

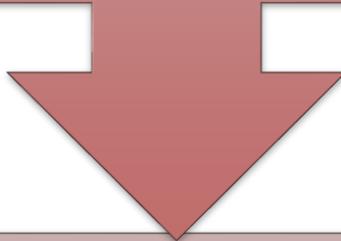
Analysis of the New Compounding Regime under FEMA

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Compounding Proceedings Rules and Directions

Foreign Exchange (Compounding Proceedings) Rules, 2024, dated 12th September 2024, under Notification No. G.S.R 566 (E) issued by the Ministry of Finance

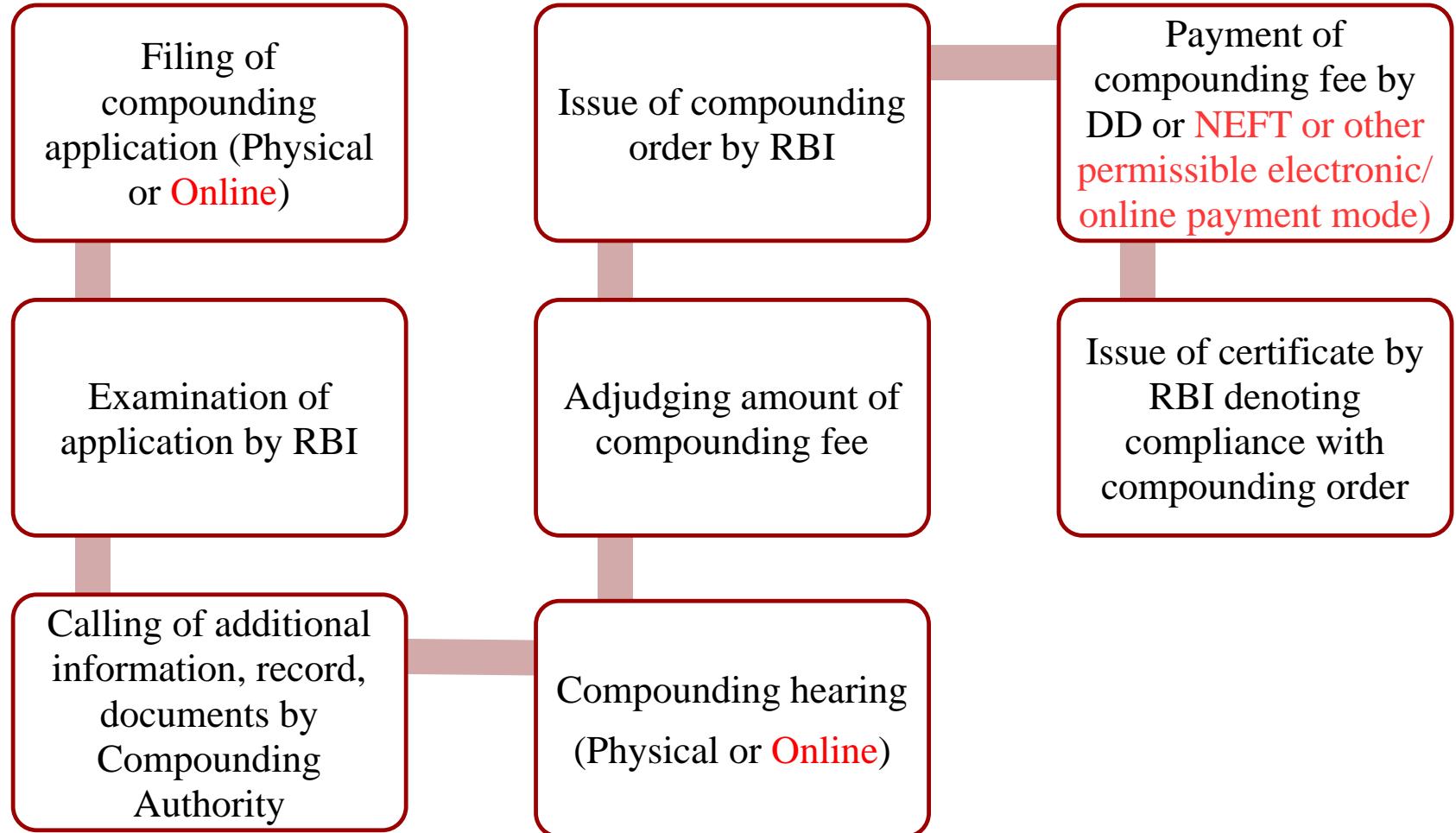


Directions and FAQs - Compounding of Contraventions dated 1st October 2024 issued by RBI

Key Changes in Rules & Directions



RBI Compounding Procedure



Power to compound by RBI

- ❖ Contravention of any provisions of FEMA Act, 1999 except Sec 3(a) & 37A of the Act.
- ❖ In cases where the sum involved in such contravention is:

Designation	Monetary Limit	
	Erstwhile Foreign Exchange (Compounding Proceeding) Rules, 2000	New Foreign Exchange (Compounding Proceeding) Rules, 2024
Assistant General Manager ('AGM') of RBI	Up to Rs 10 Lakh	Up to Rs. 60 Lakh
Deputy General Manager ('DGM') of RBI	Up to Rs 40 Lakh	Up to Rs. 2.5 Crore
General Manager ('GM') of RBI	Up to Rs 1 Crore	Up to Rs. 5 Crore
Chief General Manager ('CGM') of RBI	Above Rs 1 Crore	Above Rs. 5 Crore

Compounding Application Fees & Mode of Payment

Erstwhile Foreign Exchange (Compounding Proceeding) Rules, 2000	New Foreign Exchange (Compounding Proceeding) Rules, 2024
<ul style="list-style-type: none"> An application for compounding any contravention was required to be submitted to RBI in the form along with a fee of Rs. 5,000/- (inclusive of taxes) and other prescribed required documents. Application fees were required to be paid solely by demand draft ('DD'). 	<ul style="list-style-type: none"> An application for compounding any contravention must be submitted to RBI in the prescribed form, along with a fee of Rs. 10,000/- (exclusive of taxes) and other prescribed required documents. Now, in addition to DD, application fees can also be paid through National Electronic Fund Transfer ('NEFT') or other approved electronic/ online payment methods.

Contraventions not to be Compounded in Certain Cases

Erstwhile Foreign Exchange (Compounding Proceeding) Rules, 2000	New Foreign Exchange (Compounding Proceeding) Rules, 2024
<ul style="list-style-type: none"> No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act. No such provision. 	<ul style="list-style-type: none"> Now, if the Adjudicating Authority has already passed an order imposing a penalty under section 13 of the Act, then such contravention shall not be compounded by RBI. Now, if the compounding authority is of the view that the contravention involved requires further investigation by ED to determine the amount of contravention under Section 13 of the Act, then such contravention shall not be compounded by RBI.

Delegation of Powers

Erstwhile Master Direction - Compounding of Contraventions Under FEMA,1999	New Direction - Compounding of Contraventions Under FEMA,1999
<ul style="list-style-type: none">■ Kochi and Panaji Regional RBI Offices were permitted to compound the contraventions only if the sum involved was < Rs. 1 Cr, in case the office is headed by an officer below the rank of CGM.■ No explicit clarification was given about the jurisdiction of Regional Offices (RO) for submitting compounding applications related to foreign investment contraventions.	<ul style="list-style-type: none">■ Now, both the Kochi and Panaji regional offices of RBI can compound the contraventions without any monetary limit, regardless of the officer's rank■ A clarification has been provided stating that the jurisdiction for compounding applications concerning foreign investments will be based on the location of the registered office of the investee Indian company.

Indicative List of Administrative Actions

Erstwhile Master Direction - Compounding of Contraventions Under FEMA, 1999	New Direction - Compounding of Contraventions Under FEMA, 1999
<ul style="list-style-type: none"> ▪ An indicative list of what will be construed as completion of administrative action was not provided. 	<ul style="list-style-type: none"> ▪ Administrative action means actions necessary concerning the transactions involved in contravention and shall include such corrective action that shall be undertaken by the applicant to bring the transaction involved in compliance with FEMA. ▪ An Indicative list of the administrative action has been provided which includes: <ul style="list-style-type: none"> ✓ Obtaining necessary approvals/ permissions from relevant authorities; ✓ Unwinding/reversing the transaction; ✓ Repatriating the receivable due; ✓ Compliance with pricing guidelines or submission of valuation certificate; ✓ Compliance with reporting requirements; ✓ Any other corrective action as may be required.

Computation Matrix

Type of contravention	Formula
<p>1] <u>Reporting Contraventions</u></p> <p>A) FEMA 20/ FEMA 20(R)/FEMA 395 Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4)</p> <p>B) FEMA 3/ FEMA 3(R) Non submission of ECB statements</p> <p>C) FEMA 120/ FEMA 400 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 Row 2 below and of LO/BO/PO)</p>	<p>Fixed amount : Rs10,000/- (applied once for each contravention in a compounding application) +</p> <p>Variable amount as under:</p> <p>Upto 10 lakhs : 1,000 per year</p> <p>Rs.10-40 lakhs : 2,500 per year</p> <p>Rs.40-100 lakhs : 7,000 per year</p> <p>Rs.1-10 crore : 50,000 per year</p> <p>Rs.10 -100 Crore : 1,00,000 per year</p> <p>Above Rs.100 Crore : 2,00,000 per year</p>
E) Reporting contraventions by LO/BO/PO	As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.
<p>2] <u>AAC/ APR/ FLAR/ Share certificate delays</u></p> <p>In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120/ FEMA 400) or AAC (FEMA 22/ FEMA 22(R)) or FCGPR (B) or FLA Returns- FEMA 20 / FEMA 20(R)/ FEMA 120/ FEMA 395/ FEMA 400</p>	<p>Rs.10,000/- per AAC/APR/FCGPR (B) / FLA Return delayed.</p> <p>Delayed receipt of share certificate – Rs.10,000/- per year, the total amount being subject to ceiling of 300% of the amount invested</p>

Computation Matrix

Type of contravention	Formula
3] A] Allotment/Refunds <i>Non-allotment of shares or allotment/ refund after the stipulated Period for Foreign Investment</i> B] LO/BO/PO (Other than reporting contraventions mentioned in Para 1(v) above)	Rs.30,000/- + 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 project offices the amount of contravention shall be deemed to be 10% of the cost of project)
4] Any Contravention pertaining to issuance of any guarantee (other than reporting contraventions)	Rs.5,00,000/- + 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
5] All other non reporting contraventions	Rs.50,000/- + given percentage: 1st year : 0.50% 1-2 years : 0.55%

Computation Matrix

Type of contravention	Formula
5] (Contd.)	2-3 years : 0.60% 3-4 years : 0.65% 4-5 years : 0.70% > 5 years : 0.75%

Further points to be noted:

Erstwhile Master Direction - Compounding of Contraventions Under FEMA,1999

- If an applicant who has previously been compounded applies for compounding again for a similar contravention, the compounding fee may be increased by 50%.

New Direction - Compounding of Contraventions Under FEMA,1999

- If an applicant, against whom a compounding order was previously issued but the compounding amount remains unpaid, and re-applies for compounding concerning the same transaction, the revised compounding amount may be increased by 50% of the previously determined compounding amount, provided it does not exceed 300% of the contravention amount

Key Changes in Compounding Application Forms and Process

**NEW RULES FOR
COMPOUNDING
APPLICATIONS
UNDER FEMA**



Changes in Compounding Application Form

Erstwhile Foreign Exchange (Compounding Proceeding) Rules, 2000	New Foreign Exchange (Compounding Proceeding) Rules, 2024
<ul style="list-style-type: none"> Earlier, only the name of the adjudicating authority before whom the case was pending was required to be mentioned. 	<ul style="list-style-type: none"> Now, additional details are required to be mentioned such as <ul style="list-style-type: none"> The notice issuance date, Whether the contravention falls under Section 37A or Section 3(a), Whether an adjudication order has been passed.
<ul style="list-style-type: none"> No such field. 	<ul style="list-style-type: none"> The applicant is now required to state whether any compounding order was passed previously. If yes, the following details are required such as <ul style="list-style-type: none"> The application date, The contravention details, Order date and payment confirmation from the Reserve Bank.

Changes in Compounding Application Form

Erstwhile Foreign Exchange (Compounding Proceeding) Rules, 2000	New Foreign Exchange (Compounding Proceeding) Rules, 2024
<ul style="list-style-type: none"> Earlier, only the nature of the contravention according to Section 13(1) was required to be mentioned. 	<ul style="list-style-type: none"> Now, additional details are required to be mentioned such as <ul style="list-style-type: none"> ✓ The relevant Act, ✓ The applicable Rules and Regulations, ✓ Notifications issued, ✓ Order issued under the authority of the Act, ✓ Condition under which the RBI granted the authorization, ✓ Previous compounding orders (if any)

Changes in Compounding Application Form

Annexure I

B. Mail to be sent (as soon as possible but not later than 2 hours from the time of payment) to RBI Regional Office / Central office/ CO Cell, New Delhi post making payment of compounding application fee/ compounding amount*. (A copy of the mail sent to RBI office may also be included along with the application form).

SUBJECT: -(Please provide name of the applicant) - Details of payment made for compounding application fee / compounding amount * through electronic or online mode of payment

Sir/ Madam,

In reference to captioned subject, it is brought to your notice that compounding application fee/ compounding amount has been paid by(name of the applicant). Details of the transaction are as below.

- a. Compounding application reference no.#:
- b. Mode of payment [NEFT/ RTGS/ Others (please specify)]:
- c. Unique Transaction reference No.:
- d. Name of A/c holder:
- e. A/c No.:
- f. IFSC:
- g. Branch Name:
- h. Bank Name:
- i. Date of payment:

2. In view of the above, you are requested to take the aforesaid compounding application fee/ compounding amount* payment on record.

Regards,

XXXXX

* Strike off whichever is not applicable

Compounding application reference no. is the alphanumeric code mentioned in the order and may only be filled for payment of compounding amount but not for compounding application fee.

Documentation & Payment

Particulars	Erstwhile Master Direction - Compounding of Contraventions Under FEMA, 1999	New Direction - Compounding of Contraventions Under FEMA, 1999
▪ Prerequisite Documentation	Latest audited balance sheet was required to be submitted.	Latest audited balance sheet is not required to be submitted.
▪ Online Payment Confirmation	No obligation as payment was only accepted via DD.	For online payment mode, confirmation is now required to be emailed to the respective RO in the specified template within 2 hours of the transactions.
▪ Application Fees - return of compounding application	Rs. 5,000/- application fee was to be refunded to the applicant.	Now, the Rs. 10,000/- application fee will not be refunded if an application is returned. However, it will be adjusted in case the compounding application is resubmitted.

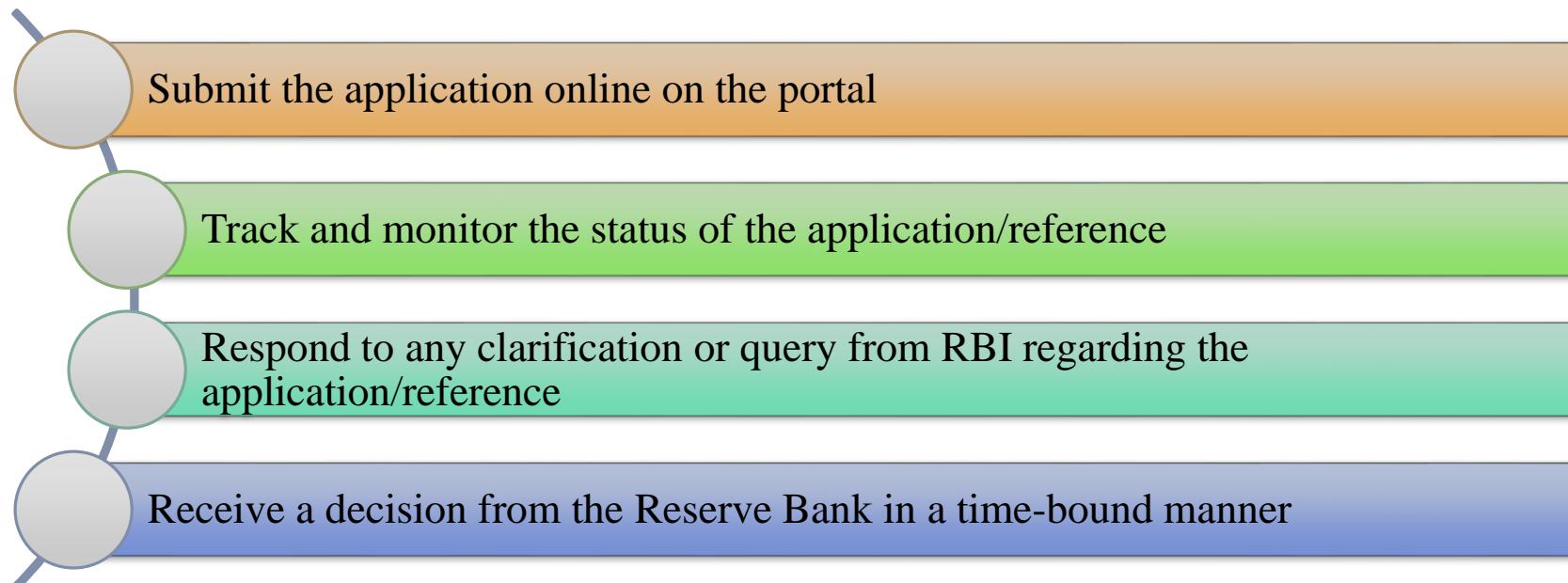
PRAVAAH Portal for Compounding Application

**RBI LAUNCHES
PRAVAAH PORTAL**

RETAIL DIRECT APP
& FINTECH REPOSITORY
TO STREAMLINE
FINANCIAL PROCESSES



- ❖ The RBI recently launched the PRAAVAH Portal for streamlined online applications for regulatory approvals.
- ❖ The PRAAVAH portal, introduced by the RBI, aims to simplify the online application for regulatory approvals, providing individuals and entities with a streamlined platform. This initiative is set to enhance the efficiency of the RBI's processes for granting regulatory approvals and clearances.
- ❖ **Key Process includes below:**



❖ Current issues encountered while filing the application on the Pravaah Portal

- Pravaah registration must be completed in one step. If the login ID is created but the application is not submitted, it will be treated as if the registration process is incomplete.
- While saving a draft application, it becomes non-editable, indicating a technical glitch that prevents any further modifications.
- Currently, online payments can only be made through NEFT, as the form does not have an option to enter DD details.

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