COMPOUNDING UNDER FEMA

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INSTITUTE OF COMPANY SECRETARIES OF INDIA

Scheme of Presentation

- Brief overview FEMA
- Enforcement under FEMA
- Adjudication under FEMA
- Appeal under FEMA
- Compounding under FEMA
  - Meaning
  - Authorities
  - Procedure
  - Application
  - Practical aspects

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Brief Overview FEMA

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Procedural and Administrative Aspects	Enforcement
• Reserve Bank of India • Regulations (S 47)	• Central Government • Rules (S 46)

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Relevant Rules/Regulation

- Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000
- Foreign Exchange (Compounding Proceedings)Rules , 2000

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Enforcement

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Enforcement under FEMA

- Officers of Enforcement
  - Directors of enforcement
  - Special Directorate of Enforcement
  - Additional Director of Enforcement
  - Deputy Directors of Enforcement
  - Deputy Legal Adviser
  - Assistant Director of Enforcement
  - Assistant Legal Adviser

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Adjudicating authority

- Following has been appointed as the Adjudicating Authority under FEMA [under section 16 of the Act vide S.O 535(E), dated 1-6-2000 to hold an enquiry under Section 13 of the Act].
  - Directors of Enforcement
  - Special Directorate of Enforcement
  - Additional Director of Enforcement
  - Deputy Directors of Enforcement

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Officers

- Makes a Complaint

Adjudicating Authority

- Holds Enquiry

On Persons

- alleged to have committed contravention u/s 13

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Contd…

- Director of Enforcement have the jurisdiction over the cases involving an amount exceeding Rs. one crore
- Special Director of Enforcement I, II and III have the jurisdiction over the cases involving amount exceeding Rs.one crore [jurisdiction over specified zones]
- Additional Director have the jurisdiction over the cases involving amount of Rs.75 lakhs but not over 1 crore.
- Deputy Director's jurisdiction is on the cases in which amount involved does not exceed Rs. 75 Lakhs.
- Under Section 6(3)(g) and 7(1)(a) is Commissioner of Customs and Central Excise.

Appeal against Order passed by Adjudicating Authority

- Special Director (Appeals)
- Appellate Tribunal

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Procedure

- Director Appeal

- Three copies

- Form 1

- Demand draft of INR 5000/- payable in favour of special director

- Appellate Tribunal
- - Form II
- Three copies
- Demand draft of INR 5000/- payable in favor appellate tribunal for foreign exchange, New Delhi

Special Director (Appeals)

- Adjudicating authority being Assistant Director of Enforcement or a Deputy Director of enforcement

Appellate Tribunal

- Adjudicating authority not being Assistant Director /Deputy Director of enforcement

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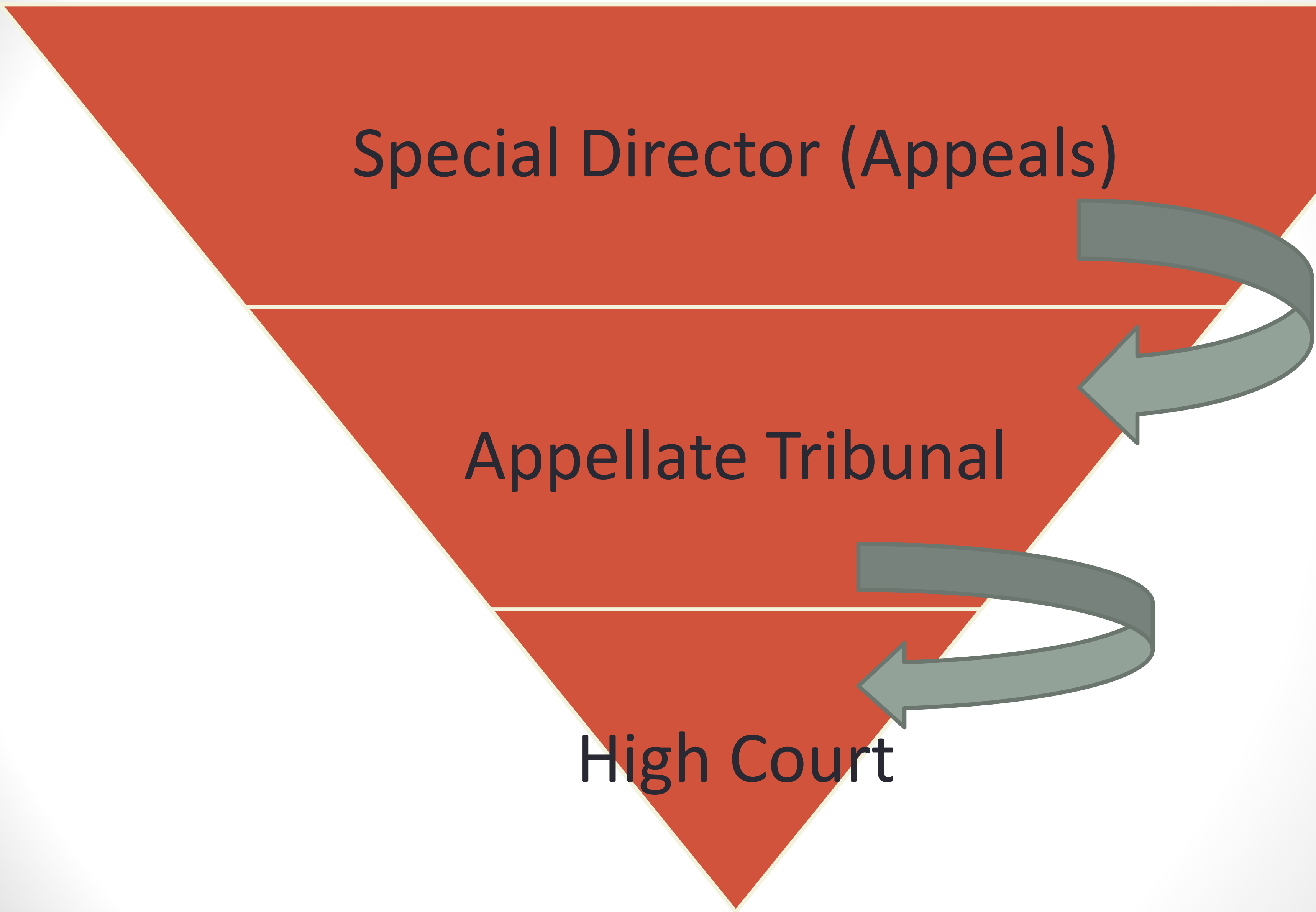

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Compounding

Compounding

- Not defined under FEMA
- As per Master circular dated 01 July 2012 :- Compounding of contraventions under FEMA is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA under Section 13(1) of the FEMA, 1999.

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Amount of Penalty

Amount of contravention is Quantifiable	• Thrice the sum involved in such contravention
Amount is not quantifiable	• Two Lakh Rupees
Continuing	• Rs. 5000 per day for every day during which the default continues

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Compounding Powers

- Reserve Bank of India – All the Sections of FEMA except Section 3(a) of the Act
- Directorate of Enforcement – Section 3(a) of the Act (Essentially dealing with Hawala Transactions)

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Nature of Contravention

- Whether the contravention is technical and /or minor in nature and needs only an administrative cautionary advice
- Whether the contravention is serious in nature and warrants compounding of the contravention
- Whether the contravention, prima facie, involves money laundering, national and security concerns involving serious infringement of the regulatory framework.

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Directorate of Enforcement

Sum Involved in Contravention	**Authorized Person**
Rs 5 lakhs and below	Deputy Director
Above Rs.5 lakhs but of below Rs.10 lakhs	Addl. Director of Enforcement Directorate
Above Rs 10 lakhs but of below Rs. 50 lakhs	Special Director
Above Rs. 50 lakhs but with below Rs. 1 crore	Special Director with Legal Adviser of Deputy Enforcement Directorate
Rs.1 crore or more	Director of Enforcement with Special Director of Enforcement Directorate

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Reserve Bank of India

Sum Involved in Contravention	Authorized Person
Rs 10 lakhs and below	Assistant General Manager of RBI
Above Rs.10 lakhs but of below Rs.40 lakhs	Deputy General Manager of RBI
Above Rs 40 lakhs but of below Rs. 1 Crore	General Manager of RBI
Rs.1 crore or more	Chief General Manager of RBI

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Compounding authority

Persons authorized by the Central Government under sub-section (1) of section 15 of the Act

An officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA)

An officer of the Reserve Bank of India not below the rank of the Assistant General Manager

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Process of compounding

- A duly completed application (in duplicate) for compounding of a contravention under FEMA, 1999 may be submitted to the Compounding Authority (CA) on being advised of a contravention under FEMA, 1999, **either through a memorandum or suo moto** on being made or on becoming aware of the contravention. The format "Form" of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Annexed).

- The application for compounding has to be submitted together with relevant facts and supporting documents and a copy of the memorandum, wherever applicable.

- Prescribed fee of Rs.5000/- is payable by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the centre where the application shall be processed/was processed and the compounding order was issued.

- The application may be submitted with to: *The Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 3rd floor, Amar Building, Sir P.M. Road, Fort, Mumbai- 400001 or as advised in the memorandum issued by the office of the Reserve Bank.*

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- The applicant must indicate the following information about the authorized person of the entity who would be handling the complete process of the compounding :

  - • Name and Designation of the authorised person for the contravener
  - • Telephone/Fax/Email of the authorized person.
  - • Details of the contravener e.g. date of incorporation, ownership pattern, activity, transaction etc. may be provided.(In column-6 of the Form (Brief facts of the case).

- The contravener/applicant shall specify the details of the contraventions sought to be compounded in column-5 [according to sub-section (1) of Section 13] explicitly and expressly i.e. the provision of the FEMA, or Rule, Regulation, Direction or order issued in exercise of the powers under the FEMA, or condition subject to which an authorization was issued by the Reserve Bank.

- The contravener/applicant shall also specify / describe in the application the details/facts (e.g. date, amount (in Indian Rupees), parties involved etc.) of the transaction for which the contravention has occurred.

- Incomplete applications shall be liable to rejection by the Reserve Bank and appropriate action for the contravention of the FEMA shall be taken accordingly.

- The gravity and nature of the contravention would be assessed by the compounding authority on the basis of information/document submitted together with the application.

- Non-submission of relevant information/document during the processing of the compounding application would be considered as willful and intentional suppression of the material fact and the compounding application would be liable for rejection and appropriate action for contravention under the FEMA.

- Communications and orders issued under the compounding process shall be served on the authorised person in any of the following manners, which are to say by fax/Courier/Registered Post by sending it to the address/information given in the compounding application.

- The sum for which the contravention is compounded as specified in the order of compounding is payable by way of a demand draft in favour of the "Reserve Bank of India" within fifteen days from the date of the order of compounding of such contravention. The demand draft has to be deposited in the manner as directed in the compounding order.

- On realization of the sum for which contravention is compounded a certificate is issued by the Reserve Bank subject to the specified conditions, if any, in the order.

- Contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the authorities concerned.

- On receipt of the application for compounding, the proceedings would be concluded and order issued by the CA within 180 days from the date of the receipt of the application. The order of CA has to be speaking order and an opportunity of being heard is required to be given to the applicant. The application once made cannot be withdrawn.

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- Non Compliance in Foreign Direct Investment in India
- Non Compliance in Overseas Investment
- Non Compliance in External Commercial Borrowings
- Non compliance in Export /import obligations
- Others


In the future, please say "I object"
rather than "that's total bullshit."

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