

# AccountAble™

106: CSR and FCRA

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## IN THIS ISSUE

Indian Company-Foreign Source pg1

Foreign Company-Indian Source? • CSR Foundations • Items Covered • Case studies pg2

Precautions • For NGOs pg3

For Companies pg4

Many companies in India give money to NGOs, schools, hospitals, etc. Sometimes the money is given directly. In other cases, the money is given through the company's own foundation. This may also be done as part of the company's CSR<sup>1</sup> activities.

If the company is a foreign source, then FCRA<sup>2</sup> comes into play. However, few companies are familiar with FCRA. This issue of AccountAble discusses the FCRA requirements related to CSR activities.



### INDIAN COMPANY – FOREIGN SOURCE

Under the Companies Act, an Indian company means a company formed and registered in India. A foreign company means a company formed abroad. Things are different with FCRA.

Under FCRA, an Indian company is an Indian

source, only if it is controlled by Indian citizens, companies, etc. If the control passes into the hands of foreigners, then it becomes a foreign source. For example, if foreigners hold 50% or more of the shares in an Indian company, it automatically becomes a foreign source.

The following well-known Indian companies are classified as foreign source under FCRA:<sup>3</sup>

- Bata India Ltd.
- Britannia Industries Ltd.
- Hindustan Unilever Ltd.
- Housing Development Finance Corporation Ltd. (HDFC)
- ICICI Bank Ltd.
- IDFC Ltd.
- ING Vysya Bank Ltd.
- ITC Ltd.
- Jet Airways (India) Ltd.
- Maruti Suzuki India Ltd.
- MphasiS Ltd.
- Sesa Goa Ltd.
- Siemens Ltd.

...if foreigners hold 50% or more of the shares in an Indian company, it automatically becomes a foreign source.

<sup>1</sup> Corporate Social Responsibility. With the parliament passing the new Companies Bill in Aug '13, CSR activities are set to increase in a big way.

<sup>2</sup> Foreign Contribution (Regulation) Act, 2010

<sup>3</sup> This illustrative compilation is based on information available in public records and internet sources. It may or may not be accurate. Please validate the company's FCRA status independently, before taking any action based on this.

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Similarly, if an Indian company is a subsidiary of a foreign company, then it will be treated as a foreign source. An example is iGate Global Solutions Ltd., Bangalore, which is a subsidiary of iGate Corporation, USA.

On the other hand, there are companies such as Blue Star, Greaves Cotton, Café Coffee Day, which have foreign sounding names but are actually Indian sources.

### FOREIGN COMPANY – INDIAN SOURCE?

Can a foreign company become an Indian source? Never. Foreign companies are always a foreign source under FCRA. This remains true even if all the shares are held by Indian citizens or by Indian companies. Therefore, if an Indian company acquires a foreign company, the foreign company will continue to remain a foreign source.

### CSR FOUNDATIONS

What happens if one of the above companies<sup>4</sup> forms a public trust in India for CSR? The trust should get FCRA registration before accepting any grant or donation from the mother company. Secondly, the CSR grant and the interest on these funds will be foreign contribution.

Therefore, all the usual FCRA restrictions come into play. These funds cannot be given to political parties, media, government officers, etc. If the funds are given to another NGO, then it should have FCRA registration or prior-permission.

### ITEMS COVERED

FCRA covers donative transactions related to money, material and securities. However, it does not cover use of facilities without charge, or volunteering. It also leaves out some receivers such as hospitals.<sup>5</sup>

### CASE STUDIES

Let us now consider two hypothetical cases.

In the first case, an international mining company set up operations in India. It also started CSR activities around its plant through grants to a number of NGOs, and to its own Trust. The mining company was a subsidiary of a foreign company, and therefore a foreign source. However, the company was not aware of this. As a result, it did not check FCRA status of the receiving NGOs. This continued for several years, till the lapse was pointed out in a special audit. The company then applied to FCRA Department for compounding the offence, and obtaining FCRA registration for its Trust.

In the second case, a large Indian bank has set up a Trust to run its CSR activities. The bank is classified as a foreign source, as 56% of its shares are held by Foreign Institutional Investors. The bank has made several corpus grants to the Trust, running into hundreds of crores. The Trust uses interest earned on the corpus to make grants to a number of NGOs. It also runs programs directly.

The Trust is managed by people with a business background. Most of the governing body members in the Trust are also from the bank and associated companies. None of them are aware of the FCRA requirement. Therefore, the bank, the Trust and the partner NGOs, are all defaulting

**Foreign companies are always a foreign source under FCRA**

<sup>4</sup> Classified as foreign source under FCRA

<sup>5</sup> For more on this, see 'What's Covered' pp. 40-45 and 'Other Areas' p.72, AccountAble Handbook: FCRA 2010 at [www.AccountAid.net](http://www.AccountAid.net).



unknowingly on FCRA compliance.

### PRECAUTIONS

What should you do to ensure you don't end up with FCRA problems?

#### For NGOs

Check the FCRA status of any company that donates money or material to you. If the donor is a listed company, you can simply Google for 'shareholding pattern of [name of company]'. Then open the page that shows breakup of the shareholding. Add up all the foreign shareholding (including companies, individuals, FII, etc.). If this exceeds 50%, then the company is a foreign source.

If the company is not widely-held, then you won't find this information on the internet. You should, therefore,

### A brief history of FCRA

Ancient India is credited with many innovations: the zero, the modern numeral notation and yoga to name just a few. However, few know that this innovative streak has continued in modern times as well. For example, in 1976, Indians became the first nation to invent controls over international charity.

This was in the form of FCRA 1976. This law asked all the NGOs to tell the government how much funds they receive from foreigners. The law was refined in 1984- NGOs could not accept foreign funds without government permission.

In 2010, the law was reinforced further. Charitable individuals were also brought into the net. The law was made more rigorous: periodic renewals, restrictions over use of funds, cap on administrative expenses, were introduced.

And the world has followed in India's wake. Similar laws have been passed in Bangladesh, Indonesia, Egypt, Ethiopia, Russia and Venezuela, among others. A proposal for this law is now pending in Pakistan's senate. Sri Lanka might also follow suit.

Notwithstanding Francis Fukuyama's elegant argument, the end of this history is nowhere in sight.

email the company as follows:<sup>6</sup>

*To comply with requirements of Foreign Contribution (Regulation) Act, 2010, we need to find out whether a donor / supporter is classified as a foreign source or Indian source. As FCRA provisions are complex, we request the following information about [full name of the company] which will help our legal advisers decide on this issue:*

1. *Whether your company is a foreign company or corporation i.e. registered or incorporated outside India [Yes/No/Can't say]*
2. *Whether your company is a branch of a foreign company or corporation [Yes/No/Can't say]*
3. *Whether your company is part of a foreign multi-*

<sup>6</sup> For more on this, see 'Company under Foreign Control' p.52, AccountAid Handbook: FCRA 2010, available at [www.AccountAid.net](http://www.AccountAid.net)

*national corporation (MNC) [Yes/No/Can't say]*

4. *Whether your company is a subsidiary of a foreign company or of a foreign multi-national corporation [Yes/No/Can't say]*
5. *Whether more than 50% of the company's nominal capital is held by foreigners (including foreign citizens, foreign governments, foreign corporations, FIIs, foreign companies, foreign*



*MNCs or their subsidiaries or foreign trusts / firms etc.) [Yes/No/Can't say]*

Once you get this information, talk to your auditors. If they cannot help you, send an email to [query@accountaid.net](mailto:query@accountaid.net) with the details.

### For Companies

Find out whether you are classified as a foreign source. If yes, then make sure:

1. Your Finance and CSR teams are clear about FCRA.<sup>7</sup>
2. Grants<sup>8</sup> are given only to NGOs with FCRA.
3. The NGOs know that you are giving them foreign funds.
4. You do not give any donations or grants to political parties, politicians, media persons, judiciary, government servants, etc. If you are giving a gift to such an individual, make sure that its market value is less than Rs. 25,000.

<sup>7</sup> Visit FCRA Department's website at <http://www.mha.nic.in/fcra.htm> for circulars and notices.

Also see AccountAble issues or the AccountAid Handbook on FCRA 2010 at [www.AccountAid.net](http://www.AccountAid.net).

<sup>8</sup> Money, material (equipment, supplies, etc.) or securities

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**Interpretation of law:** Interpretation of law given here is of a general nature. Please consult your advisors before taking any important decision.

**Questions and doubts?** AccountAid provides complimentary advice to implementing NGOs and NGO auditors on matters related to accounting or financial regulation. You can send

your questions by e-mail ([query@accountaid.net](mailto:query@accountaid.net)) or letter. You can also discuss these over the phone.

**Comments:** Your comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; Phone/Fax: 011-2634 3852; e-mail: [query@accountaid.net](mailto:query@accountaid.net).

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