

FCRA NOTIFICATION ON PROSECUTION & COMPOUNDING OF OFFENCE

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1. INTRODUCTION

- 1.1** Ministry of Home Affairs has issued a Notification No. S.O. 2291(E), dated 05.06.2018 regarding the various authority for compounding of offences before initiating any prosecution. The text of the circular is provided in Annexure 1.
- 1.2** It may be noted that earlier, though, the Foreign Contribution Regulation Act, 2010 (FCRA 2010) provided for compounding of offence but there was no clarity about the administrative hierarchy in dealing such issues. Now with the issue of this notification there is
- a section wise and offence wise clarity regarding the various offences
 - clarity about the type of offence and the quantum of penalty
 - clarity about the specific authority who has the power to dispose such cases.

2. HIGHLIGHTS OF THE NOTIFICATION

- 2.1** The aforesaid notification supercedes all earlier notifications and circulars pertaining to compounding of offences. This notification has provided for compounding of various new offences which were not notified earlier. In some sense it is a positive move and provides clarity about the possible penalty in case of a violation. The offences, quantum and the authority in nutshell is as under:
- Accepting foreign hospitality without approval shall be subject to a penalty of Rs. 10,000/- and such cases can be disposed of by the Director or Deputy Secretary in charge.
 - Transferring foreign fund to unauthorised recipients shall be subject to a penalty of Rs. 1,00,000/- or 10% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
 - If the administrative expenses exceeds 50% of contribution received then the excess amount shall be subject to a penalty of Rs. 1,00,000/- or 5% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
 - If foreign contribution is received without registration or prior permission then it shall be subject to a penalty of Rs. 1,00,000/- or 10% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
 - If the foreign contribution is received in any account other than the designated bank account then such amount shall be subject to a penalty of Rs. 1,00,000/- or 5% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
 - If the bank or authorised person fail to inform regarding any unauthorised receipt of foreign contribution then bank or authorised person shall be subject to a penalty of Rs. 1,00,000/- or 3% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.

- If local fund is deposited in the FC account then it shall be subject to a penalty of Rs. 1,00,000/- or 2% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
- If an organisation or person fails to provide intimation to FCRA Department regarding the source of foreign contribution received then it shall be subject to a penalty of Rs. 1,00,000/- or 5% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.
- If an organisation or person fails to maintain books of accounts and records regarding foreign contribution received then it shall be subject to a penalty of Rs. 1,00,000/- or 5% whichever is higher and such cases can be disposed of by the Director or Deputy Secretary in charge.

3. SUMMARISED OVERVIEW OF THE LAW PERTAINING TO COMPOUNDING OF OFFENCE

3.1 The Foreign Contribution Regulation Act, 2010 (FCRA) provides for compounding of offences. This new provision would provide relief to many organisations who commit violation, sometimes, unintentionally. Under the new provisions, organisations who have violated the provisions of FCRA can resolve their case by paying financial penalties only. Some highlight of the new provisions are as under

- Under the old FCRA law organisations were being prosecuted, even, for small offences such as receiving FC funds in the non FC bank account. There are instances where organisations have fought cases for decades together against petty offences.
- The new FCRA provides that most of the offences (except those, which are subject to imprisonment only) can be resolved by payment of financial penalty.
- any such offence may, before the institution of any prosecution, be compounded against payment of specified sums.
- Once an offence is compounded, the same person cannot avail the benefit of compounding if such offence is committed again within three years.
- However, if an offence is committed after three years of compounding, then such subsequent offence will be treated as first offence and can be compounded again.
- The Director or Deputy Secretary in charge of FCRA Wing, Ministry of Home affairs shall be the authority for exercising the powers of compounding of an offence.
- The option to compound and close an offence without prosecution is a welcome change. This provision shall provide relief to both the Government Authorities and the litigants, as offences could be resolved lawfully without fighting, time consuming legal cases.

4. STATUTORY PROVISION ON COMPOUNDING OF OFFENCES

4.1 Section 41 of the FCRA 2010 provides that any offence punishable under this Act (whether committed by an individual or organisation, not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the official gazette, specify.

4.2 The text of Section 41 is reproduced as under:

“Section 41 : Compounding of certain offences:

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the official gazette, specify in this behalf.
- (2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation—For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed a first offence.

- (3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervisions of the Central Government.
- (4) Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner along with such fee as may be prescribed.
- (5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
- (6) Every officer or authority referred to in sub-section (1), while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission to file or register with or deliver or sent to, the Central Government or any prescribed authority any return account or other document, may, direct by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.”

5. OFFENCES THAT CAN BE COMPOUNDED AND PENALTIES THEREOF

- 5.1 In terms of Gazette Notification No. S.O. 2291(E), dated 05.06.2018 , the categories of offences that can be compounded under section 41 of FCRA, 2010 and the quantum of penalty for compounding, as indicated against each of the offences, is provided in Annexure 1.
- 5.2 Apart from the above-specified penalties, the Director or Deputy Secretary in charge of FCRA Wing, Ministry of Home affairs shall be the authority for exercising the powers of compounding of an offence. In other words, apart from the offences mentioned in Annexure 1 the Director or Deputy Secretary of FCRA department has the authority to compound all other offences, except those offences which are subject to imprisonment only.

6. HOW TO APPLY FOR COMPOUNDING OF AN OFFENCE UNDER FCRA 2010

6.1 An application for the compounding of an offence under section 41 is to be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper along with a fee of '1000/- (One Thousand only) in the form of a demand draft or a banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi. It may be noted that, formally FCRA department has become a paper less department but no mechanism has been provided for an application for the compounding of an offence under section 41. The affected organisation is advised to contact FCRA department over mail before sending the hard copies.

6.2 It may be noted that currently FCRA is a paperless department; however, no online procedure has been provided for Compounding of Offences. Therefore, an organisation should right to the FCRA department before filing any such petition.

7. WHAT HAPPENS AFTER AN OFFENCE IS COMPOUNDED

7.1 After payment of the penalty imposed and compounding of the offence, the person may be granted registration or prior permission, as the case may be, subject to its fulfilling all parameters.

8. WHAT IF THE PERSON IS UNWILLING OR UNABLE TO PAY THE PENALTY IMPOSED

8.1 In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.

GAZETTE NOTIFICATION NO. S.O. 2291(E), DATED 5.06.2018

MINISTRY OF HOME AFFAIRS
NOTIFICATIONS
New Delhi, the 5th June, 2018



S.O. 2291(E), – In exercise of the powers conferred by sub-section (1) of Section 41 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and in supersession of the notifications of the Government of India in the Ministry of Home Affairs numbers S.O. 1976(E), dated the 26th August, 2011 and S.O. 2133(e), dated the 16th June, 2016, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the officer in column (4) of the table, who may, before institution of any prosecution under the Act, compound the offences specified in column (4) of the table, who may, before institution of any prosecution under the Act, compound the offences specified in column (2), on payment of the amount specified in column (3), of the said table namely:-

TABLE

Sr. No.	Offence	Amount of Penalty	Officer competent for compounding
(1)	(2)	(3)	(4)
1.	Offence punishable under section 35 for accepting any hospitality in contravention of section 6 of the Act	Rs. 10,000/-	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
2.	Offence punishable under section 37 for transferring any foreign contribution to any other person in contravention of section 7 of the Act or any rule made thereunder.	Rs. 1,00,000/- or 10% of such transferred foreign contribution, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
3.	Offence punishable under section 37 for defraying of foreign contribution beyond fifty per cent of the contribution received for administrative expenses in contravention of section 7 of the Act.	Rs. 1,00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
4.	Offence punishable under section 35 for accepting foreign contribution is contravention of section 11 of the Act.	Rs. 1,00,000/- or 10% of the foreign contribution received, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
5.	Offences punishable under section 37 read with section 17 of the Act for (a) receiving foreign contribution in any account other than specified account in his application for grant of certificate.	Rs. 1,00,000/- or 5% of the foreign contribution received in such account, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.

Sr. No.	Offence	Amount of Penalty	Officer competent for compounding
(1)	(2)	(3)	(4)
(b)	non-reporting the prescribed amount of foreign remittance of secure and manner of such remittance by banks and authorised persons.	Rs 1,00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
(c)	receiving & depositing any fund other than foreign contribution in the account or accounts opened for receiving foreign contribution or for utilizing the foreign contribution.	Rs. 1,00,000/- or 2% of such deposit, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
6.	Offence punishable under section 37 for non-furnishing of intimation of the amount of each foreign contribution received and the source from which and in the manner in which, such foreign contribution is received as required under section 18 of the Act.	Rs. 1,00,000/- or 5% of the foreign contribution received during the period of non-submission, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.
7.	Offence punishable under section 37 for not maintaining the account and records of foreign contribution received and manner of its utilisation on required section 19 of the Act.	Rs. 1,00,000/- or 5% of the foreign contribution during the relevant period of the non-maintenance of accounts, whichever is higher.	Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.

2. In case more than one offence has been committed by a person, the total amount of the compounding for such offences shall not be more than the value of the foreign contribution involved.

[F.No. II/21022/23(088)/2015-FCRA-III(A)]
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