

# HINESH R. DOSHI & CO. LLP

Chartered Accountants

FEMA UPDATES (COMPOUNDING ORDERS)

DATE: 07/10/2018

ESTABLISHMENT IN INDIA OF LIAISON OFFICE, BRANCH OFFICE, PROJECT OFFICE [FEMA Notification No.22 dated May 03, 2000]

*Summary of few Compounding Orders passed by Reserve Bank of India (RBI) for ECB*



## Contravention

- Means a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 ('the Act) and rules/ regulations/ notification/ orders/ directions/ circulars issued thereunder.

## Compounding

- Refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contravention as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) ibid.

## General Penalty

- As per provisions of section 13 of the Act, penalty levied can be **up to 300%** of the amount involved for any contravention under the Act and Regulations thereunder.

## Compounding Fee

- The Compounding Fee varies for different offences and may include a fixed and a variable component depending on the circumstances of the case.

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**CASE 1:**

<b>Name of Applicant</b>	<b>Hirose Electric Singapore Pte. Ltd.</b> Order date: 12 <sup>th</sup> March, 2018
<b>Contravention</b>	<i>Establishment in India of additional Liaison Office at Noida without RBI permission.</i>
<b>Relevant Regulation</b>	Regulation 3 and 5(i) of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 notified vide Notification No. FEMA 22/2000-RB
<b>Requirement of the Regulation</b>	No person resident outside India(PROI) shall, <b>without prior approval of the Reserve Bank</b> , establish in India a branch or a liaison office or a project office or any other place of business by whatever name called. Further, a PROI desiring to establish a branch or Liaison Office in India shall apply to the RBI, in form FNC 1.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant was granted permission to establish a Liaison Office in India at Bangalore (Nodal Office) and New Delhi as an additional Liaison Office) vide Reserve Bank approval letter.</li> <li>• Subsequently, the company also opened a Liaison Office at Noida, Uttar Pradesh in May 2014 without obtaining prior approval from RBI.</li> <li>• All the operations were routed through the Noida Office (which was in operation without RBI permission) instead of New Delhi office, which was also maintained in terms of RBI approval.</li> <li>• The Liaison Office noticed non-compliance and suo motu submitted application to Reserve Bank of India for post facto approval for regularization of the contravention.</li> </ul>
<b>Period of contravention</b>	3 years 3 months and 10 days
<b>Amount involved</b>	Rs.1,70,65,259/-
<b>Compounding Fee</b>	<b>Rs.1,06,793/-</b>

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**CASE 2:**

<b>Name of Applicant</b>	<b>Pearson Education (Singapore) Pte. Ltd.- Branch Office</b> Order date: 12 <sup>th</sup> March, 2018
<b>Contravention</b>	<i>Breach of activities permitted to Branch Office in India.</i>
<b>Relevant Regulation</b>	A.P.(DIR Series) Circular No.3 dated July 6, 2002 read with Regulation 6(i) of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 notified vide Notification No. FEMA 22/2000-RB
<b>Requirement of the Regulation</b>	AD can allow term deposit account for a period <b>not exceeding 6 months</b> in favour of a BO of a person resident outside India (PROI) provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO furnishes an undertaking that the maturity proceeds of the term deposit will be utilized for their business in India <b>within 3 months</b> of maturity. Further, a PROI may undertake or carry on any activity specified in Schedule I or, as the case may be, in Schedule II, but shall not undertake or carry on other activity unless otherwise specifically permitted by the RBI.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The company had ceased its operations/activities from August 1, 2005.</li> <li>• The company kept its funds in current account until November 8, 2013 as it was unable to place the funds in Term Deposit subsequently after ceasing its operations.</li> <li>• The company then in November 2013 placed its funds in interest bearing Term Deposit for a period of 1 year 3 months.</li> <li>• Hence, utilising the proceeds of Term Deposit on maturity <b>after 6 months</b> for its business activity in India does not apply.</li> </ul>
<b>Period of contravention</b>	2 years 3 months and 25 days
<b>Amount involved</b>	Rs. 13,00,00,000/- (The undue gain of interest income was neutralised due to payment of income tax)
<b>Compounding Fee</b>	<b>Rs.94,91,250/-</b>

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**CASE 3:**

Applicant	<b>M/s Bitzer SE</b> Order Date:1 <sup>st</sup> February, 2017			
<b>Contravention</b>	<i>Operating beyond the validity period without taking prior approval of the Reserve Bank of India (RBI)</i>	<i>Transferring the assets of the Liaison Office to subsidiary without obtaining prior permission of the RBI.</i>	<i>Transferring the surplus funds of the Liaison Office to subsidiary without obtaining prior permission of the RBI.</i>	<i>Annual Activity Certificate not representing a factual position of the operations.</i>
<b>Relevant Regulation:</b>	Regulation 5(i) of FEMA Notification No.22 dated May 03, 2000	Para 2 of AP (DIR Series) Circular No.88 dated March 01, 2012.	Para iv and Para ix of Annexure to the approval letter for establishment of liaison office in India.	AP (DIR Series) Circular No.6 dated August 09, 2010 read with Para 5(i) of AP (DIR Series) Circular No.24 dated December 30, 2009.
<b>Requirement of the Regulation</b>	A person resident outside India desiring to establish a branch or liaison office in India <b>shall apply to the Reserve Bank, in form FNC 1.</b>	Transfer of assets of Liaison/Branch Office to subsidiaries or other LO / BO or any other entity <b>is permitted only with the specific approval</b> of the Central Office of the Foreign Exchange Department, RBI.	The office in India <b>shall not borrow or lend any money from/to any person in India without our prior permission.</b> Further, <b>debits to this account could be raised only for meeting the local expenses of the office.</b>	BO/ LOs are <b>required to submit Annual Activity Certificate</b> (from their Auditors to the Central Office / Regional Office of the RBI, certifying that the BO / LO has carried out only those activities which are approved by the RBI.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant was given permission for establishment of liaison office at Mumbai in the year 1999. Subsequent extensions of the permission to continue operating the Liaison Office in India were granted by the RBI till 2008. However, the Liaison Office continued to operate without valid permission after expiry of its renewal.</li> <li>• The applicant incorporated its wholly-owned subsidiary and then transferred the assets with book value of Rs.25,04,274/- of the Liaison Office to its wholly owned subsidiary without prior permission of the RBI.</li> </ul>			

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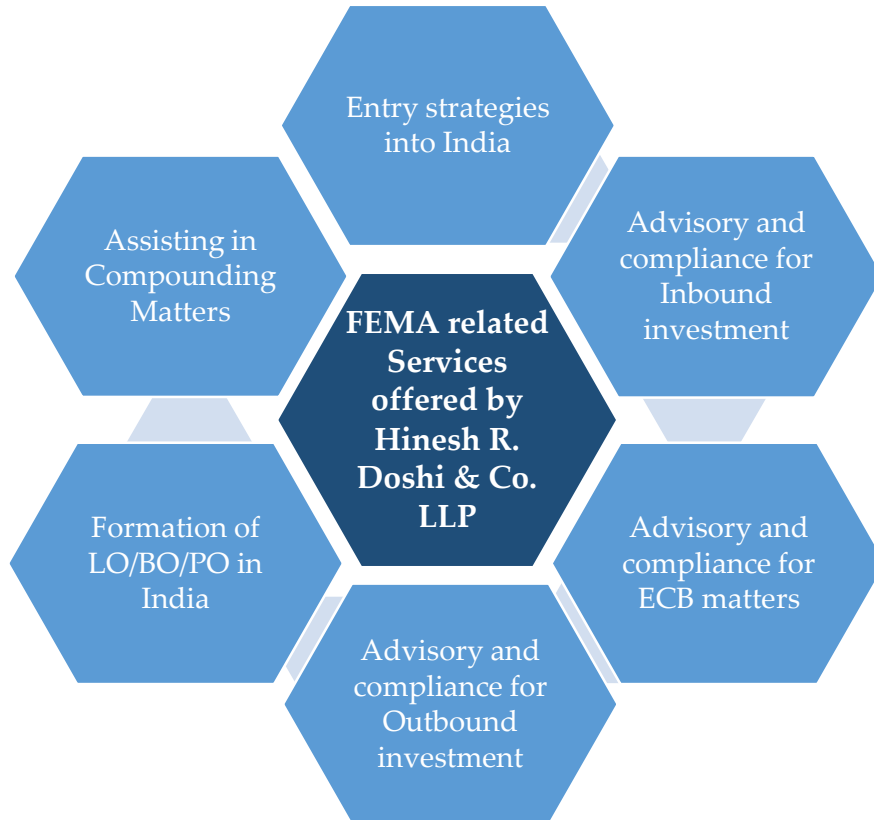
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	<ul style="list-style-type: none"> <li>• The applicant also transferred surplus funds amounting to Rs.33,84,802.85/- of the Liaison Office to its wholly owned subsidiary.</li> <li>• The Annual Activity Certificate submitted by the Liaison Office did not represent a factual position of LO operations.</li> </ul>
<b>Period of contravention</b>	9 years
<b>Amount involved</b>	Rs.58,89,077/-
<b>Compounding Fee</b>	<b>Rs. 74,200/-</b>

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