

Social Sector Hotline

July 06, 2022

NOT-FOR-PROFITS REJOICE: RECEIVING FOREIGN CONTRIBUTIONS MADE EASY

- The Foreign Contribution (Regulation) Rules 2011 (“**2011 Rules**”) has been amended by The Foreign Contribution (Regulation) Amendment Rules, 2022; enforced from July 1, 2022.
- Persons/associations can receive up to 10 lakh INR (approx. \$13000) and a time of three months to declare if the same exceeds the prescribed limit.
- Registered entities are not required to furnish intimation of quarterly receipt of foreign contribution
- The time limit for intimating change of names, aims, objectives or key members of the association has been increased to 45 days.
- The maximum fine for receiving a foreign contribution without being registered or receiving prior consent has increased from 10% to 30%.

INTRODUCTION

The Foreign Contribution (Regulation) Rules 2011 (“**2011 Rules**”) has been amended by The Foreign Contribution (Regulation) Amendment Rules, 2022 (“**New Rules**”) ¹ which came into effect on July 1st, 2022. The Government in its powers conferred under Section 48 of Foreign Contribution (Regulation) Act, 2010 (“**FCRA**”) has amended the rules under this Act for carrying out its provisions.

FCRA regulates foreign donations and ensures that such contributions do not adversely affect the internal security of the country. The provisions of the Act apply to the territory of India, to citizens of India who may be outside India and to companies or their branches outside India that are registered or incorporated in India. The entities covered by the Act include an individual, a Hindu undivided family, an association, or a registered company.

KEY AMENDMENTS AND THEIR IMPACT

| RULE | AMENDMENTS | IMPACT |
|---|---|---|
| Rule 6 - Intimation of receiving foreign contribution from relatives | <i>“In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as the said rules), in rule 6, — (i) for the words “one lakh rupees”, the words “ten lakh rupees” shall be substituted; (ii) for the words “thirty days”, the words “three months” shall be substituted;”</i> | Persons/associations can receive up to 10 lakh INR (roughly \$13000 equivalent) and a time of three months to declare the same under Form FC-1 if the same exceeds the prescribed limit. |
| Rule 9 - Application for obtaining 'registration' or 'prior permission' to receive foreign contribution. | <i>“In the said rules, in rule 9, (i) in sub-rule (1), in clause (e), for the words “fifteen days”, the words “forty-five days” shall be substituted; (ii) in sub-rule (2), in clause (e), for the words “fifteen days”, the words “forty five days” shall be substituted;”</i> | FCRA Registered persons/associations (previously or presently) must submit Form FC-6D within 45 days. |
| Rule 13 - Declaration of receipt of foreign contribution. | <i>“Declaration of receipt of foreign contribution. - (a) (b) Omitted”</i> | Registered entities are not required to furnish intimation of quarterly receipt of foreign contribution. |
| Rule 17A - Change of designated bank account, name, | <i>“In the said rules, in rule 17A, for the words “fifteen days”, the words “forty-five days” shall be substituted;”</i> | The time limit for intimating changes under Forms FC-6A, FC-6B, FC-6C, FC-6D or FC-6E is increased to 45 days. |

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address, aims, objectives or Key members of the association.

Rule 20 - Revision of an order passed by the competent authority under Section 32 of the Act

"In the said rules, in rule 20, for the words "on a plain paper", the words "in such form and manner, including in electronic form as may be specified by the Central Government" shall be substituted."

Application for revision of an Order cannot be made on "a plain paper". It must be filed in the prescribed format electronically.

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Table 1: Denoting the 2022 amendments in the governing rules and their impact

KEY AMENDMENTS IN COMPOUNDING OF OFFENCES UNDER FCRA, 2010

The Central Government² further revised the penalty payable in case of compounding of offences under FCRA. The maximum fine for receiving a foreign contribution without being registered or receiving prior consent has increased from 10% to 30%. Though the minimum fine remains at INR 1 lakh (approx. \$1300) it has not altered. The offence of sub-granting or transferring FCRA money to any other person may only be compounded once.

The following table shows the offences which are compoundable under FCRA along with the penalties for contravention of the provisions of FCRA:

| S.No. | Offence | Amount of Penalty | Officer competent for Compounding |
|-------|---|---|-------------------------------------|
| 1 | Offence punishable under Section 35 for accepting any hospitality in contravention of Section 6 (Intimation of receiving foreign contribution from relatives). | INR 10,000 (\$130) | Director/Deputy Secretary in-charge |
| 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: Provided that transfer of foreign contribution (inclusive of more than one instances of transfer, if any) shall be compoundable only once. | INR 1 Lakh (\$1300) or ten percent (10%) of such transferred foreign contribution, whichever is higher. | Director/Deputy Secretary in-charge |
| 3 | Offence punishable under Section 37 for defraying of foreign contribution beyond twenty per cent of the contribution received for administrative expenses in contravention of Section 8 of the Act. | INR 1 Lakh (\$1300) or five percent (5%) of such foreign contribution so defrayed beyond the permissible limit, whichever is higher | Director/Deputy Secretary in-charge |
| 4 | Offence punishable under Section 35 for accepting foreign contribution in contravention of Section 11 (mandatory registration or prior permission from the Central Government before receiving foreign contribution). | INR 1 Lakh (\$1300) or thirty percent (30%) of the foreign contribution received, whichever is higher | Director/Deputy Secretary in-charge |
| 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; (b) non-reporting the prescribed amount of foreign remittance or source and manner of such remittance by banks and authorised persons. (c) receiving and depositing any fund other than foreign contribution in the account or accounts opened for receiving foreign contribution or for utilising the foreign contribution. | INR 1 Lakh (\$1300) or five percent (5%) of the foreign contribution received in such account, whichever is higher; INR 1 Lakh (\$1300) or three percent (3%) of the foreign contribution received or deposited in such account, whichever is higher. INR 1 Lakh (\$1300) or two percent (2%) of such deposit, whichever is higher. | Director/Deputy Secretary in-charge |
| 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 | INR 1 Lakh (\$1300) or five percent (5%) of the foreign contribution received during the period of non- | Director/Deputy Secretary in-charge |

in which, such foreign contribution is received as required under Section 18 of the Act.

submission, whichever is higher.

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|----|---|--|-------------------------------------|
| 7 | Offence punishable under Section 37 for not maintaining the account and records of foreign contribution received and manner of its utilisation as required Section 19 of the Act. | INR 1 Lakh (\$1300) or five percent (5%) of the foreign contribution during the relevant period of non-maintenance of accounts, whichever is higher. | Director/Deputy Secretary in-charge |
| 8 | Offence punishable under Sections 3, 11 and 35 of the Act read with rule 6 for failure to intimate about receipt of foreign contribution within the prescribed time limit. | Five per cent (5%) of such foreign contribution received in a financial year | Director/Deputy Secretary in charge |
| 9 | Offence punishable under Section 37, Section 17 and Section 19 of the Act read with clause (e) of sub-rule (1) of rule 9 for failure to intimate about opening of account or accounts within the prescribed time. | INR 10,000 (\$130) per utilisation account for failure to intimate within the prescribed time. | Director/Deputy Secretary in charge |
| 10 | Offence punishable under Section 37, Section 17 and Section 19 of the Act read with clause (e) of sub-rule (2) of rule 9 for failure to intimate about opening of account or accounts within the prescribed time. | INR 10,000 (\$130) per utilisation account for failure to intimate within the prescribed time. | Director/Deputy Secretary in charge |
| 11 | Offence punishable under Section 37, Section 11 and Section 17 of the Act read with rule 17A, for failure to intimate about details within the prescribed time | INR 10,000 (\$130) or thirty per cent (30%) for each violation of failure to intimate within the prescribed time | Director/Deputy Secretary in-charge |
| 12 | Offence punishable under Section 37 and Section 19 of the Act read with rule 13, for failure to place on website as prescribed in clause (a) of rule 13 within the prescribed time. | INR 10,000 (\$130) for each violation. | Director/Deputy Secretary in-charge |

Table No. 2: Denoting the list of amended compoundable offences and subsequent penalties thereof

CONCLUSION

The 2022 amendments allow for significant increase in quantum of permissible foreign contributions. This allows for persons/associations to receive more foreign contributions in a smoother manner; and reduces time and management resources spent in regulatory procedures. Additions in the list of compoundable offences is an initial step to encourage foreign contributions in India. The FCRR aims at prohibiting utilisation of foreign contribution for any activities detrimental to the national interest. Nevertheless, the government, while ensuring strict scrutiny of all foreign contributions to India, has significantly smoothed the procedure and the penalty for any lapses therein to ensure that the same does not discourage the rate of foreign contributions.

Thereby, as per the amended rules, person's/associations barred to receive foreign contribution under Section 3, FCRA can receive foreign contribution up to INR 10 lakh (\$13000). Entities can pay five percent (5%) of the foreign contribution received and absolve their liability under FCRA. Mandatory disclosures of quarterly updates on the foreign contribution received are no longer required.

With reference to amendments to compoundable offences, the amount of penalty computed with respect to any offence(s) thereof shall not be more than the value of the foreign contribution received. Lastly, the application to compound offences specified above may be processed in physical or electronic form as may be specified by the Government.

The new amendments will lead positive implications for not-for-profits receiving foreign contributions in India. The compliance burden has significantly reduced to allow them to structure their resources and time for utilizing their foreign contributions. The entities shall not be required to report receiving any amount lesser than INR ten lakhs (\$13000). Moreover, in case of any contraventions falling under the list of compoundable offences, the penalty imposed upon the entities has also been reduced. Thereby, aiding not-for-profits in accepting foreign contributions without any bureaucratic or legal, regulatory delays.

– Nitish Raj, Rahul Rishi & Dr.Milind Antani

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You can direct your queries or comments to the authors

¹ Notification No. GSR 506(E) dated 01.07.2022 in F. No. II/21022/23(04)/2021-FCRA-III:

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