

Provisions relating to Foreign Contribution (Regulation) Act, 2010 [FCRA] and an Overview of CSR

Scope & Purpose

FCRA came into effect from May 1, 2011

In exercise of the power conferred by section 48 of the FCRA, the Central Government (CG) prescribed the Foreign Contribution Regulation Rules [FCRR].

FCRR came into effect from May 1, 2011. The said rules have been amended from time to time.

To regulate the acceptance and utilisation of FC and Foreign Hospitality by certain individuals or associations or companies

To prohibit acceptance and utilisation of FC or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Applicability

Extends to whole of India and also applies to citizens of India outside India and associates/branches and subsidiaries outside India of Companies or bodies registered or incorporated in India

The provisions of FCRA shall override provisions of FEMA, therefore restrictions under FCRA will be applicable for transactions covered under FCRA and FEMA both.

Definition of “Foreign Contribution” (FC) [Section 2(1)(h) of FCRA]

- Means the donation, delivery or transfer made by any foreign source
- Covers contribution in cash or kind
- Covers Indian or Foreign Currency
- Covers security /foreign security as defined in FEMA & SCRA
- Contribution received from any person who has in turn received it from a foreign source.
- The interest accrued on the FC deposited in any bank or any other income derived from FC or interest thereon

But does not include

- Article gifted for personal use where MV does not exceed the sum Rs. 25,000/- vide [G.S.R. 292 (E) dated 12th April, 2012].
- Received from foreign source by way of fee - including fees charged by an educational institution
- Received towards cost in lieu of goods sold or services rendered in ordinary course of business
- Any contribution received from an agent or a foreign source towards such fee or cost

Definition of “Foreign Source” [SEC (1)(j) of fcra]

- Govt of any foreign country, International Agency other than UN, World Bank, IMF or such other agency notified by Central Govt
- Foreign Company or any other entity incorporated outside India
- Domestic Company in which more than 50% nominal capital is held by Foreign Company , Foreign trust, Foreign Citizen or any other entity incorporated outside India
- Citizen of Foreign Country

Prohibited from accepting Foreign Contributions [sec 3(1) of FCRA]

- candidate for election;
- political party or office-bearer thereof
- correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper
- Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- member of any Legislature;
- Organisation of political nature [sec5(1)]
- Association or Company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode/ form as defined U/s 2 of the Information Technology Act, 2000
- correspondent, columnist, cartoonist, editor, owner, printer or owner of association or company referred above

Prohibited from accepting Foreign Contributions [sec 3(2) of FCRA]

No person, resident in India, and no citizen of India resident outside India shall -

- Accept FC, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred under subsection 1 of section 3 or both
- Deliver any foreign or Indian currency accepted from foreign source to any person if has reason to believe that such person intends to deliver it to a political party, or any person referred under subsection 1 of section 3 or both.

Procedure to notify organisation of Political Nature

- CG on the basis of activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party may specify whether the organisation is of political nature in official gazette
- Issue of notice & opportunity to be heard
- Organisation served with notice may make a representation
- After considering representation based on the guidelines specified in FCRR shall make order

Guidelines for declaring the organisation as that of political nature are –

- political objectives, objectives of promoting political goals, in its Memorandum of Association or bylaws;
- participation in political activities
- front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party
- If objectives stated in MOA or activities gathered through other material evidence include step towards advancement of political interest
- Organisation engaged in or which employs methods of political action in support of public causes e.g bandh, rasta roko, jail bharo e.t.c.

Registration for Acceptance of Foreign Contribution

Any Association (except political nature) having a definite cultural, economic, educational, religious or social Programme can accept foreign contribution after registration

The Registration obtained shall be valid for a period of 5 years.

Person not registered under the Act shall obtain prior permission for specific Donor and Specific Project

Where & How to apply for registration / prior permission & renewal.

Application for registration and permission can be downloaded from the website i.e. <http://mha.nic.in/fcra.htm>

Application to be filed online in Form FC-3A (for registration); FC-3B (for prior permission for acceptance of Foreign Contribution).

Application ordinarily to be processed in 90 days

Registration remains valid for a period of 5 years from date of issue and must be renewed 6 months before expiry or earlier

If renewal application (in FC- 3) with fees of Rs. 1500/- does not reach by that date registration shall cease.

If sufficient reasons given the renewal application can be entertained but not beyond one year from expiry of registration.

Prior Permission vis-à-vis Registration

<http://mha.nic.in/fcra.htm>

Prior Permission	Registration
Is for specific donor and specific project	For all types of donations within the object of the association
Is one time	Shall be granted for 5 years.
Does not include registration	Includes Prior permission
No reason for denial is communicated	Reason for denial is communicated
Application to be made in FC- 3B electronically	Application shall be made in Form FC 3A electronically
Prescribed Fees Rs. 3,000/-	Prescribed Fees Rs. 5,000/-

Exclusive bank account

FC should be received only in the branch of Bank as specified in the application for grant of registration certificate **depositing the same in other account is an offence.** A bank account is defined in Rule 2(aa) to mean a bank account in a core banking compliant bank which is integrated with Public Management Financial System

For utilization of the funds, one or more banks are permissible. Intimation of opening such accounts to be submitted electronically in Form FC-6 to be given to Secretary, Ministry of Home Affairs within 15 days of opening the account.

No funds other than FC shall be received or deposited in such account or accounts

Exclusive bank account(cont.)

Every bank or authorized dealer in foreign exchange shall report to CG amount of foreign remittance and the source and manner in which the foreign remittance was received within 48 hours.

Apart from the annual return a person receiving FC must place the details thereof on its official website or website as specified by CG within 15 days of the end of the quarter

Prohibition to transfer FC to other registered / unregistered persons [section 7 of FCRA]

May transfer FC if certificate/ permission already granted to recipient

Otherwise application to be filed in Form FC – 5 for intention to transfer

CG may permit transfer of (10%) of the total FC received

Donor shall not transfer FC without prior approval.

Any transfer shall be reflected in Form FC – 6 by the transferor and the recipient.

Restriction to utilize foreign contribution

The person receiving the contribution

shall utilise such contribution for the purposes for which the contribution has been received

Shall not be used for any speculative business or speculative activities.

“speculative activities” means activities which have element of risk of appreciation/ depreciation of original Investment linked to market forces or participation in schemes promising high returns

e.g. Investments in Mutual Fund or Shares, Chit Funds, Investments in assets not directly linked to objects of the organisation/ association

Shall not use more than 50% of the contribution towards administrative expenses as specified in rules

“Administrative expenses” as in FCRR contd...

salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the organisation excluding salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training

all expenses towards hiring of personnel including salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;

all expenses related to consumables like electricity and water charges, telephone charges, postal charges, rent or repairs to premise(s), stationery and printing charges, transport and travel charges and expenditure on office equipment;

contd...

cost of accounting for and administering funds;

expenses towards running and maintenance of vehicles;

cost of writing and filing reports;

legal and professional charges

Expenses directly related to the stated objective of the Welfare oriented organization shall be excluded

Changes to be intimated online [Sec 17A]

Changes in designated bank account, name, address, aims, objectives of key members to be intimated.

Intimation to be made in Form FC-6 within 15 days of change.

Change to be intimated online.

Suspension of Certificate of Registration [section 13 of FCRA]

CG can suspend registration for 180 days by order in writing.

Reason to be recorded in writing by CG

During this period, FC cannot be accepted or utilized or can be accepted or utilized only as per terms and conditions specified by CG

If such order of suspension is passed, up to 25% of unutilized amount can be spent with prior approval of Central Government for declared aims and objects. Balance 75% of the amount can be spent only after suspension order is revoked

Cancellation of Certificate of Registration

[section 14 of FCRA]

CG after making enquiry may cancel the registration if the holder of certificate has -

- made a false or incorrect statement in application
- violated any terms & conditions of the certificate or renewal thereof
- violated any provisions of this act or rules
- not been engaged in reasonable activity in chosen field for benefit of society for two consecutive years
- become defunct

In opinion of CG it is necessary to cancel in public interest.

CG shall give reasonable opportunity to be heard

Holder of certificate will not be eligible for registration/ permission for a period of three years from cancellation

Custody of FC in such case shall rest with exclusive FC bank Account of the holder.

Maintenance & Audit of Accounts

Every person who has been granted registration or prior permission under section 12 shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised

Every person who receives foreign contribution shall submit a report in the prescribed form (FC- 4) accompanied by an Income and expenditure statement, receipt and payment and balance sheet for every financial year by 31st December,

Foreign contribution received by a candidate for election shall be furnished in the prescribed form (FC – 1) within forty-five days from the date on which he is duly nominated as a candidate for election

Maintenance & Audit of Accounts

- The annual return in form FC-4 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.
- If the foreign contribution relates only to articles, the intimation shall be submitted in form FC-1.
- If the foreign contribution relates to foreign securities, the intimation shall be submitted in form FC-1.
- Every report submitted under above rules shall be duly certified by a chartered accountant.

Maintenance & Audit of Accounts

- The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.
- A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year.
- However in such a case no certificate of a chartered accountant is required.

Violation of provisions of FCRA & FCRR

Press note dated 09.01.1998 issued by MHA (FCRA division) has clarified “Non-submission of the return in time; furnishing of false information; mis-utilisation or diversion of foreign contribution for purposes other than those for which such contribution was received; transfer of contribution to any other organisation who have not been permitted to receive foreign contribution either by way of registration or prior permission, **constitute a violation of the provisions of the Act and attract penal action**”

One Time relaxation for those whose Registration was cancelled

The CG had cancelled a number of registrations of a large number of entities.

These entities in terms of Section 14 were not eligible for registration for a period of 3 years.

A public notice dated 1st August, 2019 has been issued to give one time exemption to such entities.

One Time relaxation for those whose Registration was cancelled cont.

They would be entitled to apply for registration within a period of 3 months i.e. on or before 31st October, 2019.

The pending annual returns can be uploaded on the portal without a penalty.

Offences & Penalties

Type of Offence/ Violation	Penalty
making of false statement, declaration or delivering false accounts	be liable to imprisonment for a term which may extend to three years or with fine or with both
article or currency or security obtained in contravention of prohibitory order	imprisonment for a term which may extend to three years, or with fine, or with both;
Violation or contravention of provisions	imprisonment for a term which may extend to five years, or with fine, or with both.

Offences & Penalties

Type of Offence/ Violation	Penalty
article or currency or security is not available for confiscation	a fine not exceeding five times the value of the article or currency or security or one thousand rupees, whichever is more, if such article or currency or security is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act
where no separate punishment has been provided:	imprisonment for a term which may extend to one year, or with fine or with both.

Compounding of Offence

Acceptance of FC in cash/ cheque/ draft/ kind without registration or prior permission is an offence that can be compounded

An application for the compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper and shall be accompanied by a fee of Rs.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.

Quantum of Compounding for Acceptance of FC without registration or prior permission

where cheque is not deposited in Bank	Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher
where cheque is deposited in Bank	Rs. 25,000/- or 3 per cent of the foreign contribution involved, whichever is higher.
Acceptance and utilisation of the FC for the purpose for which the same was received, and records of receipt and utilisation have been kept properly	Rs. 1,00,000/- or 5 per cent of the foreign contribution involved, whichever is higher
in kind notwithstanding that nothing adverse was reported after inquiry	Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.

Penalty for delay in submission of Annual Return

Quantum of Delay	Penalty
Upto 3 months	2% of FC or 10,000 whichever is less.
3 to 6 months	3% of FC or 50,000 whichever is less.
6 to 12 months	4% of FC or 2,00,000 whichever is less.
12 to 24 months	5% of FC or 5,00,000 whichever is less.
More than 24 months	10% of FC or 10,00,000 whichever is less.

Role of a Chartered accountant

To verify whether the associations are eligible to receive foreign contribution.

To guide the applicant organization in submission of application for registration/prior permission;

To ensure that the association receives and utilises the foreign contributions through its bank account exclusively opened for the purpose and that foreign contribution is not deposited or utilised from the bank account being used for domestic funds.

To assist in the proper maintenance of prescribed books of accounts

To ensure that the annual returns of an association have been prepared in accordance with the provisions of FCRA, 2010 and FCRR, 2011.

CORPORATE SOCIAL RESPONSIBILITY

BY CA ANIL SATHE

CSR CONCEPT

THE CONCEPT OF CSR WAS FIRST RECEIVED REGULATORY RECOGNITION WITH ISSUE OF **“CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES 2009 “BY MINISTRY OF CORPORATE AFFAIRS (MCA) .**

RECOGNISING THE NEED TO TAKE A LEAD IN THIS REGARD THE **DEPARTMENT OF PUBLIC ENTERPRISE** HAD ISSUED **GUIDELINES ON CSR FOR CENTRAL PUBLIC SECTOR ENTERPRISES(CPSE)** IN APRIL 2010

THE **COMPANIES ACT, 2013** HAS BROUGHT THE IDEA OF CSR TO THE FOREFRONT AND THROUGH ITS DISCLOSE-OR-EXPLAIN MANDATE, IS PROMOTING GREATER TRANSPARENCY AND DISCLOSURE.

SECTION 135

APPLICABILITY [135(1)]:

TO ALL COMPANIES THAT HAVE EITHER OF THE FOLLOWING IN ANY FINANCIAL YEAR:

NET WORTH 	INR 500 CRORE OR MORE
NET PROFIT 	INR 5 CRORE OR MORE
TURNOVER 	INR 1000 CRORE OR MORE

IF ANY OF THESE CONDITIONS IS SATISFIED IN THE IMMEDIATELY PRECEDING FINANCIAL YEAR, THEN IN THAT YEAR THE COMPANY WILL HAVE TO COMPLY WITH CSR PROVISIONS.

SECTION 135 (contd..)

CSR COMMITTEE

COMPANIES ARE REQUIRED TO CONSTITUTE A **CSR COMMITTEE** CONSISTING OF THREE MEMBERS, INCLUDING ONE INDEPENDENT DIRECTOR WITH THE FOLLOWING ROLES:

- FORMULATE CSR STRATEGY AND ACTIVITIES THROUGH A CSR POLICY .
- RECOMMEND QUANTUM OF EXPENDITURE TO BE INCURRED.

- REGULARLY MONITOR CSR POLICY AND ACTIVITIES.

SECTION 135 (contd..)

ANNUAL SPENDING ON CSR:

IN EVERY FINANCIAL YEAR THE COMPANY SHALL ENSURE THAT IT SPENDS AT LEAST 2 PERCENT OF AVERAGE NET PROFITS OF PAST THREE YEARS.

NET PROFIT FOR SECTION 135 AND CSR RULES SHALL MEAN NET PROFIT BEFORE TAX (CALCULATED AS PER S.198) AS PER BOOKS OF ACCOUNTS AND SHALL NOT INCLUDE PROFITS ARISING FROM BRANCHES OUTSIDE INDIA.

Recently Section 135 was amended to provide

IF THE COMPANY HAS AN UNSPENT AMOUNT OUT OF ITS CSR OBLIGATION (OTHER THAN AN AMOUNT PERTAINING TO ANY ONGOING PROJECT).

IT SHALL TRANSFER THE SAME TO A FUND SPECIFIED IN SCHEDULE-VII, WITHIN A PERIOD OF 6 MONTHS FROM THE END OF THE FINANCIAL YEAR.

THE UNSPENT AMOUNT PERTAINING TO AN ONGOING PROJECT SHALL BE TRANSFERRED TO AN UNSPENT CSR ACCOUNT WITHIN A PERIOD OF 30 DAYS FROM THE END OF THE FINANCIAL YEAR.

Recently Section 135 was amended to provide (cont.)

SUCH AMOUNT SHALL BE SPENT BY THE COMPANY WITHIN A PERIOD OF 3 FINANCIAL YEARS FROM THE DATE OF SUCH TRANSFER FAILING WHICH IT SHALL BE TRANSFERRED TO A FUND SPECIFIED IN SCHEDULE VII WITHIN A PERIOD OF 30 DAYS FROM THE COMPLETION OF THE THIRD FINANCIAL YEAR.

Failure to comply with the above requirements shall attract

PENALTY OF A MINIMUM RS. 50,000 AND A MAXIMUM OF RS. 25 LAKHS.

EVERY OFFICER IN DEFAULT SHALL BE PUNISHABLE WITH IMPRISONMENT FOR A TERM WHICH MAY EXTEND UPTO 3 YEARS OR WITH FINE OF A MINIMUM SUM OF RS. 50,000 BUT WHICH MAY EXTEND TO RS. 5,00,000, OR BOTH.

EXPENSES NOT QUALIFIED AS CSR

EXPENSES INCURRED BY COMPANIES FOR THE FULFILMENT OF ANY ACT/ STATUTE OF REGULATIONS (SUCH AS LABOUR LAWS, LAND ACQUISITION ACT ETC.)

ACTIVITIES UNDERTAKEN BY THE COMPANIES IN PROJECT/ PROGRAMME MODE ; ONE-OFF EVENTS SUCH AS MARATHONS/ AWARDS/ CHARITABLE CONTRIBUTION/ ADVERTISEMENT/ SPONSORSHIPS OF TV PROGRAMMES ETC. WILL NOT QUALIFY AS PART OF CSR EXPENDITURE.

CLARIFICATIONS

SALARIES PAID BY THE COMPANIES TO REGULAR CSR STAFF AS WELL AS TO VOLUNTEERS OF THE COMPANIES (IN PROPORTION TO COMPANY'S TIME/HOURS SPENT SPECIFICALLY ON CSR) WILL AMOUNT TO INCURRING EXPENDITURE ON CSR

EXPENDITURE INCURRED BY FOREIGN HOLDING COMPANY FOR CSR ACTIVITIES IN INDIA WILL QUALIFY AS CSR SPEND OF THE INDIAN SUBSIDIARY IF, THE CSR EXPENDITURES ARE ROUTED THROUGH INDIAN SUBSIDIARIES

CLARIFICATIONS (contd..)

CONTRIBUTION TO CORPUS OF A TRUST WILL QUALIFY AS CSR EXPENDITURE AS LONG AS

- (A) THE TRUST/ SOCIETY/ SECTION 8 COMPANIES ETC. IS CREATED EXCLUSIVELY FOR UNDERTAKING CSR ACTIVITIES OR
 - (B) WHERE THE CORPUS IS CREATED EXCLUSIVELY FOR A PURPOSE DIRECTLY RELATABLE TO A SUBJECT COVERED IN SCHEDULE VII OF THE ACT.
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ICAI FAQ's

IS CSR SPENDING REQUIRED TO BE DONE BY THE COMPANY DIRECTLY OR SUCH AMOUNTS CAN BE CONTRIBUTED TO CHARITY/ NGO/ SECTION 25(OLD)/SECTION 8 COMPANY. WILL SUCH CONTRIBUTION QUALIFY AS CSR SPEND?

YES. CONTRIBUTION BY THE COMPANY TO SUCH TRUSTS, NGOS ETC. ALSO QUALIFY FOR CSR SPEND IF IT MEETS THE TRACK RECORD AND OTHER CRITERIA AS PER RULE 4(2) OF COMPANIES (CSR POLICY) RULES, 2014.

CSR-Income Tax Perspective

CSR EXPENDITURE, BEING AN EXPENDITURE NOT INCURRED WHOLLY AND EXCLUSIVELY FOR THE PURPOSES OF CARRYING ON BUSINESS WILL NOT QUALIFY FOR DEDUCTION U/S 37.

IT WILL THEREFORE NOT BE ALLOWED AS DEDUCTION FOR THE PURPOSES OF COMPUTING TAXABLE INCOME OF A COMPANY, AMOUNT SPENT ON CSR CANNOT BE ALLOWED AS DEDUCTION FOR COMPUTING THE TAXABLE INCOME OF THE COMPANY.

Section 37 Deductibility of Expenditure

ANY EXPENDITURE INCURRED BY AN ASSESSEE ON THE ACTIVITIES RELATING TO CORPORATE SOCIAL RESPONSIBILITY SHALL NOT BE DEEMED TO HAVE BEEN INCURRED FOR THE PURPOSE OF BUSINESS AND HENCE SHALL NOT BE ALLOWED AS DEDUCTION UNDER SECTION 37

HOWEVER CSR EXPENDITURE WHICH IS OF THE NATURE DESCRIBED IN SECTIONS 30 TO 36 SHALL BE ELIGIBLE FOR DEDUCTION

SECTION 35

ANY EXPENDITURE INCURRED WHICH FALLS IN LINE WITH SECTION 35 SHALL BE ALLOWED UPON FULFILLMENT OF THE RESPECTIVE CONDITIONS .I.E. EXPENDITURE INCURRED BY THE ASSESSEE IN RESPECT OF SCIENTIFIC RESEARCH SHALL BE ALLOWED.

Section 80G(*Deductions*)

IF PROJECTS OR APPROVALS ARE NOT FOUND TO BE PRACTICALLY FEASIBLE BY CORPORATES, THE ALTERNATIVE OPTION CAN BE, TO CONTRIBUTE THE AMOUNT OF THE CSR TO A TRUST OR INSTITUTION WHICH IS REGISTERED U/S 12AA SO THAT THE AMOUNT OF CONTRIBUTION CAN BE CLAIMED AS DEDUCTION(50%).

IN CERTAIN CASES THE CONTRIBUTION TO CERTAIN TRUSTS/FUNDS WHICH FALL WITHIN PURPOSE SETOUT BY SCHEDULE VII MAY QUALIFY FOR A TOTAL DEDUCTION

Section 80G(*Deductions*)

DONATIONS MADE TO SWACHH BHARAT KOSH AND CLEAN GANGA FUND IN PURSUANCE OF CORPORATE SOCIAL RESPONSIBILITY SHALL HOWEVER NOT BE ALLOWED AS DEDUCTION.

MAT IMPACT

WHILE COMPUTING BOOK PROFIT UNDER SECTION 115JB OF THE ACT RELATING TO MINIMUM ALTERNATE TAX (MAT) THE CSR EXPENDITURE SHOULD NOT BE CONSIDERED AN APPROPRIATION. HENCE, THE BOOK PROFIT TO BE COMPUTED UNDER SECTION 115JB OF THE ACT SHOULD NOT BE INCREASED BY THE EXPENDITURE INCURRED ON CSR.

NO ADJUSTMENT IN SECTION 115JB HAS BEEN PROVIDED WITH RESPECT TO CSR EXPENDITURE.

THANK YOU