

FCRA

#Charcha 2020

Sanjay Agarwal

About DevelopAid

DevelopAid Foundation is a sec. 8 not-for-profit company, with a mission of enhancing public trust, accountability, financial literacy, governance, and understanding of relevant laws and regulations among philanthropic organisations and social enterprises in India.

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Coronavirus | \$3.6 million in U.S. funding to Indian labs may be delayed

U.S. Centers for Disease Control and Prevention has been placed on watch list since December 2019.

A decision by the U.S. Centers for Disease Control and Prevention (CDC) to donate \$3.6 million to Indian laboratories and research agencies to assist in countering the [COVID-19 pandemic](#) could run into delays, given that the agency has been placed on a “watch list” since December 2019, officials said in New Delhi.

[India coronavirus lockdown Day 50 updates | Helpline numbers](#)

On May 12, the U.S. Embassy issued a release saying the CDC would commit \$3.6 million as an “initial tranche of funding” to India’s response to the pandemic. “Since early January, the CDC’s India Office has been collaborating with sub-national and national government institutes to support the COVID-19 response in India,” the release said, adding that the money would go towards increasing “laboratory capacity for COVID-19 (SARC-CoV-2) testing, molecular diagnostics and serology”.

However, a government official told *The Hindu* that any funding from the U.S. government body would have to be cleared by the Ministry of Home Affairs (MHA) as it had been placed on a “watch list” on December 2, 2019, that barred it from sending funds directly to any government or private institute in India without the MHA’s clearance.

THE HINDU

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JUST IN

6

1hr Rajasthan CM criticises ‘insensitive’ economic package

7

1hr No link between BCG vaccination, coronavirus in Israel: study

8

1hr ICC Board to discuss T20 WC on May 28

MENU

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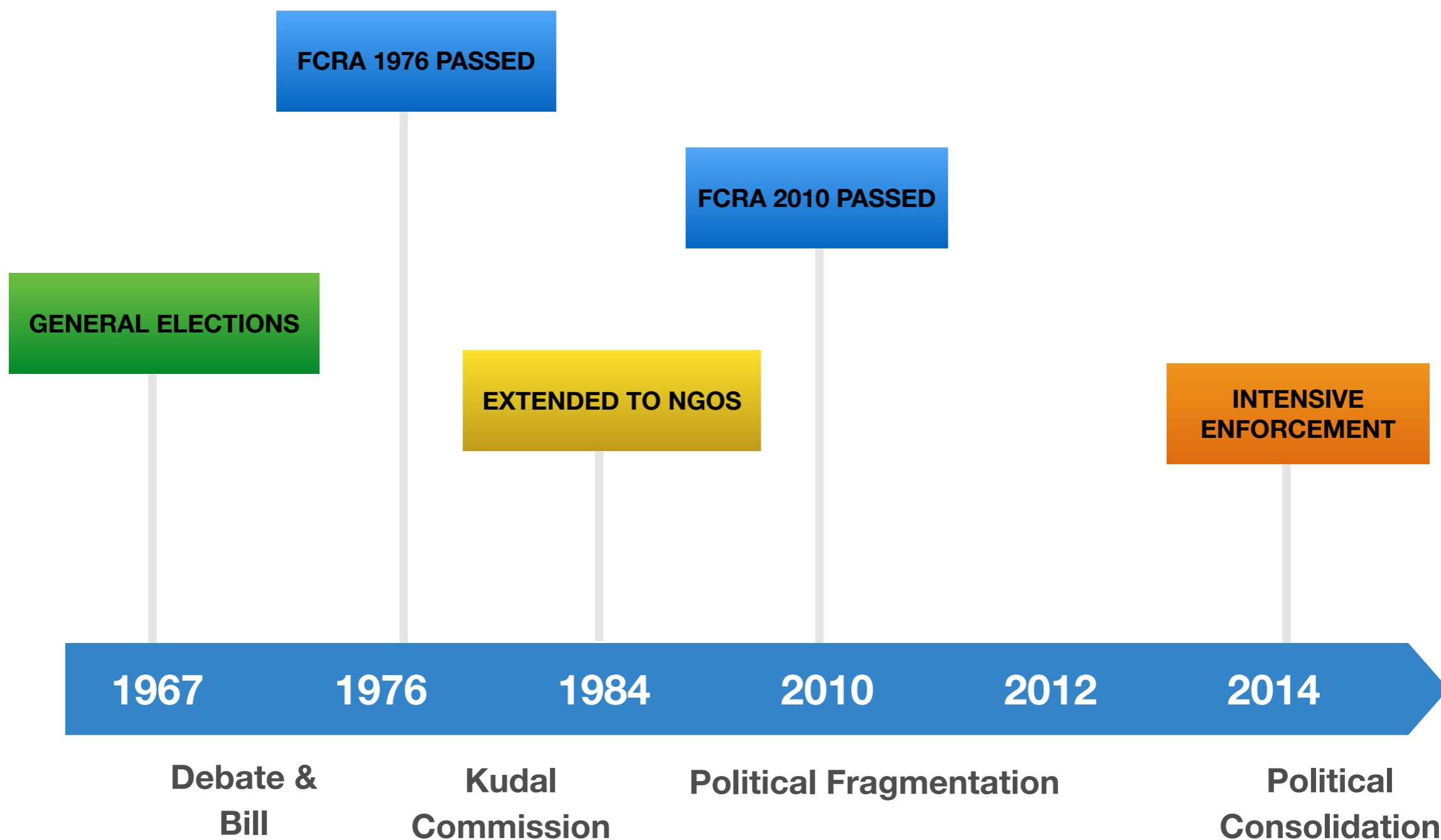
NATIONAL

Coronavirus | \$3.6 million in U.S. funding to Indian labs may be delayed

Vijaita Singh

Suhasini Haidar

NEW DELHI, MAY 14, 2020 00:33 IST
UPDATED: MAY 14, 2020 09:59 IST



The regulations have been so framed that while legitimate charitable, social, educational, medical and activity that serves any public purpose is allowed, **foreign money does not dominate social and political discourse in India.** There is enough money for charity within India. Enough money can be raised within India for **charitable** causes, the **social** causes. But, if you want to access foreign money, then one has to come under a system of regulation.

- Minister of Home Affairs, Rajya Sabha, 19-Aug-10

The Foreign Hand

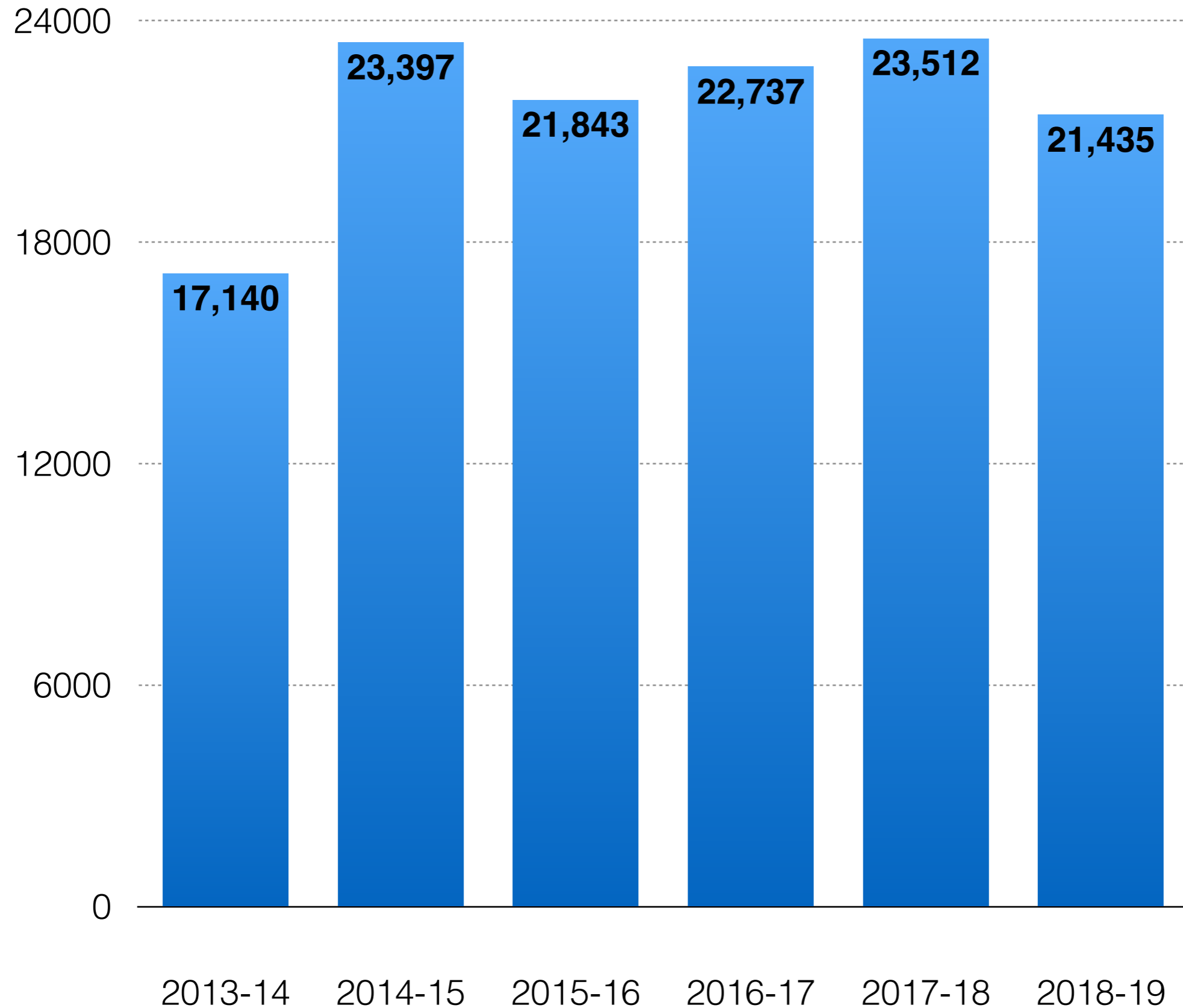




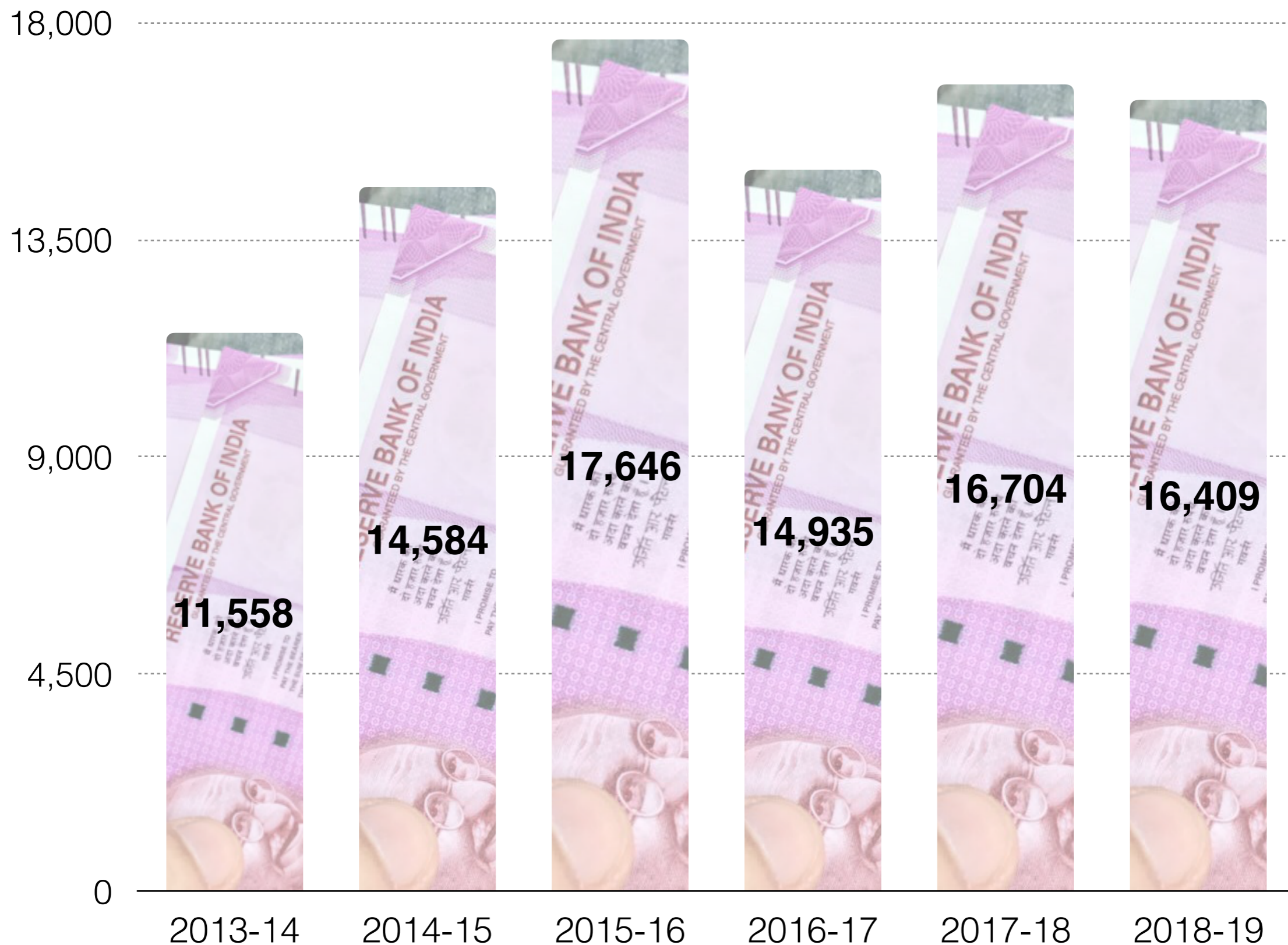
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ACCOUNTING | AUDIT | REGULATION | FUNDING

Returns Filed



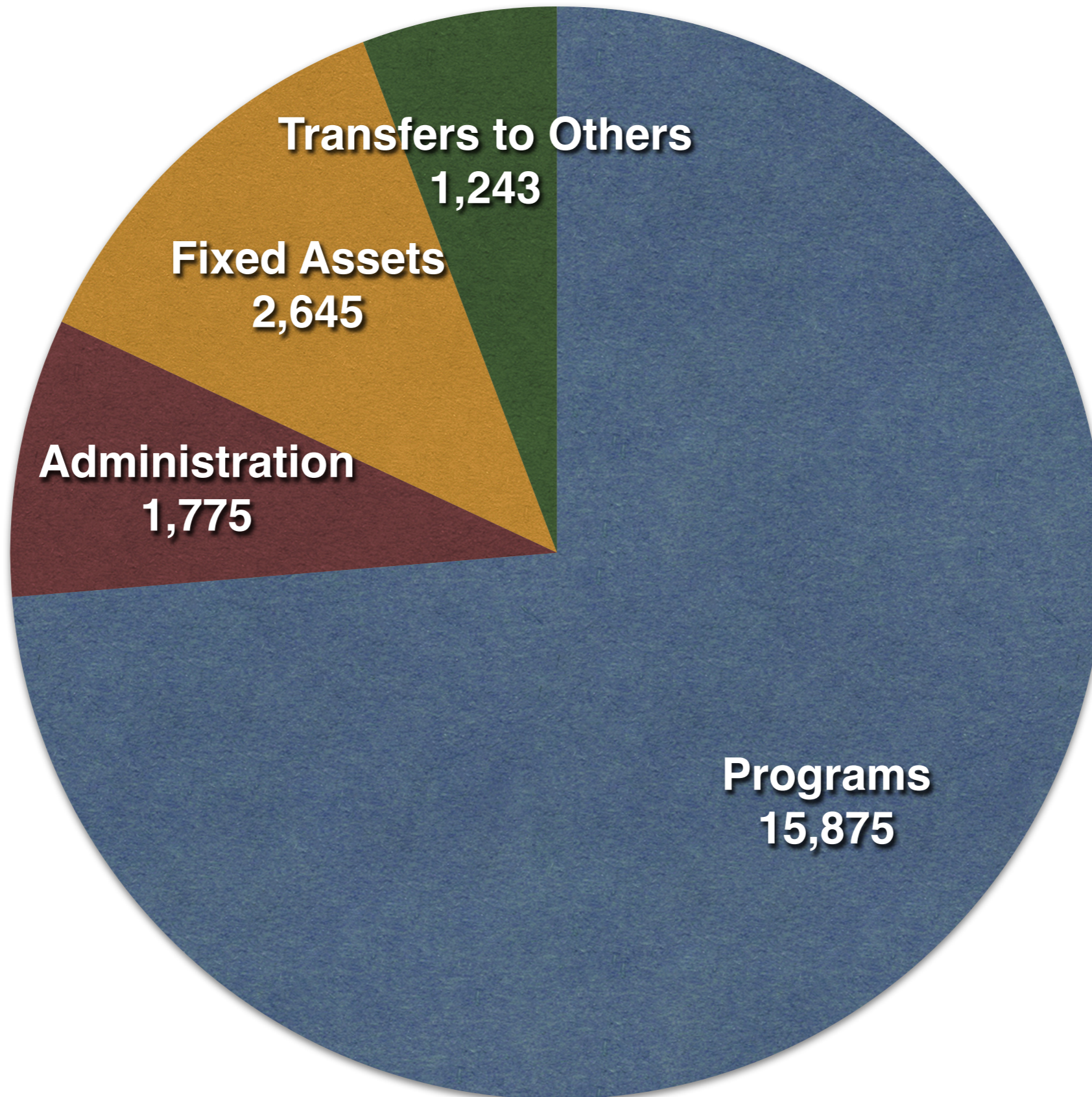
Direct FC Receipts (Rs. Crores)



Primary Receipts

Data till 4-May-2020

FC Utilised in 18-19 (Rs. Crores)

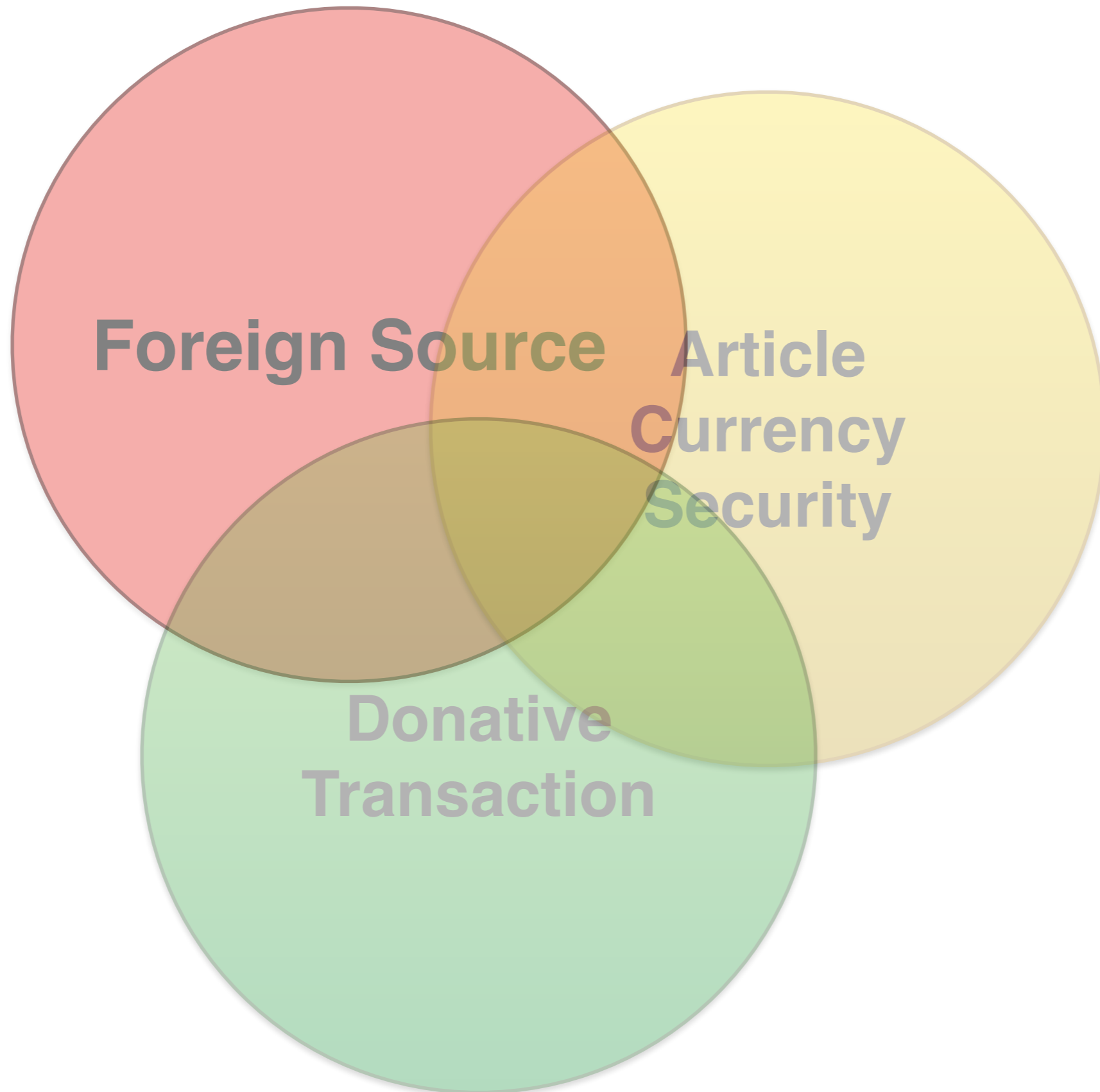


Foreign Contribution



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Foreign Source

**Article
Currency
Security**

**Donative
Transaction**

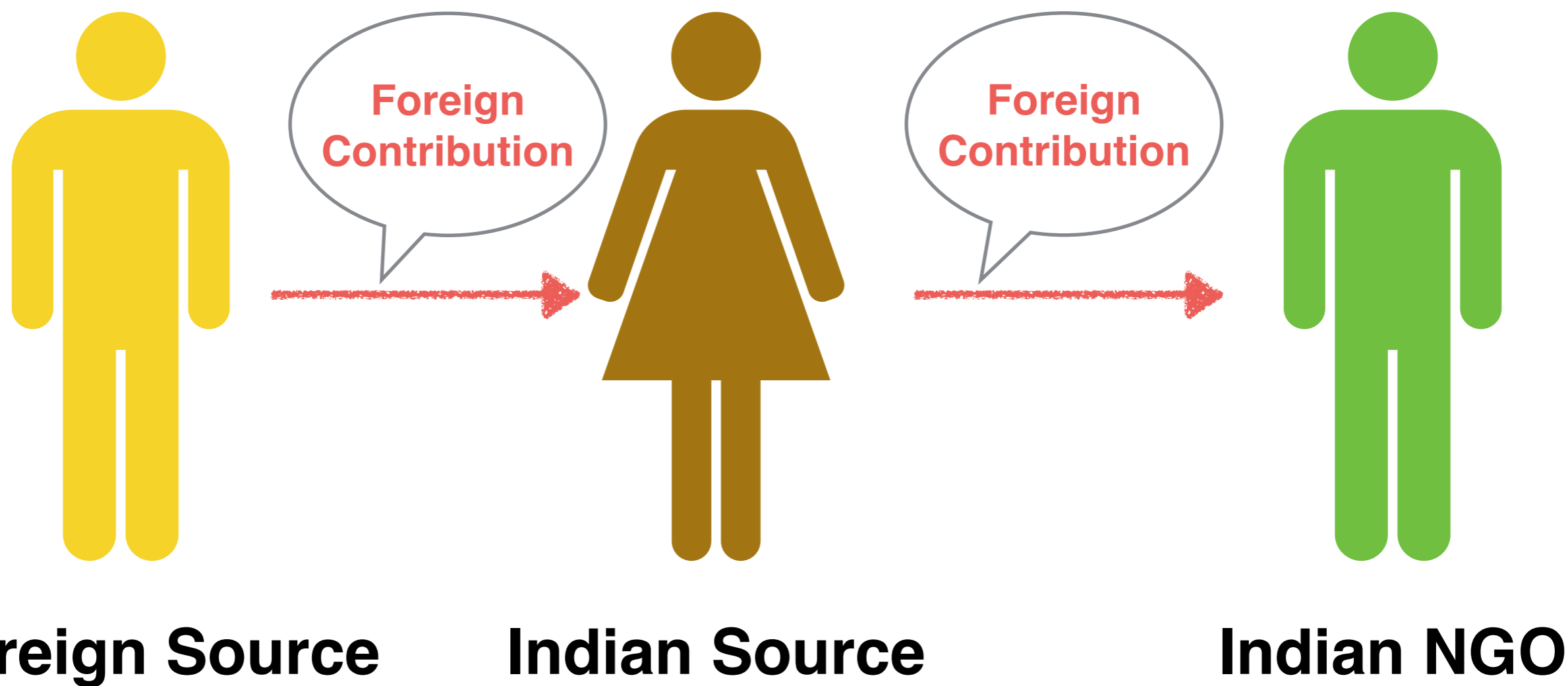
**Foreign
Source**

**Specified
Item**

**Foreign
Contribution**

Donative Transaction

Foreign Sources



This can be FC...

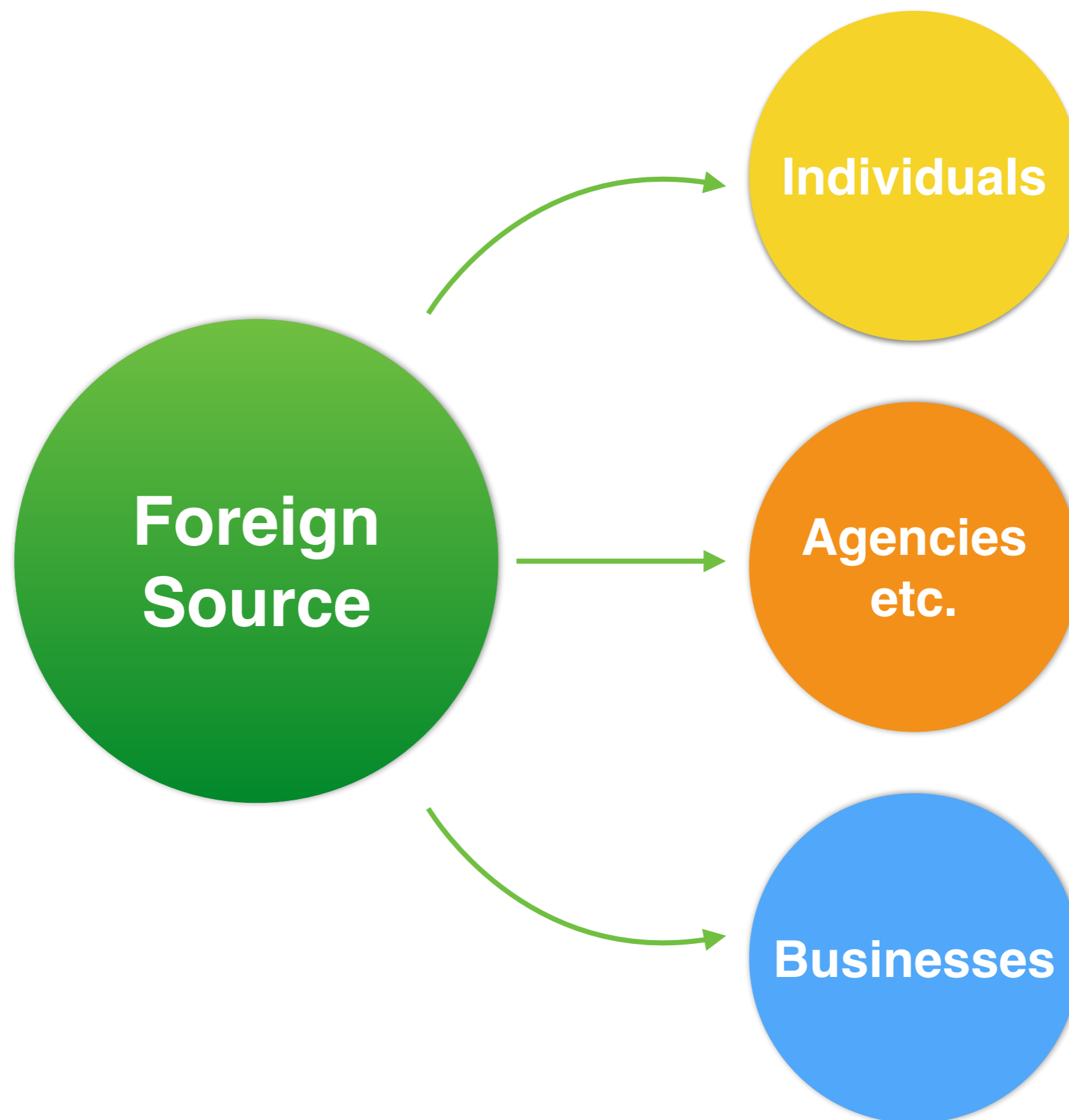


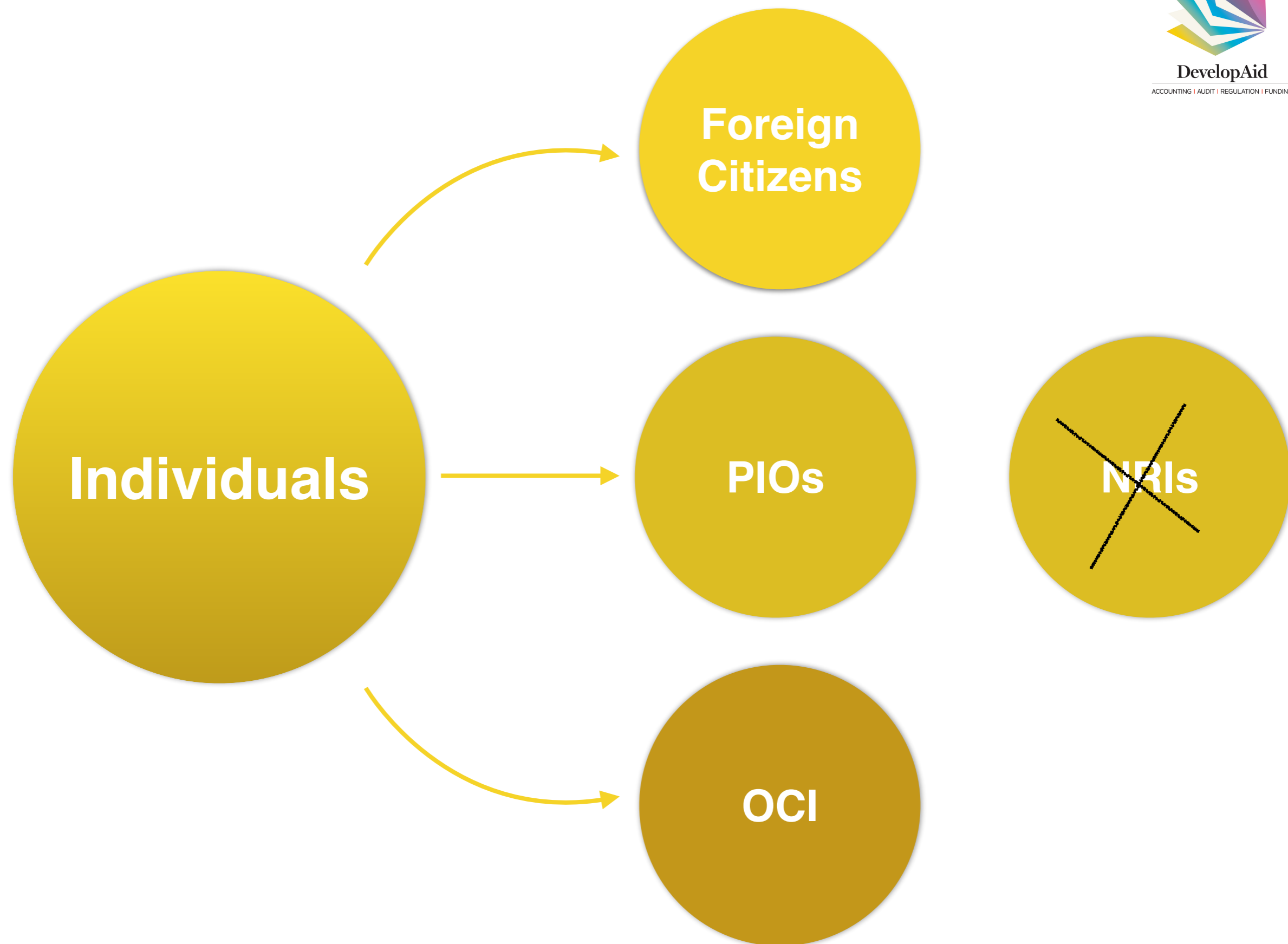


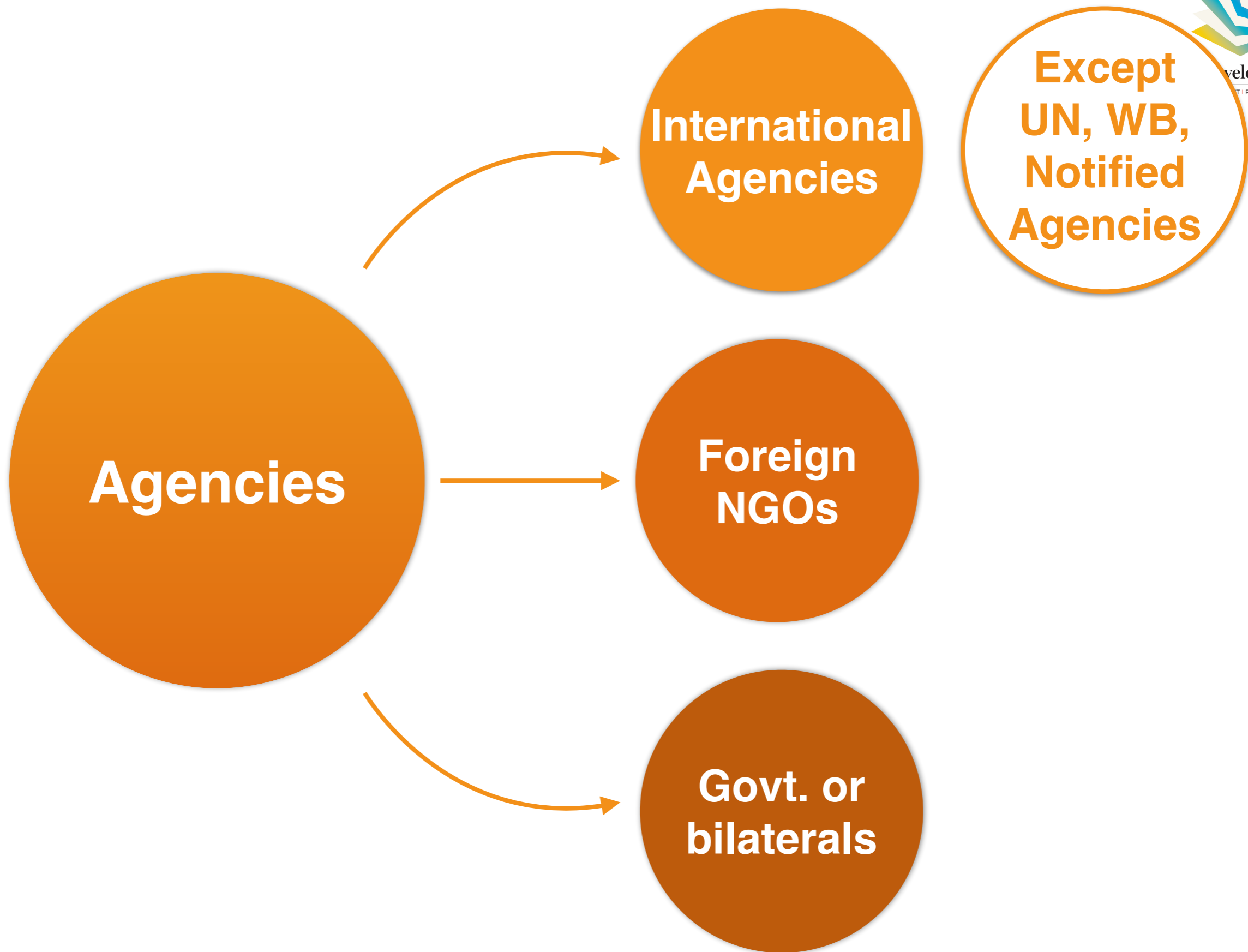
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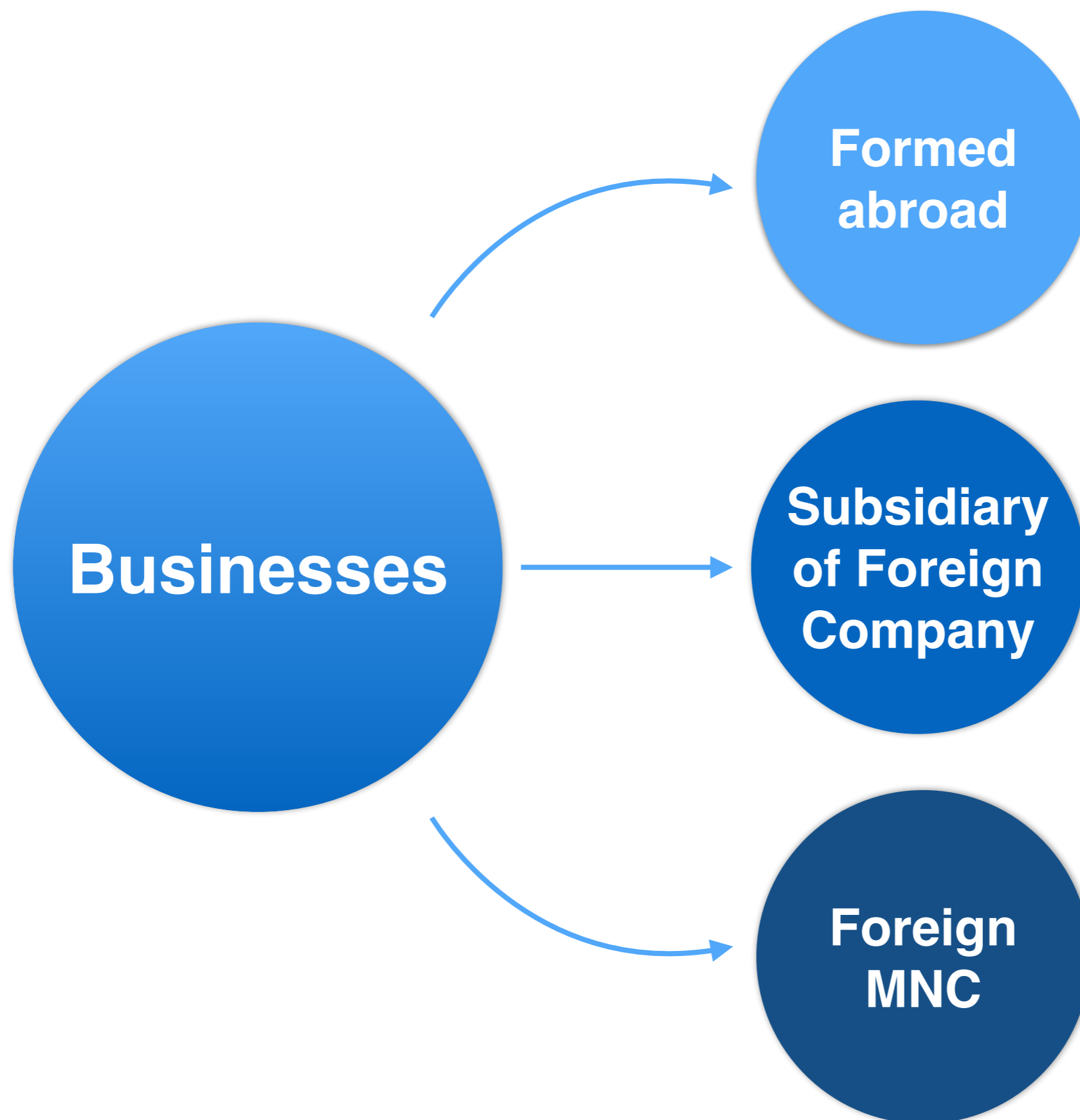
And this non-FC.



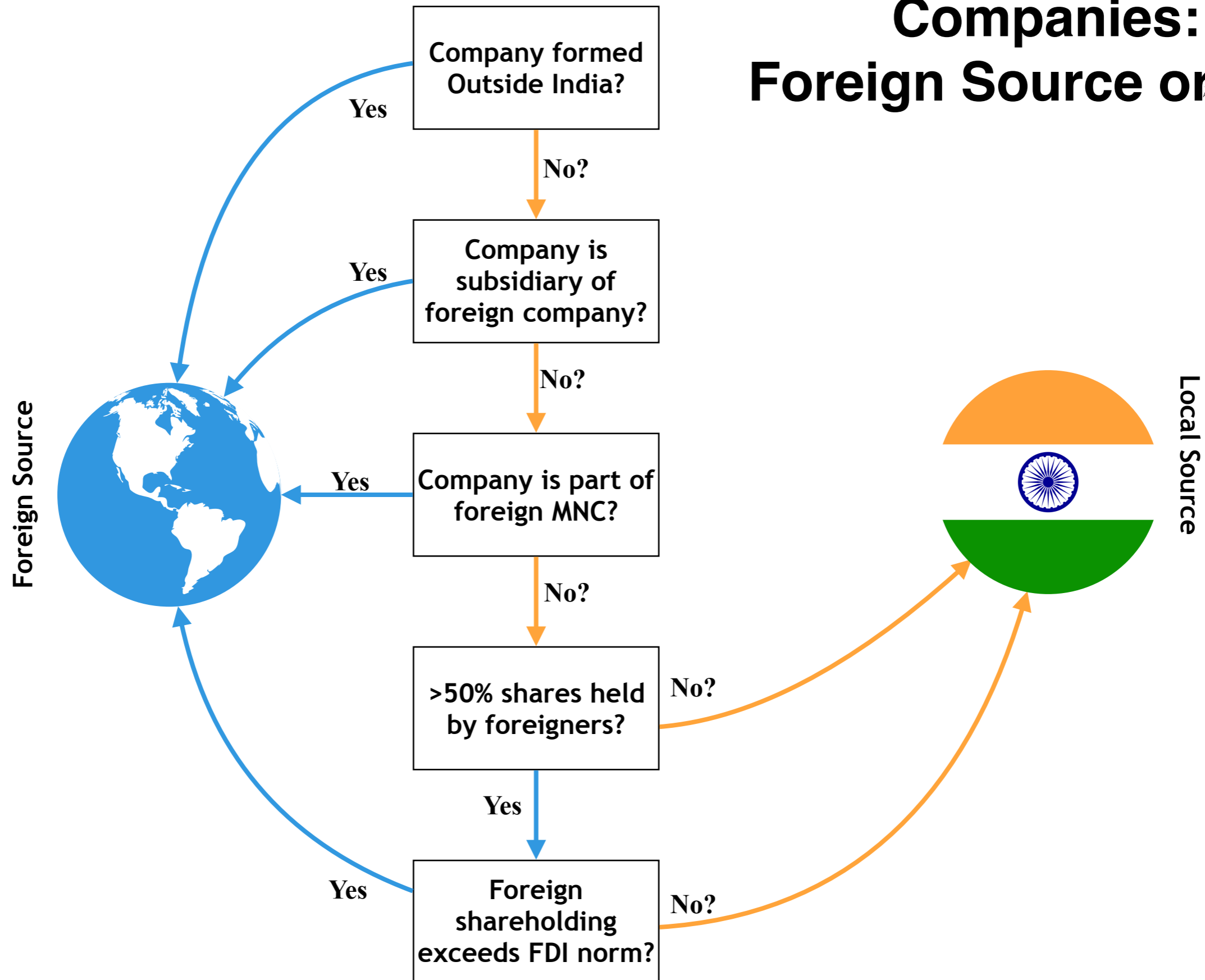








Companies: Foreign Source or not?



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84: Foreigners & Foreign Companies in FCRA 2010

Aug'18

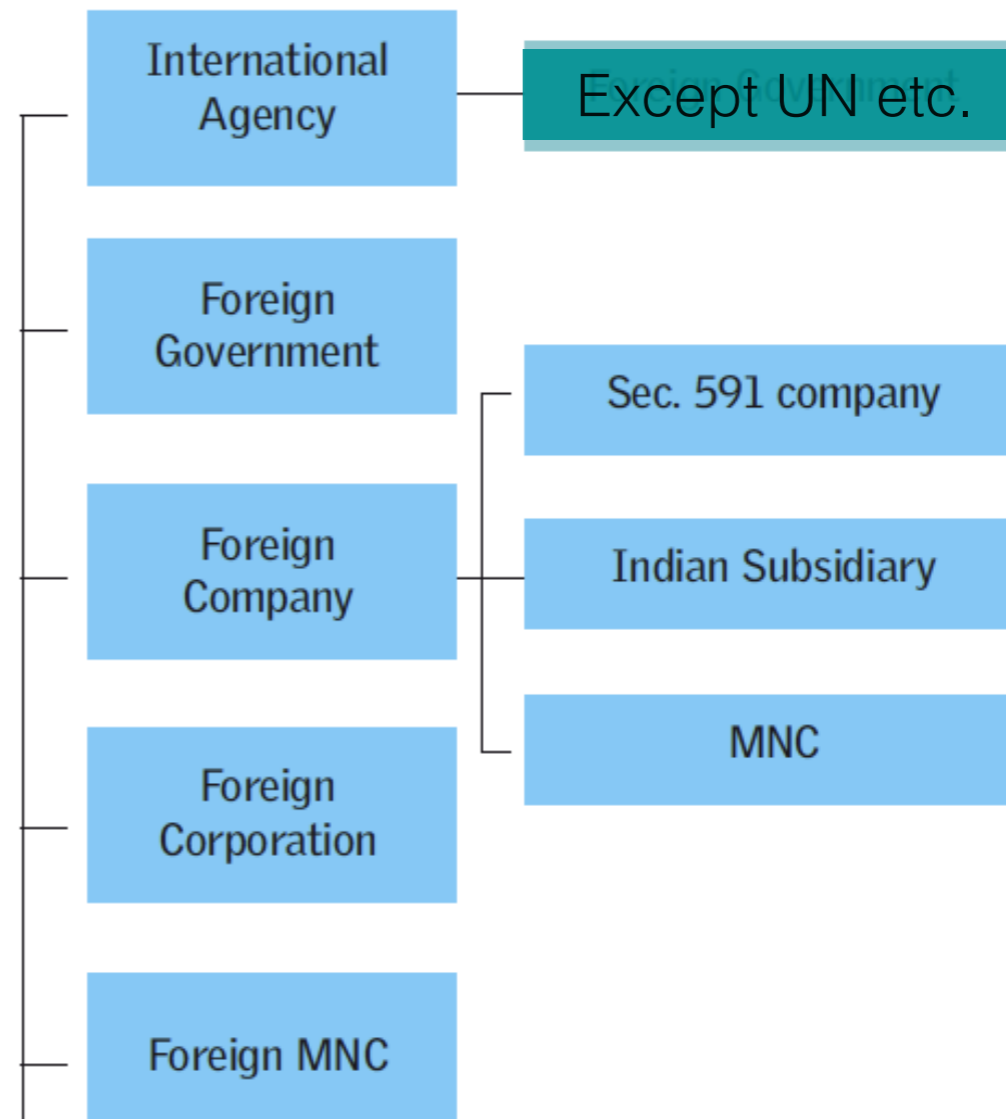
During Trojan wars (when fear of foreigners bearing gifts first arose), it was fairly easy to make out who was a foreigner and who was not. In these days of globalisation, it is much more confusing. Name, skin colour, dress or type of hair is no longer a reliable indicator of one's foreignness. The tortuous definition in FCRA also does not help.

In this issue of Accountable, we try to help by explaining what a foreign source under FCRA 2010 looks like.

Foreign Source

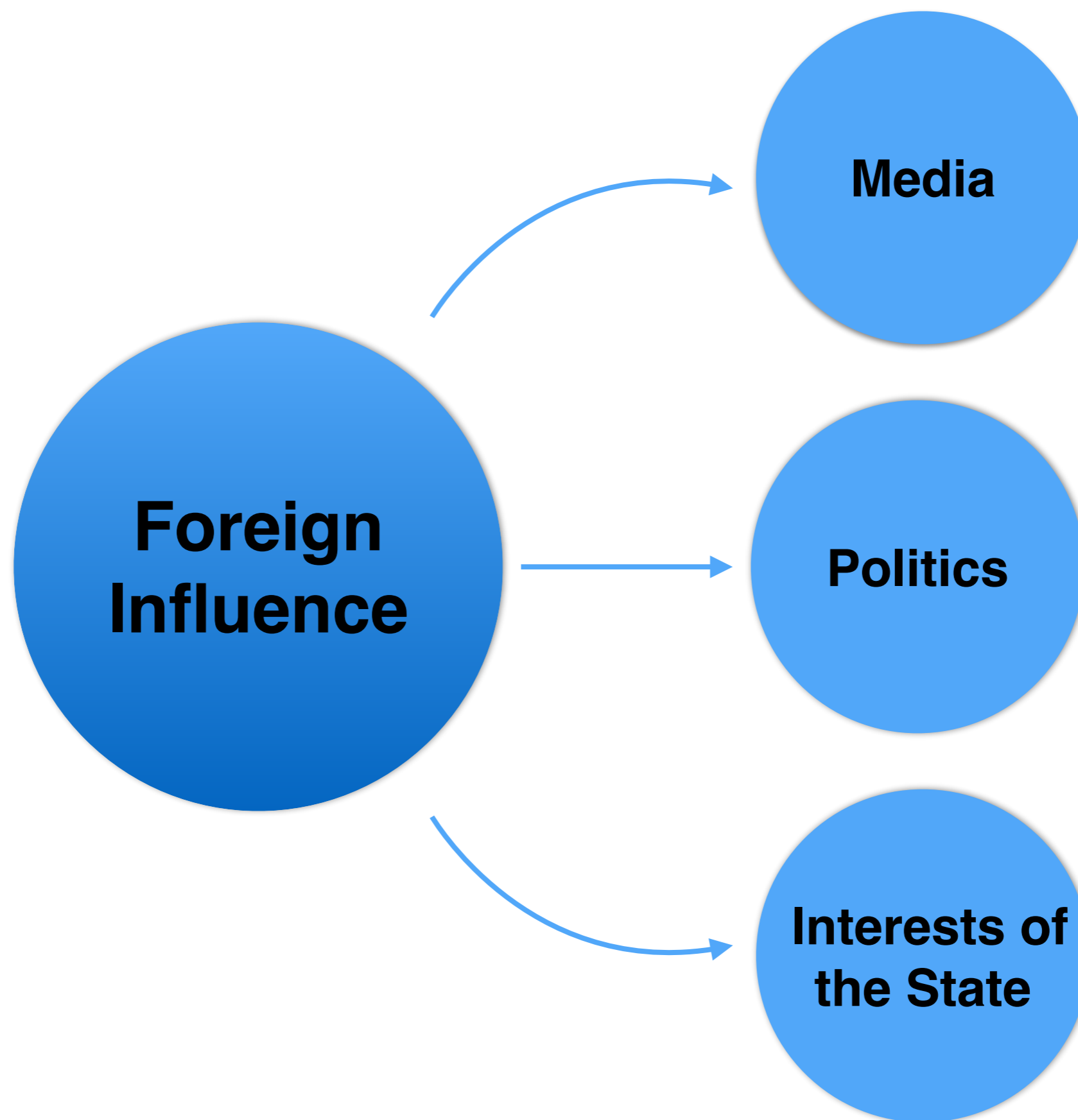
Foreign source is defined in sec. 2(1)(j) of FCRA 2010 (see chart). The foreignness of most of these sources is self-evident. However, people and companies pose a challenge. We discuss these below.

People: Foreigners

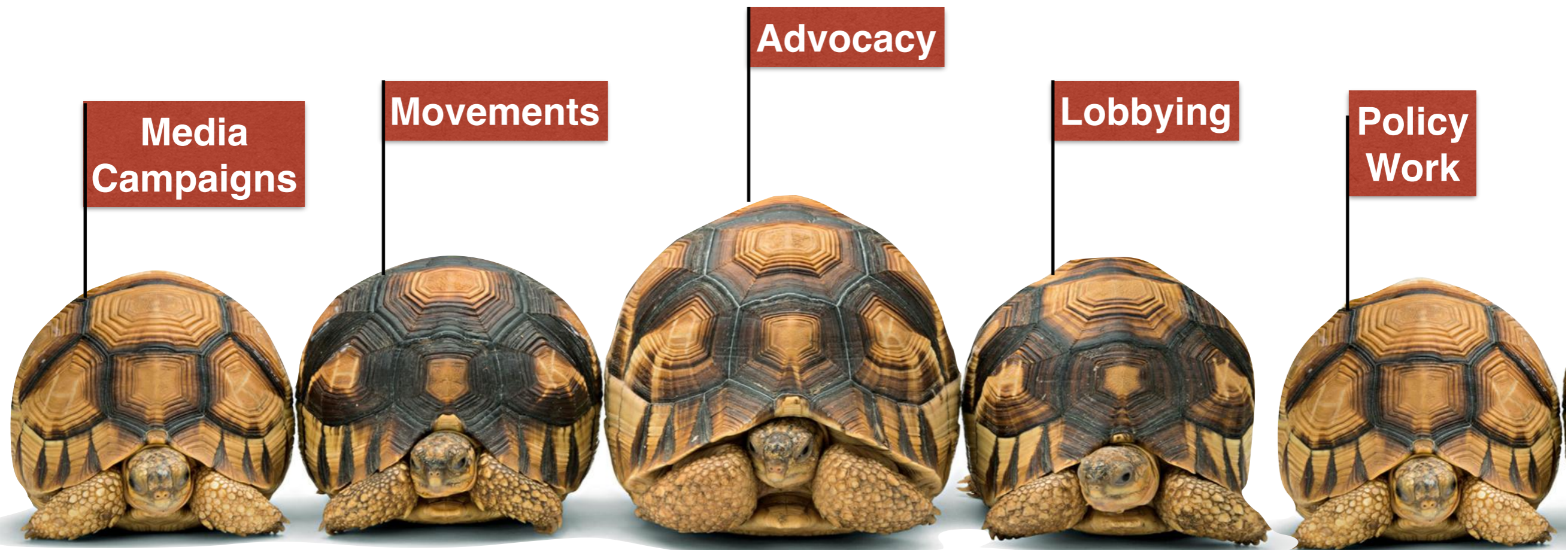


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Restricted Activities



Endangered...





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AccountAble 31: The Politics of FCRA

Feb'15

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Charitable Activities • The 'Charitable' in FCRA • The 'Political' in FCRA	pg 2
Charitable or Political? • A View from the Courts • AVARD (1990) • INSAF (2013)	pg 3
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About fifty years ago in 1967, there was a furious debate in the Lok Sabha. The issue was the role of foreign money in Indian elections. Eventually, this led to passing of FCRA. FCRA placed a ban on politicians and parties receiving foreign donations. There was

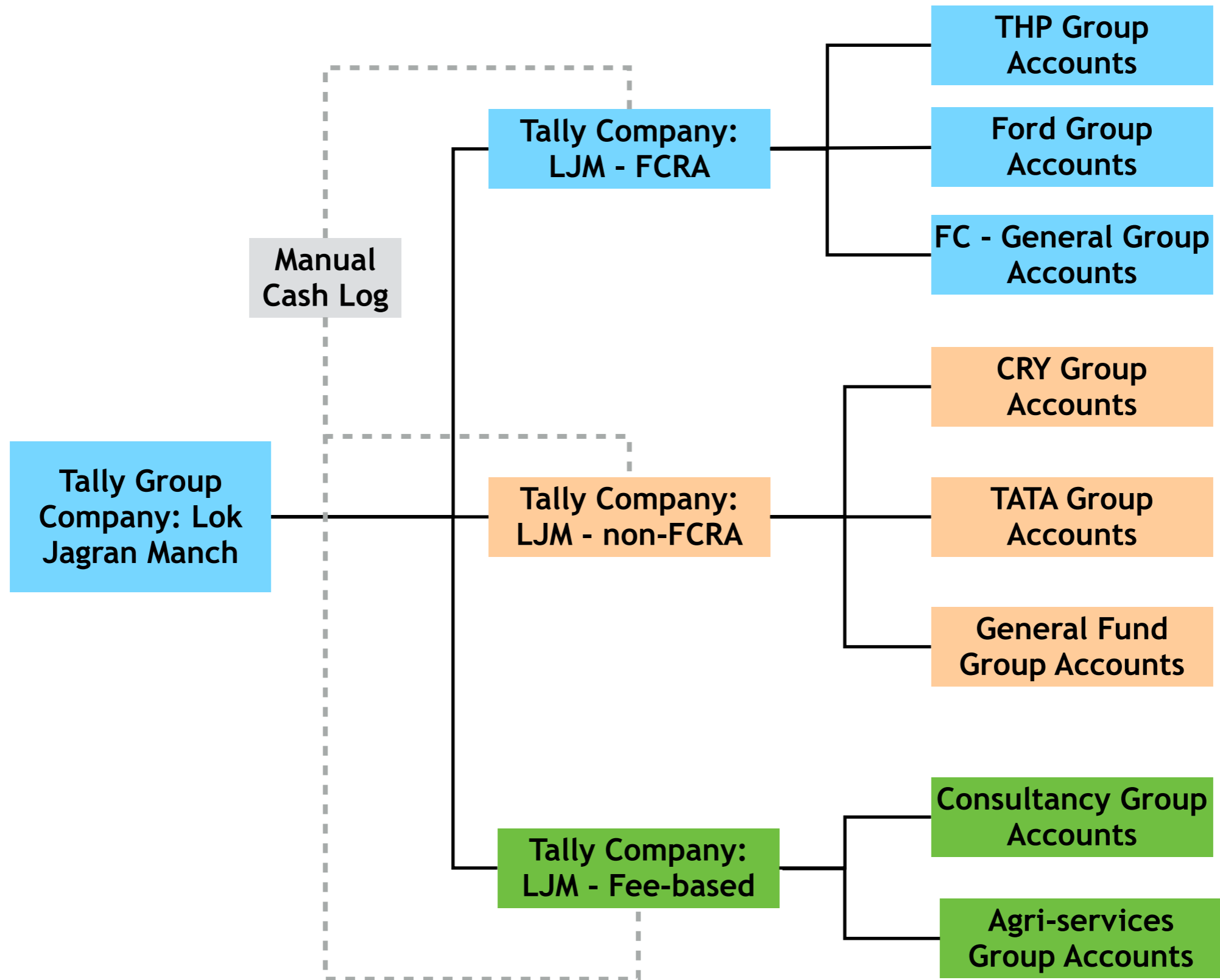


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Accounting

Separate Books for FC

- Rule 11 asks for **one separate set** of books and records for FCRA
- NGO keeping project-wise books
 - Penalty of 1 lakh or 5% of FC received



Separate Records: FCRA

- **Salary Register**
- **Fixed Assets Register**
- **Investment Register**
- **Stock Register**
- **Distribution Register**

Banking

Separate Bank Accounts

- **Designated**
- **Utilisation**
- **PFMS compliant**
 - **Public Financial Management System**



Compounding

Transfer of FC

Offence	Culprit	Penalty	Sec. & Rule
Passing on FC to unregistered NGO	NGO which transfers	Higher of 1 lakh or 10%	Sec. 7
Accepting FC w/o registration or permission	NGO which accepts	Higher of 1 lakh or 10%	Sec. 11

Records/Reports

Offence	Culprit	Penalty	Sec. & Rule
Spending > 50% on admin	NGO	Higher of 1 lakh or 5%	Sec. 8, Rule 5
Not filing FC-4 / FC-1 by due date	NGO	Higher of 1 lakh or 5%	Sec. 18, rule 17
Not keeping FCRA accounts / records properly	NGO	Higher of 1 lakh or 5%	Sec. 19, rule 11

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152: FCRA Compounding

Jun'18

Foreign Contribution (Regulation) Act 2010 (FCRA 2010) has a provision for compounding of offences. This allows the Government to enter into a compromise with the offender. They can simply pay a compounding fee, instead of facing court proceedings, and possibly a fine and imprisonment. This helps the Government keep litigation costs down, while earning some useful revenue.

In theory, all the offences under the Act are eligible

for compounding. However, in practice, only notified offences can be compounded. FCRA Department had notified some offences for compounding in 2011 and then in 2013. Some of the penalties were lowered in 2016. It has now come out with a longer list and bigger fines. This issue of AccountAble explains what offences can be compounded as well as the procedure.

Compoundable Offences

Following notified offences can be compounded:¹

Nature of offence	Compounding Fee	Payable by
• Bureaucrat, judge, MP, MLA, politician, etc. enjoys foreign hospitality while abroad without permission or intimation	Rs. 10,000	Bureaucrat, judge, MP, MLA, politician, etc.

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FCRA Forms

Advance Permissions

- **FC 2 for accepting hospitality overseas**
- **FC 3A for Registration**
- **FC 3B for Prior-permission**
- **FC 3C for Renewal**
- **FC 5 for transferring to non-FCRA NGO**

Returns/Reports

- **FC 1C for Contribution in Kind**
- **FC 4 for Annual Return (Money or Kind)**
- **COVID 19 for COVID Work (selected NGOs)**

File by
31-Dec

File by
31-Dec

File by
15th of
next month

Intimation/Approval

- **FC 6A for Name/address change within State**
- **FC 6B for changes in nature/objects (offline)**
- **FC 6C Change of designated bank account**
- **FC 6D Opening FC Utilisation Account**
- **FC 6E for changes in board/key members**

File within 15 days of change

FCRA Tips

Board

- **Report any Board changes within 15 days**
- **Don't keep foreigners on your Board**
- **Avoid keeping politicians, journalists, Government Officers on your Board**
- **Chief Functionary shouldn't be CF of another FCRA-NGO**

Activities

- **Avoid political or media-related activities**
- **Avoid comment on such issues in social media**
- **Keep activities restricted to your FCRA CREES**
- **Avoid payments to politicians, journalists, Government Officers out of FCRA funds**

Accounting

- **Keep only one set of books for FCRA**
- **All receipts related to FCRA treated as FC**
- **Don't pay more than Rs. 10,000 in cash**
- **Pay FC expenses directly from FC cash/bank**

Banking

- **Minimise cash withdrawals - never > Rs.40,000**
- **Don't use ATM cards or debit cards on FCRA bank**
 - **NEFT payments through letter to bank**
- **Don't transfer funds from/to Indian bank**
- **Don't transfer funds between Utilisation Accounts**

Renewal

- **Talk to your Trustees about signed affidavit from each!**
- **Apply 6-12 months before renewal is due**
 - **Make sure fees is paid**
 - **Give correct mobile number and email ID in form**
 - **Keep checking status online for any questions**
- **Stop accepting FC funds if not renewed in time**

Others

- **Don't pass on FCRA funds to non-FCRA NGOs**
- **Check foreign source status carefully in case of CSR funds**
- **Update Covid-19 format every month**
- **Keep Administrative Expenses down to 50%**



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Program Expenses Program Activities

Teacher Salaries
Doctor Salaries
Surveyors
Analysts
Trainers

Rent

.....
All Staff Salary
.....

Board Salaries

Overheads

Fees

Travel

<50%

Admin Expenses

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AccountAble 54: Administrative Expenses under FCRA

Mar-16

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Administrative expenses [pg1](#)

Other doubts • Budgeting [pg3](#)

Exceptions • Managerial staff or All staff [pg2](#)

Tracking • Monitoring • Reporting • Implications [pg4](#)

FCRA 2010 places a limit of 50% on administrative expenses. This means that only up to 50% of foreign contribution can be used for administrative expenses.¹ If you are likely to use more than 50% on administration, you should get prior-approval from the Government.²

However, till now, there has been no mechanism to monitor spending on administrative expenses. This has changed now. The new form FC-4 (annual return) requires disclosure of foreign contribution spent on

Rule 5	Interpretation
(i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person	Remuneration and Travel to Office Bearers
(i) all expenses towards hiring of personnel for management of	• Remuneration and travel to Staff

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Public Disclosure

- **Quarterly receipts of FC**
 - **own website or**
 - **FCRA site**
- **FCRA audited Financial Statements**
 - **own website**

Within 15 days
from end of
quarter

By 31-Dec

Doubts/Comments?

query@DevelopAid.org