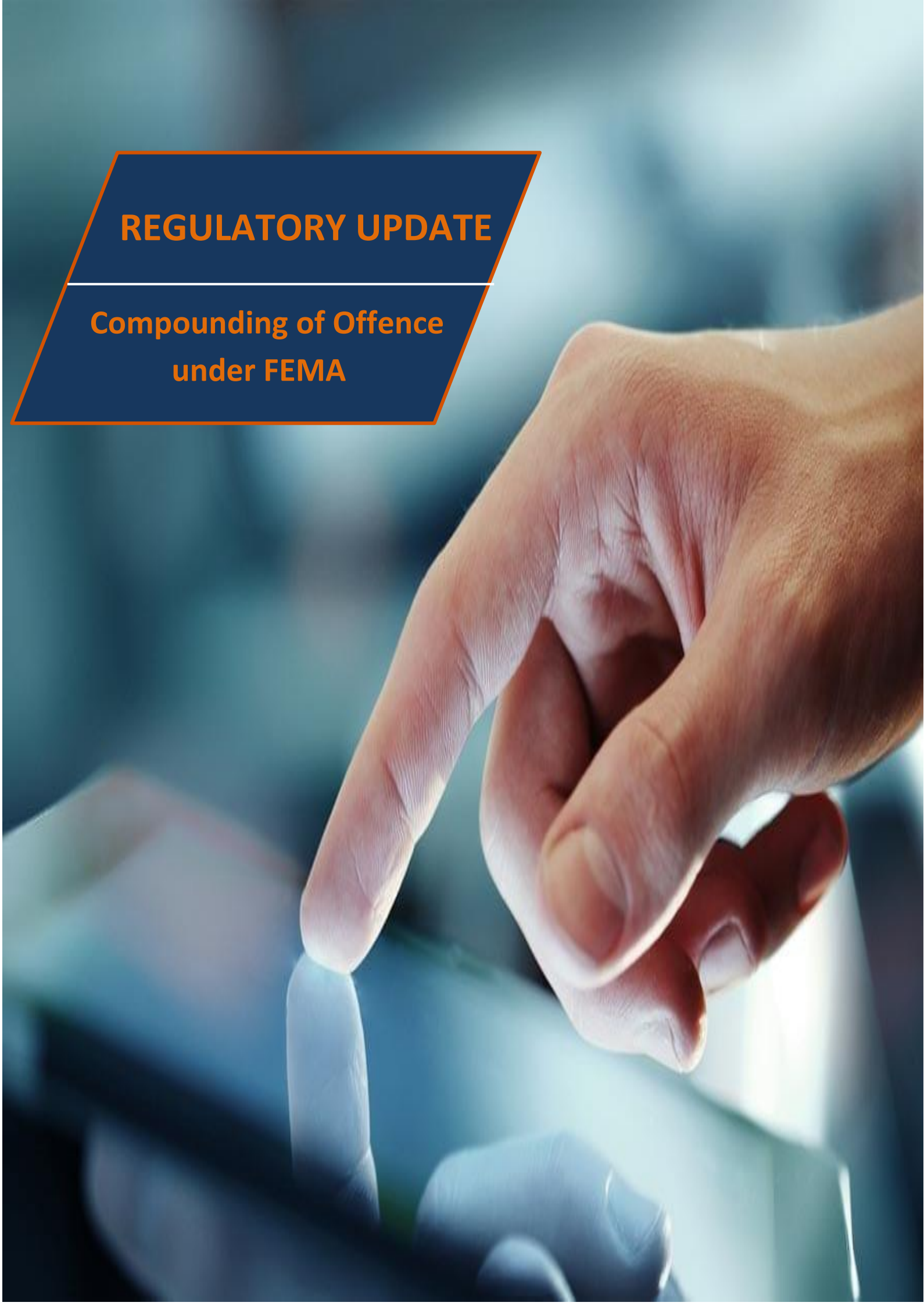


REGULATORY UPDATE

Compounding of Offence under FEMA



The Reserve Bank of India aligns the Compoundable offences under FEMA with the recently promulgated NDI Rules

Background

Compounding of an offence refers to the process of admitting the contravention, suo moto and seeking redressal. The Reserve Bank of India is empowered to compound any contraventions as defined under section 13 of Foreign Exchange Management Act, 1999 ('the Act') except the contravention under section 3(a) of the Act in the manner provided under Foreign Exchange (Compounding Proceedings) Rules, 2000. Provisions governing the compounding of offence are consolidated and updated in the RBI Master Direction-Compounding of Contraventions under the Act, annually.

The Circular no. 6 dated November 17, 2020

The Reserve Bank of India has issued the Circular having reference number RBI/2020-21/67 A.P. (DIR Series) Circular No. 06 dated November 17, 2020 on Compounding of Contraventions under FEMA, 1999.

Certain key highlights of the said Circular on Compounding of Contraventions under FEMA, 1999 are as follows:

1. Alignment of the Compounding rules with the recently introduced 'Government Regulations on NDI'

As we all are aware that the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (**FEMA 20R**) has been superseded by the promulgation of issuance of FEM (Non-Debt Instrument) Rules, 2019 (**NDI Rules**) and the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (**Payment and Reporting Regulations**) vide Notifications dated October 17, 2019 (Collectively referred to as **the Government Regulations on NDI**).

Accordingly, the Apex Bank has updated the references of the erstwhile regulations i.e. **FEMA 20R**, in the Compounding Rules, in line with the Government Regulations on NDI, vide the RBI Circular No. 06 dated November 17, 2020 and consequently, the powers to compound offences under **FEMA 20R** delegated to the Regional Offices/ Sub Offices of the Reserve Bank has also been aligned with respective provisions under **the Government Regulations on NDI**.

2. The RBI discards the classification of a contravention as technical nature

Prior to this Circular no. 06, dated November 17, 2020, contravention of technical nature used to be dealt with by way of an administrative/ cautionary advice and the same is being done away with the Circular.

Now, the Reserve Bank, proposes to regularize such contraventions by imposing minimal compounding amount as per the compounding matrix as contained in the ‘Master Direction - Compounding of Contraventions under FEMA, 1999’ dated January 01, 2016, as amended from time to time.

3. Public disclosure of compounding order to be in summary form

Since the Compounding orders by RBI can be accessed at the RBI website, the Reserve Bank, in partial modification of earlier instructions issued dated May 26, 2016 states a summary information of the Compounding Orders passed **on or after March 01, 2020** shall be published on the RBI’s website in the following format, instead of the entire compounding orders.

Sr. No.	Name of the Applicant	Details of contraventions (provisions of the Act/Regulation/Rules compounded)	Date of compounding order	Amount imposed for compounding of contraventions
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Concluding remarks:

This Circular dated Nov 17, 2020 primarily aligns the list of compoundable offences under FEMA with the Newly brought in NDI Regulations in supersession of FEMA 20R and the format for Compounding Order at RBI’s site shall be more user friendly, with ease of access to all the stakeholders in Fema Compliance tracking.

Discard of the classification of technical nature contravention which used to be dealt by cautionary advice by the RBI, makes it more important for the Companies and Stakeholders to ensure FEMA Compliance, meticulously.

For further details, please refer to following links:

1. <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIRS62545AA7432734B31BD5B59601E49AA6C.PDF>
2. <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/01MDC010116BADB4521C423465C9679DBFA22845C7D.PDF>
3. <http://egazette.nic.in/WriteReadData/2019/213332.pdf>
4. <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FEMMPRND07112019923B015079E44E1C87B1B624707265F2.PDF>

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