

FOREIGN CONTRIBUTIONS



Gopal Chopra & Associates
Chartered Accountants
www.gca-associates.com

Contents

- 1.0 INTRODUCTION 3
- 2.0 WHAT CONSTITUTES FOREIGN CONTRIBUTION 3
- 3.0 WHAT CONSTITUTES FOREIGN SOURCE 4
- 4.0 ELIGIBILITY FOR RECEIPT OF FOREIGN CONTRIBUTION 5
- 5.0 REGISTRATION UNDER FOREIGN CONTRIBUTION (REGULATION) ACT 2010, (FCRA 2010) 6
- 6.0 CONDITIONS FOR GRANT OF REGISTRATION AND PRIOR PERMISSION 7
- 7.0 REPORTING AND FILING REQUIREMENTS ON RECEIPT OF FOREIGN CONTRIBUTION 8
- 8.0 VARIOUS FORMS UNDER FOREIGN CONTRIBUTION REGULATION ACT 9

1.0 INTRODUCTION

Any organization can receive 'Foreign Contributions' provided it is registered under the Foreign Contribution (Regulation) Act, 2010 (FCRA 2010) in India. The FCRA 2010, which came into effect from May 1, 2011, vide Gazette Notification G.S.R. 349 (E) dated the 29th April, 2011, is governed by the Ministry of Home Affairs, Government of India, and replaces the Foreign Contribution (Regulation) Act 1976, which has therefore now been repealed. The Foreign Contribution (Regulation) Rules, 2011 (FCRR 2011) made under section 48 of FCRA, 2010 have also come into force effective from 1st May, 2011. The Foreign Contribution (Regulation) Rules, 2015 (FCRR 2015) made under section 48 of FCRA, 2010 have also come into force effective from 14 Dec, 2015

Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may either obtain registration or prior permission to receive foreign contribution from Ministry of Home Affairs by making application in the prescribed format and furnishing details of the activities and audited accounts.

2.0 WHAT CONSTITUTES FOREIGN CONTRIBUTION

To receive foreign contribution, the organization should be registered under FCRA 2010 and should receive such contribution through bank only. For this purpose, a separate bank account has to be maintained exclusively for foreign contributions. It can be received in rupees or foreign currency. The interest or any other income earned out of such received foreign contribution should be shown as second /subsequent foreign contribution receipt in the annual return during the year in which it is earned.

"Foreign Contribution" defined in section 2(1)(h) of FCRA, 2010, means the donation, delivery or transfer made by any foreign source,

- (i) of any article, not being an article given to a person (individual/ Hindu undivided family/an association/company registered under section 25 of the Companies Act, 1956) 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 (currently Rs. 25,000/- through insertion of Rule 6A in the FCRR 2011 vide the Foreign Contribution (Regulation) Amendment Rules, 2012 G.S.R. 292 (E) dated 12th April, 2012) 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.

Foreign Contribution also includes the following:

- (i) A donation, delivery or transfer or any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution.
- (ii) The interest accrued on the foreign contribution deposited in any specified bank or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution.

Foreign Contributions

However, the following shall not be treated as Foreign Contribution:

- (i) Any amount received, by a 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
- (ii) Any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution.

3.0 WHAT CONSTITUTES FOREIGN SOURCE

As mentioned in section 2(1)(h) of FCRA, 2010, a foreign contribution is a donation, delivery or transfer made by any foreign source. What constitutes a 'Foreign Source' is defined in section 2(1)(j) of FCRA 2010 to mean the following:

- (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;"

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

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.

The Ministry of Home Affairs, Government of India gives a list of banned terrorist organizations under section 35 of Unlawful Activities (Prevention) Act, 1967 from which it is prohibited to receive any contribution. Additionally, the United Nations displays the list of foreign entities/individuals established and maintained by the 1267 Committee with respect to individuals, groups, undertakings and other entities associated with Al-Qaida.

4.0 ELIGIBILITY FOR RECEIPT OF FOREIGN CONTRIBUTION

FCRA 2010 is meant to ensure that foreign contribution is received from legitimate sources and utilized only for legitimate purposes by person receiving the foreign contribution.

Any individual, HUF, association or a company registered under Section 25 of Companies Act 1956 (Now Section 8 of Companies Act, 2013) can receive foreign contribution subject to following conditions:-

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

Section 3 of FCRA 2010 prohibits acceptance of foreign contribution in certain cases. Accordingly, no foreign contribution can be accepted by the following:

- (i) candidate for election
- (ii) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (iii) Judge, government servant or employee of any Corporation or any other body controlled or owned by the Government;
- (iv) member of any legislature;
- (v) political party or office bearer thereof;
- (vi) organization of a political nature as may be specified by the Central Government by an Order published in the Official Gazette, 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 organization with the activities of any political party
- (vii) 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 the Information Technology Act, 2000 or any other mode of mass communication; and any correspondent or columnist, cartoonist, editor, owner of the association or company
- (viii) certain individuals or associations who have been prohibited from receiving foreign contribution.

Foreign contribution can, however, be accepted by the above-mentioned persons in the following specific cases:

- (i) 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
- (ii) 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
- (iii) 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
- (iv) 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
- (v) from his relative; or
- (vi) 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; or
- (vii) by way of any scholarship, stipend or any payment of like nature.

Foreign Contributions

Associations which were granted certificates of registration or prior permission under Section 6 of the Foreign Contribution (Regulation) Act, 1976, will continue to be eligible to receive foreign contribution under the Act and such registration shall be valid for a period of five years from the date on which the Act came into force.

5.0 REGISTRATION UNDER FOREIGN CONTRIBUTION (REGULATION) ACT 2010, (FCRA 2010)

Application for grant of registration / prior permission is to be submitted online in form FC-3 at the website fcraonline.nic.in. All requisite documents are to be uploaded with the application

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

(A) Registration

- (i) jpg file of signature of the chief functionary
- (ii) self-certified copy of registration certificate/Trust deed etc., of the association
- (iii) self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aim and objects of the association.
- (iv) Activity Report indicating details of activities during the last three years;
- (v) Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administrative expenditure;

(B) Prior Permission

- (i) jpg file of signature of the chief functionary
- (ii) self-certified copy of registration certificate/Trust deed etc., of the association
- (iii) duly signed Commitment Letter from Donor.
- (iv) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspapers for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- (v) Fee of Rs. 2000/- is to be paid online through payment gateway

For registration the association is required to pay a fee of Rs. 2,000/- and for prior permission, the fee is Rs. 1,000/- only. The fee is to be paid while filling online form through payment gateway. No Bank draft/cheque is accepted.

Every certificate of registration granted under FCRA, 2010 shall be valid for a period of five years from the date of its issue. Every certificate of registration shall have to be renewed. The application for renewal is to be made in Form FC-3 along with the prescribed fee, six months before the date of expiry of the certificate of registration. Documents required for renewal of certificate:

- (i) Signature of Chief Functionary
- (ii) seal of the association
- (iii) registration certificate of the association Memorandum of Association/ Trust Deed
- (iv) Self certified copy of registration

In case of change of designated bank account, name, address, aims, objectives or key members of the association, the person who has been granted shall intimate electronically online in Form FC-6 within fifteen days.

6.0 CONDITIONS FOR GRANT OF REGISTRATION AND PRIOR PERMISSION

The following are the conditions for the grant of registration and prior permission under FCRA 2010:

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

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

(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.

7.0 REPORTING AND FILING REQUIREMENTS ON RECEIPT OF FOREIGN CONTRIBUTION

Once an organization is registered under section 18 of FCRA 2010, it has to mandatorily inform the below-mentioned information to the Central Government in such form and manner as may be prescribed:

- a. foreign contribution received
- b. source from where the contribution has received
- c. the manner of receipt of contribution
- d. the purpose and utilization of the contribution

Such Intimation is required to be given both by a person who has been granted a certificate of registration or by a person who has been granted prior permission under the Act. This intimation has to be accompanied by a copy of the statement indicating the particulars of foreign contribution received duly certified by an officer of the bank or authorized person in foreign exchange.

Also the Reserve Bank of India advises that the bank receiving foreign contribution should forward the report of receipts of such contributions to the Central Government within 48 hours

Every person who receives foreign contribution under the act shall submit signed or digitally signed report electronically online in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment Account and Balance sheet for every Financial year beginning on 1st day of April within nine months of the closure of Financial Year. The annual return in Form FC-4 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. Every such return in Form FC-4 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.

If the foreign contribution relates only to articles, the intimation should be submitted in form FC-1.

If the foreign contribution relates to foreign securities, the intimation should be submitted in Form FC-1.

Submission of a 'Nil' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. All the above reports have to be certified by a Chartered Accountant except submission of Nil Return

Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in Form FC-1 within forty-five days from the date on which he is duly nominated as a candidate for election.

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 (Rule 6 of FCRR, 2011).

A person who has been granted a certificate of registration or prior permission shall place the audited statement of accounts on receipt and utilization of the foreign contribution, including income and expenditure account, receipt and payment account and balance sheet for every financial year beginning on the first day April within nine months of the closure of financial year on its official website as specified by Central Government

A person receiving foreign contribution in a quarter of the Financial Year shall place details of foreign contribution received on its official website or on the website as specified by the Government within Fifteen days following the last day of quarter in which it has been received clearly indicating the details of donors, amount received and date of receipt.

8.0 VARIOUS FORMS UNDER FOREIGN CONTRIBUTION REGULATION ACT

Form Name	Particulars
FC-1	<ul style="list-style-type: none">• Intimation to central government of receipt of foreign contribution by way of gift from relative by an individual• Foreign contribution in the form of articles/ securities/ by a candidate for election (Section 21 of the Foreign contribution (Regulation) Act 2010)
FC-2	Application for seeking prior Permission of the Central Government to accept Foreign hospitality
FC-3	Application for Registration / Prior Permission/ Renewal for acceptance of Foreign Contribution by an Association having definite cultural, economic, educational, religious or social Programme
FC-4	Account of Foreign Contribution for the Year
FC-5	Application for seeking permission for transfer of foreign contribution to other un-registered Persons
FC-6	Intimation regarding Change of Designated Bank account, Utilization Account, name/ address/ aims/ objectives/ Key Members/ in Respect of association granted Registration/ prior permission