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FEMA UPDATES (COMPOUNDING ORDERS)

EXTERNAL COMMERCIAL BORROWINGS

*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.

**CASE 1:**

Name of Applicant	<p align="center"><b>Lloyd Electric and Engineering Limited</b> Order Date: 28<sup>th</sup> October, 2016</p>			
<b>Contravention</b>	<i>Availing External Commercial Borrowing (ECB) from a non-recognized lender</i>	<i>Non-compliance with average maturity period guidelines.</i>	<i>Drawdown of ECB before obtaining Loan Registration Number (LRN) from the Reserve Bank of India (RBI).</i>	<i>Delay in meeting the reporting requirements.</i>
<b>Relevant Regulation: Regulation 6</b>	Para 1(iii) of Schedule I to FEMA Notification No. FEMA.3/2000-RB	Para 1(v) of Schedule I to FEMA Notification No. FEMA 3/2000-RB.	Para1(xi) of Schedule I to Notification No. FEMA 3/2000-RB.	Para1(xii) of Schedule I to FEMA 3/2000-RB read with C(i)(d) of Annex to AP (DIR Series) Circular No 5.
<b>Requirement of the Regulation</b>	A person resident in India (PRI) may raise foreign currency loans only from <b>recognized</b> lenders.	The maturity of the borrowings in foreign exchange shall not be <b>less than 3 years</b> for the loan of an amount up to USD 20 million or its equivalent.	Draw-downs of borrowing in foreign exchange shall be made strictly in accordance with the terms of the loan agreement only <b>after obtaining the loan registration number</b> from the Reserve Bank.	The borrower shall adhere to the reporting procedure as specified by the RBI and are also required to submit ECB-2 Return on <b>monthly</b> basis.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>The applicant entered into a loan agreement with Lloyd Europe, a <b>Wholly Owned Subsidiary</b> (WOS) of the applicant, to receive a loan of Euro 3,000,000. The WOS was not an eligible lender, as per the provisions of FEMA.</li> <li>The average maturity period of the loan was <b>2.4 years</b>.</li> <li>Loan Registration Number (LRN) was not obtained from RBI by the applicant <b>before</b> drawdown of the ECB.</li> <li>The applicant made delay in reporting as per the period mentioned below.</li> </ul>			
<b>Period of contravention</b>	1 year 7 months			
<b>Amount involved</b>	Rs. 20,98,50,000/-			
<b>Compounding Fee</b>	<p align="center"><b>Rs. 12,04,175/-</b> <b>(Also the entire transaction was unwound)</b></p>			

**CASE 2:**

<b>Name of Applicant</b>	<b>Avery Dennison (India) Private Limited</b> Order Date:9 <sup>th</sup> August, 2016		
<b>Contravention</b>	<i>Repayment schedule of the loan not being in compliance with the minimum average maturity period.</i>	<i>All-in-cost ceiling in respect of the loan was breached.</i>	<i>Prior approval of the Reserve Bank of India (RBI) was not obtained for the import of goods under finance lease.</i>
<b>Relevant Regulation: Regulation 6</b>	Para 1(v) of Schedule – I to FEMA Notification No. FEMA.3/2000-RB.	Para 1(vi) of Schedule I to FEMA Notification No. FEMA.3/2000-RB read with Para1A(iv) of Annex to AP (DIR Series) Circular No 5.	A.P.(DIR Series) Circular No.24 dated 01.03.2002
<b>Requirement of the Regulation</b>	A person resident in India(PRI) may raise foreign currency loans in accordance with the provisions of the Automatic Route Scheme. Further, ECB <b>upto</b> USD 20 million or equivalent should have a minimum average maturity of <b>3 years</b> .	The all-in-cost ceilings for the borrowing in foreign exchange shall be specified by the Reserve Bank from time to time	A financial lease transaction i.e. the lease transaction containing option to purchase the asset at the end of the lease period will require prior approval from the RBI.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant imported two digital machines costing USD 10,01,500 under an operating lease.</li> <li>• The average maturity period under the operating lease arrangement was <b>2.6 years</b> with rate of interest at 6.98% which was higher than the all-in-cost ceiling as then applicable.</li> <li>• The applicant subsequently converted the operating lease arrangement to a finance lease arrangement without obtaining the prior approval of the RBI.</li> <li>• The applicant later sought permission from RBI with a delay of 3 year for registering the finance lease as an external commercial borrowing (ECB) transaction.</li> <li>• However, RBI issued a letter to the applicant refusing to register the said finance lease as an ECB <b>due to the above mentioned contraventions</b>.</li> </ul>		
<b>Period of contravention</b>	5 Years		
<b>Amount involved</b>	Rs.6,00,00,000/-		
<b>Compounding Fee</b>	Rs.4,70,000/-		

**CASE 3:**

<b>Name of Applicant</b>	<b>Healthcare Global Enterprises Limited</b> Order Date:15 <sup>th</sup> July, 2016	
<b>Contravention</b>	<i>Exceeding the all-in-cost ceiling in respect of the loan, as then applicable</i>	<i>Non-reporting of the trade credit transaction in Form TC through the Authorized Dealer bank.</i>
<b>Relevant Regulation</b>	Regulation 6(3) of Notification No. FEMA 3/2000-RB read with A.P. (DIR Series) Circular No.87 dated April 17, 2004.	
<b>Requirement of the Regulation:</b>	The all-in-cost ceilings for the borrowing in foreign exchange shall be specified by the Reserve Bank from time to time	It is necessary to ensure the reporting of the trade credit transaction in Form TC through the Authorized Dealer bank.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant availed a facility in the form of supplier's credit from a overseas lender for an amount of USD 878,500 in connection with the import of certain medical equipment.</li> <li>• The applicant breached the all-in-cost ceiling (6 months LIBOR +125 bps, as then applicable)</li> <li>• The applicant did not report this trade credit transaction in Form TC through the Authorized Dealer prior to availing the loan.</li> </ul>	
<b>Period of contravention</b>	9 Years and 5 Months	
<b>Amount involved</b>	Rs.3,76,43,725/-	
<b>Compounding Fee</b>	Rs.3,32,300/-	

**CASE 4:**

<b>Name of Applicant</b>	<b>Intercat Equipment (Mumbai) Private Limited</b> Order date:2 <sup>nd</sup> June, 2016
<b>Contravention</b>	<i>Delay in making payment for import of goods from overseas entities</i>
<b>Relevant Regulation:</b>	Regulation 5(3) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 notified vide Notification No. FEMA 3/2000-RB read with Para A.12 of A.P (DIR Series) Circular No.9 dated August 24, 2000.
<b>Requirement of the Regulation</b>	Remittances against imports should be completed not later than six months from the date of shipment. Payments beyond a period of six months from the date of shipment are treated as external commercial borrowings which require prior approval of the Reserve Bank/Government of India.
<b>Matter Compounded</b>	<ul style="list-style-type: none"> <li>• The applicant imported various additive systems from its then parent company for a period of 8 Years, amounting to USD 4,25,908.97</li> <li>• The applicant delayed in making payments against the said import of goods beyond the prescribed period of time as mentioned below.</li> </ul>
<b>Period of contravention</b>	2 to 10 Years
<b>Amount involved</b>	Rs.2,31,04,867/-
<b>Compounding Fee</b>	<b>Rs.2,13,800/-</b>

