

## Offences and Penalties and Compounding of certain offences

### **Q. 1 What are the offences and penalties under FCRA, 2010?**

Ans. Section 11 of the FCRA, 2010 prescribes that no person, save as otherwise provided in the Act, shall accept foreign contribution unless such person obtains a certificate of registration or prior permission of the Central Government. Therefore, acceptance of foreign contribution without obtaining registration or prior permission from the Central Government constitutes an offence under the Act and is punishable.

The provisions of FCRA, 2010 regarding offences and penalties are –

#### **Section 33: Making of false statement, declaration or delivering false accounts:**

Any person, subject to this Act, who knowingly, —

(a) gives false intimation under sub-section (c) of section 9 or section 18; or

(b) seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by a court, be liable to imprisonment for a term which may extend to three years or with fine or with both.

#### **Section 34: Penalty for article or currency or security obtained in contravention of Section 10:**

If any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.

#### **Section 35: Punishment for contravention of any provision of the Act:**

Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

**Section 36: Powers to impose additional fine where article or currency or security is not available for confiscation:**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying a person, who, in relation to any article or currency or security, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency or security liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person 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.

**Section 37: Penalty for offences where no separate punishment has been provided:**

Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

**Section 38: Prohibition of acceptance of foreign contribution:**

Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.

**Section 39: Offences by companies:**

(1) Where an offence under this Act or any rule or order made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule or order made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation – for the purposes of this section,–

(a) "company" means any body corporate and includes a firm, society, trade union or other association of individuals; and

(b) 'director" in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a members of the governing body of such society, trade union or other association of individuals.

#### **Section 40: Bar on prosecution of offences under the Act:**

No court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

#### **Section 41: Compounding of certain offences:**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the official gazette, specify in this behalf.

(2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section. Explanation – For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervisions of the Central Government.

(4) Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner along with such fee as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Every officer or authority referred to in sub-section (1), while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission to file or register with or deliver or sent to, the Central Government or any prescribed authority any return account or other

document, may, direct by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.

**Q. 2 Which are the offences that can be compounded and what would be the penalties therefor?**

Ans: A) Acceptance of foreign contribution without registration/prior permission: In terms of Gazette Notification S.O. 1976 (E) dated 26.08.2011, the quantum of penalty for compounding of offence of acceptance and utilization of foreign contribution without registration/prior permission is as under:

(i) Acceptance of cheque or draft towards foreign contribution by a 'person' without registration or prior permission of the Central Government even in cases where the cheque or draft has not been deposited in a Bank by the 'person'. Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.

(ii) Acceptance of cheque or draft by a 'person' towards foreign contribution without registration or prior permission of the Central Government and depositing the same in a Bank notwithstanding non-utilisation of the amount of the foreign contribution. Rs. 25,000/- or 3 per cent of the foreign contribution involved, whichever is higher.

(iii) Acceptance of foreign contribution by a 'person' without registration or prior permission of the Central Government and utilisation of the same notwithstanding any inquiry which revealed that the contribution received was not diverted towards any purpose other than the objectives or purpose for which the same was received, utilisation of the contribution was as per the objectives of receipt of the same 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.

(iv) Acceptance of foreign contribution in kind by a 'person' without registration or prior permission of the Central Government notwithstanding that nothing adverse was reported after inquiry. Rs. 10,000/- or 2 per cent of the foreign contribution involved, whichever is higher.

Non-furnishing of annual return within the stipulated time period: In terms of Gazette Notification S.O. 1070 (E) dated 26.04.2013, the quantum of penalty for non furnishing of annual returns is as under:

- Non-furnishing of return upto ninety days after 31st December every year:-  
Penalty of two per cent of the amount received during the Financial year or rupees ten thousand, whichever is higher.

- Non-furnishing of return after ninety days upto one hundred and eighty days after 31st December every year: Penalty of three per cent of the amount received during the Financial year or rupees twenty thousand, whichever is higher.
- Non-furnishing of return after one hundred and eighty days after 31st December every year: Penalty of five per cent of the amount received during the Financial year or rupees fifty thousand, whichever is higher, with rupees five hundred per day of delay after one hundred and eighty days.

### **Q. 3 How to apply for compounding of an offence under FCRA, 2010?**

Ans: An application for the compounding of an offence under section 41 of FCRA, 2010 is to be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper along with 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.

### **Q.4 What if the person is unwilling or unable to pay the penalty imposed?**

Ans: In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.

### **Q.5 Which are the investigating agencies for investigating and prosecuting a person for violation of FCRA?**

Ans. The Central Bureau of Investigation or the investigating agencies (Crime Branch) of the State Governments, cause of action of which arises in their respective States, are the designated agencies for investigating and prosecuting a person for violation of FCRA.

### **Q.6 Can an organization, whose violation under FCRA, 1976 has been condoned, apply for registration/prior permission?**

Ans. Yes, after the violation committed by an association has been condoned, the association can apply for prior permission (PP)/registration