

FREQUENTLY ASKED QUESTIONS (FAQs) ON FCRA

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 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 or 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 an 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; and (iv) a company

registered under section 25 of the Companies Act, 1956.

**The sum, as stated at (i) above, has been specified as Rs. 25,000/- vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012].

Q.2 Whether earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it is treated as foreign contribution?

Ans. No. As clarified at Explanation 3 above, 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.

Q.3 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)."

Q.4 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);
- (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;
- (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;”

List of agencies of the United Nations, World Bank and some other International agencies/multilateral organisations, which are not treated as 'foreign source', are available on the website <http://mha.nic.in/fcra/intro/FCRA-exemptedAgenciesUN.pdf>

Q.5 Who can receive foreign contribution?

Ans. A 'person', as defined in Section 2(1)(m) with the exclusion of those mentioned in Section 3 of FCRA, 2010, having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. Illustrative but not exhaustive lists of activities which are permissible and may be carried out by associations of different nature are available on the website — http://mha.nic.in/fcra/intro/permitted_programs.htm

Q.6 Who cannot receive foreign contribution?

Ans. As defined in Section 3(1) of FCRA, 2010, foreign

contribution cannot be accepted by any:

- (a) 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 (i) 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 clause (g).

Explanation – In clause (c) and section 6, the expression “corporation” means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(i) individuals or associations who have been prohibited from receiving foreign contribution.

Q.7 Are there any banned organisations from whom foreign contribution should not be accepted?

Ans. Yes. FCRA is meant to ensure that foreign contribution is received from legitimate sources and utilised for legitimate purposes by any person. A list of banned organisations is available in MHA's website http://mha.nic.in/uniquepage.asp?Id_Pk=292 . In particular, the list of foreign entities/individuals can be seen in <http://www.un.org/sc/committees/1267/AQList.htm>

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 an Indian passport holder.

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 who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO card holders and to Overseas Citizens of India. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship.

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

Ans. The position in this regard as given in Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011 are as under:

Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. 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 <http://mha.nic.in/fcra/forms/fc-1.pdf>

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. "Delegate/participation Fees" paid in foreign currency 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 Whether a Company incorporated in India under the Companies Act, 1956 having its operations in 2 or more countries is to be treated as a MNC/foreign source under FCRA, 2010?

Ans. No. However, as defined under section 2(j)(vi), a company within the meaning of the Companies Act, 1956 having more than one-half of the nominal value of its share capital held, either singly or in the aggregate, by one or more of the following will be treated as a "foreign source":

- (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"

Q.14 Can foreign contribution be received in rupees?

Ans. Yes. Any amount received from 'foreign source' in rupees or foreign currency is construed as 'foreign contribution' under law. Such transactions even in rupees term are considered foreign contribution.

Q.15 Will interest or any other income earned from foreign contribution be considered foreign contribution?

Ans. Yes.

Q.16 Whether interest or any other income earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?

Ans. Yes. The interest or any other income earned out of such deposit should be shown as second / subsequent foreign contribution receipt in the annual return during the year in which it is earned.

Q.17 Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?

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

1. (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to marked 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.

(2) A debt-based secure investment shall not be treated as speculative investment.

(3) Every association shall maintain a separate register of investments.

(4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

In view of the above, secure investments and fixed deposits in any bank or Government approved financial institution which ensures a fixed return will not be treated as speculative investment.

Q.18 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.19 Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?

Ans. No. The association should utilize such funds for the welfare purpose or activities for which it is received. The utilization

should be in line with the objectives of the association. However, foreign contributions can be utilized for self-sustaining activities, not meant for commercial purposes.

Q.20 Can foreign contribution be received in and utilised from multiple Bank Accounts?

Ans. No fund other than foreign contribution can be deposited in the exclusive single FC account of a Bank, as mentioned in the order for registration or prior permission granted by MHA, to be separately maintained by the associations. However, one or more accounts in one or more banks may be opened for utilising the foreign contribution after it has been received 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 on plain paper shall have to be furnished to MHA within 15 days of the opening of the account.

Q.21 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. 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 amount received in the designated FC account shall be received or deposited in such multiple account or accounts. Inter-account transfer of funds between the multiple accounts is not permissible. As such, the banks should apply full diligence to keep track of the transfers.

Q.22 Can foreign contribution be mixed with local receipts?

Ans. No. Foreign contribution cannot be deposited or utilised from the bank account being used for domestic funds.

Q.23 Whether expenses like 'interest paid to bank', 'bank charges', 'hospitality' etc. can be included in 'administrative expenses'?

Ans. No. The definition of as 'administrative expenses', as given in Rule 5 of FCRR, 2011 is explicit in this regard.

Q.24 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-10. <http://mha.nic.in/fcra/forms/fc-10.pdf>

(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-6 to be submitted by both the transferor and the recipient." <http://mha.nic.in/fcra/forms/fc-6.pdf>

Q.25 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.

Q.26 What are the eligibility criteria for grant of registration?

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

(i) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 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. For this purpose, the association should have spent at least Rs.10,00,000/- over the last three years on its activities, excluding administrative expenditure. Statements of Income & Expenditure, duly audited by Chartered Accountant, for last three years are to be submitted to substantiate that it meets the financial parameter.

Q.27 What are the eligibility criteria for grant of prior permission?

Ans. An organisation in formative stage is not eligible for registration. Such organisation 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:

- (i) be registered under 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) submit copy of a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised.

Q.28 Whether the amount of foreign contribution for which prior permission has been granted can be received by an association in installments?

Ans. 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 return in FC-6 form for receipt and utilisation of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilised. Even if no transaction takes place during a year, a NIL return should be submitted.

Q.29 Whether an association should 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.30 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.31 Whether Banks should credit any foreign contribution received by an association to its account even if the association does not have registration/prior permission from MHA and subsequent reporting can be made by Banks to MHA?

Ans. Rule 16 (1) of FCRR, 2011 states that every bank shall send a report to the Central Govt. within 30 days of receipt of foreign contribution by any person who is required to obtain a certificate a registration or prior permission under the Act, but who was not granted such certificate or prior permission on the date of receipt of such remittance. Further, Rule 16(3) prescribes that the banks shall send a report to the Central Govt. within 30 days from the date of such last transaction in respect of receipt of any foreign contribution in excess of Rs.1 Crore or equivalent thereto in a single transaction or in transactions within a duration of 30 days, by any person whether registered or not under the Act.

In view of the above, it follows that bank may credit any foreign contribution received by an Association without registration or prior permission. However, while the banks can prevent such a situation in cases where a cheque is presented by the recipient of foreign contribution for deposit in its savings/current account, it may not always be possible when the foreign remittance is through wire transfer. Therefore, in all such cases, besides sending a report to MHA as per Rule, the bank should not allow any withdrawal or transfer or utilisation of the FC amount till such time the Association produces documentary evidence from MHA permitting it to do so.

Q.32 Should the Banks report transactions pertaining to foreign contributions which are returned back 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.33 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.34 Whether the reference period prescribed in Rule 16(3) of FCRR, 2011 for reporting by Banks in respect of transactions during 30-days period should mean calendar month?

Ans. For the purpose of reporting to MHA, 30 days period may be construed as a calendar month.

Q.35 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.

(ix) 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; or
- (ii) the security, strategic, scientific or economic interest of the State; or
- (iii) the public interest; or
- (iv) freedom or fairness of election to any Legislature; or
- (v) friendly relation with any foreign State; or
- (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.36 Can a private limited company or a partnership firm get registration or prior permission under FCRA, 2010?

Ans. As per the definition of the "person" in the FC(R)Act, 2010 which includes an "association" which in turn is defined as an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called, a private limited company too may seek prior permission/registration for receiving foreign funds in case they wish to do some charitable work at some point of time.

Q. 37 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. The definition of the 'person' in the Foreign Contribution (Regulation) Act, 2010 includes any individual and '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.38 Whether infusion of foreign share capital in a company

registered under section 25 of the Companies Act, 1956 attracts the provisions of FCRA, 2010?

Ans. Yes, infusion of foreign share capital in a company registered under section 25 of the Companies Act, 1956 is treated as foreign contribution.

Q.39 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. However, in certain cases, if the amount of foreign contribution for which prior permission is being sought is less than Rs.50 lakh, submission of such a certificate assists in speedy clearance of the application.

Q.40 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. Yes. When an application is filed online, a printout of the same is to be taken after submission and thereafter, it should be submitted, duly signed by the Chief Functionary of the Association, along with the requisite documents to the Ministry of Home Affairs. The prescribed forms for submission of application for grant of Registration and Prior Permission are FC-3 and FC-4 respectively. The forms are available at MHA website <http://mha.nic.in/fcra/forms/fc-3.pdf> and <http://mha.nic.in/fcra/forms/fc-4.pdf> respectively.

Q.41 What are the documents to be enclosed with the application?

Ans. (a) Following documents should be enclosed with the application for grant of Registration:

(i) Hard copy of the online application, duly signed by the Chief Functionary of the association;

(ii) Certified copy of registration certificate or Trust deed etc., as the case may be;

(iii) Activity Report indicating details of activities during the last

three years;

(iv) Copies of audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure);

(v) 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.

(vi) Fee of Rs. 2000/- by means of demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(b) Following documents should be enclosed with the application for grant of Prior Permission:

(i) Hard copy of the online application, duly signed by the Chief Functionary of the association;

(ii) Certified copy of registration certificate or Trust deed etc., as the case may be;

(iii) Commitment letter from foreign donor specifying the amount of foreign contribution and the purpose for which it is proposed to be given;

(iv) Copy of the project report for which foreign contribution is solicited/being offered and is proposed to be utilised;

(v) 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.

(vi) Fee of Rs. 1000/- by means of demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

Note: The hard copy of the on-line application along with all the documents mentioned above must reach the Ministry of Home Affairs,

Foreigners Division (FCRA Wing), NDCC-II Building, Jai Singh Road, New Delhi – 110 001 within thirty days of the submission of the on-line application, failing which the request of the person for grant of registration or prior permission, as the case may be, shall be deemed to have ceased.

Q.42 How to find the status of pending application for registration/prior permission. ?

Ans. Status of pending applications for grant of registration or prior permission may be checked on-line from the Ministry of Home Affairs web-site – http://mha.nic.in/fcraweb/fc_online.htm. One needs to fill in the numbers on acknowledgement letter or any correspondence from MHA (Foreigners Division) in the blank format which pops up on the screen after selection of status enquiry icon (registration/prior permission, as the case may be)

Q.43 Whether foreigners can be appointed as Executive Committee members of an association seeking registration or prior permission?

Ans. Organisations 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. Foreigners may, however, be allowed to be associated with such associations in an ex-officio capacity, 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 persons stature in his/her field of activity. Subject to relaxation given on a case to case basis, foreign nationals fulfilling the following conditions may be appointed as Executive Committee members, after obtaining prior approval of the Central Government:

- (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 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 Trustee/Executive Committee, in an ex-officio capacity representing a multilateral body

which is exempted from the definition of foreign source.

The need for such an appointment should, however, be adequately justified.

Q.44 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.45 Whether organisations under Central/State Governments are required to obtain registration or prior permission under FCRA, 2010 for accepting foreign contribution?

Ans. In terms of Gazette Notification S.O. 1492(E) dated 01.07.2011, <http://mha.nic.in/pdfs/ExempStatBodi-010711.pdf> all statutory bodies constituted or established by or under a Central Act or State Act requiring to have their accounts compulsorily audited by the Comptroller & Auditor General of India are exempted from all the provisions of FCRA, 2010.

Q.46 What is the procedure for seeking change in the name/address of an association registered under FCRA?

Ans. For seeking change in the name/address of the association, one should use the prescribed form available on MHA's website http://mha.nic.in/fcra/forms/chng_name_addr.pdf and submit the same along with the requisite documents specified therein.

Q.47 What is the procedure for change of designated FC Bank Account?

Ans. For change of the bank account, an application in prescribed form mentioning the details of the old bank account and the proposed new bank account along with justification for change of designated bank, name/ address of the society, copy of registration under FCRA, copy of fresh resolution of the executive committee (in English or Hindi) for change of designated bank account, certificate from the proposed bank (copy of Bank Pass Book is not acceptable) that the account is being opened exclusively for FCRA, may be submitted to MHA. This form is available on website

http://mha.nic.in/fcra/forms/chng_bank_acnt.pdf

Q.48 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 50% or more of such Members of the Executive Committee/Governing Council of the association, intimation is to be given to MHA within thirty days of such change in accordance with the undertaking & declaration given by the association in its application for registration or prior permission, as the case may be. Further, as per the undertaking & declaration, the association should not accept any foreign contribution except with prior permission till the permission to replace the office bearer(s) has been granted by MHA.

Q.49 What is the procedure for filing Annual Returns?

Ans. An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilisation of the foreign contribution. The return is to be filed 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. Submission of a 'Nil' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. The return is to be submitted, in prescribed Form FC – 6, duly accompanied with the balance sheet and statement of receipt and payment, which is certified by a Chartered Accountant. The form is available on MHA's web-site – <http://mha.nic.in/fcra/forms/fc-6.pdf> For further details, please refer to Sections 17, 18 and 19 of FCRA, 2010 and Rule 17 of FCRR, 2011.

Note: It may be noted that the annual return for the financial year 2010 – 2011 was to be filed by the 31st December, 2011 in Form FC-3, i.e., as per FCRA, 1976.

Q.50 For how many years an association which has been granted prior permission to receive foreign contribution should file the mandatory annual return?

Ans. 'Prior permission' is granted to an association to receive a specific amount of foreign contribution from a specific donor for a specific purpose. After receipt of approval from the Government, the association should submit the mandatory return in FC-6 form for receipt and utilisation of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilised. Even if no transaction takes place during a year, a NIL return should be submitted.

Q.51 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.52 Which are the offences that can be compounded and what would be the penalties therefor?

Ans: In terms of Gazette Notification S.O. 1976 (E) dated 26.08.2011, <http://mha.nic.in/fcra/forms/ComOffNoti-260811.pdf> the categories of offences that can be compounded under section 41 of FCRA, 2010 and the quantum of penalty for compounding, as indicated against each of the offences, are –

Nature of offence Quantum of penalty
(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.

Q.53 How to apply for compounding of an offence under FCRA, 2010?

Ans: An application for the compounding of an offence under section 41 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.54 What happens after an offence is compounded?

Ans: After payment of the penalty imposed and compounding of the offence, the person may be granted registration or prior permission, as the case may be, subject to its fulfilling all parameters.

Q.55 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.56 Which are the investigating agencies for investigating and prosecuting a person for violation of FCRA?

Ans. In terms of Gazette Notification S.O. 2446 (E) dated 27.10.2011, The Central Bureau of Investigation or the investigating agencies (Crime Branch) of the State Governments, cause of action which arises in their respective States, are the designated agencies for investigating and prosecuting a person for violation of FCRA.

Q.57 Can the Government cancel the certificate of registration granted to a person under FCRA?

Ans. Yes. The conditions for cancellation of certificate, as prescribed under section 14 of FCRA, 2010 are –

14 (1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if –

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of the certificate has violated any of the provisions of this Act or rules or order made thereunder.

(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

14 (2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

14 (3) 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.58 Can the Government suspend the certificate of registration granted to a person under FCRA?

Ans. The conditions for suspension of certificate, as prescribed under section 13 of FCRA, 2010 are –

13(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of Section, 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding one hundred and eighty days as may be specified in the order.

13(2) Every person whose certificate has been suspended shall –

(a) not receive any foreign contribution during the period of suspension of certificate:

Provided that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

In terms of Rule 14 of the Foreign Contribution (Regulation) rules, 2011, the unspent amount that can be utilised in case of suspension of a certificate of registration may be as under: -

(a) In case the certificate of registration is suspended under sub-section (1) of section 13 of the Act, 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.

(b) The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

Q.59 Can an organization, whose violation under FCRA, 1976 has been condoned, apply for registration/prior permission?

Ans. After the violation committed by an association has been condoned, the association can apply for prior permission (PP) only by submitting an application in form FC-4 <http://mha.nic.in/fcra/forms/fc-4.pdf>. Once the PP has been granted and foreign contribution received for specific purpose has been fully/partially utilized and organisation has submitted annual FC-6 <http://mha.nic.in/fcra/forms/fc-6.pdf> returns and accounts in prescribed format pertaining to the PP, it becomes eligible for consideration of registration under FCRA. Registration would be granted under FCRA, if other parameters are fulfilled by the association.

Q.60 What is the status of the applications submitted under the repealed FCRA, 1976 but have not been disposed of?

Ans. In terms of Rule 9(5) of FCRR, 2011, every application made for registration or prior permission under FCRA, 1976 but not disposed of before the date of commencement of these rules, i.e., 01.05.2011, shall be deemed to be an application for registration or prior permission, as the case may be, under FCRR, 2011 subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

Q.61 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. 62 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. Prior permission granted under FCRA, 1976 as also under FCRA 2010 remains valid till receipt and full utilisation of the amount of FC for which the permission was/is granted.

Q.63 Whether the certificate of registration is to be renewed and what is the procedure for such renewal?

Ans. Section 16 of FCRA, 2010 and Rule 12 of FCRR, 2011 may please be seen in this regard.

Q.64 When should an Association which has been granted registration under FCRA, 1976 should 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-5 for renewal of its registration six months before the date of expiry of the certificate of registration. Since registration granted to Associations under the repealed FCRA, 1976 shall be valid up to 30th April, 2016, such Associations should apply for renewal of their registration on or before 1st November, 2015.

An Association granted registration under FCRA, 2010, i.e., after 1st May, 2011, shall have to apply for renewal of registration six months before the date of expiry of the validity of its certificate of registration.

Associations implementing an ongoing multi-year project should apply for renewal twelve months before the date of expiry of the certificate of registration.

Q.65 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.66 Who cannot accept foreign hospitality without prior approval of the Ministry of Home Affairs?

Ans. Section 6 of FCRA, 2010 prescribes that "No member of a Legislature or office bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government any foreign hospitality.

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, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him."

Q.67 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. Any person belonging to any of the categories specified in Section 6 of FCRA, 2010 would require such approval only if the person concerned is seeking foreign hospitality from a foreign source.

Q.68 How one can seek permission of the Government for receiving foreign hospitality?

Ans. Application form (Form FC-2) for this purpose is available on MHA's web-site – <http://mha.nic.in/fcra/forms/fc-2.pdf>. In terms of Rule 7 of FCRR, 2011:

(i) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.

(ii) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.

(iii) 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.

Foot Note:

For applicants who are individuals, the criteria of registration under Societies/Trust Act will not be applicable.