

AccountAble

The Power of the Law

Before we go deeper into this, we must be clear about one thing. The law, by and large, is benevolent. During enforcement, various positive factors are also considered. The authorities try to follow the spirit of the law, to the extent possible.

Yet the letter of the law remains important. We need to know what is the worst that can happen. Another thing to remember is that FCRA (Foreign Contribution Regulation Act, 1976) is not a fiscal act. It is an Act to preserve internal security. This means that the style and procedure of enforcement is different.

Various offenses and their penalties are listed in a ready-reckoner on next three pages. It may be good idea to check the ready-reckoner *before* embarking on an adventure with FCRA.

Some of the other implications are discussed below:

1. Appeal against confiscation: You can appeal within one month of receiving the confiscation order in the sessions court or High Court [sec. 21].

2. Appeal against prohibition or refusal: If you are prohibited from receiving foreign contribution or permission/ registration is refused, you can appeal within sixty days of *order date*. The appeal has to be made to the High Court [sec.21].

Most of us violate some law or the other at some point of time. We may do this knowingly or unknowingly. But ignorance of law is not an excuse.



FCRA contains many penalties. We have ignored these all along because very few (if any) people have been penalized under FCRA. Our thinking on this may be similar to those company directors who are now behind the bars under FERA.

This paper is a small attempt to identify the many land-mines that are hidden in FCRA. Walk with care lest you step on one.

3. Chief Functionaries: Assume that the violation is done by a company or society. Who will be penalized? Firstly the company/ society itself will be penalized. Secondly, anyone who was in charge of the company / society (Chief Functionary/ director etc.). However, if this person can show that he did not know about this or it happened despite his best effort, then he / she will not be penalized [sec.26].

4. Governing body: In 3 above, can anyone else be penalized? Any director, member of Governing body, manager, secretary or other officer can also be penalized. However, in this case, it must be shown that there was neglect or connivance or consent of such person [sec. 26].

5. Advisers & Funding Agencies: The Government can prosecute any one who assists an organization in receiving foreign contribution (in violation of FCRA). This may include Governing Body members, advisers, consultants, funding agency officers, etc. if their role is proven [sec.23].

6. Government's sanction: No one can be punished or fined under FCRA unless the Government first sanctions prosecution. This means that there can not be any public-interest petition under FCRA [sec. 27].


7. Investigative powers: The Government may authorize a person or department to investigate some offense under FCRA. Such a person will then have powers similar to a police-station in-charge [sec. 28].

8. Honest mistake: When the Government is acting under FCRA it may make an honest mistake and cause loss or damage. For this loss or damage, no one can prosecute the Government [sec.29].

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Offenses & Penalties: Ready-Reckoner

<i>Offense</i>	<i>Who may be penalized</i>	<i>Penalty</i>
1. Politician/ journalist/ judge/ Government servant/ public sector employee accepts foreign contribution (section 4)	<ul style="list-style-type: none"> • Person who accepted the foreign contribution • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23]
2. Political organization accepts foreign contribution without Government's prior permission (section 5)	<ul style="list-style-type: none"> • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23]
3. Indian resident or Indian Citizen accepts foreign contribution (currency) for above persons (section 4, 5)	<ul style="list-style-type: none"> • Indian resident or Indian Citizen who accepted • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23]
4. Indian resident or Indian Citizen is involved in delivery of foreign contribution (currency) to above persons (section 4, 5)	<ul style="list-style-type: none"> • Indian resident or Indian Citizen who was involved in delivery • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23, 25]
5. Person after receiving foreign contribution (currency) for one association delivers it to different association (section 4)	<ul style="list-style-type: none"> • Person who received the currency • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23, 25]
6. Association accepts foreign contribution without registration or prior permission (section 6)	<ul style="list-style-type: none"> • Association • Chief Functionary etc. • Governing Body members • Other officers • Person who assisted 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23]
7. Association having FCRA registration receives foreign contribution in different bank account (section 6)	<ul style="list-style-type: none"> • Association • Chief Functionary etc. • Governing Body members • Other officers 	<ul style="list-style-type: none"> • Compulsory prior permission [section 6] • Inspection & seizure of accounts & records [sec. 14,15] • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24]

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Ready-Reckoner (contd.)


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<i>Offense</i>	<i>Who may be penalized</i>	<i>Penalty</i>
8. Association having FCRA registration does not file FC-3 in time (section 6) 	<ul style="list-style-type: none"> • Association • Chief Functionary etc. • Governing Body members • Other officers 	<ul style="list-style-type: none"> • Compulsory prior permission [section 6] • Inspection & seizure of accounts & records [sec. 14,15] • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]
9. Association having FCRA registration files FC-3 with false information (section 6)	<ul style="list-style-type: none"> • Association • Chief Functionary etc. • Governing Body members • Other officers 	<ul style="list-style-type: none"> • Compulsory prior permission [section 6] • Inspection & seizure of accounts & records [sec. 14,15] • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]
10. Person nominated for election within 180 days of accepting foreign contribution fails to intimate Central Government (section 6)	<ul style="list-style-type: none"> • Concerned person 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]
11. Indian citizen receiving scholarship , stipend or similar payment (exceeding Rs.36,000 in academic year) fails to file form FC-5	<ul style="list-style-type: none"> • Concerned person 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]
12. Politician/ journalist/ judge/ Government servant/ public sector employee accepted foreign contribution <i>exceeding</i> Rs.8,000 (as gift) from relative without prior permission (section 8)	<ul style="list-style-type: none"> • Person who accepted the gift 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto five years and/ or fine [sec.23]
13. Politician/ journalist/ judge/ Government servant/ public sector employee who accepted foreign contribution upto Rs.8,000 (as gift) from relative and did not give intimation to Government (section 8)	<ul style="list-style-type: none"> • Person who accepted the gift 	<ul style="list-style-type: none"> • Seizure & confiscation of foreign contribution [sec.16, 18] • Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] • Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]

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Ready-Reckoner (contd.)

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<i>Offense</i>	<i>Who may be penalized</i>	<i>Penalty</i>
14. Politician/ journalist/ judge/ Government servant/ public sector employee accepts foreign hospitality without medical emergency [sec. 9]	<ul style="list-style-type: none"> Person who accepted the foreign hospitality 	<ul style="list-style-type: none"> Imprisonment upto three years and/ or fine [sec. 23]
15. Politician/ journalist/ judge/ Government servant/ public sector employee accepts foreign hospitality in medical emergency and does not give intimation in 30 days [sec. 9]	<ul style="list-style-type: none"> Person who accepted the foreign hospitality 	<ul style="list-style-type: none"> Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25] 
16. Association with FCRA registration or prior permission does not maintain prescribed records and accounts [section 13]	<ul style="list-style-type: none"> Association Chief Functionary etc. Governing Body members Other officers 	<ul style="list-style-type: none"> Inspection & seizure of accounts & records [sec. 14,15] Seizure & confiscation of foreign contribution [sec.16, 18] Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] Imprisonment upto one year and / or fine upto Rs.1,000 [sec. 25]
17. Person transfers/ deals with foreign contribution despite prohibitive order under section 12 [sec. 22]	<ul style="list-style-type: none"> Person who transferred or dealt Person who assisted 	<ul style="list-style-type: none"> Seizure & confiscation of foreign contribution [sec.16, 18] Additional fine (upto five times in value) if original foreign contribution spent [sec. 24] Imprisonment upto three years and/ or fine upto market value of foreign contribution [sec. 22]
18. Accepting or assisting another person to accept foreign contribution in violation of FCRA [sec.23]	<ul style="list-style-type: none"> Person who accepts Person who assists another to accept 	<ul style="list-style-type: none"> Seizure & confiscation of foreign contribution [sec.16, 18] Imprisonment upto five years and/ or fine [sec. 23]
19. A person is convicted second time for offense under sec. 23 (1) or 25 [sec. 25-A]	<ul style="list-style-type: none"> Association Person 	<ul style="list-style-type: none"> Prohibition on accepting foreign contribution for three years [sec. 25-A]

Accounts Clinic in Mumbai

Bombay Chartered Accountants' Society is offering free advice to NGO's on accounting, audit, taxation and related legal issues. This service is available on first Thursday of each month.

Address of the clinic is:

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If you can not get the bare FCRA Act / Rules in your town or city, write to Jain Book Agency, C-9, Connaught Place, New Delhi - 110001; Phones: 3320806; 3321663
FCRA rules have been revised on 27 December '96.

We would welcome your views, comments and questions on this circular. Please send these to:

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