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**NEWSFLASH - IMPLICATIONS ON CSR SPENDING OF  
PROPOSED AMENDMENT TO THE DEFINITION OF  
'FOREIGN SOURCE' UNDER THE FOREIGN CONTRIBUTION  
REGULATIONS ACT, 2010**

## 1.0 Background

One of the major proposals in the Finance Bill, 2016 pertain to amendment to be brought in the Foreign Contribution Regulations Act, 2010 ('FCRA') by amending the definition of 'foreign source'. Pursuant to the proposed change, which if legislated would facilitate smoother movement of funds by the Indian companies (which are foreign owned), which are required to mandatorily comply with the Corporate Social Responsibility (CSR) regulations under the Companies Act, 2013.

An overview has been provided in this newsflash about the proposed change in the FCRA regulations and its implication on foreign owned Indian companies from the CSR perspective.

## 2.0 Proposed Amendment in FCRA – Definition of “Foreign Source”

The Finance Bill, 2016 proposed to amend the definition of Foreign Source given u/s 2(1)(j) of the Foreign Contribution Regulations Act, 2010 ('FCRA') by inserting a proviso to sub-clause (vi). The present definition and proposed definition (change highlighted in **blue**) is tabulated as under for your ready reference.

| Present Definition   | Proposed Definition  |
|--|--|
| <p>"foreign source" includes,--</p> <p>i. the Government of any foreign country or territory and any agency of such Government;</p> <p>ii. any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;</p> <p>iii. a foreign company;</p> <p>iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;</p> <p>v. a multi-national corporation referred to in sub-clause (iv) of clause (g);</p> <p>vi. a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:--</p> <p>A. the Government of a foreign country or territory;</p> <p>B. the citizens of a foreign country or territory;</p> <p>C. corporations incorporated in a foreign country or territory;</p> <p>D. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;</p> <p>E. foreign company;</p> <p>vii. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;</p> <p>viii. a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;</p> | <p>"foreign source" includes,--</p> <p>i. the Government of any foreign country or territory and any agency of such Government;</p> <p>ii. any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;</p> <p>iii. a foreign company;</p> <p>iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;</p> <p>v. a multi-national corporation referred to in sub-clause (iv) of clause (g);</p> <p>vi. a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:--</p> <p>A. the Government of a foreign country or territory;</p> <p>B. the citizens of a foreign country or territory;</p> <p>C. corporations incorporated in a foreign country or territory;</p> <p>D. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;</p> <p>E. foreign company;</p> <p><b><u>“Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;”</u></b></p> |

| Present Definition  | Proposed Definition  |
|---|--|
| ix. a society, club or other association of individuals formed or registered outside India;<br>x. a citizen of a foreign country; | vii. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;<br>viii. a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;<br>ix. a society, club or other association of individuals formed or registered outside India;<br>x. a citizen of a foreign country; |

### 3.0 Effective Date of the Proposed Amendment

The aforementioned amendment is proposed be operational from 26 September 2010, i.e. with retrospective effect from the date on which FCRA came into force and shall take effect when Finance Bill, 2016 gets the assent of the President.

### 4.0 Brief Overview of the CSR regulations and Consequences of Proposed Amendment

- As per section 135 of the Companies Act, 2013 every company having
  - net worth of INR 500 crore or more, or
  - turnover of INR 1,000 crore or more or
  - a net profit of INR 5 crore or more during any financial year

spend, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility ('CSR') Policy.

- As such, the provisions of CSR are applicable to every Indian company satisfying the conditions mentioned above and such company is mandatorily required to spend specified percentage of profits on CSR activities every year.
- As per existing definition of "Foreign Source", where more than ½ of the nominal value of share capital of an Indian company is held either singly or in the aggregate by a foreign company is treated as foreign source. As such, a person intending to receive donations from such companies is required to approach FCRA authority for obtaining specific approval or registration under FCRA Act

- The effect of proposed amendment is that an Indian company which has FDI (*with more than 50% of the nominal capital being held by foreign company*) as per as per extant limits under Foreign Exchange Management Act, 1999 can make eligible donation without attracting FCRA Regulations.
- As such, no specific approval of the FCRA authority shall be required for receiving such donations from the foreign owned Indian company as part of their CSR spending.
- This amendment shall bring in consonance the provisions of the CSR spending as contained in the Companies Act 2013 with the provisions of the FCRA, which regulates foreign contribution.
- Also, all Indian companies which have majority foreign ownership up to the permissible limits under FEMA are outside the purview of the FCRA for any donation whether related to CSR or not.

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This newsflash is general in nature. In this newsflash, we provide you an overview of the limited amendment in the FCRA as proposed in the Finance Bill 2016. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the respective press release / other published material of the Central Government and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. The government or other authorities, may not necessarily, agree to the views shared in this newsflash. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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