HINESH R. DOSHI & CO. LLP

Chartered Accountants

FEMAUPDATES (COMPOUNDING ORDERS) DATE:29-AUGUST-2018

Summary of few latest Compounding Orders passed by Reserve Bank of India (RBI)

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.

Palai Plaza, 3rd Floor,9, Kohinoor Road, Opp. Hotel Pritam, Dadar (East), Mumbai – 400 014.
Tel.: +91-22-66008100/8111
Email: info@hineshdoshi.com Website: www.hineshrdoshicollp.com

CASE 1:

Name of Applicant	**Inventurus Knowledge Solutions Private Limited** Order Date: 29th June, 2018		
Contravention	*Delay in Reporting of Foreign Remittances. (FIRC, KYC and other documents)*	*Delay in submission of Form FC-GPRs to the RBI*	*Delay in reporting Transfer of Shares in Form FC-TRS*
Relevant Regulation	Para 9(1) (A) of Schedule I to Notification No. FEMA 20/2000- RB.	Para 9 (1) B of Schedule I to Notification No. FEMA 20/2000-RB	Regulation 4 of Notification No. FEMA 20/2000-RB.
Requirement of the Regulation	An Indian company issuing shares or convertible debentures is required to submit a report in form Advance Remittance Form (ARF) along with a copies of Foreign Inward Remittance Certificates (FIRC), Know Your Customer (KYC) report on the non-resident investor and details of the Government approval, if any, **within 30 days** from the date of receipt of consideration.	An Indian Company issuing shares or convertible debentures in accordance with these Regulations shall submit a report in the Form FC-GPR **within 30 days** from the date of issue of shares.	In case of transfer of securities of an Indian company from a person resident in India (PRI)to a person resident outside India (PROI)or vice versa, the PRI is required to submit Form FC-TRS within 60 days from the date of receipt or payment of the consideration, as applicable
Matter Compounded	• The applicant, an Indian Company, received funds towards share application money from various foreign investors. • The applicant made delay in reporting the required forms as per the period mentioned below.		
Period of contravention	Ranging from 6 days to 9 years	Ranging from 9 to 10 years	Ranging from 9 to 11 years
Amount involved	Rs. 1,23,90,273	Rs. 1,15,75,225/-	Rs. 2,68,94,122/-
Compounding Fee	**Rs.8,11,042/-**		

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CASE 2:

Name of Applicant	**KGK Creations Private Limited** **Order date: 21st June, 2018**
Contravention	*Delay in filing Annual Return on Foreign Liabilities and Assets*
Paragraph 9(2) of Schedule 1 to Notification No. FEMA 20/2000-RB read with A. P. (DIR Series) Circular No. 29 dated February 02, 2017	All Indian companies receiving Foreign Direct Investment (FDI) need to submit the Annual Return on Foreign Liabilities and Assets (FLA return) to the RBI on or before the 15th July of each year for all investments received up to that date.
Matter Compounded	• The company has delayed filing the Annual Return on Foreign Liabilities and Assets (FLA return) to the Reserve Bank of India for the Financial Years 2007-08, 2008-09, 2010-11 and 2011-12 on or before stipulated date.
Compounding Fee	Rs. 10,000/- per FLA return delayed per year.

CASE 3:

Name of Applicant	**Rahul Saraf** **Order date: 24th May, 2018**
Contravention	*Transferring shares of an unlisted Indian company to a person resident outside India (PROI) without Valuation*
Regulation 10(A)(b)(i) read with para 5 of schedule 1 to FEMA 20/2000-RB.	In terms of the regulation, when shares of an Indian company not listed on any recognized stock exchange in India are issued to PROI, their price shall not be less than the valuation on arm's length basis as per internationally accepted pricing methodology and is required to be duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.
Matter Compounded	• In this case, the applicant transferred the shares without obtaining the valuation
Period of contravention	9 years
Amount involved	Rs.1,63,02,000/-
Compounding Fee	**Rs.6,65,598/-** (including amount for delay in filing Form FC-TRS)

CASE 4:

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Name of Applicant:	**Panacea Publishing Pvt. Ltd.** Order date: **9th May, 2018**
Contravention	*Transfer of shares of a company engaged in a sector under approval route, between two non-residents without prior Government approval.*
Regulation 3 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB.	**Restriction on issue or transfer of security by Person Resident Outside India** Transfer, between two non-residents, of shares of an Indian company engaged in a sector under approval route, needs to be done only with prior permission of the Government. (Foreign Investment Promotion Board-FIPB)
Matter Compounded	• The applicant, an Indian Company, is engaged in the business of print media, publication of magazines, etc., an activity under the Government approval route to receive FDI up to 50% of its equity. • The applicant issued 100% of its equity shares to a foreign company who transferred its shareholding in the applicant company to another Non-Resident (NR) company without prior Government approval. • Post facto approval for transfer of the said 1,00,000 equity shares from NR to NR was given by FIPB (Ministry of Finance, Government of India) subject to the applicant applying for compounding from the date of transfer of shares till the date of the FIPB approval.
Period of contravention	1 year
Amount involved	Rs. 10,00,000/-
Compounding Fee	Rs. 55, 500/-

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CASE 5:

Name of Applicant:	**Strides Shasun Limited** Order date: 28th June, 2018
Contravention	*Issuance of Employee Stock Options to the Person resident outside India (PROI)*
Para 25.2 of the erstwhile Annex B to schedule 1 read with para 3 of schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB	Foreign investment in brownfield pharmaceutical sector falls under the approval route. An Indian company intending to issue specified shares to a PROI shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.
Matter Compounded	• The applicant is engaged in the pharmaceutical industry as manufacturer, producer, processor and formulator of proprietary medicine, drugs etc. • The applicant company issued 50,000 Employee Stock Options (ESOPs) convertible into equity shares to an employee resident outside India for which it did not seek approval from FIPB of Government of India. • Such issuance without prior approval triggered the contravention clause of FEMA, 1999.
Period of contravention	3 years
Amount involved	Rs.1,61,15,000/-
Compounding Fee	Rs.1,54,748/-

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CASE 6:

Name of Applicant:	**M/s Advisual Technology India Private Limited** Order date: 14th May, 2018
Contravention	*Delay in refund of share application money*
Para 8 of Schedule 1 to Notification No.FEMA20/2000-RB	Any Indian company issuing shares to a Non-resident investor beyond a period of 180 days* from the date of receipt of inward remittance, is required to refund the same with RBI's permission. In case of delay, the company is then required to provide a definite action plan either for allotment of the equity instruments or for refund of the advance share application money, with full details to the Foreign Exchange Department of RBI, for its approval
Matter Compounded	• In this case, the applicant had received inward remittance of share application money in November 2012 from the non-resident investor which was refunded to the investor after 3 years.
Period of contravention	3 years
Amount involved	Rs. 4,00,000/-
Compounding Fee	Rs. 31,800/-

* **As per revised Notification No. FEMA 20(R)/ 2017-RB dated November 07, 2017:**
Any Indian company issuing shares to a Non-resident investor beyond a period of 60 days from the date of receipt of inward remittance, is required to refund the same with RBI's permission within 15 days from the date of completion of 60 days.

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CASE 7:

Name of Applicant:	**M/s. IAcharya Silicon Ltd** Order date: 11th May, 2018
Contravention	*Issue of equity instruments to the foreign investor beyond the prescribed time*
Para 8 of Schedule I to Notification No. FEMA 20/2000-RB read with para 5 of AP (DIR Series) Circular No.20 dated December 14, 2007	As per the regulations, the shares have to be issued/excess amount refunded within 180 days from the date of receipt of the inward remittance.
Matter Compounded	• The applicant, an Indian Company, received funds towards share application money from foreign investors. • The company allotted shares with a delay of more than 1 year beyond the prescribed period. • Further, the company did not seek prior RBI approval delayed allotment.
Period of contravention	1 year
Amount involved	Rs. 2,14,50,391/-
Compounding Fee	Rs.1,05,076 (Rs.30,000/- + 0.35% for delay of 1-2 years)

Note:

Notification No. FEMA 20/2000-RB has been substituted by Notification No. ***FEMA 20(R)/ 2017-RB-*** *Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017* ***dated November 07, 2017****.*

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