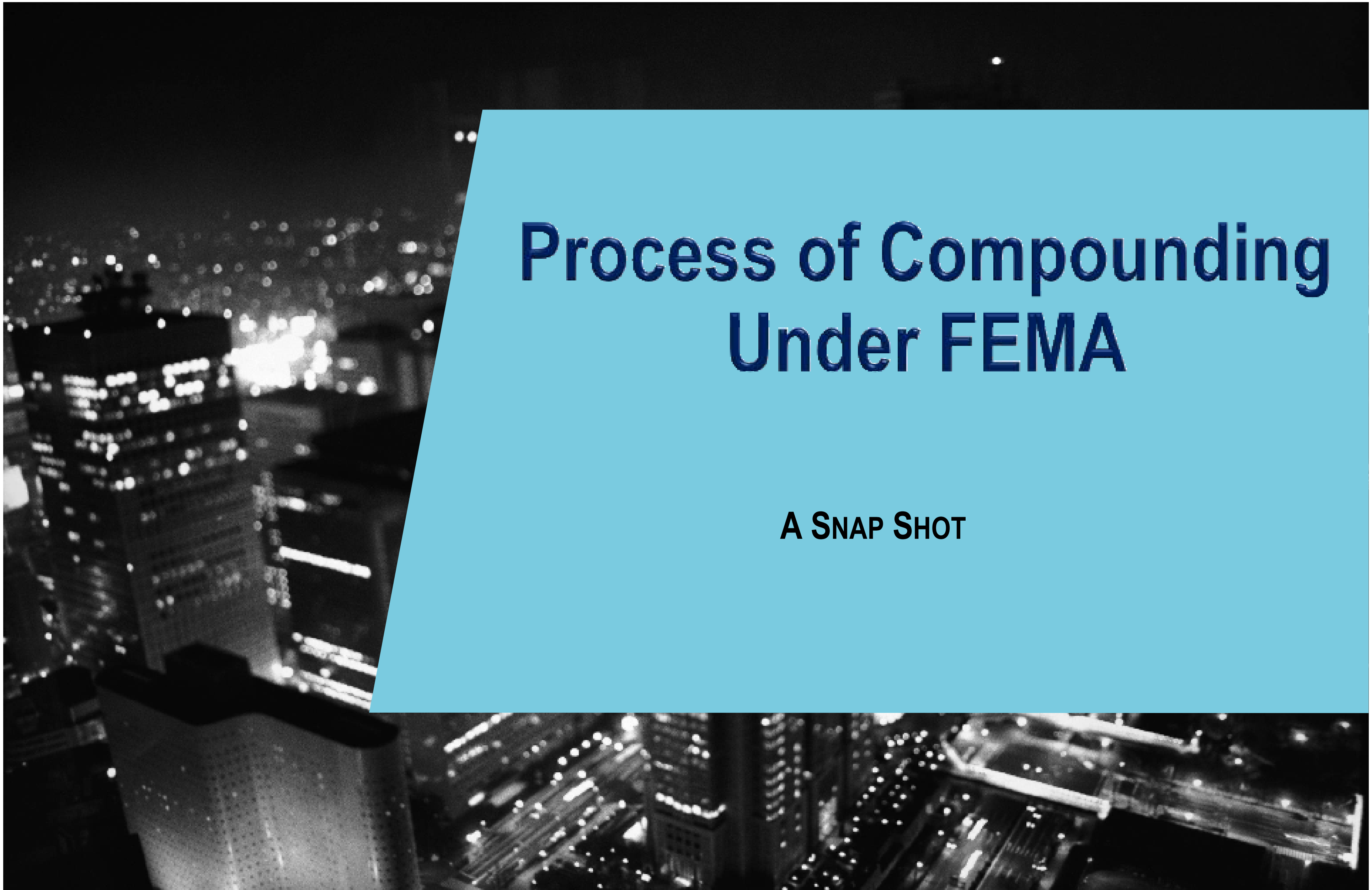

Process of Compounding Under FEMA

A Snap Shot

February 2013

Introduction

There have been framed the procedure for compounding of contraventions under Foreign Exchange Management Act 1999 by Reserve Bank of India with a view to provide comfort to the citizens and corporate to citizens and corporate community by minimizing transaction costs while taking severe view of willful mala fide and fraudulent transactions.

Any contravention under FEMA leads to upon adjudication penalty of

Up to thrice the sum involved in such contravention where the amount is quantifiable or

Up to Rupees Two Lakh where the amount is not quantified and

Where the contravention is a continuing one, further penalty which may extend to Rupees **Five Thousand** for every day after the first day during which the contravention continues

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 favor 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 must indicate the following information about the authorize person of the entity who would be handling the complete process of the compounding:

Name and Designated of the authorized person for the contravener

Telephone/Fax/Email of the authorize 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 FEMA, or Rule, Regulation, Direction or issued in exercise of the power under the FEMA , or condition subject to which an authorization was issued by 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 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 act and the compounding application would be liable for rejection and appropriate action for contravention under the FEMA.

- Communications and order issued under the compounding process shall be served on the authorized 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 favor of the of the "Reserve Bank of India" within fifteen days from the date of 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 applicant once made cannot be withdrawn.

Annexed format of Application

Form (See rule 4 or 5) (To be filled in duplicate and shall be accompanied by certified copy of the Memorandum issued)

- Name of the applicant (In Block Letters)
- Full address of the applicant (Including Phone and Fax Number & Email ID)
- Whether the application is resident in India or resident outside India [Please refer to section 2(v) of the Act]
- Name of the Adjudicating Authority before whom the case is pending.
- Nature of the contravention (according to sub section (1) of section 13)
- Brief facts of the case
- Detail of fee for application of compounding.
- Any other information relevant to the case.
- I we declare that the particulars given are true and correct to the best of my/our knowledge and belief and that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/ our case.

Dated: (Signature of the Applicant)

Name

Thank you