



FCRA 2010 / FCRR 2011

Introduction

- ❑ It has come into force from 1st May 2011 along with FCRR 2011 by repealing FCRA 1976
- ❑ Historical context
- ❑ FCRA 2010 is a national security legislation to consolidate the law to regulate the acceptance and utilization of Foreign Contribution (FC)

Applicability of FCRA

❑ FCRA 2010 applies to:

- Whole of India
- NRI including citizens of India outside India
- Outside India located associate branches or subsidiaries of companies registered or incorporated in India

❑ But FCRA 2010 does not apply to:

- Transactions between Government of India and Government of any other country

What is Foreign Source (FS)

(Section 2(1)(j))

- ❑ Government of any foreign country and its agency
- ❑ International agencies excluding UN and its specialized agencies
- ❑ A corporation incorporated in foreign country
- ❑ A foreign company
- ❑ MNC
- ❑ Foreign citizen

Foreign Source

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- ❑ Trade union in any foreign country
- ❑ Foreign Trust or Foundation mainly financed by foreign territory
- ❑ Society/ Club/ Association of individual formed/ registered outside India
- ❑ An Indian company having more than $\frac{1}{2}$ of its share capital held by any of the above

Foreign Contribution (FC)

(Section 2(1)(h))

- Any donation, delivery or transfer, generating from a Foreign Source, of
 - Any currency, Indian or Foreign
 - Any security
 - Any article, if the market value of the article is more than Rs.25,000
 - Donation of any article on lease by foreign source without any consideration

□ FC also include

- Interest earned on FC
- Income generated from the assets created from FC
- Infusion of foreign share capital in a Company registered under Section 25 of the Companies Act
- Unsecured loans/ loans at subsidized rate from foreign source

❑ But FC does not include

- Earning from foreign clients in lieu of goods sold or service rendered
- Donations by NRI but excluding donation by persons of Indian origin having foreign nationality
- Article gifted by foreign source having value less than Rs.25,000
- Delegation/ participation Fee paid in foreign currency for participation in an event
- Charges/ fee/ offerings received by temples for service rendered to foreign clients
- Fulfillment of commercial contractual obligations in ordinary course of business

Who can not accept FC

- ❑ Candidate for election
- ❑ Correspondent, columnist, cartoonist, editor, owner, printer or publisher of registered newspaper
- ❑ Judge, Government Servant or employee of any Body controlled or owned by the Govt
- ❑ Member of any legislature including Panchayat
- ❑ Political party or its office bearer
- ❑ Organization of political nature specified by the Govt
- ❑ Association/ company engaged in production/ broadcast of audio/ audio visual news or current affairs programme through any mode of mass communication

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- ❑ Person otherwise prohibited for acceptance of FC can accept FC
 - By way of salary, wages or other remuneration
 - By way of payment in the course of international trade or commerce
 - As an agent of FS for transaction made by FS with Central/ State Govt
 - By way of gift as a member of Indian delegation
 - From relative (less than Rs.1.00 lakh in a year)
 - By way of remittance received in ordinary course of business
 - By way of scholarship, stipend etc

Acceptance of FC

- ❑ FC received should be deposited only in the designated FC bank account
- ❑ Association should keep record of all FC clearly indicating the names of donors, their locations and the purpose for which it has been received
- ❑ FC can be treated as Corpus donation only if it is supported by written consent of the donor
- ❑ Donation received through donation box should be treated as FC if it has been received in foreign currency

Utilization of FC

- ❑ FC should be utilized for the purpose it has been received
- ❑ Not more than 50% of FC received should be utilized for administrative expenses without the prior approval of the Central Govt
- ❑ FC can not be invested in speculative business like mutual funds. However, it can be invested in Bank/ Govt approved financial institutions which guarantee a fixed return
- ❑ Every assets purchased/ acquired should be in the name of association
- ❑ Interest earned on FC should be utilized towards its activities/ projects of the associations

Restriction on transfer of FC

- ❑ FC can be transferred to only those associations who have been granted registration/ PP
- ❑ FC, less than 10% of the total FC received in a financial year, may be transferred to an association not granted registration/ PP only after obtaining the permission of the Central Govt
- ❑ However, approval not required if such FC to SHGs/ individuals beneficiaries is the end utilization of FC received or the FC received is for definite programme for providing some direct financial assistance as charity
- ❑ In case of extending loans to SHGs/ CBO, approval of the Government is required

Maintenance of FC Accounts

- ❑ There should be a separate FC designated account in the bank. FC cannot be deposited or utilized from the bank account used for local/ domestic funds
- ❑ Associations are required to maintain a separate set of account or records exclusively for the FC received and utilized.
- ❑ Any standard or acceptable method of accounting can be used for maintaining books of account for FCRA purposes

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- ❑ Local/ domestic contribution should never be mixed up with FC
- ❑ All accounting statements, annual return and copy of statement of account from the bank regarding the exclusive FC account accompanying the annual returns should be preserved at least for a period of six years. Associations should maintain separate register of investments and every register of investment must be submitted for audit

- ❑ Interest earned on FC and its investments in FDs should be shown as a second/ subsequent FC received in the annual return for the year in which it is earned
- ❑ Proper accounts should be maintained to show as to how the expenditure was apportioned between local funds and FC
- ❑ A foreign security is not treated as permissible assets/ investment under the IT Act 1961. It is advisable to liquidate and convert them into funds or assets.

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- ❑ All funds like General Fund, created from FC to be reflected in the FC books of accounts
- ❑ Any asset created/ purchased out of FC is FC asset and should be recorded in the FC books of account
- ❑ Association receiving FC in excess of one crore or equivalent thereto in a financial year are required to place the summary data on receipts and utilization of the FC pertaining to the year of receipt as well as for one year thereafter in the public domain

Filing Annual Returns

- ❑ The association should submit report in Form FC-6 accompanied by Audited Statement of Accounts (Income and Expenditure Statement, Receipt and Payment Account and Balance Sheet) for every financial year within nine months of the closure of the financial year i.e. By 31 December
- ❑ Every report submitted should be duly certified by a Chartered Accountant

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- ❑ The annual return in Form FC 6 should reflect the FC received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilization.
- ❑ Form FC 6 to be accompanied with a copy of duly certified statement of FC account from the bank

- ❑ Even if no FC has been received during a financial year, filing of report is a must
- ❑ Association should maintain FC account with details of each FC received, including interest/ income earned, source of FC, its purpose and the manner of its utilization on annual basis and reflected in FC 6
- ❑ As of now filing of hard copy of the documents is a must, even if the association is filing on-line annual return

- ❑ Online submission of annual returns is not mandatory but it is advisable to use the service as the fact of submission of the AR will immediately come on MHA's record.
- ❑ Non-submission of AR within the prescribed period is a violation of the Act and attracts penalty.
- ❑ It may adversely affect renewal of registration

Compounding of the offence of non-submission of Annual Return

Offence	Amount of Penalty
Non-furnishing of the Return up to 90 days after 31 December every year	2% of FC received in the financial year or Rs.10,000, whichever is higher
Non-furnishing of the Return after 90 days and up to 180 days after 31 December every year	3% of FC received in the financial year or Rs.20,000, whichever is higher

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Offence	Amount of Penalty
Non-furnishing of the Return after 180 days after 31 December every year	5% of FC received in the financial year or Rs.50,000, whichever is higher with Rs.500 per day of delay after 180 days

Offences and Penalties under FCRA

Section and kind of Offence	Penalties
Section 33: Making of false statement, declaration or delivering false account	Imprisonment for a term which may extend to 3 years or with fine or with both
Section 34: delivery, transfer or dealing with any article or currency or security whether Indian or foreign in contravention of prohibitory orders imposed	Imprisonment for a term which may extend to 3 years or with fine, or with both Court may also impose an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which prohibitory orders have been contravened or such part thereof as court may deem fit

Section and kind of Offence	Penalties
Section 35: Accepting or assisting any person, political party or association in accepting any FC or any currency from a foreign source in contravention of any provision of the Act or any rule made there under	Imprisonment for a term which may extend to 5 years or fine, or with both
Section 37: Penalty for offences where no separate punishment has been provided	Imprisonment for a term which may extend to 1 year or with fine or with both
Section 38: whoever having been convicted of any offence under Section 35 or 37 relating to acceptance or utilization of FC is again convicted of such offence	Can not accept any FC for a period of 3 years from the date of subsequent conviction

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- As per Section 39 of the Act, where an offence under the Act has been committed by a company, every person, who at the time of offence was in charge of, and was responsible for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence

- Compounding of offence in the following cases is allowed provided there is no misutilization or misappropriation of FC

Nature of Offence	Quantum of penalty
Acceptance of cheque or draft towards FC without registration/ PP even though it has not been deposited in a bank	Rs.10,000/- or 2% of the FC, whichever is higher
Acceptance of cheque or draft towards FC without registration/ PP and depositing in a bank	Rs.25,000/- or 3% of the FC, whichever is higher

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Nature of Offence	Quantum of penalty
Acceptance of cheque or draft towards FC without registration/ PP and utilization of the same even though the enquiry reveals that FC was not diverted for purpose other than for which it was received and records of receipt and utilization have been properly kept.	Rs.1,00,000/- or 5% of the FC, whichever is higher
Acceptance of FC in kind without registration or PP of the Central Govt notwithstanding that nothing adverse was reported after inquiry	Rs.10,000/- or 2% of FC, whichever is higher

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- ❑ In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution to be initiated
- ❑ Receipt of FC in the account through electronic transfer even without the knowledge of the association is violation of the Act
- ❑ Where an offence has been compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence

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- ❑ However, if offence is committed within a period of 3 years from the date on which similar offence committed was compounded, the provision of compounding the later offence is not available
- ❑ Offences that can not be compounded are liable to investigation and prosecution by CBI or State Police depending upon amount of FC involved.

Monitoring, Inspection & Investigation

- ❑ Monitoring Unit (MU) of FCRA Wing has been designated to monitor the receipt and utilization of FC
- ❑ MU conducts detailed inspection of the books of accounts and records of the associations:
 - Who defaults in filing annual returns
 - In whose case prima facie contravention of the Act is noticed
 - Where there is a complaint of misutilization or misappropriation of FC or any other violation
 - Where any adverse report is received from law enforcing agencies

- ❑ Inspection is carried out with twin objective-(a) to educate the associations about the bonafide errors
(b) to detect the willful violators for further investigation by the Investigation authority
- ❑ Advance intimation on the proposed date and time for inspection, the name & designation of the Inspecting Officer (IO) and the reasons for inspection is given. Detailed Standard Questionnaire (SQ) is also sought from the association

- ❑ During inspection, if the IO has any reasonable cause to believe that any provision of FCRA or any other law relating to foreign contribution has been or is being contravened, then he may seize such account or record of the association and produce the same before the court in which such proceedings are brought for such contravention.
- ❑ If IO has any reason to believe that any person has in his possession or control any article exceeding Rs.25,000/-, or currency, or security, whether Indian or foreign, in relation to which any provision of FCRA has been or is being contravened, he may also seize such article or currency or security

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- ❑ Findings of the inspection are shared with the association to submit their reply and also to rectify the technical discrepancies in the accounts/ records
- ❑ After examination of inspection report, reply of the association and other relevant factors, MHA decides whether the violation could be compounded or sent to the concerned Investigating Agency for further investigation or the association to be placed in PP category or prohibited to receive FC and on freezing of accounts

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- ❑ For offences involving a prime facie violation involving receipt of FC of an amount less than Rs 1.00 crore, the case is referred to Crime Branch of the State Govt further investigations
- ❑ For offences involving a prime facie violation involving receipt of FC of an amount of Rs 1.00 crore or more, the case is referred to CBI for further investigation

Suspension and Cancellation of Registration

Cancellation

- ❑ The Govt may cancel the certificate of registration, after giving reasonable opportunity to the association, on the following grounds:
- ❑ Making incorrect/ false statement for seeking registration or renewal
- ❑ Violation of any of the terms and conditions of certificate or its renewal
- ❑ Violation of any of the provisions of the Act or Rules

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- ❑ If in the opinion of the Govt it is necessary to cancel the certificate in public interest
- ❑ If the association has not been engaged in any reasonable opportunity in its chosen field for the benefit of the society for two consecutive years or has become defunct
- ❑ Cancellation of certificate debars the association for new registration or grant of PP for a period of 3 years
- ❑ The unutilized FC in the designated account will vest with the concerned Bank till the Govt issues further directions in the matter

Suspension

- ❑ If the Govt is satisfied that pending consideration of the question of cancellation of registration for any of the grounds for cancellation under the Act, it may, after recording reasons, order suspension of registration for a period not exceeding 180 days
- ❑ During the period of suspension, the association cannot receive FC. However, Govt, if it considers appropriate, may allow receipt of FC on any specified terms and conditions

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- ❑ During the period of suspension, up to 25% of the unutilized amount may be spent only after the prior approval of the Govt.
- ❑ The remaining 75% can be spent only after the revocation of suspension of the certificate



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