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Regulatory

September 19, 2024

Foreign Exchange Management (Compounding Proceedings) Rules, 2024

Snapshot

The Foreign Exchange (Compounding Proceedings) Rules, 2000 have been replaced by Foreign Exchange (Compounding Proceedings) Rules, 2024 that introduce several key changes. These include revised thresholds for handling contraventions, the option to pay application fees and compounding amounts through digital payment methods, and modifications to the application form. These updates aim to streamline the process and make it more efficient for individuals and entities seeking to resolve foreign exchange contraventions.

Background

In pursuance to the announcement made in the 2024-25 Union Budget to further simplify rules and regulations pertaining to foreign exchange transactions, including compounding, the Department of Economic Affairs (DEA), Ministry of Finance notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 ('Amended Rules') on September 12, 2024.

The notification of the Compounding Rules, 2024 is to give a fresh impetus to the mantra of "ease of doing business" and to further streamline, rationalize and facilitate foreign exchange transactions in the right manner and direction, which over the years have increased exponentially. Not only have the nature and quantum of transactions in foreign currency increased manifold but the types and value of contraventions observed with the opening of the Indian economy have also seen a manifold increase. Government of India thus felt a dire need to review the extant provisions so as to cater to the new reality, hence the extant Rules were comprehensively reviewed in consultation with the Reserve Bank of India ('RBI'). The emphasis has been to expedite and streamline the process of compounding so as to focus on simplifying and rationalizing the provisions to eliminate ambiguity and bring more clarity to the process.

The Regulations and the Master Direction on the Compounding Proceedings are awaited which will provide more clarity and explanation on the procedure and detailed formats of applications for various compounding offences along with the computation matrix for varied contraventions, which provides a guidance of the penalty expected to be levied by the Compounding Authority. The jurisdictions (i.e.,) the various Regional Offices of the Reserve Bank of India / Central Office of Reserve Bank of India which will undertake the respective compounding cases too is yet to be notified.

Summary of Key Changes

The key amendments in the Amended Rules notified *vide* Notification No. G.S.R. 566 (E) dated September 12, 2024 *vis a vis* the erstwhile Foreign Exchange (Compounding Proceedings) Rules, 2000 ('Erstwhile Rules') notified *vide* Notification No. G.S.R. 383(E) dated May 3, 2000 read along with Master Direction on Compounding of Contraventions under FEMA, 1999 *vide* FED Master Direction No.4/2015-16 RBI/FED/2015-16/1 dated January 1, 2016, as amended from time to time have been tabulated below:

Particulars	Erstwhile Rules	Amended Rules	KCM Comments
<p>Sum involved in contravention that can be compounded by officer of RBI</p> <p><i>[Rule 4 (1) – Erstwhile Rules and Amended Rules]</i></p>	<ul style="list-style-type: none"> Less than or equal to INR 10 Lakhs - Assistant General Manager of the RBI More than INR 10 Lakhs but less than INR 40 lakhs - Deputy General Manager of the RBI More than or equal to INR 40 lakhs but less than INR 100 lakhs - General Manager of the RBI More than or equal to INR 100 lakhs – Chief General Manager of the RBI 	<ul style="list-style-type: none"> Less than or equal to INR 60 Lakhs – not below the rank of Assistant General Manager of the RBI Less than or equal to INR 2.5 crores – not below the rank of Deputy General Manager of the RBI Less than or equal to INR 5 crores – not below the rank of General Manager of the RBI More than INR 5 crores – not below the rank of Chief General Manager of the RBI 	<p>The RBI authorities, as specified, are empowered to compound contraventions, except those related to dealing in or transferring foreign exchange or foreign securities to unauthorized persons.</p> <p>Under the Amended Rules, the contravention amount limits have been revised, allowing for higher thresholds. Previously, the category of officer assigned to compound contraventions was fixed for each scale of contravention. However, the Amended Rules introduce flexibility in the jurisdiction of the compounding authority by specifying a minimum designation for the officer handling the compounding. This allows any officer of a higher rank to also compound the contravention.</p>
<p>Applicable fee for compounding payable to RBI authorities</p> <p><i>[Rule 4 (4) – Erstwhile Rules and Amended Rules]</i></p>	<p>INR 5000 through demand draft</p>	<p>INR 10,000 + GST through demand draft or NEFT or other permissible electronic mode of payment</p>	<p>The compounding fees have been increased from INR 5,000 to INR 10,000, and digital payment options will now be accepted for the same.</p>

Particulars	Erstwhile Rules	Amended Rules	KCM Comments
<p>Sum involved in contravention that can be compounded by Directorate of Enforcement ('ED')</p> <p><i>[Rule 5 (1) – Erstwhile Rules and Amended Rules]</i></p>	<ul style="list-style-type: none"> Less than or equal to INR 5 Lakhs – Deputy Director of ED More than INR 5 Lakhs but less than INR 10 lakhs – Additional Director of ED More than or equal to INR 10 Lakhs but less than INR 50 lakhs – Special Director of ED More than or equal to INR 50 Lakhs but less than INR 1 crore – Special Director along with the Deputy Legal Adviser of ED More than or equal to INR 1 crore – Director of Enforcement along with Special Director of ED 		<p>The ED authorities, as specified, are authorized to compound contraventions related to dealing in or transferring foreign exchange or foreign securities to unauthorized persons.</p> <p>No change / enhancement in limit of sum involved in contraventions that can be compounded by the various levels of officers at the Directorate of Enforcement.</p>
<p>Applicable fee for compounding payable to ED authorities</p> <p><i>[Rule 5 (4) – Erstwhile Rules and Amended Rules]</i></p>	INR 5000 through demand draft	INR 10,000 + GST through demand draft or NEFT or other permissible electronic mode of payment	The compounding fees have been increased from INR 5,000 to INR 10,000, and digital payment options will now be accepted for the same.
<p>Payment of amount compounded</p> <p><i>[Rule 9 – Erstwhile Rules Rule 10 – Amended Rules]</i></p>	Only through DD	Through DD or NEFT or other permissible electronic mode of payment	Under the Amended Rules, digital payment options will now be accepted for compounded amount.
<p>Discontinuation of adjudication</p> <p><i>[Rule 6 – Erstwhile Rules and Amended Rules]</i></p>	Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.	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.	The provisions have been elaborated to ensure that no further inquiry / adjudication will be undertaken for contraventions under section 16 of the Foreign Exchange Management Act, 1999 ('the Act') which is a relief for the applicant.

Particulars	Erstwhile Rules	Amended Rules	KCM Comments
<p>Contraventions not to be compounded</p> <p><i>[Rule 11 – Erstwhile Rules]</i></p> <p><i>Rule 9 – Amended Rules]</i></p>	<p>No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.</p>	<p>No contravention shall be compounded:</p> <ul style="list-style-type: none"> • Where the provisions of section 37A of the Act are applicable • Where the Adjudicating Authority has already passed an order imposing penalty under section 13 of the Act • Where the compounding authority is of the view that the contravention involved requires further investigation by the ED to ascertain the amount of contravention under section 13 of the Act 	<p>Section 37A of the Act, introduced by the Finance Act, 2015, grants the ED the authority to seize assets in India if the Authorized Officer suspects that foreign exchange, securities, or property held abroad are in violation of the Act. Under the Amended Rules, contraventions of this section cannot be compounded.</p> <p>Section 13 of the Act provides for penalties. Therefore, if a penalty order has been issued, the compounding provisions will not apply under the Amended Rules. Additionally, the ED has been given the discretion to determine if further investigation is necessary to ascertain the penalty amount; in such cases, the compounding provisions will not apply.</p> <p>Previously, under the Erstwhile Rules, compounding provisions did not apply if an appeal was filed with the Special Director (Appeals) under Section 17 or the Appellate Tribunal under Section 19 of the Act. With the new Amended Rules, which no longer allow for compounding relief once a penalty order has been passed, the provision excluding appeals from compounding relief is no longer required and has been removed.</p>
<p>Continuation of Pending Proceedings</p> <p><i>[Rule 14 – Amended Rules]</i></p>	<p>-</p>	<p>Any compounding application pending before the compounding authority, on the date of commencement of these rules, shall be governed by the provisions of the Foreign Exchange (Compounding Proceedings) Rules, 2000 superseded herein.</p>	<p>The pending applications shall continue as per the Erstwhile Rules.</p>

Particulars	Erstwhile Rules	Amended Rules	KCM Comments
<p>Procedure for compounding and update in application form</p> <p><i>[Rule 8 – Erstwhile Rules and Amended Rules]</i></p>	<p>The Compounding authority (Reserve Bank of India / Directorate of Enforcement) shall pass the compounding order not later than 180 days from the date of application.</p>	<p>The Compounding authority shall pass the compounding order not later than 180 days from the date of receipt of application.</p> <p>Prescribed Form notified in the Rules for Compounding application which will form part of the Compounding Memorandum gives a brief overview of the specific provisions under which the contravention / (s) are being compounded, along with Declaration and other relevant details.</p> <p>The following are the additional details required in the new form as compared to the existing one:</p> <ul style="list-style-type: none"> • Specific details of the contravention (for e.g., details of contravention of the Act, Rules, Regulations, Notifications, Order, Condition etc.) • Details of previously passed compounding order if any (for e.g., date of application, contravention, date of compounding order etc.) • Phone number, Email ID, PAN, ECS mandate details, GST number • Details if any notice has been issued under Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 	<p>The application form has been updated to include new, additional details, making it more comprehensive and thorough. The form has been rationalized to include certain confirmation / declaration which was provided separately in the erstwhile Compounding process. The Master Direction may provide more clarity on the other forms required to be submitted at the time of compounding application.</p>

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For further analysis and discussion, you may please reach out to us.

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