentially with Hawala Transaction.
- The cases falls under section 3(a) of FEMA, 1999 can compounded by the Enforcement Directorate.

Fees for seeking compounding

- 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 RBI while sending the request for compounding.

Pre-requisite for Compounding Process

- In respect of a contravention committed, a similar contravention could not be committed by a person in last three year.
- Contraventions relating to any transaction where proper approvals from the Government or any statutory authority concerned, have been required, such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities.
- In case where adjudication has been done by the DoE and an appeal has been filed under section 17 or 19 of FEMA, no contravention can be compounded in terms of Rule 11 of Foreign Exchange (Compounding Proceedings) Rules, 2000

Compounding Process

- Receipt of application
- Receipt of fees
- Examination of documents by RBI
- Calling for additional documents, if required
- Opportunity for personal hearing
- Passing compounding order
- Payment of compounding amount: and
- Issuance of certificate of payment of a compounding amount.

Compounding Process- Brief

- Application, along with fee and documents to be submitted to The Compounding Authority, Central Office or the Regional Office concerned depending on the amount / contravention.
- The application fee shall be paid by a DD in favour of the “Reserve Bank of India” and payable at Mumbai or the Regional Office location.
- The proceedings would be concluded and order issued by the Compounding Authority within 180 days from the date of receipt of the application for compounding.
- This time limit would be from the date of receipt of application for compounding to the date of issue of compounding order.

- The Compounding Authority(CA) may call for additional information, relevant to the compounding proceedings.
- Such additional information where ever called for shall be submitted within the period as specified by the CA.
- In case the contravener fails to submit the additional information called for within specified period, the application for compounding will be liable for rejection.
- **Contraventions relating to any transaction under FEMA but requiring approval or permission from the Government Department concerned or any Statutory Authority as the case may be, would not be compounded UNLESS the required approval is obtained from the authorities concerned.**

Compounding application and related documents

- A. The format of the application
- B. Details Required for contravention relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office/ Liaison Office.
- C. Undertaking that the applicant is/is not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame
- D. Mandate and details of their bank account (In case the application has to be returned for any reason, the application fees of Rs.5000/- received along with the application fees is also returned.

A. Format of application

1. Name of the applicant (in BLOCK LETTERS)
2. Full address of the applicant (including Phone and Fax No. and email id)
3. Whether the applicant is resident in India or resident outside India.
4. Name of the Adjudicating Authority before whom the case is pending
5. Nature of the contravention [according to sub-section (1) of Section 13]
6. Brief facts of the case
7. Details of fee for application of compounding
8. Any other information relevant to the case .

I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief and that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/our case.

Dated :

Name

(Signature of the Applicant)

B. Details required for compounding application

- In case of contravention relating FDI:
 - Name of the applicant
 - Date of incorporation
 - Income-tax PAN
 - Nature of activities under taken (Please give NIC code – 1987 / 2008)
 - Brief particulars about the foreign investor
 - Details of foreign inward remittances received by Applicant Company from date of incorporation till date in following format:

Table A					
S.No	Name of Remitter	Total Amount (INR)	Date of Receipt	•Reported to RBI on	Delay if any

Table B					
Name of Investor	Date of allotment of shares	No. of shares allotted	Amount for which shares allotted	•Date of reporting to RBI	Delay if any

Table C							
S. No	Name of Remitter	Total Amount (INR)	Date of Receipt	Excess share application money	Date of refund of share application money	Amount in Forex	RBI approval letter and date

•Date of reporting to RBI and not AD

Table D(Authorised Capital)					
S.No	Date	Authorised Capital	With effect from	Date of Board meeting	Date of filing with ROC

A= B+C

Please give supporting documents

Table A- Copies of FIRC with date stamp of receipt at RBI

Table B- Copies of FCGPR with date stamp of receipt at RBI

Table C – letter seeking refund/ allotment of shares- approval letter from RBI A2 form

- Copies of Balance Sheet during the period of receipt of share application money
- and allotment of shares
- Nature of contravention and reasons for the contravention

- **In case of contravention relating External Commercial Borrowing (ECB)**
- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Brief particulars about the foreign lender
- Is the applicant an eligible borrower?
- Is the lender eligible lender?
- Is the lender an equity holder?
- What is the level of his holding at the time of loan agreement?
- Details of ECB

- Amount in Foreign Currency and Indian Rupee
- Rate of interest
- Period of loan
- Repayment particulars-

Date of draw down	Amount in Foreign Currency	Amount in INR
-------------------	----------------------------	---------------

- Details of draw down
- Details of LRN Number- application and receipt
- Details of ECB 2 returns submitted; Period of return: Date of submission
- Details of Utilization of ECB in Foreign Currency and Indian Rupee
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

- **In case of contravention relating Overseas Direct Investment (ODI)**
- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Name of Overseas entity
- Date of incorporation of overseas entity
- Nature of activities under taken by overseas entity
- Nature of entity- WOS/JV

- Details of remittance sent- Date of remittance; Amount in FCY and in INR
- Details of other financial Commitment
- Details of UIN applied and received
- Date of receipt of share certificate
- Approval of other regulators if required
- Details of APRs submitted: For the period ended; date of submission
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

- **In case of contravention relating Branch/Liaison Office in India**
- Name of the applicant
- Date of incorporation
- Income-tax PAN
- Nature of activities under taken (Please give NIC code – 1987)
- Date of approval for opening of Liaison Office/ Branch Office
- Validity period of the approval
- Income and expenditure of the LO/BO
- Dates of submission of Annual activity Certificates
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted

C. Undertaking (On the letterhead of the applicant)

I/We _____ (Name of the applicant) hereby confirm/declare that I/we am/are not under any enquiry/investigation/adjudication by any agency such as Directorate of Enforcement, CBI etc as on the date of this application.

I/We further undertake to inform to the Compounding Authority / Reserve Bank of India immediately, in writing, if any enquiry/investigation/adjudication proceedings are initiated by any agency against me/us at any time hereafter but on or before the date of issuance of the compounding order in respect of the compounding application filed by me/us.'

OR

I/We _____ (Name of the applicant) hereby confirm/declare that I/we am/are or was/were under enquiry/investigation/adjudication by any agency such as Directorate of Enforcement, CBI etc. and the details are given in the Annex.

I/We further undertake and confirm that no appeal has been filed by me/us under section 17 or section 19 of FEMA, 1999.

Signature of the authorised signatory

D. Electronic Clearing Service (ECS) - Mandate Form

1. Name of the Party (Beneficiary)
2. PAN
3. Particulars of the Bank Account –
 - A. Name of the Bank
 - B. Name of the Branch - Address: Telephone No:
 - C. Type of Account - SAVINGS / CURRENT
 - D. Account No. - (as appearing on the cheque book issued by the Bank)
 - E. The 9 Digit MICR Code Number - (as appearing on the cheque book)
 - F. IFSC Code - (as appearing on the cheque book issued by the Bank)
4. Checklist for Attachments: Photocopy of PAN Card
Photocopy of a cancelled blank cheque
5. I/We hereby declare that the particulars given above are correct and complete. If the transaction is delayed or not effected at all for reasons of incomplete or incorrect information, I/We would not hold the user institution responsible.

Date:
Place:

Signature of the Authorised Signatory
(Name of the Authorised Signatory)
Official Stamp

Power to compound by designation in RBI

S.No.	Monetary Limit	Designation/post in RBI
1	Rs. Ten Lakhs or less	Assistant General Manager
2	Rs. Ten Lakhs or more but less than Rs. Forty Lakhs	Deputy General Manager
3	Rs. Forty Lakhs or more but less than Rs. Hundred Lakhs	General Manager
4	Rs. One Hundred Lakhs or more	Chief General Manager

- Provided no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

Power to compound to Regional Offices of RBI

S.No	FEMA Regulations	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 9(2) of Schedule I	Delay in filing the Annual Return in respect of the Foreign Liabilities and Assets (FLA)
4	Paragraph 8 of Schedule I	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
5	Paragraph 5 of Schedule I	Violation of pricing guidelines for issue of shares

6	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.
7	Paragraph 2 or 3 of Schedule I	Issue of shares without approval of RBI or FIPB respectively, wherever required.
8	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.
9	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.
10	Regulation 4	Taking on record transfer of shares by investee company, in the absence of certified from FC-TRS.

11	Regulation 14(6)(ii)(a)	Delay in reporting the downstream investment made by an Indian entity or an investment vehicle in another Indian entity to Secretariat for Industrial Assistance, DIPP..
12	Paragraphs 7(1) (for the period upto 02.03.2017) and 6(1) (for the period 03.03.2017 to 06.11.2017) of Schedule 9	Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by 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
13	Regulation 10(A)(a)	Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the RBI.

Notification No. FEMA 20(R)/2017-RB dated 07/11/17

- The compounding powers have been delegated to the Regional Offices of the RBI.

S.No.	FEMA Regulations	Brief Description of Contravention
1	Regulation 13.1(1)	Delay in reporting inward remittance received for issue of shares.
2	Regulation 13.1(2)	Delay in filing form FC(GPR) after issue of shares.
3	Regulation 13.1(3)	Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).
4	Paragraph 2 of Schedule I	Delay in issue of shares/refund of share application money beyond 60 days, mode of receipt of funds, etc.

5	Regulation 11	Violation of pricing guidelines for issue/transfer of shares.
6	Regulation 2(v) read with Regulation 5	Issue of ineligible instruments
7	Regulation 16.B	Issue of shares without approval of RBI or Government, wherever required.
8	Regulation 13.1(4)	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.
9	Regulation 4	Receiving investment in India from non-resident or taking on record transfer of shares by investee company.

10	Regulation 13.1(11)	Delay in reporting the downstream investment made by an Indian entity or an investment vehicle in another Indian entity (indirect foreign investment), to Secretariat for Industrial Assistance, DIPP.
11	Regulations 13.1(7) and 13.1(8)	Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by LLPs/ delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a nonresident (or vice-versa) in case of LLPs.
12	Regulation 10(5)	Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of RBI.

Power to FED, CO Cell, RBI, 6, Sansad Marg, New Delhi

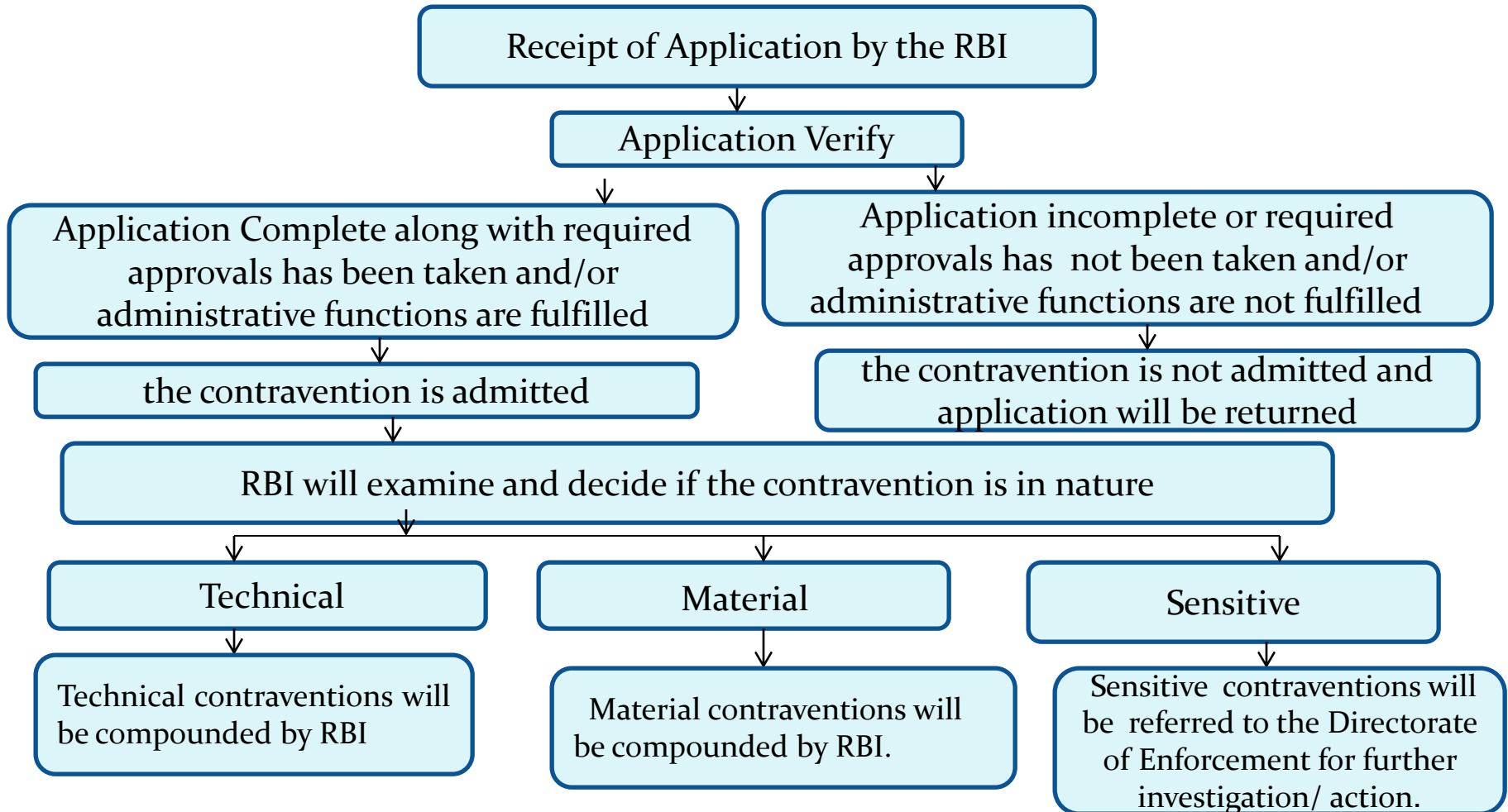
- Foreign Exchange Department, Central Office Cell are now authorized to compound the contraventions as under-

S.No.	FEMA Regulations	Brief Description of Contravention
1	<u>FEMA 7/2000-RB, dated 3-5-2000</u>	Contraventions relating to acquisition and transfer of immovable property outside India
2	<u>FEMA 21/2000-RB, dated 3-5-2000</u>	Contraventions relating to acquisition and transfer of immovable property in India
3	<u>FEMA 22/2000-RB, dated 3-5-2000</u>	Contraventions relating to establishment in India of Branch office ,Liaison Office or project office
4	<u>FEMA 5/2000-RB, dated 3-5-2000</u>	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 1,00,00,000/-.
- The contraventions of Rupees 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 RO and Thiruvananthapuram RO respectively.

- 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.**

Action is taken by the RBI on receipt of application



Note:- Once the Compounding Application is filed by applicant Suo-Moto, admitting the contravention, the same will not be considered as “technical” or “minor” in nature.

Type of contraventions

Type of contravention would be decided by the RBI on the merits of the case.

- Sensitive Contraventions those contravention having serious issue like suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation.
- Material Contraventions Material contraventions are those which are required to be compounded for which the necessary compounding procedure has to be followed.
- Technical Contraventions Whenever a contravention is identified by the RBI 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 decide it technical contravention.

Contravention not be classified as technical

- 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.

When a contravention is classified as Material

When contravention is material than concern authorities call for a personal hearing.

person opts to attend the personal hearing(applicant authorise another person to attend the personal hearing)

The application would be disposed of on the basis of personal hearing and documents submitted

person opts not to attend the personal hearing.

The application would be disposed of on the basis of documents submitted.

- Appearing for personal hearing is not mandatory.
- The personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order.

Compounding Order(CO)

- The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened.
- The Compounding Authority shall pass an order after affording the contravener an opportunity of being heard.
- The sum payable for compounding the contravention is indicated in the compounding order.
- The contravention is compounded by payment of the amount imposed.
- 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
--------------	--------------------------	-----------------------	----------------------	-----------------------

Factor- considered at time of passing CO

- The amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- the amount of 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;
- Submissions made during the personal hearing; and
- any other factor as considered relevant and appropriate

Calculation of compounding amount

- The amount to be imposed on compounding is calculated as below:

Type of contravention	Formula
<p><u>1] Reporting Contraventions</u></p> <p>A) FEMA 20 Para 9(1)(A), 9(1)(B), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4)</p> <p>B) FEMA 3 Non submission of ECB statements</p> <p>C) FEMA 120 Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern.</p> <p>D) Any other reporting contraventions (except those in Item 2 below)</p>	<p>Fixed amount : Rs10000/- (applied once for each contravention in a compounding application) + Variable amount as under:</p> <p>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</p>

Type of contravention	Formula
<p>E) Reporting contraventions by LO/BO/PO</p>	<p>As above, subject to ceiling of Rs.2 lacs. In case of Project Office, the amount of contravention shall be @10% of total project cost.</p>
<p>2] AAC/ APR/ Share certificate delays 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))</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>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>	<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 PO the amount of contravention shall be deemed to be 10% of the cost of project</p>

Type of contravention	Formula
<p><u>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</u></p>	<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>
<p><u>5] Issue of Corporate Guarantees</u> 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: 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.</p>

- ***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:
 - 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
 - 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
 - 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
- 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 chart.

Penalties-Quantum of penalty (section 13)

- Compounding may be subject to a penalty up to **thrice** the sum involved in such contravention where such amount is quantifiable,

or

- up to Rs 2 Lakhs where the amount is not quantifiable.

and

- where such contravention is a continuing one, further penalty which may extend to Rs 5000/-for every day after the first day during which the contravention continues.

Time limit for payment of contravention compounding amount

- The contravention compounding amount should be paid within 15 days from the date of the order.
- In case of non-payment of the amount indicated in the compounding order within 15 days from the date of the order, it will be treated as if the applicant has not made any compounding application to the RBI.
- Such cases will be referred to the Directorate of Enforcement for necessary action.

How does the application finally get disposed of?

- 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 adjudication by DoE where contravention has been compounded and compounding amount has been paid within 15 days from date of compounding order.
- 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.

Appeal against the Compounding Order

- As compounding is based on voluntary admissions and disclosures, there is no provision under the Compounding Rules for an appeal against the compounding order passed by Compounding Authority.
- There is no provision under the Compounding Rules under which applicant can a request to Compounding Authority for reduction in compounding amount or extend the period for payment of the compounding amount imposed.

Cases in which Application fees will be return

- In case the application has to be returned where required approvals are not obtained from the authorities concerned and/or administrative compliance are not fulfilled, 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.

Late Submission Fees (LSF)

- The RBI vide notification dated 7th November 2017, has laid down a simple procedure for payment of late fees to regularise the instances of delay in reporting requirement Under FDI.
 - The payment of LSF is an option for regularizing reporting delays without undergoing compounding procedure.
 - *Minimum applicable LSF shall be INR 100.*
 - The % of LSF will be doubled every twelve months.
- The RBI vide Circular No. 17 dated January 16, 2019, has introduce LSF to regularize the delay in compliance of ECB guidelines.

Calculation of LSF

- For ECB Reporting

Sr. No	Type of Return/Form	Period of delay	LSF (INR)
1	Form ECB 2	Up to 30 calendar days from due date of submission	5,000
2	Form ECB 2/Form ECB	Up to 3 years from due date of submission/date of drawdown	50,000 per year
3	Form ECB 2/Form ECB	Beyond 3 years from due date of submission/date of drawdown	100,000 per year

- For FDI reporting

S. No	Amount involved in reporting	LSF as % of amount involved	Maximum amount of LSF
1	Up to 10 million	0.05 %	Lower of: Rs. 1 million or 300% of the amount involved
2	More than 10 million	0.15%	Lower of: Rs.10 million or 300% of the amount involved

Late Submission Fees (LSF) v/s Compounding

Sr. No	<u>LSF</u>	<u>Compounding</u>
1	It is only procedural compliances	It is covered procedural and administrative both
2	It is limited	It is wide
3	It is more costly as compare to compounding	It is not costly
4	It is easy and quick Process	It is lengthy and time consuming process

FEM (ADJUDICATION PROCEEDINGS AND APPEAL) RULES, 2000

Power to Make Rules and their Enforceability :

- **Who made Rules:** In exercise of the powers conferred by section 46 read with sub-section (1) of section 16, sub-section (3) of section 17 and sub-section (2) of section 19 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (“The Rules”).
- **Purpose:** Imposing penalty and appeals under Chapter V of the Foreign Exchange Management Act, 1999 (“The Act”).
- This rules came in to force with effect from 01st day of June 2000

Chapter V (Adjudication And Appeal) of Foreign Exchange Management Act,1999

S.No.	Section No.	Description
1.	16	Appointment of Adjudicating Authority.
2.	17	Appeal to Special Director (Appeals)
3.	18	Appellate Tribunal.
4.	19	Appeal to Appellate Tribunal.
5.	20	Omitted
6.	21	Qualifications for appointment of Special Director (Appeals).
7.	22	Omitted
8.	23	Terms and conditions of service of Special Director (Appeals).
9.	24	Omitted
10.	25	Omitted
11.	26	Omitted
12.	27	Staff of Special Director (Appeals).

S.No.	Section No.	Description
13.	28	Procedure and Powers of Appellate Tribunal and Special Director (Appeals)
14.	29	Omitted
15.	30	Omitted
16.	31	Omitted
17.	32	Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers.
18.	33	Officers and employees, etc. to be public servant.
19.	34	Civil court not to have jurisdiction.
20.	35	Appeal to High Court.

Rules

S. No.	Rule No.	Description
1.	1	Short title and commencement
2.	2	Definitions
3.	3	Appointment of Adjudicating Authority
4.	4	Holding of inquiry
5.	5	Appeal to Special Director (Appeals)
6.	6	Procedure before Special Director (Appeals)
7.	7	Contents of the Order in appeal
8.	8	Representation of party
9.	9	Service of notices, requisitions or orders
10.	10	Appeal to the Appellate Tribunal
11.	11	Procedure before Appellate Tribunal
12.	12	Contents of the Order in appeal
13	13	Representation of party
14	14	Service of notices, requisitions or orders

Rule 2: Definitions

- 2. In these rules, unless the context otherwise requires,—
 - (a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);
 - (b) "Adjudicating Authority" means an officer appointed by the Central Government under sub-section (1) of section 16 of the Act;
 - (c) "applicant" means an aggrieved person who makes an appeal before Special Director (Appeals) or Appellate Tribunal, as the case may be;
 - (d) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18 of the Act
 - (e) "Form" means form appended to these rules;
 - (f) "Section" means a section of the Act;
 - (g) "Special Director (Appeals)" means Special Director (Appeals) appointed by the Central Government under sub-section (1) of section 17 of the Act;
 - (h) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.

Rule 3 :Appointment of Adjudicating Authority

- 3. The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding inquiry under the provisions of Chapter IV of the Act.

Rule 4 : Holding of inquiry

- (1) For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.
- (2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.
- (3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.
- (4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, directions or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

- 5) The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).
- 6) 6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject-matter of the inquiry.
- 7) (7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.
- 8) (8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act.

Rule 5 : Appeal to Special Director (Appeals)

Form of appeal –

1. Every appeal presented to the Special Director (Appeals) under section 17 of the Act shall be in the Form I signed by the applicant. The appeal shall be filed in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees five thousand in the form of cash or demand draft payable in favour of the Special Director (Appeals).
2. The appeal shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively; and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant.
3. Where the appeal is presented after the expiry of the period of forty five days referred to in sub-section (3) of section 17, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty five days.
4. Any notice required to be served on the applicant shall be served on him in the manner specified in rule 9 at the address for service specified in the appeal.

Rule 6: Procedure before Special Director (Appeals)

1. On receipt of an appeal under rule 5, the Special Director (Appeals) shall send a copy of the appeal, together with a copy of the order appealed against, to the Director of Enforcement.
2. The Special Director (Appeals) shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.
3. On the date fixed for hearing of the appeal or any other day to which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.
4. Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned, the applicant or the presenting officer fail to appear when the appeal is called for hearing, the Special Director (Appeals) may decide the appeal on the merits of the case ²[within one hundred and eighty days from the date of such appeal].

Rule 7: Contents of the Order in appeal

1. The order of Special Director (Appeals) shall be in writing and shall state briefly the grounds for the decision.
2. The order referred to in sub-rule (1) shall be signed by the Special Director (Appeals) hearing the appeal

Rule 9: Service of notices, requisitions or orders

9. A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,
- (a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person,
 - (b) by sending the notice or requisition or order to him by registered post with acknowledgement due to the address of his place of residence or his last known place or residence or the place where he carried on, or last carried on, business or personally works or last worked for gain, or
 - (c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or
 - (d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation of area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

Rule 10: Appeal to the Appellate Tribunal.

10. *Form of appeal* –

- 1) Every appeal presented to the Appellate Tribunal under section 19 of the Act shall be in the Form II signed by the applicant. The appeal shall be sent in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of rupees ten thousand in the form of cash or demand draft payable in favour of the Registrar, Appellate Tribunal for Foreign Exchange, New Delhi :

Provided that the applicant shall deposit the amount of penalty imposed by the Adjudicating Authority or the Special Director (Appeals) as the case may be, to such authority as may be notified under the first proviso to section 19 of the Act :

Provided further that where in a particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

- 2) The appeal shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively; and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant; and the sum imposed by way of penalty under section 13 and the amount of fee prescribed in sub-rule (1) has been deposited or not.

- 2) Where the appeal is presented after the expiry of the period of forty five days referred to in sub-section (2) of section 19, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty five days.

- 2) Any notice required to be served on the applicant shall be served on him in the manner prescribed in rule 14 at the address for service specified in the appeal.

Rule 11: Procedure before Appellate Tribunal.

1. On receipt of an appeal under rule 10, the Appellate Tribunal shall send a copy of the appeal, together with a copy of the order appealed against, to the Director of Enforcement.
2. The Appellate Tribunal shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.
3. On the date fixed for hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.
4. Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned, the applicant or the presenting officer fail to appear when the appeal is called on for hearing, the Appellate Tribunal may decide the appeal on the merits of the case.

Rule 12: Contents of the Order in appeal

1. The order of Appellate Tribunal shall be in writing and shall state briefly the grounds for the decision.
2. The order referred to in sub-rule (1) shall be signed by the Chairman or Member of the Appellate Tribunal hearing the appeal.

Rule 13: Representation of party

13. Any applicant who has filed an appeal before the Appellate Tribunal under section 19 of the Act may appoint a legal practitioner or a chartered accountant to appear and plead and act on his behalf before the Special Director (Appeals) under the Act.

Rule 14: Service of notices, requisitions or orders.

14. A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,
- a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person;
 - b) by sending the notice or requisition or order to him by registered post with acknowledgement due to the address of his place of residence or his last known place or residence or the place where he carried on, or last carried on, business or personally works or last worked for gain; or
 - c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

- d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation of area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

THANKYOU

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

Mob No: 9910099584
deepanilassociates@gmail.com
www.deepanilassociates.com