

FREQUENTLY ASKED QUESTIONS (FAQs) FOR NPOs

ON

FCRA LAWS

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Frequently Asked Questions (FAQs) for NPOs on FCRA Laws

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Foreword

Dear Professional Colleagues,

The laws governing the foreign contribution have been drastically changed in recent times. New FCRA, 2010 has helped in smooth functioning of NGOs in India and also in nourishing the environment for their healthy growth. The money coming from abroad by way of philanthropy is a key source of finance for many NGOs working in our country. Proper regulation of this money, in order to ensure it is spent for intended purpose, is utmost important for achieving social causes such as upliftment of poor and underprivileged. Chartered Accountants can play crucial role in ensuring that the foreign contributions are being used for its desired purpose.

I am pleased that Committee for Cooperatives & NPO Sectors (CCONPO) of the Institute of Chartered Accountants of India (ICAI) has come up with the Frequently Asked Questions (FAQs) for NPOs on FCRA Laws. I hope this publication is found highly relevant and useful by the professionals dealing with foreign contributions.

I congratulate CA. Anuj Goyal, Chairman, CCONPO, CA. Tarun J. Ghia, Vice-Chairman, CCONPO and other members of the committee for bringing out the publication.

I hope that the readers would find this publication a handy resource material.

February 3, 2014
New Delhi

CA. Subodh K. Agrawal
President, ICAI

Preface

Dear friends,

It was felt that the FCRA, 1976 had outlived and it is necessary to bring new act keeping in view the current socio-economic environment. The basic purpose of FCRA 2010 as mentioned in the preamble to the Act is "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 the national interest and for matters connected therewith or incidental thereto." The contribution received from outside country has been the major source for NGOs to procure funds to carry out their activities. There is a lot of confusion on FCRA provisions among the practitioners.

I am happy to share this book on FAQs for NPOs on FCRA for members of ICAI & other stakeholders of NPO Sectors and confident that it will help to bring clarity on FCRA provisions among practitioners.

I would like to take opportunity to place on record my deep appreciation to Dr. Manoj Fogla for drafting this book and CA. Suresh Kejriwal, Co-opted Member, CCONPO for his key inputs.

I compliment the members of the committee for their valuable suggestions and comments.

I also thank CA. Subodh Kumar Agrawal, President, ICAI and CA. K. Raghu, Vice President, ICAI for their able guidance and support.

I wish to extend my sincere thanks to Dr. Amit Kr. Agrawal, Secretary, CCONPO and his team who were instrumental in giving the final shape to this book.

I am sure that this publication will be of great help to the reader.

February 3, 2014
New Delhi

CA. Anuj Goyal
Chairman
Committee for Cooperatives & NPO Sectors

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Chapter 1

MHA-Frequently Asked Questions (FAQs) On FCRA*

Introduction

In this chapter, 68 FAQs as provided by the FCRA department have been reproduced. In some FAQs there is need for additional clarity and in some FAQs there is statutory inconsistency which has been discussed in the next chapter with suitable references under such FAQ.

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

* Source : <http://mha.nic.in/fcra.htm>.

** 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 ₹ 25,000/- vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012].

form 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.

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

Ans. No. As clarified in 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 ₹ 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)."

(Regarding personal receipt and gifts, please also see FAQ no. 1 of Chapter 2 for the legal & statutory issues related with this query.)

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) 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 that 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

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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>.

(Kindly also see FAQ no. 2 of Chapter 2 for the legal and statutory issues related to this query.)

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 ₹ 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 has to 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 & 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 ensure 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. Is inter-account funds transfer allowed within the multiple accounts that an Association is now permitted to open for the purpose of utilizing the foreign contributions and what is 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

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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 ₹ 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 Government within 30 days of receipt of foreign contribution by any person who is required to obtain a certificate of 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 Government within 30 days from the date of such last transaction in respect of receipt of any foreign contribution in excess of ₹ 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 banks 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;

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- (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; 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 ₹ 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?

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

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 ₹ 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 ₹ 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 online 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 online 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 can you 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 online from the Ministry of Home Affairs website-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.

(Kindly also see FAQ no. 3 of Chapter 2 for the legal and statutory issues related to this query.)

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.

(Kindly also see FAQ no. 4 of Chapter 2 for the procedural issues related to this query.)

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.

(Kindly also see FAQ no. 5 of Chapter 2 for the procedural issues related to this query.)

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 should an association which has been granted prior permission to receive foreign contribution 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:

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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.

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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 ₹ 10,000/- or 2 per cent foreign contribution by a 'person' of the foreign contribution without registration or prior permission involved, whichever is of the Central Government even in cases higher.	where the cheque or draft has not been deposited in a Bank by the 'person'.
(ii) Acceptance of cheque or draft by a ₹ 25,000/- or 3 per cent 'person' towards foreign contribution of the foreign contribution without registration or prior permission involved, whichever is of the Central Government & depositing higher.	the same in a Bank notwithstanding non-utilisation of the amount of the foreign contribution.
(iii) Acceptance of foreign contribution by ₹ 1,00,000/- or 5 per cent a 'person' without registration or prior of the foreign contribution permission of the Central Government involved, whichever is and utilisation of the same notwith- higher.	standing 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.

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

Q.53. How can one 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 ₹ 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 respective State Governments, in which the cause of action arises, 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(7) 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.

(Kindly also see FAQ no. 6 of Chapter 2 for the procedural issues related to this query.)

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 the 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 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.

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- (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.

Chapter 2

Clarificatory FAQs

In this chapter clarificatory notes have been provided to certain FAQs of FCRA Division, MHA, as provided in Chapter 1 in the light of the FCR Act, 2010 and the Rules thereof.

Q.1 Will an individual receiving contribution (including gifts) for personal purposes be covered ?

Ans. The term 'person' includes individuals, therefore, all individuals except the prohibited category can receive foreign contribution subject to the compliance of FCRA 2010. The FCRA, 2010 has confusing provisions in this regard; however, the overall intent seems to be to regulate all foreign contributions received by individuals from a foreign source.

An individual may receive foreign contribution or gift for personal consumption or as a trustee to execute any specific programme, research, activity etc. Some foreign donors do send money in individual bank accounts for charitable project. The issue is whether both types of foreign contribution receipts shall be covered by the Act or not.

Section 11(1) of the FCRA provides that any person receiving foreign contribution for a definite programme should apply for registration. In other words it may be implied that any person receiving foreign contribution for personal use may not apply for registration. This provision creates confusion on whether individuals receiving gifts or contribution for personal purposes are exempted from the law. Further section 12(4)(a)(vi) provides that any person applying for registration or prior permission shall not use foreign contribution for personal gain or divert it for any undesirable purpose. To sum up, the registration and procedural provisions of the Act have been structured only to cover contribution received for a definite purpose, but the statutory definition of foreign contribution and inclusion of individuals in the definition of the term 'person' makes it applicable to all individuals who receive foreign contribution from a foreign source. But at the same time the Act is not clear how such contribution received by individuals will be regulated when the registration and prior permission are required to be taken only when foreign contribution is received for definite purpose.

In other words, the application of the Act to an individual is very clear. Further gifts from foreign sources also seem to be covered under the definition of foreign contribution. But the Act does not regulate personal gifts or contribution therefore, individuals or even institution, technically, can receive gifts from foreign sources without prior permission or registration. The regulation of personal receipts and gifts from foreign sources has not been properly articulated. Further, the act does not debar receiving gifts and contribution for personal purposes. The act provides for reporting of gifts received from relatives above ₹ 1 lakh, but it is silent about reporting of gifts received from foreign source. In this context the chapter on "*Gift Received from Relatives & Foreign Sources*". Further, the preamble of the act as provided in the beginning of this chapter states that the act is to regulate the foreign contribution or foreign hospitality of certain individuals, associations or companies. In other words, the act at the outset also makes it clear that it does not apply to all categories of persons.

Overall, it seems that the act applies to all persons for foreign contribution received for a definite purpose, in other words the Act would not apply to foreign contribution received for personal use or as gift. Only the specified individual under section 3 are debarred from receiving FC except gifts from relatives.

Q.2 Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?

Ans. Rule 6 of FCRR, 2011 provides any gift received from a relative in excess of ₹ 1 lakh, per annum, needs to be intimated to the Central Government. It may be noted that no prior permission is necessary to receive gifts from relatives staying abroad but an intimation has to be sent within 30 days in Form FC-1. Rule 6 of FCRR 2011 is reproduced as under:

"6. Intimation of receiving foreign contribution from relatives.

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."

In this context it may be noted that the FCRA law would not apply if the relative is an Indian holding valid Indian passport. The Form FC-1 is enclosed as a part of this book and is also available on the website <http://mha.nic.in/fcra/forms/fc-1.pdf>.

Since even the persons specified in Section 3 of FCRA 2010, i.e., persons not permitted to accept foreign contribution, are permitted to accept gifts from their relatives under Section 4(e) of the Act, subject to the provisions of Section 10, it is obvious that any other person in general is also permitted to accept gifts from his/her relative.

Rule 6A creates an anomalous situation which is described below:

- A gift from relative holding Indian passport is totally exempted for everybody.
- A gift from non-relative holding Indian passport is also totally exempted for everybody.
- A gift from relative who is a foreigner is also totally exempted for everybody, but an intimation has to be sent within 30 days in Form FC-1, if the amount exceeds ₹ 1 lakhs in a year.
- A gift from non-relative who is a foreigner is also totally exempted for everybody, and it seems that no intimation has to be sent within 30 days in Form FC-1.

Q.3 Are foreigners allowed as members or board members of the NPO ?

Ans. It may be noted that the FCRA 2010 and the Rules thereof are silent about the issue of foreigners on Board of an NPO. The FCRA department through its FAQ is not permitting foreigners on Board as discussed above. The legal sanctity of the authority of the FCRA department to impose such conditions is not based on the statute or the Rules thereof.

Further, under the general law, as far as registering a Charitable Organisation with foreigners as subscribers/members/trustees is concerned, there is no law, which prohibits such registration. In fact there are case laws, which say "*even if all the subscribers are foreigners yet the society will be Indian if it is registered in India and vice-versa*"¹.

On the other hand, a society will be considered as foreign society if it is registered outside India although all the members are of Indian origin.²

1 From Anands Commentaries on Societies Registration Act, 1860, (i) General Company for promotion of Land Credit (1870) 5 ch. Ap.363 and on appeal (1871) 5 H.L. 176 (ii) A.G. vs. Jewish Colonisation Association (1901) 1 K.B. 123.

2 Janson vs. Drifontein Mines (1902) A.C. 484, Gramophone and Typewriter Ltd. vs. Stanley (1906) 2 K.B. 856.

Q.4 Procedure for Change of Address to another District or State.

Ans. When the change of address is from one district to another or to another state, then it may be noted that the FCRA department is following a detailed procedure for validating such changes. The FCRA department has been asking the concerned organisation to file a new application for registration in form FC-3. It is not very clear why the FCRA department is insisting on filing of an application for registration in form FC-3, to validate and update the change of address. The reason for asking for a registration application is that the registration number of organisation is based on district code and state code which also require change. However, any inquiry or internal procedure regarding change of address should be done internally and it seems unusual to ask a registered organisation to apply for fresh registration.

The FCRA department simultaneously also requests the organisation to apply for cancellation of the old registration in lieu of the new registration. It is confusing to the applicant organisations to request for cancellation of the existing registration. It is important that FCRA department evolve a more rational mechanism for change of address.

Q.5 Whether intimation regarding more than 50% change of Members of the Executive Committee/Governing Council of the association is to be given to the Government?

Under FCRA, any change in the board members in excess of 50% shall be made with prior permission. This condition is a part of the undertaking provided by the applicant at the time of making application for 'registration' or 'prior permission'. Therefore, even though it is not mentioned in the Act or the Rules, it becomes binding on all the organisations by virtue of the undertaking given at the time of making application for 'registration' or 'prior permission'. In fact the undertaking provided in Form FC-3 (application for registration) provides that prior permission should be taken for any change in the board members in excess of 50%. On the contrary the undertaking provided in Form FC-4 (application for prior permission) provides that intimation should be given to FCRA department within 30 days of any change in the board members in excess of 50%.

Does this law apply to organisations registered under the repealed fcra 1976 : The undertaking regarding change of more than 50% board member was there in the old form FC-8 also. In fact, this undertaking became a part of the application form for registration with effect from 27.12.1996 when the

erstwhile form FC-8 was amended. In other words, all organisations which have applied for FCRA registration after 27th December 1996 have given the undertaking regarding prior approval for change in more than 50% of the board members. Therefore, technically all organisations who have applied after 27th December 1996 are bound by this law. The organisations which have applied and obtained registration before 27.12.1996 are not subject to this provision.

Q.6 Circumstances and Procedure through which FCRA department can suspend the certificate of registration granted to a person under FCRA?

Ans. Section 13 of FCRA 2010 provides the power to the Central Government to suspend the registration pending cancellation of certificate, for a period up to 180 days. During suspension, the organisation cannot receive any foreign contribution without prior approval.

FCRA 2010 does not specifically provide for any opportunity of being heard before effecting the suspension order. Section 13(1) also does not provide for reasons to be recorded in writing. However, the provision provides that the organisation shall be provided opportunity to be heard during the period of 180 days of suspension. After the completion of 180 days and depending on the findings, the registration will either be cancelled or restored. The issue arising out of the provision is whether FCRA department can suspend registration without providing any opportunity to be heard or without giving any reasons in writing. Based on legal interpretation and judicial precedence, it seems that FCRA department cannot suspend registration without providing any opportunity of being heard or without giving any reasons in writing.

On plain reading of the provision, it can be seen that section 13 uses the word "may" as highlighted in the text of the section reproduced below:

"13 Suspension of certificate.-(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 (l) 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."

The use of word "may" implies that there is a discretion provided in the Act which may or may not be exercised. If the FCRA department wants to exercise such discretion, then it has to provide opportunity of being heard as well

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as reasons in writing. The Hon'ble Delhi High Court in the case *Indian Social Action Forum (INSAF) v. Union of India* W.P.(C) 4982/ 2013 & CM 11248/2013 ruled that the language of section 13(1) does not empower the FCRA department to suspend registration without providing opportunity of being heard or reasons in writing.

Chapter 3

Other Important FAQs

Q.1. Is FEMA also applicable to foreign contribution received by Indian NGO?

Ans. For foreign contribution received by Indian NGOs, Foreign Contribution Regulation Act, 2010 is applicable. FEMA is applicable mainly for business transactions. Moreover, FCRA is regulated by Home Ministry, whereas FEMA is regulated by Finance Ministry. FEMA may also be applicable to foreign contribution received by Indian NGOs if it involves receiving of loan.

Q.2. Whether grant received from Indian companies like Infosys, HDFC, in which more than 50% of shareholding is held by foreigners, shall be treated as FC and thereby NGOs cannot receive donations from such companies without FC registration?

Ans. Yes, donation received from an Indian company, in which more than 50% of shareholding is held by foreigners, can be received only after FC registration or prior permission.

Q.3. Whether the operational bank account has to be a current A/c or it can be a savings A/c?

Ans. There is no restriction as such under FCRA Act and therefore, operational bank account can either be a current account or a savings account. It may be noted that such an account should be for utilisation purpose only and no foreign contribution should be directly received in such accounts.

Q.4. Whether foreign contribution received in cash at field level can be deposited into the operational bank A/c?

Ans. There is no clarity on this issue. FAQs on FCRA issued by Home Ministry (FAQ No.21) provide that the operational bank account can receive funds only from Mother account. However, we understand foreign contribution received in cash at field level are not necessarily required to be deposited in the designated bank account. Such income is treated as income as subsequent recipient and can be added to the FC balance. Further, there seems to be no statutory provision prohibiting the deposit of such field level transactions in the operational bank account. In this context, it may also be noted that it is technically not possible to receive all foreign contribution (received

as subsequent recipient) in the designated bank account, for example interest earned on various multiple/operational bank accounts.

Q.5. Whether the foreign contribution received by cheque at field level can only be deposited in the designated bank A/c?

Ans. Foreign contribution received by cheque at field level should be deposited in the designated bank account.

Q.6. In the case of joint payments having funding from FC sources and non-FC sources, whether the amount can be transferred from FCRA to common pool A/c for making necessary expenses, e.g. payment of salary & provident fund funded both from FC sources & non-FC sources.

Ans. There is no clarity on this issue as FAQs on FCRA issued by Home Ministry (FAQ No.22) provide that mixing of local fund with FCRA is not allowed. Effort should always be made to avoid mixing of local funds with FC funds. For instance, in case of payment to provident fund authorities (where only one instrument is required to be made) the organisation may prepare two 'pay yourself' cheque for the bank and get one banker's cheque for the PF authority.

However, in certain technical issues where there is no possibility of segregating FC funds from local funds, temporary mixing may be allowed to facilitate the payment. Such extreme example could be like receipt of income tax refund. The tax refund may be apportioned accordingly and be transferred to the respective bank account.

Q.7. In which A/c should income tax refund cheque (consisting both of FC & non-FC) should be deposited and how to transfer the fund to respective account?

Ans. As discussed above the cheque for Income tax refund received from income tax department should be deposited first into local or designated FC account depending on the dominant share of FC or LC and then respective apportioned amount can be transferred to the foreign contribution or local bank account as the case may be. If the Income tax refund is received in specific pre- determined account, then the respective apportioned amount may be transferred to the foreign contribution or local bank account as the case may be.

Q.8. Can an organization take loan from local sources for FCRA project?

Ans. The FAQs on FCRA issued by Home Ministry (FAQ No.22) provides that mixing of local fund with FCRA is not allowed. It needs to be understood that to utilise local fund for foreign projects, it is not necessary to transfer local funds to FC Bank account and vice versa. For example, if local money is used for an FC project, then to that extent the expenditure shall remain in the local books only. Similarly, if FC money is used for local projects, then to that extent the expenditure shall remain in the FC books only.

Q.9. What expenses constitute administrative expenses under FCRA, 2010?

Ans. Basically, this will include all expenses incurred for managing the programme. However, the FCR Rules have distinguished the term 'managing' from 'expenditure incurred directly on furtherance of objectives' and 'field level expenditures'. Therefore, all expenditure including salary, travel etc. which can be proved to be towards 'directly on furtherance of objectives' or 'field level expenditures' will be treated as programme expenses.

Q.10. What is the accounting and reporting requirement for administrative expenses under FCRA, 2010?

Ans. There is no specific accounting and reporting requirement for administrative expenses under FCRA, 2010. It is not required to change the accounting process or maintain separate books of account for administrative expenses under FCRA, 2010. There is separate reporting requirement for administrative expenses under FCRA, 2010. However, all organisation, should be in a position to provide the details of administrative expenses if and when such information is sought by the FCRA department.

Q.11. Whether as a part of project program an NGO can build community assets like school building or community hall out of FC fund without complying with the formalities as provided in Rule 24?

Ans. As we understand, where community asset is created out of foreign contribution fund, necessary formalities as provided in Rule 24 should be complied with.

Q.12. Whether NGOs can transfer FC fund as a grant/loan to self help groups?

Ans. We understand that loan or grant to an Individual can be made out of foreign contribution fund for self-consumption. However if the grant or loan is given to self- help group then we understand formalities as provided in Rule 24 should be complied with.

Q.13. What will be the implications if grant is used for purposes other than purposes for which it is received?

Ans. This can be considered as violation of Section 8 of FCRA, 2010 and therefore, the registration of the organisation can be cancelled.

Q.14. What shall be the option available to an NGO if application for registration/prior permission is rejected?

Ans. The options available with the NGO include :

Making application for the revision of the order within one year from the date of the order u/s.32 of FCRA 2010. However, application for revision can be made if no appeal is filed in the court.

An appeal can also be made to the High Court against rejection of application for registration/prior permission u/s. 31(2) of FCRA 2010.

Q.15. If more than 50% of members have changed due to death what shall be the implication for the NGO and what formalities should be complied with ?

Ans. Again, there is no clarity on this issue. As we understand necessary information should be given to the Home Ministry, wherever such changes have taken place due to death.

Q.16. Whether it is mandatory to file three Nil returns FC 6, FC 7 & FC 8 if no foreign contribution is received or filing of only FC 6 shall be sufficient?

Ans. From the strict Interpretation of the Rules, it appears that the three separate Nil Return should be furnished if no foreign contribution has been received during the year. However if we are filing only one Nil Return i.e. FC 6, it is advisable that we must mention Nil while filing in kind contribution. It may be noted that FC 6 returns include information regarding contribution received in kind also. As a result, in case of nil return, all the information is duly sent. Therefore, filing FC 6 return should be sufficient when there is no FC receipt during the year. This is an issue which requires attention of the Home Ministry for necessary clarification.

Q.17. How should the refund of grant back to the Donor be shown while preparing the FC 6 return?

Ans. Refund of grant should be included as utilisation under the respective purpose for which the grant received has been classified. It may be noted

that, the FCRA does not debar refund of grant back to the Donor, irrespective of the fact whether the donor is from India or abroad.

Q.18. FC 6 requires details for each purpose wise expenditure on the basis of place with address of specific activities. Should this information be given on the basis of each village or district, or any other basis?

Ans. Again there is no clarity on this issue. We understand the place & address of the specific activities should be given on the basis of at least block level details. As it is, in case of large organisations, village-wise details may not be possible and practicable. On the other hand, providing only district level detail, will not provide the rural distribution of money.

Q.19. The format of FC 7 is in the form of stock ledger which summarises the information on the basis of date. Hence, if an organisation has received more than one article, then how should such returns be prepared and submitted?

Ans. The form of FC 7 is the item wise stock ledger, and therefore if there are more than one item, separate sheet should be used for each item received in kind.

Q.20. Is it mandatory to file the return online or physical return can also be submitted ?

Ans. So far, it has not become mandatory to file the return online. However it is suggested that online return should be filed followed by the submission of physical forms along with Annexures.

Q.21. How can the subsequent recipients be classified and what documentary evidence should the organisation possess in support of such classification ?

Ans. Subsequent recipient is not defined. However if the grants are received from any FC registered organisation in India, or any income is generated out of FC assets/investment, then these receipts should be classified as subsequent recipient. The organisation must have the evidence on record that the particular amount classified as subsequent receipt is received from any FC registered organisation or the income was generated by the organisation out of its FC assets/investment. In other words, when the funds are received directly from a foreign source it is treated as first recipient and all other receipts are treated as subsequent recipients.

Q.22. Can the return once filed be revised, and if no, what shall be the process of rectification of mistake as contained in the return?

Ans. Presently, there is no provision under FCRA to revise the return submitted online or physically. However, whenever a mistake is observed in the return submitted, it is recommended to submit revised return explaining the reason for revision.

Q.23. What shall be the implications if return is not filed?

Ans. If the organisation doesn't file the return, the implication includes :

- (a) Audit of accounts by Govt. Officers (sec. 20)
- (b) It may lead to cancellation of FCRA registration (Sec. 14(1)(d)). Further penalties may be levied as discussed below.

Q.24. What are the consequences of delay in filing of Annual return?

Ans. The FCRA department, Ministry of Home Affairs (Foreigners Division-FCRA) has issued notification No. II/21022/23(49)/2012-FCRA- III, dt. 26th April, 2013 through which it has provided stringent penalties for delayed filing of annual return in Form FC-6.

It may be noted that currently the last date of filing Form FC-6 is 31st December, i.e. nine months from the end of the financial year. The penalty proposed are as under:

- 2% of the amount received or ₹ 10,000/- whichever is higher, if the delay is within by 90 days.
- 3% of the amount received or ₹ 25,000/- whichever is higher, if the delay is between 90 to 100 days.
- 5% of the amount received or ₹ 50,000/- whichever is higher if the delay is more than by 180 days, plus ₹ 500 per day for every day beyond 180 days.

Q.25. What shall be the options available to NGO if the application for renewal is rejected ?

Ans. The options available with the NGO include:

- (i) Making application for the revision of the order within one year from the date of the order u/s.32 of FCRA2010. However, revision application can be made if no appeal is filed in the court.

(ii) An appeal can also be made to the High Court against rejection of application for registration/prior permission u/s.31(2) of FCRA2010.

Q.26. What shall be the implications for the NGO if application for renewal is rejected ?

Ans. The NGO cannot receive foreign fund till the rejection order passed against the NGO is revised or cancelled by the High Court.

Q.27. What shall be the implication if application for renewal is not made?

Ans. If no application for renewal is made the NGO cannot receive fresh foreign contribution.

Q.28. What shall be the implication for the NGO if registration is cancelled or if registration is not renewed?

Ans. If registration is cancelled then all the assets shall vest with the designated Authority. However, if registration is not renewed, the organisation cannot receive fresh contribution.

Q.29. Who can be covered under FCRA?

Ans. The 'person' as defined in FCRA is covered under FCRA. The term 'person' includes individual, HUF, Section 25 Company & Associated person. The term 'Association' is so widely defined that it includes all forms of organisation. This issue has been discussed in Chapter 2.

Q.30. Whether the Pvt Ltd./public company and other profit- making bodies shall also be subject to FCRA?

Ans. Yes, Pvt. Ltd., Public companies and other profit making companies shall subject to FCRA if they receive any grant for purposes defined as per section 11 of FCRA2010.

Q.31. Whether branch and liaison office of a foreign NGO dependent only on remittance from head office requires FCRA registration?

Ans. As technically no transfer is involved when funds are transferred from HO to Indian office, FCRA is not applicable. FCRA shall only apply if the branch office or liaison office is receiving foreign contribution from sources other than their head quarters.

Q.32. Whether the grant received from Branch office in India should be classified as first recipient or subsequent recipient?

Ans. If the branch office in India does not have any FCRA registration in India, then the grant received from the branch office should be classified as first recipient.

Q.33. What shall be the format in which data should be put in public domain?

Ans. No format has been prescribed. We recommend that at least the summarised Receipt & Payment A/c can be placed within the public domain. In the interests of transparency, the organisation may upload the entire audited financial statements.

Q.34. What shall constitute public domain?

Ans. Again, public domain has not been defined and therefore it may include publication in print media, uploading of data in website, etc.

Q.35. How long shall the data be kept in public domain for a particular financial year?

Ans. Rule 13 does not clearly mention the time limit for which the data should be kept in public domain. However, we recommend if it is kept in website it should be kept at least for one year.

Q.36. When should an NGO bring financial data into public domain?

Ans. Again there is no time limit within which financial data should be uploaded in public domain. However, we understand it should be uploaded in public domain latest by the time we furnish annual return with the Home Ministry.

Q.37. What are the requirements for maintenance of books of accounts?

- (i) Rule 11 : a separate set of books of accounts and records shall be maintained, exclusively for foreign contribution received & utilised.
- (ii) Books of accounts should be preserved for a period of six years [As per Section 19 & Rule 17(7)]
- (iii) Investment Register should be maintained (as per Rule 4(1)(3)).

Q.38. Should FC books of accounts be maintained on cash basis?

Ans. FCRA Act/Rules doesn't provide for any particular basis of accounting & therefore FC books can be maintained either on cash or accrual basis. However, as reporting requirement includes submission of Receipt &

Payment A/c, books of account should preferably be maintained on cash basis.

Q.39. Does FCRA provide for compounding of offences if FC funds are received without permission/registration? .

Ans. The Foreign Contribution Regulation Act, 2010 (FCRA) provides for compounding of offences. This new provision would provide relief to many organisations who commit violation, sometimes, unintentionally. Under the new provisions, organisations which have violated the provisions of FCRA can resolve their case by paying financial penalties only. Some highlights of the new provisions are as under :

- Under the old FCRA law, organisations were being prosecuted, even, for small offences such as receiving FC funds in the non FC bank account. There are instances where organisations have fought cases for decades together against petty offences.
- The new FCRA provides that most of the offences (except those which are subject to imprisonment only) can be resolved by payment of financial penalty.
- Any such offence may, before the institution of any prosecution, be compounded against payment of specified sums.
- Once an offence is compounded, the same person cannot avail the benefit of compounding if such offence is committed again within three years.
- However, if an offence is committed after three years of compounding, then such subsequent offence will be treated as first offence and can be compounded again.
- If a person accepts a cheque or draft from foreign source (without registration or prior permission) it will be treated as offence even if such cheque or draft is not deposited in the bank account, then the minimum penalty is ₹ 10,000/- or 2% of the amount whichever is higher.
- If a person accepts a cheque or draft from foreign source (without registration or prior permission) and such cheque or draft is deposited in the bank account, then the minimum penalty is ₹ 25,000/- or 3% of the amount whichever is higher.

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- If a person accepts foreign contribution from a foreign source (without registration or prior permission) and utilises it for specified purposes, then the minimum penalty is ₹ 1,00,000/- or 5% of the amount whichever is higher.
- If a person accepts foreign contribution in kind from foreign source (without registration or prior permission), then the minimum penalty is ₹ 10,000/- or 2% of the amount whichever is higher.
- Apart from the above specified penalties, the Director or Deputy Secretary in charge of FCRA Wing, Ministry of Home affairs shall be the authority for exercising the powers of compounding of an offence.
- The option to compound and close an offence without prosecution is a very welcome change. This provision shall provide relief to both the Government Authorities and the litigants as offences could be resolved lawfully without fighting time consuming legal cases.

Foreign Contribution (Regulation) Act, 2010

An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent, application and commencement.

1. (1) This Act may be called the Foreign Contribution (Regulation) Act, 2010.
- (2) It extends to the whole of India, and it shall also apply to—
 - (a) citizens of India outside India; and
 - (b) associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette*, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

* S.O. 909(E), dated 29-4-2011 - In exercise of the powers conferred by sub-section (3) of section 1 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby appoints the 1st day of May, 2011 as the date on which the provisions of the said Act shall come into force.

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- (a) “association” means 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 (21 of 1860), or not, and any other organisation, by whatever name called;
- (b) “authorised person in foreign exchange” means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
- (c) “bank” means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (d) “candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature;
- (e) “certificate” means certificate of registration granted under sub-section (3) of section 12;
- (f) “company” shall have the meaning assigned to it under clause (17) of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (g) “foreign company” means any company or association or body of individuals incorporated outside India and includes—
 - (i) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956);
 - (ii) a company which is a subsidiary of a foreign company;
 - (iii) 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 (i);
 - (iv) a multi-national corporation.
Explanation.—For the purposes of this sub-clause, 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;
- (h) “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 (42 of 1956) and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 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 within 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 of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;

- (i) “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 boarding, lodging, transport or medical treatment;
- (j) “foreign source” 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 specialised agencies, the World Bank, International Monetary

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- 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 of individuals formed or registered outside India;
 - (x) a citizen of a foreign country;
 - (k) "Legislature" means—
 - (a) either House of Parliament;
 - (b) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;

- (c) Legislative Assembly of a Union Territory constituted under the Government of Union Territories Act, 1963 (20 of 1963);
 - (d) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991 (1 of 1992);
 - (e) Municipality as defined in clause (e) of article 243P of the Constitution;
 - (f) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution;
 - (g) Panchayat as defined in clause (d) of article 243 of the Constitution; or
 - (h) any other elective body as may be notified by the Central Government;
- (l) "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 (1 of 1956);
- (m) "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 (43 of 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

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No. 56/J&K/02, dated the 8th August, 2002, as in force for the time being;

- (n) "prescribed" means prescribed by rules made under this Act;
 - (o) "prescribed authority" means an authority specified as such by rules made by the Central Government under this Act;
 - (p) "registered newspaper" means a newspaper registered under the Press and Registration of Books Act, 1867 (25 of 1867);
 - (q) "relative" has the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);
 - (r) "scheduled bank" shall have the meaning assigned to it under clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);
 - (s) "subsidiary" and "associate" shall have the meanings, respectively assigned to them in the Companies Act, 1956 (1 of 1956);
 - (t) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926).
- (2) Words and expressions used herein and not defined in this Act but defined in the Representation of the People Act, 1950 (43 of 1950) or the Representation of the People Act, 1951 (43 of 1951) or the Foreign Exchange Management Act, 1999 (42 of 1999) shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

Prohibition to accept foreign contribution.

3. (1) No foreign contribution shall be accepted by any—
- (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) organisation 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 (21 of 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 (1 of 1956).

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

- (i) any political party or any person referred to in sub-section (1), or both; or
- (ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency—

- (a) to any person other than a person for which it was received, or
- (b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

Persons to whom section 3 shall not apply.

4. Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,—

- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
- (b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or
- (d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative; or
- (f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999 (42 of 1999); or
- (g) by way of any scholarship, stipend or any payment of like nature:

Provided that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

Procedure to notify an organisation of a political nature.

5. (1) The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (A) of sub-section (1) of section 3 :

Provided that the Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

(2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section.

(3) The organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

(6) Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2):

Provided that in case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

Restriction on acceptance of foreign hospitality.

6. 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 aid 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.

Prohibition to transfer foreign contribution to other person.

7. 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.

Restriction to utilise foreign contribution for administrative purpose.

8. (1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

- (a) shall utilise such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business :

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

- (b) shall not defray as far as possible such sum, not exceeding fifty per cent of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding fifty per cent of such contribution may be defrayed with prior approval of the Central Government.

- (2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.

9. The Central Government may—

- (a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;
- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be

prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

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

Power to prohibit payment of currency received in contravention of the Act.

10. Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency or security and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency or security.

CHAPTER III

REGISTRATION

Registration of certain persons with Central Government.

11. (1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept

foreign contribution unless such person obtains a certificate of registration from the Central Government:

Provided that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of five years from the date on which this section comes into force.

(2) Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source:

Provided that if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.

(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—

- (i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or
- (ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government;
- (iii) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or
- (iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

Grant of certificate of registration.

12. (1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

(2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3), namely:—

- (a) the person making an application for registration or grant of prior permission under sub-section (1),—
 - (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;
 - (b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - (c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - (d) in case 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 pending against him;
 - (e) in case 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;
 - (f) the acceptance of foreign contribution by the person referred to in sub-section (1) 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;
 - (g) the acceptance of foreign contribution referred to in sub-section (1),—
 - (i) shall not lead to incitement of an offence;
 - (ii) shall not endanger the life or physical safety of any person.
- (5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where there is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005 (22 of 2005).

(6) The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

Suspension of certificate.

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.

(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.

Cancellation of certificate.

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 certificate has violated any of the provisions of this Act or rules or order made thereunder; or
 - (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.
- (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.
- (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.

Management of foreign contribution of a person whose certificate has been cancelled.

15. (1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.
- (2) The authority referred to in sub-section (1) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.
- (3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub-section if such person is subsequently registered under this Act.

Renewal of certificate.

16. (1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.
- (2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate, subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant:

Provided further that the Central Government may refuse to renew the certificate, in case where a person has violated any of the provisions of this Act or rules made thereunder.

CHAPTER IV

ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS, ETC.

Foreign contribution through scheduled bank.

17. (1) Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:

Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

(2) Every bank or authorised person in foreign exchange shall report to such authority as may be specified—

- (a) prescribed amount of foreign remittance;
- (b) the source and manner in which the foreign remittance was received; and
- (c) other particulars,

in such form and manner as may be prescribed.

Intimation.

18. (1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as

may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.

(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation under sub-section (1).

Maintenance of accounts.

19. Every person who has been granted a certificate or given prior approval under this Act shall maintain, in such form and manner as may be prescribed,—

- (a) an account of any foreign contribution received by him; and
- (b) a record as to the manner in which such contribution has been utilised by him.

Audit of accounts.

20. Where any person who has been granted a certificate or given prior permission, fails to furnish any intimation under this Act within the time specified therefor or the intimation so furnished is not in accordance with law or if, after inspection of such intimation, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, the Central Government may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or any other officer or authority or organisation, as it may think fit, to audit any books of account kept or maintained by such person and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.

Intimation by candidate for election

21. Every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by him.

Disposal of assets created out of foreign contribution.

22. Where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated, and in the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed of by such authority, as it may specify, in such manner and procedure as may be prescribed.

CHAPTER V

INSPECTION, SEARCH AND SEIZURE

Inspection of accounts or records.

23. If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being contravened by—

- (a) any political party, or
- (b) any person, or
- (c) any organisation, or
- (d) any association,

it may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party,

person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

Seizure of accounts or records.

24. If, after inspection of an account or record referred to in section 23, the inspecting officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court, authority or Tribunal in which any proceeding is brought for such contravention:

Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

Seizure of article or currency or security received in contravention of the Act.

25. If any gazetted officer, authorised in this behalf by the Central Government by general or special order, has any reason to believe that any person has in his possession or control any article exceeding the value specified in sub-clause (i) of clause (h) of sub-section (1) of section 2 or currency or security whether Indian or foreign, in relation to which any provision of this Act has been or is being, contravened, he may seize such article or currency or security.

Disposal of seized article or currency or security.

26. (1) The Central Government, may, having regard to the value of article or currency or security, their vulnerability to theft or any relevant consideration, by notification, specify such article or currency or security which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner, as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(2) The article or currency or security seized shall be forwarded without unnecessary delay to such officer as may be specified.

(3) Where any article or currency or security has been seized and forwarded to such officer, the officer referred to in sub-section (1), shall prepare an inventory of such article or currency or security containing such

details relating to their description, value or such other identifying particulars as the officer referred to in that sub-section may consider relevant to the identity of the article or the currency or security and make an application to any Magistrate for the purposes of certifying the correctness of the inventory so prepared.

(4) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, as certified by the Magistrate, as primary evidence in respect of such offence.

(6) Every officer acting under sub-section (3) shall forthwith report the seizure to the Court of Session or Assistant Sessions Judge having jurisdiction for adjudging the confiscation under section 29.

Seizure to be made in accordance with Act 2 of 1974.

27. The provisions of the Code of Criminal Procedure, 1973 shall apply insofar as they are not inconsistent with the provisions of this Act to all seizures made under this Act.

CHAPTER VI

ADJUDICATION

Confiscation of article or currency or security obtained in contravention of the Act.

28. Any article or currency or security which is seized under section 25 shall be liable to confiscation if such article or currency or security has been adjudged under section 29 to have been received or obtained in contravention of this Act.

Adjudication of confiscation.

29. (1) Any confiscation referred to in section 28 may be adjudged—

(a) without limit, by the Court of Sessions within the local limits of whose jurisdiction the seizure was made; and

(b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) When an adjudication under sub-section (1) is concluded by the Court of Sessions or Assistant Sessions Judge, as the case may be, the Sessions Judge or Assistant Sessions Judge may make such order as he thinks fit for the disposal by confiscation or delivery of seized article or currency or security, as the case may be, to any person claiming to be entitled to possession thereof or otherwise, or which has been used for the commission of any offence under this Act.

Procedure for confiscation.

30. No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency or security has been seized.

CHAPTER VII

APPEAL AND REVISION

Appeal.

31. (1) Any person aggrieved by ANY ORDER MADE UNDER SECTION 29 MAY PREFER AN APPEAL,—

(a) where the order has been made by the Court of Sessions, to the High Court to which such Court is subordinate; or

(b) where the order has been made by any officer specified under clause (b) of sub-section (1) of section 29, to the Court of Sessions within the local limits of whose jurisdiction such order of adjudication of confiscation was made,

within one month from the date of communication to such person of the order:

Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

(2) Any organisation referred to in clause (ġ) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

Revision of orders by Central Government.

32. (1) The Central Government, may, either of its own motion or on an application for revision by the person registered under this Act, call for and examine the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

(2) The Central Government shall not of its own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal or an appeal has been filed under this Act.

(5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed.

Explanation.—An order by the Central Government declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to such person.

CHAPTER VIII

OFFENCES AND PENALTIES

Making of false statement, declaration or delivering false accounts.

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

- (a) gives false intimation under clause (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 six months or with fine or with both.

Penalty for article or currency or security obtained in contravention of section 10.

34. 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 (2 of 1974), 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.

Punishment for contravention of any provision of the Act.

35. 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.

Power to impose additional fine where article or currency or security is not available for confiscation.

36. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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.

Penalty for offences where no separate punishment has been provided.

37. 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.

Prohibition of acceptance of foreign contribution.

38. Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, insofar 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 five years from the date of the subsequent conviction.

Offences by companies.

39. (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 member of the governing body of such society, trade union or other association of individuals.

Bar on prosecution of offences under the Act.

40. 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.

Composition of certain offences.

41. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 supervision 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 fees 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 or file or register with, or deliver or send 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.

CHAPTER IX

MISCELLANEOUS

Power to call for information or document.

42. Any inspecting officer referred to in section 23 who is authorised in this behalf by the Central Government may, during the course of any inspection of any account or record maintained by any political party, person, organisation or association in connection with the contravention of any provision of this Act,—
- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or rule or order made thereunder;
 - (b) require any person to produce or deliver any document or thing useful or relevant to such inspection;
 - (c) examine any person acquainted with the facts and circumstances of the case related to the inspection.

Investigation into cases under the Act.

43. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.

Returns by prescribed authority to Central Government.

44. The prescribed authority shall furnish to the Central Government at such time and in such form and manner such returns and statements as may be prescribed.

Protection of action taken in good faith.

45. No suit or other legal proceedings shall lie against the Central Government or the authority referred to in section 44 or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.

Power of Central Government to give directions.

46. The Central Government may give such directions as it may deem necessary to any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act.

Delegation of powers.

47. The Central Government may, by notification, direct that any of its powers or functions under this Act, except power to make rules under section 48, shall, in relation to such matters and subject to such conditions, if any, may be specified in the notification, be exercised or discharged also by such authority as may be specified.

Power to make rules.

48. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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- (a) the value of the article which may be specified under sub-clause (j) of clause (h) of sub-section (1) of section 2;
- (b) the authority which may be specified under clause (p) of sub-section of section 2;
- (c) acceptance or retention of gift or presentation under clause (d) of section 4;
- (d) guidelines specifying the ground or grounds on which an organisation may be specified as an organisation of political nature under sub-section (1) of section 5;
- (e) the activities or business which shall be construed as speculative business under the proviso to clause (a) of sub-section (1) of section 8;
- (f) the elements and the manner in which the administrative expenses shall be calculated under sub-section (2) of section 8;
- (g) the time within which and the manner in which any person or class of persons or an association may be required to furnish intimation regarding the amount of foreign contribution received under clause (c) of section 9;
- (h) the time within which and the manner in which any person or class of persons may be required to furnish intimation regarding foreign hospitality under clause (e) of section 9;
- (i) the manner in which the copy of the order of the Central Government shall be served upon any person under section 10;
- (j) the form and manner in which the application for grant of certificate of registration or giving of prior permission under sub-section (1) of section 12;
- (k) the fee to be accompanied by the application under sub-section (1) of section 12;
- (l) the terms and conditions for granting a certificate or giving prior permission under clause (g) of sub-section (4) of section 12;
- (m) the manner of utilising the foreign contribution under clause (b) of sub-section (2) of section 13;

- (n) the authority with whom the foreign contribution is to be vested under sub-section (1) of section 15;
- (o) the period within which and the manner in which the foreign contribution shall be managed under sub-section (2) of section 15;
- (p) the form and manner in which the application for a renewal of certificate of registration shall be made under sub-section (2) of section 16;
- (q) the fee to be accompanied by the application for renewal of certificate under sub-section (2) of section 16;
- (r) the prescribed amount of foreign remittance, the form and manner in which the foreign remittance received by every bank or authorised person in foreign exchange which shall be reported under sub-section (2) of section 17;
- (s) the time within which and the manner in which the person who has been granted certificate of registration or given prior permission under this Act shall give intimation under section 18;
- (t) the form and manner in which account of any foreign contribution and the manner in which such contribution has been utilised shall be maintained under section 19;
- (u) the time within which and the manner in which a candidate for election shall give intimation under section 21;
- (v) the manner and procedure to be followed in disposing of the assets under section 22;
- (w) the limits subject to which any confiscation may be adjudged under clause (b) of sub-section (1) of section 29;
- (x) the fee to be accompanied along with every application for revision under sub-section (5) of section 32;
- (y) the form and manner for making of an application for compounding of an offence and the fees therefor under sub-section (4) of section 41;
- (z) the form and manner in which and the time within which returns and statements to be furnished by the prescribed authority under section 44;
- (za) any other matter which is required to be, or may be prescribed.

Orders and rules to be laid before Parliament.

49. Every order made under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

Power to exempt in certain cases.

50. If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any person or association or organisation (not being a political party), or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.

Act not to apply to certain Government transactions.

51. Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.

Application of other laws not barred.

52. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to remove difficulties.

53. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving.

54. (1) The Foreign Contribution (Regulation) Act, 1976 (49 of 1976) (hereafter referred to as the repealed Act) is hereby repealed

- (2) Notwithstanding such repeal,—
- (a) anything done or any action taken or purported to have been done or taken under the repealed Act shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
 - (b) any organisation of a political nature, not being a political party, to whom the prior permission was granted under section 5 of the repealed Act, shall continue to be the organisation of a political nature, not being a political party, under clause (f) of sub-section (1) of section 3 of this Act, till such permission is withdrawn by the Central Government;
 - (c) permission to accept foreign hospitality granted under section 9 of the repealed Act shall be deemed to be the permission granted under section 6 of this Act until such permission is withdrawn by the Central Government;
 - (d) any association prohibited from accepting any foreign contribution under clause (a) of section 10 of the repealed Act, insofar as it is not inconsistent with the provisions of this Act, shall be deemed to be an association prohibited from accepting any foreign contribution under section 9 of this Act;
 - (e) permission obtained under clause (b) of section 10 of the repealed Act shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to be the permission until such permission is withdrawn by the Central Government;
 - (f) any order issued under section 12 of the repealed Act shall be deemed to be an order issued under section 10 of this Act;
 - (g) any order issued under section 31 of the repealed Act exempting any association or any individual shall be deemed to be an order under section 50 of this Act till such order is varied or revoked.

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(3) Save as provided in sub-section (2), mention of particular matters in that sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.

Foreign Contribution (Regulation) Rules, 2011

G.S.R. 349(E), dated 29-4-2011: In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules, namely: —

Short title and commencement.

1. (1) These rules may be called the Foreign Contribution (Regulation) Rules, 2011.
- (2) They shall come into force on the date on which the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) shall come into force.

Definitions.

2. (1) In these rules unless the context otherwise requires,—
 - (a) “Act” means the Foreign Contribution (Regulation) Act, 2010;
 - (b) “chartered accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
 - (c) “Form” means a form appended to these rules;
 - (d) “section” means section of the Act;
 - (e) “year” means the financial year commencing from the 1st day of April and ending on the 31st day of March of the next calendar year;
- (2) Words and expressions used and not defined herein but defined in the Act shall have the meaning assigned to them in the Act.

Guidelines for declaration of an organisation to be of a political nature, not being a political party.

3. The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds:—
 - (i) organisation having avowed political objectives in its Memorandum of Association or bylaws;
 - (ii) any Trade Union whose objectives include activities for promoting political goals;

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- (iii) any voluntary action group with objectives of a political nature or which participates in political activities;
- (iv) front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party;
- (v) organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups;
- (vi) any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bhara' in support of public causes.

Speculative activities.

- 4. (1) The following activities shall be treated as speculative activities:—
 - (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 organisation 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.

Administrative expenses.

- 5. The following shall constitute administrative expenses:—
 - (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.

Intimation of receiving foreign contribution from relatives.

6. 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.

When articles gifted for personal use do not amount to foreign contribution.

6A.* - 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

* Inserted vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292(E) dated 12th April, 2012].

shall not be a foreign contribution within the meaning of sub- clause (i) of clause (h) of sub-section (1) of section (2).

Receiving foreign hospitality by specified categories of persons.

7. (1) Any person belonging to any of the categories specified in section 6 who wishes to avail of foreign hospitality shall apply to the Central Government in Form FC-2 for prior permission to accept such foreign hospitality.

(2) 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.

(3) 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.

(4) 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 utilised:

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.

Action in respect of article, currency or security received in contravention of the Act.

8. (1) The Central Government may issue a prohibitory order for contravention of the Act in respect of any article, currency or securities.

(2) The prohibitory order issued under sub-rule (1) shall be served on the person concerned in the following manner :—

- (a) by delivering or tendering it to that person or to his duly authorised agent; or
- (b) by sending it to him by 'registered post with acknowledgement due' or 'speed post' to the address of his last known place of residence or the place where he carries on, or is known to have last carried on, business or the place where he personally works for gain or is known to have last worked for gain and, in case the person is an organisation

or an association, to the last known address of the office of such organisation or association; or

- (c) if it cannot be served in any of the manner aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or carries on, or is known to have last carried on, business or personally works for gain, or is known to have last worked personally for gain and, in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the office of that organisation or association is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

Application for obtaining 'registration' or 'prior permission' to receive foreign contribution.

9. (1)(a) An application under sub-section (1) of section 11 for registration of a person for acceptance of foreign contribution shall be made electronically online in Form FC-3, and shall be followed by forwarding the hard copy of the on-line application duly signed by the Chief Functionary of the association together with the required documents.

(b) The hard copy of the online application referred in clause (a) shall reach the Central Government within thirty days of the submission of the on-line application, failing which the request of the person shall be deemed to have ceased.

(c) Any person whose request has ceased under clause (b) of sub-rule (1) may prefer a fresh online application with the Central Government only after six months from the date of cessation of the previous application.

(d) A person seeking registration shall be required to open an exclusive bank account to receive the foreign contribution.

(e) The person may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and, in all such cases, intimation on plain paper shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

(2) (a) An application under sub-section (2) of section 11 for obtaining prior permission of the Central Government to receive foreign contribution shall be made electronically online in Form FC-4 and shall be followed by

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forwarding the hard copy of the online application duly signed by the Chief Functionary of the Association together with the required documents.

(b) The hard copy of the online application shall reach the Central Government within thirty days of filing of the online application, failing which the request of the person shall be deemed to have ceased.

(c) Any person whose request has ceased under clause (b) of sub-rule (2) may prefer a fresh online application with the Central Government only after six months from the date of cessation of the previous application.

(d) A person seeking prior permission under this rule shall be required to open an exclusive bank account for the receipt of foreign contribution.

(e) A person seeking prior permission under this rule may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and in all such cases intimation on plain paper shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

(3) No person shall prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

(4)(a) An application made for the grant of prior permission shall be accompanied by a fee of ₹ 1000 (One Thousand only).

(b) An application made for the grant of the registration shall be accompanied by a fee of ₹ 2000 (Two Thousand only).

(c) The fee may be revised by the Central Government from time to time.

(d) The fee, as applicable, shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(5) Notwithstanding anything contained in sub-rules (1) to (4), every application made for registration or prior permission under the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under these rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

Validity of certificate.

10. Every certificate of registration granted to a person under the Act shall be valid for a period of five years from the date of its issue.

Maintenance of accounts.

11. Every person who has been granted registration or prior permission under section 12 shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.

Renewal of registration certificate.

12. (1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application.

(2) Every person shall apply to the Central Government in Form FC-5, six months before the date of expiry of the certificate of registration, for its renewal.

(3) A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.

(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of ₹ 500 (Five Hundred only).

(5) The fee for renewal of the certificate of registration shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(6) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.

Illustration. A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016. A request for renewal of the registration certificate shall reach the Central Government, accompanied by the requisite fee, by the 30th June, 2016. If no application is received or is not accompanied by the renewal fee, the validity of the registration certificate issued on the 1st January 2012 shall be deemed to have lapsed with effect from the close of the day on 31st, December, 2016.

(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of rule 9.

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee, but not later than four months after the expiry of the original certificate of registration.

In the event of receipt of foreign contribution in excess of one crore rupees in a financial year.

13. In case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain. Besides, the Central Government shall also display or upload the summary data of such persons on its website for information of the general public.

Extent of amount that can be utilised in case of suspension of the certificate of registration.

14. 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.

Custody of foreign contribution in respect of a person whose certificate has been cancelled.

15. (1) The amount of foreign contribution lying unutilised in the exclusive foreign contribution bank account of a person whose certificate of registration

has been cancelled shall vest with the *bank*** concerned till the Central Government issues further directions in the matter.

(2) If a person whose certificate of registration has been cancelled transfers/ has transferred the foreign contribution to any other person, the provisions of sub-rule (1) of this rule shall apply to the person to whom the fund has been transferred.

Reporting by banks of receipt of foreign contribution.

16. (1) Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance.

(a) The report referred to in sub-rule (1) shall contain the following details:—

- (a) Name and address of the donor.
- (b) Name and address of the recipient.
- (c) Account number.
- (d) Name of the Bank and Branch.
- (e) Amount of foreign contribution (in foreign currency as well as Indian Rupees).
- (f) Date of receipt.
- (g) Manner of receipt of foreign contribution (cash/cheque/electronic transfer etc.).

(b) The bank shall send a report to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within a duration of thirty days, by any person, whether registered or not under the Act and such report shall include the following details:—

- (a) Name and address of the donor.

** For the words "banking authority", the word "bank" has been substituted vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012]

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- (b) Name and address of the recipient.
- (c) Account number.
- (d) Name of the Bank and Branch.
- (e) Amount of foreign contribution (in foreign currency as well as Indian Rupees).
- (f) Date of receipt.
- (g) Manner of receipt of foreign contribution (cash/cheque/electronic transfer etc.).

Intimation of foreign contribution by the recipient.

17. (1) Every person who receives foreign contribution under the Act shall submit a report in Form FC-6, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

(2) The annual return in Form FC-6 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-7.

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-8.

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.

(6) Every such return in Form FC-6 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.

(8) A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year.

Foreign contribution received by a candidate for election.

18. Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in Form FC-9 within forty-five days from the date on which he is duly nominated as a candidate for election.

Limit to which a judicial officer, not below the rank of an Assistant Sessions Judge may make adjudication or order confiscation.

19. An officer referred in clause (b) of sub-section (1) of section 29 may adjudge confiscation in relation to any article or currency seized under section 25, if the value of such article or the amount of such currency seized does not exceed ₹ 10,00,000 (Ten lakh only).

Revision.

20. An application for revision of an order passed by the competent authority under section 32 of the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper. It shall be accompanied by a fee of ₹ 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.

Compounding of offence.

21. An application for the compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper and shall be accompanied by a fee of ₹ 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.

Returns by the Investigating Agency to the Central Government.

22. The Central Bureau of Investigation or any other Government investigating agency that conducts any investigation under the Act shall furnish reports to the Central Government, on a quarterly basis, indicating the status of each case that was entrusted to it, including information regarding the case number, date of registration, date of filing charge sheet, court before which it has been filed, progress of trial, date of judgment and the conclusion of each case.

Authority to whom an application or intimation to be sent.

23. Any information or intimation about political or speculative activities of a person as mentioned in rule 3 or rule 4, shall be furnished to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such information or intimation shall be sent by registered post.

Procedure for transferring foreign contribution to other registered or unregistered persons.

24*. (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.

(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.

Sd/
(G.V.V. SARMA)
Joint Secretary to the Government of India

* Inserted vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012].

NOTIFICATION REGARDING THE EFFECTIVE DATE OF APPLICABILITY
OF FCRA 2010

Published in the Gazette of India, Extraordinary—Part II, Section 3, Sub-
section (ii)

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi, dated the 29th April, 2011

Notification

S.O. 909(E).- In exercise of the powers conferred by sub-section (3) of section 1 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby appoints the 1st day of May, 2011 as the date on which the provisions of the said Act shall come into force.

Sd/-
(G.V.V. SARMA)
Joint Secretary to the Government of India

FOREIGN CONTRIBUTION (REGULATION) AMENDMENT RULES, 2012

**[PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

New Delhi, the 12th April, 2012

NOTIFICATION

G.S.R. 292(E). – In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. **Short title and commencement.-**
 - (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2012.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Foreign Contribution (Regulation) Rules, 2011, (hereinafter referred to as the principal rules), after rule 6, the following rule shall be inserted, namely:-

“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).”
3. In the principal rules, in rule 15, in sub-rule (1), for the words “banking authority”, the word “bank” shall be substituted.
4. In the principal rules, for rule 24, the following rule shall be substituted, namely:-

“24. Procedure for transferring foreign contribution to any unregistered person.-

Foreign Contribution (Regulation) Amendments Rules, 2012

- (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.
- (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."

[File No. II/21022/10(1)/2010-FC-III]

Sd/-

(G.V.V. SARMA)

Joint Secretary to the Government of India

Foot Note: The principal rules were published vide Notification No. GSR 349(E) dated the 29th April, 2011.