

## ERGO

*Analysing developments impacting business*

### THE MINISTRY OF FINANCE REVISES RULES ON COMPOUNDING PROCEEDINGS

25 September 2024

Pursuant to announcements made during the Union Budget 2024-25 speech to simplify rules and regulations for foreign investments, the Department of Economic Affairs, on 12 September 2024, notified the Foreign Exchange (Compounding Proceedings) Rules 2024 (Rules) superseding the Foreign Exchange (Compounding Proceedings) Rules 2000 (Erstwhile Rules).

The Rules have, *inter alia*, raised the monetary threshold for determining the authority that will be compounding the contraventions, eased the compounding process, and provided a sunset period for applications currently pending before the authorities.

We have summarised the key changes introduced in the Rules below.

#### **Revised thresholds for determining the compounding authority**

The Rules have amended the monetary threshold for determining the compounding authorities for various contraventions currently before the Reserve Bank of India (RBI). This revision will allow applicants to compound more non-serious violations with identified authorities of the RBI, leading to faster processing of compounding applications.

DESIGNATION	ERSTWHILE RULES	REVISED RULES
Assistant General Manager of the RBI	INR 10 lakh or below	INR 60 lakh or below
Deputy General Manager of the RBI	INR 10 lakh to INR 40 lakh	More than INR 60 lakh, but up to INR 2.5 crore
General Manager of the RBI	INR 40 lakh to INR 1 crore	More than INR 2.5 crore, but up to INR 5 crore
Chief General Manager of the RBI	INR 1 crore and above	More than INR 5 crore

While there has been a change in determining the compounding authority before the RBI, the thresholds for determining the compounding authority before the ED continues to remain the same.

## **Increased application fees**

As per the Rules, every application for compounding any violation must be made to the Foreign Exchange Department of the RBI or Director of the Directorate of Enforcement (ED), as applicable, along with an application fee. This fee under the Erstwhile Rules was prescribed to be INR 5,000 which has now been doubled to INR 10,000 plus Goods and Services Tax. This fee can be paid electronically by way of NEFT and RTGS, along with the previously available demand draft facility. This fee is independent of the compounding fee that may be levied by way of the compounding order.

## **Discontinuation of adjudication**

The Rules state that in case any contravention is compounded before the adjudication authority under Section 16 of the Foreign Exchange Management Act, 1999, no inquiry or *further* inquiry can be initiated or *continued* against the person. Therefore, the Rules have clarified that no *further* inquiry can be *continued* against a person who has successfully compounding a contravention against it. While there was always a bar on initiation or inquiry, this revision clarifies that all continuing inquiries will have to be closed after compounding.

## **Procedure for compounding**

Under the Erstwhile Rules, the compounding authority was empowered to call for further information, records or any other documents that may be relevant to the compounding process. The Rules now empower the authority to take any such action as may be necessary with the respect to the transactions involved in the contravention. We would expect such actions to include completion of administrative actions such as unwinding of transactions, obtaining post-facto approvals, etc.

In addition to this, the Rules have also revised the format of the Form by way of which the applicant is required to approach the compounding authority.

## **Continuation of pending proceedings**

The Rules clarify that all compounding applications on the date of commencement of the Rules, which are pending before the compounding authority, will be governed by the provisions of the Erstwhile Rules.

## **Comment:**

In line with the Government's agenda to streamline the financial sector and increase focus on compliance surveillance, simplification of the process and the liberalisation of rules governing compounding of such non-compliances to allow for a significant number of non-serious violations to be decided by identified authorities, is a welcome move.

The Rules have also clarified that all applications pending before the compounding authority will be governed by the Erstwhile Rules, proving clarity to current applicants. These revisions reflect the Government's commitment to improving the financial sector's regulatory framework, making it more efficient and transparent and promoting 'ease of investment' for investors and 'ease of doing business' for businesses.

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