

ANALYSIS OF FOREIGN EXCHANGE (COMPOUNDING PROCEEDINGS) RULES, 2024

I. INTRODUCTION AND BACKGROUND:

The Ministry of Finance (Department of Economic Affairs) vide notification G.S.R. 566(E) dated 12 September 2024, issued a new set of rules, to be known as Foreign Exchange (Compounding Proceedings) Rules, 2024 (hereinafter referred to as “**said Rules**”) governing compounding proceedings under the Foreign Exchange Management Act, 1999 (hereinafter referred to as the “**said Act**”) superseding and replacing the earlier Foreign Exchange (Compounding Proceedings) Rules, 2000 (hereinafter referred to as the “**erstwhile Rules**”) .

The said Rules aim to streamline the process of compounding violations under the said Act by introducing stricter guidelines for serious contraventions. The emphasis has been on enabling provisions to expedite and streamline the processing of compounding applications, introduction of digital payment options for application fees and compounding amounts, and a focus on simplification and rationalization of the provisions to eliminate ambiguity and clarify the process.

II. APPLICABILITY:

The said Rules are applicable to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom the said Act applies.

III. COMMENCEMENT:

The amended/added provisions as contained in the said Rules shall come into effect from September 12, 2024. Any compounding application pending before the compounding authority, on the date of commencement of the said Rules, shall be governed by the provisions of the Foreign Exchange (Compounding Proceedings) Rules, 2000 superseded by the said Rules.

IV. KEY AMENDMENTS/ADDITIONS

The highlights of the said Rules, along with the key amendments, are as follows:

Sr.No.	Provision	Provision of Erstwhile Rules	Amended Provision of the said Rules
a.	Definitions	<p>Rule 2(c)</p> <p>'applicant' means a person who makes an application under section 15 (1) of the Act to the compounding authority.</p> <p>Rule 2 (d)</p> <p>'Compounding Order' means an order issued under sub-section (1) of Section 15 of the Act.</p>	<p>Rule 2(c)</p> <p>“applicant” means a person who makes an application under sub-rule (4) of rule 4 or, as the case may be, sub rule (4) of rule 5 to the compounding authority.</p> <p>Rule 2 (d)</p> <p>“compounding order” means an order issued for compounding a contravention as specified in sub-section (1) of section 15 of the Act.</p>

b.	Compounding authority	<p>Rule 3</p> <p>(1) 'Compounding Authority' means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely;</p> <p>(a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA).</p> <p>(b) an officer of the Reserve Bank of India not below the rank of the Assistant General Manager.</p>	<p>Rule 3</p> <p>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:-</p> <p>(a) an officer of the Directorate of Enforcement not below the rank of Deputy Director or Deputy Legal Adviser; or</p> <p>(b) an officer of the Reserve Bank not below the rank of the Assistant General Manager.</p>
c.	Compounding authorities of Reserve Bank to compound various contraventions	<p>Rule 4:</p> <p>(1) If any Person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of the Act.</p> <p>(a) in case where the sum involved in such contravention is ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;</p> <p>(b) in case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;</p> <p>(c) in case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees one hundred lakhs by the General Manager of Reserve Bank of India;</p> <p>(d) in case the sum involved in such contravention is rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India; Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.</p> <p>(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.</p> <p>Explanation: For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.</p> <p>(3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of</p>	<p>Rule 4:</p> <p>(1) If any person contravenes any provision of the Act, other than a contravention of clause (a) of section 3 thereof, -</p> <p>(a) in a case, where the sum involved in such contravention does not exceed sixty lakh rupees, an officer not below the rank of the Assistant General Manager of the Reserve Bank;</p> <p>(b) in a case, where the sum involved in such contravention does not exceed two and a half crore rupees, an officer not below the rank of the Deputy General Manager of the Reserve Bank;</p> <p>(c) in a case, where the sum involved in such contravention does not exceed five crore rupees, an officer not below the rank of the General Manager of the Reserve Bank; and</p> <p>(d) in a case, where the sum involved in such contravention is above five crore rupees, an officer not below the rank of the Chief General Manager of the Reserve Bank, may compound such contravention in accordance with the provisions of these rules.</p> <p>(2) Nothing contained in sub-rule (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.</p> <p>Explanation. - For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.</p> <p>(3) Every officer of the Reserve Bank specified under sub-rule (1) shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank.</p> <p>(4) 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 ten thousand rupees plus goods and services tax, as</p>

		<p>the Reserve Bank of India.</p> <p>(4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange—Control—Department, Central Office, Mumbai along with a fee of Rs. 5000/- by Demand Draft in favour of compounding authority.</p>	<p>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.</p>
d.	Increased Application Fees and Mode of Payment for compounding through Directorate of Enforcement	<p>Rule 5(4):</p> <p>Every application for compounding any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000/- by DD in favour of the Compounding Authority.</p>	<p>Rule 5(4):</p> <p>Every application for compounding any contravention under this rule shall be made in the prescribed Form to the Director, Directorate of Enforcement, New Delhi along with a fee of ten thousand rupees plus goods and services tax, 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.</p>
e.	Discontinuation of adjudication	<p>Rule 6:</p> <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.</p>	<p>Rule 6:</p> <p>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.</p>

<p>f.</p>	<p>Contraventions not to be compounded in certain cases</p>	<p>Proviso to Rule 4(1) & Rule 5(1):</p> <p>Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.</p> <p>Rule 8(2):</p> <p>Provided that with respect to any proceeding initiated under rule 4, if the Enforcement Directorate is of the view that the said proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting 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.</p>	<p>Rule 9:</p> <p>No contravention shall be compounded, -</p> <p>(a) where the amount involved is not quantifiable; or</p> <p>(b) where the provisions of section 37A of the Act are applicable; or</p> <p>(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</p> <p>(d) where the Adjudicating Authority has already passed an order imposing penalty under section 13 of the Act; or</p> <p>(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.</p>
<p>g.</p>	<p>Payment amount compounded of</p>	<p>Rule 9:</p> <p>The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, shall be paid by demand draft in favour of the Compounding Authority within fifteen days from the date of the order of compounding of such contravention.</p>	<p>Rule 10:</p> <p>The sum for which the contravention is compounded as specified in the compounding order under sub-rule (2) of rule 8, shall be paid by demand draft or National Electronic Fund Transfer (NEFT), or Real Time Gross Settlement (RTGS), or such other permissible electronic or online modes of payment, in favour of the compounding authority within fifteen days from the date of the compounding order for such contravention.</p>

V. CONCLUSION:

The Ministry of Finance while keeping in view the rampant technological advancements have brought some significant and necessary changes under the said Rules including digital mode of payment of application fees and compounding amount through National Electronic Fund Transfer (NEFT), or other permissible electronic or online modes of payment and an option of online application filing. The said Rules signify commitment of the Government towards promoting 'ease of investment' for investors and 'ease of doing business' for businesses. The monetary limit of sum involved in compounding of offences done by officers of 'Reserve Bank' investigating those offences, has been enhanced which would give speedy redressal to the proceedings at Reserve Bank level. Though there are explicit offences which would not be compounded but the cooling off period of three years and concept of 'similar contravention' would need more elaboration as the same may be subject to interpretation. Even the online application filing is optional and not made mandatory and the filing fees have been increased which are additional burden on the parties. In our view, in addition to above mentioned changes, the timeline of 180 days for passing the compounding order should have been shortened to speed up the process.

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