COMPOUNDING OF OFFENCES UNDER FCRA 2010

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SUMMARISED OVERVIEW

1.1.01 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:

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• 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.

• If a person accepts a cheque or draft from foreign source (without registration or prior permission) and such cheque or draft is deposited in the bank account, then the minimum penalty is Rs. 25,000/- or 3% of the amount whichever is higher.

• If a person accepts foreign contribution from foreign source (without registration or prior permission) and utilises it for specified purposes, then the minimum penalty is Rs. 1,00,000/- or 5% of the amount whichever is higher.

• If a person accepts foreign contribution in kind from foreign source (without registration or prior permission), then the minimum penalty is Rs. 10,000/- or 2% of the amount whichever is higher.

• 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.

• The option to compound and close an offence without prosecution is a very 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.
1.2.01 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.

1.2.02 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 to be 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."
OFFENCES THAT CAN BE COMPOUNDED AND PENALTIES THEREOF

1.3.01 In terms of Gazette Notification S.O. 1976 (E) dated 26.08.2011, http://mha.nic.in/fcra/forms/ComOffNoti-260811.pdf 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.

1.3.02 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.

HOW TO APPLY FOR COMPOUNDING OF AN OFFENCE UNDER FCRA 2010

1.4.01 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.

WHAT HAPPENS AFTER AN OFFENCE IS COMPOUNDED

1.5.01 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.

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

1.6.01 In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.
Annexure 1

NOTIFICATION REGARDING COMPOUNDING OF OFFENCES

Published in the Gazette of India, Extraordinary—Part II, Section 3, Sub-section (ii)

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi, dated the 26th August, 2011

Notification

S.O. 1976(E).- Whereas “foreign contribution” has been defined under clause (h) of sub-section (1) of Section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) (hereinafter referred to as the “Act”).

Whereas “person” has been defined under clause (m) of sub-section (1) of Section 2 of the Act.

Whereas section 11 of the Act prescribes that no person, save as otherwise provided in the Act, shall accept foreign contribution unless such person obtains a certificate of registration or prior permission of the Central Government and therefore, acceptance of foreign contribution without obtaining registration or prior permission from the Central Government constitutes an offence under the Act.

Whereas sub-section (1) of section 41 of the Act prescribes that 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.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 41 of the Act, the Central Government hereby specifies that the following offences by any ‘person’ may, before the institution of any prosecution, be compounded for the payment of sums as penalty, as indicated against each of the offences under the Act:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature of offence</th>
<th>Quantum of penalty</th>
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<tbody>
<tr>
<td>(i)</td>
<td>Acceptance of cheque or draft towards foreign contribution by a ‘person’ without</td>
<td>₹ 10,000/- or 2 per cent of the foreign</td>
</tr>
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</table>
 registration or prior permission of the Central Government even in cases where the cheque or draft has not been deposited in a Bank by the 'person'.

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<tr>
<td>(ii) Acceptance of cheque or draft by a 'person' towards foreign contribution without registration or prior permission of the Central Government &amp; depositing the same in a Bank notwithstanding non-utilisation of the amount of the foreign contribution.</td>
<td>₹ 25,000/- or 3 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>(iii) Acceptance of foreign contribution by a 'person' without registration or prior permission of the Central Government and utilisation of the same notwithstanding any inquiry which revealed that the contribution received was not diverted towards any purpose other than the objectives or purpose for which the same was received, utilisation of the contribution was as per the objectives of receipt of the same and records of receipt and utilisation have been kept properly.</td>
<td>₹1,00,000/- or 5 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>(iv) Acceptance of foreign contribution in kind by a 'person' without registration or prior permission of the Central Govt. notwithstanding that nothing adverse was reported after inquiry.</td>
<td>₹ 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.</td>
</tr>
</tbody>
</table>

(2) In exercise of the powers conferred by sub-section (1) of section 41 of the Act, the Central Government hereby specifies that the Director or Deputy Secretary in charge of the FCRRA Wing of the Foreigners Division in the Ministry of Home Affairs shall be the authority for exercising the powers for compounding of an offence under the Act.

Sd/-
(G.V.V. SARMA)
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