

Introduction to FCRA, 2010

Q.1 What is the purpose of FCRA, 2010??

Ans. FCRA, 2010 has been enacted by the Parliament to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest and for matters connected therewith or incidental thereto.

Q.2 What are the various acts/rules/guidelines which regulate the flow of foreign contribution to India?

Ans. The flow of foreign contribution to India is regulated under Foreign Contribution (Regulation) Act, 2010, Foreign Contribution (Regulation) Rules, 2010 read with and other notification / orders etc., issued there under from time to time. These are available at the website fcraonline.nic.in.

Q.3 What is the status of the FCRA, 1976 after coming of FCRA, 2010?

Ans. It has been repealed.

Q.4 To whom FCRA, 2010 is applicable?

Ans. As per Section 1(2) of FCRA, 2010, the provisions of the act shall apply to:

- i. Whole of India
- ii. Citizens of India outside India; and
- iii. Associate Branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India

Key Definitions and Concepts under FCRA, 2010

A. Foreign Contribution

Q.1 What is foreign contribution?

Ans. As defined in Section 2(1)(h) of FCRA, 2010, "foreign contribution" means the donation, delivery or transfer made by any foreign source –

- (i) of any article, not being an article given to a person* as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum as may be specified from time to time by the Central Government by the rules made by it in this behalf.
- (ii) of any currency, whether Indian or foreign;
- (iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1 – A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution with the meaning of this clause.

Explanation 2 – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3 – Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

* In terms of FCRA, 2010 "person" includes –

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) an association;
- (iv) a company registered under section 25 of the Companies Act, 1956 (now Section 8 of Companies Act, 2013).

•

Q.2 Who can receive foreign contribution?

Ans. Any "Person" can receive foreign contribution subject to following conditions:-

- a) It must have a definite cultural, economic, educational, religious or social programme.
- b) It must obtain the FCRA registration / prior permission from the Central Government
- c) It must not be prohibited under Section 3 of FCRA, 2010.

Q.3 Who cannot receive foreign contribution?

Ans. As defined in Section 3(1) of FCRA, 2010, the following are prohibited to receive foreign contribution:

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, **Government** servant or employee of any **corporation** or any other body controlled or owned by the Government;
- (d) member of any **legislature**;
- (e) political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.
- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in point (g).
- (i) Individuals or associations who have been prohibited from receiving foreign contribution.

Q.4 Can foreign contribution be received in rupees?

Ans. Yes Any donation, delivery or transfer received from a 'foreign source' whether in rupees or in foreign currency is construed as 'foreign contribution' under FCRA, 2010. Such transactions even in rupees term are considered as foreign contribution.

Q.5 Will interest or any other income earned from foreign contribution be considered foreign contribution?

Ans. Yes. It will become part of F.C. please see Explanation 2 under Question 1.

Q.6 Whether interest or any other income earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?

Ans. No. The interest or any other income earned out of such deposit should be shown against Column 2(i)(b) in the annual return (Form FC-4) during the year in which it is earned. Such interest or income would be considered as F.C.

Q.7 Whether earnings from foreign client(s) by a person in lieu of goods sold or a service rendered by it is treated as foreign contribution?

Ans. No. As clarified at Explanation 3 under section 2 (1) (h), foreign contribution excludes earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it as this is a transaction of commercial nature/quid pro quo.

Q.8 Whether donation given by Non-Resident Indians (NRIs) is treated as ‘foreign contribution’?

Ans. Contributions made by a citizen of India living in another country (i.e., Non-Resident Indian), from his personal savings, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is actually an Indian citizen.

Q.9 Whether donation given by an individual of Indian origin and having foreign nationality is treated as ‘foreign contribution’?

Ans. Yes. Donation from an Indian origin person who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO / OCI cardholders. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship and they are not foreigners.

Q.10 Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?

Ans. No. As per Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution **in excess of one lakh rupees or equivalent thereto in a financial year from any** of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution. This form is available on the website: fcraonline.nic.in

Q.11 Whether individuals not covered under Section 3 or a HUF can accept foreign contribution freely for the purposes listed in section 4 of FCRA, 2010?

Ans. Yes. Since, subject to the provisions of Section 10, even the persons specified under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to receive foreign contribution for the purposes listed in section 4, it is obvious that Individuals in general and a HUF are permitted to accept foreign contribution without permission for the purposes listed in section 4. However, it should be borne in mind that the monetary limit for acceptance of foreign contribution in the form of any article given as gift to a person for his personal use has been specified as Rs. 25,000/ vide FCR Amendment Rules, 2012.

Q.12 Can the fee paid by the foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?

Ans. No. “Delegate/participation Fees” paid by foreign delegates/participants for participation in a conference/seminar and which is utilized for the purpose of meeting the

expenditure of hosting the conference/seminar is not treated as foreign contribution and as such no permission under FCRA is required.

Q.13 Section 2(c)(i) of repealed FCRA, 1976 inter alia defined foreign contribution as the donation, delivery or transfer made by any foreign source of any article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees. What limit has been prescribed in FCRA, 2010 in respect of such articles?

Ans. The limit has been specified as Rs. 25000/- through insertion of the following Rule 6A in FCRR, 2011 vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012]:

"6A. When articles gifted for personal use do not amount to foreign contribution. - Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2)."

B. Foreign Source

Q.1 What is a foreign source?

Ans. Foreign source, as defined in Section 2(1) (j) of FCRA, 2010 includes:-

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g) of section 2 of FCRA, 2010;
- (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:- a. the Government of a foreign country or territory; b. the citizens of a foreign country or territory; c. corporations incorporated in a foreign country or territory; d. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory; e. foreign company;
[provided that
..... such company shall not be a foreign source]
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (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;
- (ix) a society, club or other association or individuals formed or registered outside India;
- (x) a citizen of a foreign country;"

NOTE – A few bodies/ organisations of the United Nations, World Bank and some other International agencies/multilateral organisations are exempted from this definition, and are not treated as foreign source. Hence, the funds received from them are not considered as foreign contribution. List of such bodies / organisations, which are not treated as 'foreign source', are available on the website fcraonline.nic.in

Q.2 Whether an Individual of Indian Origin who has acquired foreign nationality is treated as foreign source?

Ans. Yes. The contribution received from all the non- Indian Passport Holders are treated “Foreign Source.”

Q.3 What is a foreign company?

Ans. As per of FCRA, 2010, Section 2(1) (g) foreign company means any company or association or body of individuals incorporated outside India and includes-

- a) a foreign company within the meaning of Section 379 of the Companies Act, 2013
- b) a company which is a subsidiary of a foreign company
- c) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- d) a multi-national corporation
-

Q.4 What is a Multinational Corporation?

Ans. As per explanation given under clause (g) of sub-section 1 of Section 2 of FCRA, 2010 a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation,-

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories;
-

Q.5 Whether a Company incorporated in India under the Companies Act, 2013 having its operations in 2 or more countries is to be treated as a MNC under FCRA, 2010?

Ans. No

C. Other Key Definitions and Concepts

Q.1 What is a candidate for election?

Ans. A candidate for election means a person who has been duly nominated as a candidate for election to any legislature.

Q.2 What is a registered newspaper?

Ans. “registered newspaper” means a newspaper registered under the Press and Registration of Books Act, 1867.

Q.3 What is a political party?

Ans. “political party” means –

- (i) an association or body of individual citizens of India -
 - A) to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
 - B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- (ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No. 56/J&K/02, dated the 8th August, 2002, as in force for the time being;

Registration and Prior Permission

Q.1 How does a person obtain permission to accept Foreign Contribution?

Ans. There are two modes of obtaining permission to accept foreign contribution according to FCRA, 2010:

- i. Registration
- ii. Prior Permission

A. Eligibility

Q.2 What are the eligibility criteria for grant of registration?

Ans. For grant of registration under FCRA, 2010, the association should:

- (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc;
- (ii) Normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. The applicant NGO/association will be free to choose its items of expenditure (excluding the administrative expenditure as defined in Rule 5 of FCRR, 2011) to become eligible for the minimum threshold of Rs. 10.00 lac spent during the last three years. If the association wants inclusion of its capital investment in assets like land, building, other permanent structures, vehicles, equipments etc, then the Chief Functionary shall have to give an undertaking that these assets shall be utilized only for the FCRA activities and they will not be diverted for any other purpose till FCRA registration of the NGO holds.

- **Q.3 What are the eligibility criteria for grant of prior permission?**

Ans. An organization in formative stage is not eligible for registration. Such organization may apply for grant of prior permission under FCRA, 2010.

Prior permission is granted for receipt of a specific amount from a specific donor for carrying out specific activities/projects. For this purpose, the association should meet following criteria:

- (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 etc;
- (ii) submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given; and
- (iii) For Indian recipient organizations and foreign donor organizations having common members, FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:
 - i) The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
 - ii) At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.
 - iii) In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.
 - iv) In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

Q.4 What are the conditions to be met for the grant of registration and prior permission?

Ans. In terms of Sec.12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration and prior permission:

(a) The 'person' making an application for registration or grant of prior permission-

- i. is not fictitious or benami;
- ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
- iii. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
- iv. has not been found guilty of diversion or mis-utilisation of its funds;
- v. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
- vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
- vii. has not contravened any of the provisions of this Act;
- viii. has not been prohibited from accepting foreign contribution;
- ix. the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
- x. the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.

(b) the acceptance of foreign contribution by the association/ person is not likely to affect prejudicially –

- i. the sovereignty and integrity of India;
- ii. the security, strategic, scientific or economic interest of the State;
- iii. the public interest;
- iv. freedom or fairness of election to any Legislature;
- v. friendly relation with any foreign State;
- vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities.

(c) the acceptance of foreign contribution-

- i. shall not lead to incitement of an offence;
- ii. shall not endanger the life or physical safety of any person.

Q.5 Can a private limited company or a partnership firm get registration or prior permission under FCRA, 2010?

Ans. Yes, a private limited company too may seek prior permission/registration for receiving foreign funds in case they wish to do some work useful to society at some point of time.

Q. 6 Whether an individual or a Hindu Undivided Family (HUF) can be given registration or prior permission to accept foreign contribution in terms of section 11 of FCRA, 2010?

Ans. Yes. The definition of the 'person' in the Foreign Contribution (Regulation) Act, 2010 includes any individual and a 'Hindu Undivided Family' among others. As such an Individual or an HUF is also eligible to apply for prior permission to accept foreign contribution.

Q.7 Whether organisations under Central/State Governments are required to obtain registration or prior permission under FCRA, 2010 for accepting foreign contribution?

Ans. Yes. However, all bodies constituted or established by or under a Central Act or a State act requiring to have their accounts compulsorily audited by Comptroller & Auditor General of India are exempted from the operations of all the provisions of FCRA, 2010.

B. Executive Committee

Q.8 Whether foreigners can be appointed as Executive Committee members of an association seeking registration or prior permission?

Ans. Organizations having foreign nationals, other than of Indian origin, as members of their executive committees or governing bodies are generally **NOT** permitted to receive foreign contribution. However, foreigners may be allowed to be associated with such associations in an ex-officio capacity, if they are representing multilateral bodies, foreign contribution from whom is exempted from the purview of the Foreign Contribution (Regulation) Act, 2010, or in a purely honorary capacity depending upon the person's stature in his/her field of activity.

Relaxation may be considered on case to case basis by an authority higher than the competent authority, if any of the following grounds is met:

- i. the foreigner is married to an Indian citizen;
- ii. the foreigner has been living and working in India for at least five years;
- iii. the foreigner has made available his/her specialized knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;
- iv. the foreigner is a part of the Board of Trustees/Executive Committee in terms of the provisions in an inter-governmental agreement;
- v. the foreigner is part of the Board of Trustees/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

Q.9 Whether Government servants, Judges and employees of a Government owned/controlled company/body can be on the executive committees/boards of an association?

Ans. Yes. The legal entity of a 'person' under FCRA, 2010 is distinct from an individual person. Therefore, individuals who cannot receive foreign contribution may happen to be on the executive committees/boards of such an association.

Q.10 Whether the registration certificate or prior permission granted under the repealed FCRA, 1976 shall remain valid when FCRA, 2010 has come into force?

Ans. Yes. An association granted prior permission or registration under the repealed FCRA, 1976 shall be deemed to have been registered or granted prior permission, as the case may be, under FCRA, 2010. Registration granted under FCRA, 1976 shall remain valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.

Q. 11 Whether prior permission granted under FCRA, 1976 would also remain valid for next 5 years from the 1st May, 2011, i.e., the date when FCRA, 2010 came into force?

Ans. No. Prior permission granted under FCRA, 1976 is also remains valid under FCRA, 2010 till receipt and full utilisation of the amount of FC for which the permission was/is granted.

D. How to apply

Q.1 How to submit application for grant of registration/prior permission?

Ans. Application for grant of registration / prior permission is to be submitted online in form FC-3 (A) and FC-3 (B) at the website fcraonline.nic.in

Q.2 If an application for registration or prior permission is submitted online by an association, does it need to submit that application in physical form also?

Ans. No. All requisite documents are to be uploaded with the application online only and no physical copies shall be accepted.

E. Filing of online form

Q.3 How to fill online form for filing application for grant of registration / prior permission?

Ans. The online application form FC-3 (A) for registration / FC-3 (B) prior permission has been designed in an easy to fill format. The applicant will find detached instructions on each web page of online form while filing the application.

Q.4 How to rectify an error in the application for registration or PP that has already been submitted online?

Ans. No rectification of error is allowed after the application has been finally submitted online. In case of error, please Contact Support Centre/ Help Desk of the FCRA.

D. Required documents

Q.1 What are the documents to be uploaded with the application for grant of registration?

Ans. The applicant should be ready with the scanned copies of the following documents before filing the application online:

(A) Registration

- (i) jpg file of signature of the chief functionary (size: 50kb)
- (ii) self-certified copy of registration certificate/Trust deed etc., of the association (size:1mb)
- (iii) self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aim and objects of the association. (size:5mb)
- (iv) Activity Report indicating details of activities during the last three years; (size:3mb)
- (v) Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure; (size:5mb)
- (vi) Fee of **Rs. 5000/-** is to be paid online through payment gateway

(B) Prior Permission

- (i) jpg file of signature of the chief functionary (size:50kb)
- (ii) self-certified copy of registration certificate/Trust deed etc., of the association (size:1mb)
- (iii) duly signed Commitment Letter from Donor. (size:5mb)
- (iv) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspapers for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- (v) Fee of Rs. 3000/- is to be paid online through payment gateway.
- (vi) Project Report for which FC will be received. (size:3mb)

Q.7 What all pages of MoA are to be uploaded in the online form FC-3?

Ans. A Memorandum of Association (MOA) is a legal document prepared in the formation and registration process of a limited liability company to define its relationship with shareholders. The MOA is accessible to the public and describes the company's name, physical address of registered office, names of shareholders and the distribution of shares, The MOA and the Articles of Association serve as the constitution of the company.

Q.8 What is the form of Audited Statements which are to be uploaded with the FC-3 Form?

Ans. An Audit statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative, duly signed by the chartered Accountant with his membership number.

Q.9 What are the limits of File sizes for uploading?

Ans. The applicant will find detached instructions regarding the uploading limit of File size on web page of online form while filing the application.

Q.10 Is recommendation of District Collector or Deputy Commissioner or District Magistrate mandatory for submission of an application for registration or prior permission?

Ans. No Submission of verification certificate from the District Collector or Deputy Commissioner or District Magistrate is not mandatory.

(e) Payment of fee

Q.1 What is the amount of fee for grant of registration and prior permission and renewal?

Ans. For registration the association is required to pay a fee of Rs. 5,000/- and for prior permission, the fee is Rs. 3,000/- and for renewal, the fee is Rs 1500/- only.

Q.2 How to make payment of fee. Can the fee be paid through Bank draft/cheque etc.

Ans. The fee is to be paid while filling online form through payment gateway. No Bank draft/cheque is accepted.

Q.3 Is recommendation of District Collector or Deputy Commissioner or District Magistrate mandatory for submission of an application for registration or prior permission?

Ans. No. Submission of verification certificate from the District Collector or Deputy Commissioner or District Magistrate is not required.

(f) Status of Online Form

Q.1 How to find the status of pending application for registration/prior permission/renewal?

Ans. Status of pending applications for grant of registration/ prior permission/renewal may be checked on-line at fcra online services using user ID and password created at the time of filing application.

Acceptance and Utilization of Foreign Contribution

A. Acceptance

Q.1 From whom an association registered/granted prior permission under FCRA, 2010 can accept the foreign contribution?

Associations registered or granted prior permission under FCRA, 2010 should ensure that they received foreign contribution only from a legitimate source and for activities as prescribed under the Act.

Q.2 Are there any banned organisations from whom foreign contribution should not be accepted?

Yes. FCRA is meant to ensure that foreign contribution is received from legitimate sources and utilised for legitimate purposes by any person.

Q.3 Whether the amount of foreign contribution for which prior permission has been granted can be received by an association in installments?

Ans. Yes. There is no bar on receiving such foreign contribution in installments. However, the aggregate amount should not exceed the specified amount for which prior permission has been granted.

The association shall have to submit the mandatory online return in FC-4 form for receipt and utilization of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilized. Even if no transaction takes place during a year, a NIL return should be submitted.

A. Administrative Expenses

Q.4 What are the administrative expenses as per FCRA, 2010?

Ans. Rule 5 of FCRR, 2011 defines that administrative expenses constitute the following :

- (i) Salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;
- (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
- (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
- (iv) cost of accounting for and administering funds;
- (v) expenses towards running and maintenance of vehicles;
- (vi) cost of writing and filing reports;
- (vii) legal and professional charges; and
- (viii) rent of premises, repairs to premises and expenses on other utilities;

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

B. Utilisation of funds

Q.5 Can foreign contributions be invested in Mutual Funds or other speculative investments?

Ans. No. Speculative activities have been defined in Rule 4 of FCRR, 2011 as under:-

- (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
- (b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association.

Every association shall maintain a separate register of investments. Every such register of investments maintained under sub-rule (3) shall be submitted for audit.

Q.6 Can capital assets purchased with the help of foreign contributions be acquired in the name of the office bearers of the association??

Ans. No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since an association has a separate legal entity distinct from its members.

Q.7 Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?

Ans. No. The associations are granted registration/Prior Permission under the FCRA Act 2010 for receiving FC for certain purpose/objectives. Accordingly FC should be utilized for the purpose only for which it is received.

Q.8 Can foreign contribution be received in and utilised from multiple Bank Accounts?

Ans. The foreign contribution should be received only in the exclusive single FC account of a Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation in FC-6Dis to be given online within 15 days of opening of such account.

Q.9 Can an association transfer foreign contribution from one utilization account to another utilization account?

Ans. As such there is no bar for transferring FC from one uc a/c to another uc a/c. However, the same be preferably avoided to keep the accounting process simple.

Transfer of Foreign Contribution

Q.1 Can an association having registration or prior permission transfer the FC received by it to another organization? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations?

Ans. Yes. Section 7 of FCRA, 2010 states:-

“No person who –

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government." Rule 24 of FCRR, 2011, as amended vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012] prescribes the procedure for transferring foreign contribution as under:

"24. Procedure for transferring foreign contribution to any unregistered person. —

- (1) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in Form FC-5.
- (2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that:
 - (a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;
 - (b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
- (3) A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.
- (4) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-4 to be submitted by both the transferor and the recipient."

Q.3 Whether inter-account funds transfer shall be allowed within the multiple accounts that an Association is now permitted to open for the purpose of utilizing the foreign contributions and the level of diligence required on the part of the Banks in this regard?

Ans. No. Transfer of funds is allowed from the designated FC account of an Association to the multiple account or accounts opened for its utilization. However, no funds other than the funds (FC) received in the designated FC account shall be received or deposited in such multiple account or accounts. There is no bar in transferring foreign contribution between the utilisation accounts. However, Association should preferably avoid such practice for keeping the accounting process simple. The banks should apply full diligence to keep track of the transfers.

Q.4 How would an organisation that is registered or has obtained prior permission under FCRA and intends to transfer a part of the foreign contribution received by it to another organisation would know whether the recipient organisation has been proceeded against under FCRA?

Ans. Where any organisation is proceeded against under FCRA, it is done with due intimation to the organisation concerned. Therefore, the donor organisation is advised to insist on a written undertaking from the intending recipient organisation.

Maintenance of Accounts

Q.1 Can foreign contribution be mixed with local receipts?

Ans. No. Accounts and records relating to receiving and utilization of foreign contribution are to be maintained exclusively/ separately.

Filing of Annual Returns

Q.1 Is online submission of annual returns mandatory?

Ans. Yes. Annual returns are to be filed online at fcraonlineservice.nic.in. No hard copy of the returns shall be accepted in FCRA Wing of Ministry of Home Affairs.

Q.2 What is the last date for online filing of returns?

Ans. The return is to be filed online for every financial year (1st April to 31st March) within a period of nine months from the closure of the year i.e. by 31st December each year.

Q.3 What is the procedure for filing Annual Returns?

Ans. The Annual return is to be submitted online at fcraonline.nic.in in prescribed Form FC-4, duly accompanied balance sheet and statement of receipt and payment, which is certified by a Chartered Accountant. Submission of a 'NIL' return, even if there is no receipt/utilization of foreign contribution during the year, is also mandatory. However, in such case, certificate from Chartered Accountant, audited statement of accounts is not required to be uploaded.

Annual Return are to be filed online at fcraonline.nic.in

For further details, please refer to Rule 17 of the foreign contribution (Regulation) Rules, 2011 (FCRR, 2011)

Q.4 For how many years an association which has been granted prior permission to receive foreign contribution should file the mandatory annual return?

Ans. The association should fill the mandatory annual return on a yearly basis, till the amount of foreign contribution is fully utilized. Even if no transaction takes place during a year, a NIL return should be submitted.

Q.5 What are the consequences of not filling the annual returns on time?

Ans. An association not filing annual return on time may face the following consequences:

- (1) Imposition of penalty for late submission of return.
- (2) Cancellation of registration

Banks and Banking related issues

Q.1 Are there any specified banks for the purpose of FCRA 2010?

Ans. Yes, It should be a PFMS integrated Bank. List of banks integrated with PFMS is available at https://fcraonline.nic.in/fc_bank_list.aspx

Q.2 Whether an association needs to open an exclusive FC A/c before submission of an application for registration or prior permission?

Ans. Yes. Since the FC A/c through which foreign contribution is proposed to be received and utilised is to be mentioned in the application seeking registration or prior permission, as the case may be, the association should open such an exclusive FC A/c with a Bank. This A/c number would be mentioned in the letter granting registration or prior permission to the association.

Q.3 Whether Banks should allow an association which is applying for registration or prior permission under FCRA, 2010 to open an exclusive FC A/c with INR?

Ans. Yes. However, the Banks should not allow any foreign inward remittance in that A/c till such time the association is granted registration or prior permission, as the case may be.

Q.4 Should the Banks report transactions pertaining to foreign contributions which are returned to the remitter by the beneficiary Association for want of registration/prior permission from MHA?

Ans. It is not necessary for the bank to report such foreign contribution that is returned to the donor without crediting in the account of the recipient.

Q.5 Whether reporting by Banks is also applicable for transfer of funds between FCRA accounts of two or more associations?

Ans. Yes. Reporting by Banks is also applicable to transfer of funds from one FCRA registered Association to another.

Q.6 Minimum Balance requirements in FC Accounts?

Ans. There is no such requirement under FCRA, 2010.

Change in Name, Address, Objectives, FC Account details etc.

Q.1 What is the procedure for seeking change FC-6 A in the name and or FC-6 B aims and objects of an association registered under FCRA?

Ans. For seeking change in the name/address of the association, intimation is to be given online in Form **FC-6** within 15 days and self certified copy of amendment approved by local/relevant authority is to be uploaded.

Q.2 What is the procedure for change of designated FC-6 C Bank Account?

Ans. For change of the bank account, an intimation is to be given online in Form **FC-6 C** within 15 days of such change with uploading of certificates from the concerned banks regarding the change.

Q.3 Whether intimation regarding the change of Members of the Executive Committee/Governing Council of the association is to be given to the Government?

Ans. Yes. If at any point of time, such change causes replacement of original Members of the Executive Committee/Governing Council of the association, intimation is to be given online in Form **FC-6 E** to MHA within 15 days of such change.

Renewal of registration .

Q.1 Whether the certificate of registration is to be renewed?

Ans Yes, As per Section 16 of FCRA, 2010 every person who has been granted a certificate of registration under Section 12 thereof shall have such certificate renewed within six months before the expiry of the period of the certificate.

Q.2 What is the process for renewal of registration?

Ans. Association which desire to renew their registration certificate may apply online in Form FC-3C six months before the expiry of their existing registration.

Q.3 Whether the registration certificate granted to an association under the repealed FCRA, 1976 shall have to renew their registration?

Ans. Yes. An association granted registration under the repealed FCRA, 1976 shall be deemed to have been registered under FCRA, 2010 for a period of 5 years. Registration granted under FCRA, 1976 shall remain valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.

Q.4 When should an Association which has been granted registration under FCRA 2010 apply for renewal of registration?

Ans. In terms of Rule 12 (2) of FCRR, 2011, an Association registered under FCRA should apply in Form FC-3C for renewal of its registration six months before the date of expiry of the certificate of registration.

Q.5 What are the documents to be uploaded for renewal of registration?

Ans. Signature of Chief Functionary, seal of the association, registration certificate of the association Memorandum of Association/ Trust Deed, FCRA Registration Certificate of association issued by MHA are to be uploaded for renewal of registration.

Q.6 What happens if the association does not apply for renewal of registration?

Ans. The existing registration under FCRA, 2010, will cease from the date of completion of the period of five years from the date of grant of registration and will not be eligible for receiving of foreign contribution and will not be eligible for receiving of foreign contribution. In such a case, the association has to apply afresh for grant of registration.

Offences and Penalties and Compounding of certain offences.

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

Ans. Under section 41, the government has issued a gazette notification dated **5.06.2018** and **27.07.2018**, which is highlighted as below:

TABLE

| Sr. No. | Offence | Amount of Penalty |
|---------|--|--|
| (1) | (2) | (3) |
| 1, | Offence punishable under section 35 for accepting any hospitality in contravention of section 6 of the Act. | Rs. 10,000/- |
| 2. | Offence punishable under section 37 for transferring any foreign contribution to any other person in contravention of section 7 of the Act or any rule made thereunder. | Rs. 1, 00,000/- or 10% of such transferred foreign contribution, whichever is higher. |
| 3. | Offence punishable under section 37 for defraying of foreign beyond fifty per cent of the contribution received for administrative expenses in contravention of section 8 of the Act. | Rs. 1, 00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher. |
| 4. | Offence punishable under section 35 for accepting foreign contribution in contravention of section 11 of the Act. | Rs. 1, 00,000/- or 10% of the foreign contribution, received, whichever is higher; |
| 5. | Offences punishable under section 37 read with section 17 of the Act for - (a) receiving foreign contribution in account in his application for grant of certificate; (b) non-reporting the prescribed or source and manner of such remittance by banks and authorised persons. (c) receiving & depositing any fund other than foreign contribution in the account or accounts opened for receiving foreign contribution or for utilizing the foreign contribution. | Rs. 1, 00,000/- or 5% of the foreign contribution received in such account, whichever is higher; Rs. 1, 00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher; Rs. 1, 00,000/- or 2% of such deposit, whichever is higher; |
| 6. | Offence punishable under section 37 for non-furnishing of intimation of the amount of each foreign contribution received and the source from which and in the manner in which, such foreign contribution is received as required under section 18 of the Act. | Rs. 1, 00,000/- or 5% of the foreign contribution received during the period of non submission, whichever is higher. |
| 7. | Offence punishable under section 37 for not maintaining the account and records of foreign contribution received and manner of its utilisation on required section 19 of the Act. | Rs. 1, 00,000/- or 5% of the foreign contribution during the relevant period of non maintenance of accounts, whichever is higher. |

“The amount of penalty computed under column (3) of the Table in respect of any offence or offences referred to in column (2) thereof shall not be more than the value of the foreign contribution involved.”

Q. 2 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.3 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.4 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.

Suspension and Cancellation of Registration.

Q.1 Can the Government cancel the certificate of registration granted to a person under FCRA?

Ans. Yes. Central Government may cancel the certificate as per the provisions of section 14 of the FCRA, 2010.

NOTE – Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

Q.2 Can the Government suspend the certificate of registration granted to person under FCRA?

Ans. Yes. Central Government may suspend the certificate as per the provisions of section 13 of the FCRA, 2010 for a period not exceeding one hundred and eighty days.

Q.3 What are the consequences of suspension of the registration certificate granted to a person under FCRA?

Ans. A person whose FCRA registration certificate has been suspended shall:-

- (a) not receive any foreign contribution during the period of suspension of certificate; provided that the central government specifically approves it on a case by case basis
- (b) not utilize the unutilized FC in his custody without the prior approval of the Central Government. Even in this case, only up to twenty-five per cent of the unutilised amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received. The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

Foreign Hospitality.

Q.1 What is foreign hospitality?

Ans. Foreign Hospitality means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

Q.2 Who requires prior approval from Ministry of Home Affairs before accepting Foreign Hospitality?

Ans. The following categories of persons require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality:-

- a) Members of a Legislature
- b) office bearers of political parties
- c) Judges
- d) Government servants
- e) Employees of any corporation or any other body owned or controlled by the Government.

Provided that it shall not be necessary to obtain any such permission for an emergent medical aide needed on account of sudden illness contracted during a visit outside India. But, where such foreign hospitality has been received, the person receiving such hospitality shall give an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

Q.3 Whether approval of the Ministry of Home Affairs is required in cases where the proposed foreign visit is being undertaken by a person in his/her personal capacity and the entire expenditure thereon is being met by the person concerned?

Ans. No.

Q.4 How one can seek permission of the Government for receiving foreign hospitality?

Ans. The applicant should submit application in Form FC-2 online.

Q.5 What documents are to be uploaded with FC-2 form for seeking prior permission for Foreign Hospitality?

Ans. Following documents are to be uploaded with FC-2 form (as mentioned under Rule 7 of FCRR, 2011):-

- (i) Signature of the applicant (maximum 50 KB allowed in JPG/ JPEG format)
- (ii) An invitation letter from the host or the host country, as the case may be (maximum 1 MB allowed in PDF format)
- (iii) administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government (maximum 1 MB allowed in PDF format).

•

Q.6 When should the application for filing the FC-2 form be filled?

Ans. The application for grant of permission to accept foreign hospitality should be filed online ordinarily two weeks before the proposed date of onward journey.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Provided that no such intimation is required if the value of such hospitality in emergent medical aid is up to one lakh rupees or equivalent thereto.

