

**FCRA PROVISIONS APPLICABLE
TO NGOs INCLUDING RECENT
AMENDMENTS**

AT

**WESTERN INDIA REGIONAL
COUNCIL OF ICAI (WIRC)**

ON

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BY

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FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 (FCRA)

- **Foreign Contribution**
- **Foreign Source**
- **Category of Person who cannot receive Foreign Contribution**
- **Registration**
- **Prior Permission**
- **Exclusive FC bank account**
- **Utilisation FC bank account**
- **Foreigner as an Executive Committee member**
- **Change of name, address, bank, Trustees, Managing Committee members and Directors**
- **Annual Return**
- **Penalties and Offences**

Objectives of FCRA law

- ***Consolidate and regulate*** Acceptance & utilization of Foreign Contribution / Foreign Hospitality by certain Individuals, Associations, Companies,
- ***Prohibits***, such acceptance or utilization for activities detrimental to national interest, organizations of political nature and Speculative business,
- ***Sharing of information***,
- ***Cap administrative expenses***,
- ***Registration valid for 5 years***,
- ***Compounding of certain offences***,
- ***Suspension and cancellation of registration.***

Scope of the Act

- **This Act received Presidential assent on 26th September 2010**
- **Came into force on 29th April 2011.**
- **Extends to the whole of India**
- **Applies to citizens outside India**
- **Associate branches or subsidiaries outside India of Body Corporate registered or Incorporated outside India**
- **Applies to Associations**

Foreign Contribution

As defined in sec.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 (includes individual, HUF, Association and Section 8 company) as a gift for his personal use, if the market value, in India, is Rs.25,000/-;

(ii) of any currency, whether Indian or foreign;

(iii) of any security.

Following not treated as Foreign Contribution

- ◆ **Article gifted for personal use where MV does not exceed the sum specified by Central Government (Rs.25,000/-).**
- ◆ **Received from foreign source by way of fee - including fees charged by an educational institution**
- ◆ **Received towards cost in lieu of goods sold or services rendered in ordinary course of business**

Prohibition of receipt foreign contribution

- a candidate for election,
- correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper,
- public servants, Judge, government servants or employee of any Corporation or any other body controlled or owned by the Government,
- member of any legislature,
- political party or office bearer thereof,
- organisation of a political nature,
- association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through electronic mode and correspondent or columnist, cartoonist, editor owner of such association,
- individuals or associations prohibited.

FOREIGN SOURCE

Foreign source, as defined in s 2(1)(j) of FCRA, 2010 includes the following :

- (i) the Government of any foreign country or territory and any agency of such Government;**
- (ii) Any international agency;**
- (iii) A foreign company;**
- (iv) A corporation, not being a foreign company, incorporated in a foreign country or territory;**
- (v) a multi-national corporation;**

Foreign Source (Cont'd)

- (vi) 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;**

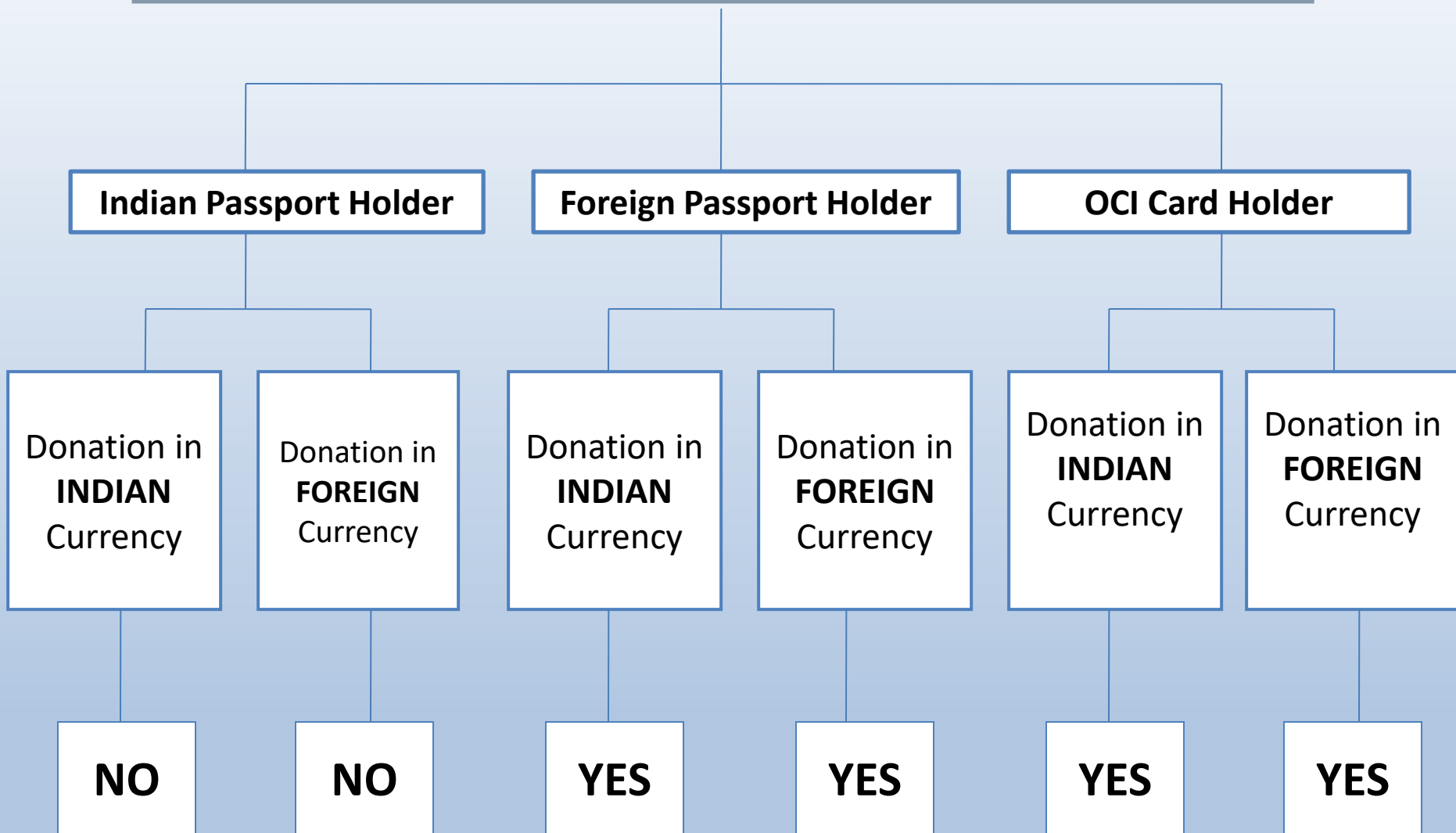
Foreign Source (Cont'd)

- (vii) 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;**

Foreign Hospitality

- **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 cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment**
- **The following categories of persons requires prior approval from Ministry of Home Affairs before accepting Foreign Hospitality,**
 - (a) members of a Legislature**
 - (b) office bearers of political parties**
 - (c) Judges**
 - (d) Government servants**
 - (e) Employees of any corporation or any other body owned or controlled by the Government;**
- **Form FC-2 online to be filed for grant of permission ordinarily two weeks before the proposed date of onward journey.**

FOREIGN SOURCE



FC-1

• Intimation of Receipt of FC by way of gift as Articles/ Securities by candidate for election

FC-2

• Application for FCRA Hospitality

FC-3A

• Application for FCRA Registration

FC-3B

• Application for FCRA Prior permission

FC-3C

• Application for RENEWAL of FCRA Registration

FC-4

• Intimation- Annual Returns

FC-5

• Application for seeking permission for transfer of foreign contribution to other un-registered persons

FC-6A

• Intimation for Change of Name/Address within State

FC-6B

• Intimation for Change in Nature, Aims and Objects

FC-6C

• Intimation for Change of Designated FC Receipt-cum-Utilisation Bank Account

FC-6D

• Intimation for Opening of additional FC-utilisation Bank Account for utilization purposes

FC-6E

• Intimation for Change in original Key members of the association

FCRA Rules, 2015

By way of Notification dt. 14-12-2015, sweeping amendments were introduced, few notables points are as under;

- All application for registration, prior permission and renewal are merged and will have to filed in new Form FC-3.
- Online submission, no manual submission henceforth.
- Application need to be digitally signed or the scanned signatures and the seal to be uploaded.
- Payments online.

Important Issues to be kept in mind

- **Form FC-4 needs to be filed online, even if there is no receipt or utilisation of Foreign contribution during the year.**
- **Form FC-1 needs to be filed for Foreign articles and securities.**
- **Darpan registration compulsory for FCRA registration / Prior Permission/Renewal.**
- **Investments in Mutual funds not allowed.**
- **No approval for following,**
 - i. 50% change in board members,**
 - ii. Change in aims and objectives,**
 - iii. Change in address within the State ,**
 - iv. Change in Original key member of Association.**

The Finance Bill, 2018

The Finance Bill, 2018 has amended the definition of foreign source retrospectively w.e.f. 5th August, 1976 the date of commencement of the Foreign Contribution (Regulations) Act, 1976, to protect political and other institutions which received donation from subsidiaries of foreign companies in violation of FCRA. The landmark judgment of Delhi High Court in case of Association for Democratic Reforms (ADR) v. Union of India (2014), was the reason for this amendment.

FCRA Amendment, 2020

- **Restriction on Transfer of foreign contribution.**
- **Reduction in the limit of Administrative expenses**
- **Designated bank account for receipt of FCRA Funds.**
- **Compulsory submission of Aadhar Card.**
- **Compulsory submission of OCI card or Passport.**
- **Surrender of FCRA registration certificate.**

Renewal of registration

- **Registration remains valid for a period of 5 years from date of issue**
- **Must be renewed 6 months before expiry or earlier**
- **If renewal application does not reach by that date registration shall cease.**
- **If sufficient reasons given the renewal application can be entertained but not beyond 4 months from expiry of registration**

Charter for Chartered Accountants

- **Since the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) is dealing with national security, associations are required to exercise extreme care and caution in utilising foreign contribution.**
- **CA are obliged to conduct performance as well as forensic audits to ensure that receipt and utilisation of foreign contribution has happened within the four corners of law.**
- **CA are expected to provide proper guidance to the associations in maintaining proper accounts and utilising foreign contribution only as provided under the FCRA law.**
- **CA must guide/help in Eligible, Utilisation, Preparation and Maintenance of Books of accounts and filing of Annual returns.**
- **The Chartered Accountants are requested to get themselves thoroughly**
- **familiarised with FCRA laws including amendments.**

Recent important Circulars, Public Notice & Notifications

- **Public Notice dated 18-5-2021, Procedure for opening and operating the designated “FCRA Account”.**
- **Public Notice dated 18-5-2021, Extension of validity of registration certificates.**
- **Notification regarding filing of Annual return through online only dated 22-7-2016.**
- **New Notification on Penalty for delayed filing of return dated 16-6-2016.**
- **Notification dated 18-7-2016 regarding Updation of Bank accounts by 31st August, 2016 .**
- **SOP for account opening with SBI, NDMB.**
- **Public notice for Unique Id of NGO receiving Foreign Contribution(Darpan registration) dated 15-1-2019.**

Recent important Circulars, Public Notice & Notifications contd...

- **Extension of time for uploading/online Annual return for the year 2019-20 dated 23-11-2020.**
- **Public notice for exemptions u/s.14(3)(FCRA registration cancelled due to non filing of AR online) dt.18-3-2020**
- **Public notice for online submissions and approval from MHA before effecting any changes in the office bearers/key functionaries.**

Offences and Penalties

Sr. No.	Offence	Amount of penalty
1.	Punishable under section 35 for accepting any hospitality in contravention of section 6 of the Act.	Rs. 10,000/-
2.	Punishable under section 37 for transferring any foreign contribution to any other person in contravention of section 7 of the Act or any rule made thereunder	Rs. 1,00,000/- or 10% of such transferred foreign contribution, whichever is higher.
3.	Punishable under section 37 for defraying of foreign contribution beyond twenty per cent of the contribution received for administrative expenses in contravention of section 8 of the Act.	Rs. 1, 00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher.
4.	Punishable under section 35 for accepting foreign contribution in contravention of section 11 of the Act.	Rs. 1, 00,000/- or 10% of the foreign contribution, received, whichever is higher;

Offences and Penalties contd...

Sr. No.	Offence	Amount of penalty
5.	Offences punishable under section 37 read with section 17 of the Act for :	
a.	receiving foreign contribution in account in his application for grant of certificate;	Rs. 1, 00,000/- or 5% of the foreign contribution received in such account, whichever is higher
b.	non-reporting the prescribed source and manner of such remittance by banks and authorized persons.	Rs. 1, 00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher;
c.	receiving & depositing any fund other than foreign contribution in the account or accounts opened for receiving foreign contribution or for utilizing the foreign contribution.	Rs. 1, 00,000/- or 2% of such deposit, whichever is higher;

Offences and Penalties contd...

Sr. No.	Offence	Amount of penalty
6.	Punishable under section 37 for non-furnishing of intimation of the amount of each foreign contribution received and the source from which and in the manner in which, such foreign contribution is received as required under section 18 of the Act.	Rs. 1, 00,000/- or 5% of the foreign contribution received during the period of non submission, whichever is higher.
7.	Punishable under section 37 for not maintaining the account and records of foreign contribution received and manner of its utilization on required section 19 of the Act	Rs. 1, 00,000/- or 5% of the foreign contribution during the relevant period of non maintenance of accounts, whichever is higher.

Common Grounds for Rejection of Applications under FCRA, 2010

- If the association is not registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 8 of the Companies Act, 2013.
- If any of the office bearers/trustees including the chief functionary is a foreign national, other than of Indian origin.
- If the association has a single office bearer/member.
- If the association is found to have been formed for personal gain or for diversion of the funds for undesirable purposes.
- If the association is found to be fictitious or 'benami' in nature.
- If the credibility of any member of the governing body is in doubt.
- If the association has close links with another association which has been refused registration under FCRA or prohibited under FCRA or violated the provisions of FCRA.
- If the association has links with any banned organizations.
- If the principal office bearers of the association have been convicted by any court of law under any act or if a prosecution for any offence is pending against them.

Common Grounds continued....

- **If the principal office bearers of the association have been found guilty of diversion or misutilization of funds of the said association or any other association in the past.**
- **If the activities of the association are found to be aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.**
- **If the association is found to propagate sedition or to advocate violent methods to achieve its ends.**
- **If the association is found to be creating communal tensions or disharmony.**
- **If the office bearers of the association are also office bearers of another association and one of these associations has come to adverse notice.**

Controversial Issues

- **What is the time frame for receipt of permission under prior permission and or registration?**
- **Whether all the pages of MOA need to be submitted online at the time of registration?**
- **From when one can accept FC, day of application or date of registration?**
- **The cap of 20% administrative expenses justified?**
- **Whether there is any magical formula to open an account with SBI, NDMB?**
- **Transfer of FC restricted, so what is to be done with the balance lying in the FCRA account?**
- **What is the solution if by mistake FCRA funds are deposited in Non FCRA bank account and vice versa, genuinely?**
- **What is the accounting treatment for payment to Project Manager?**



DANKSCHEEN
 SPASSIBO SNACHALHUYA NUHUN CHALTU YAQHANYELAY TASHAKKUR ATU YUSPAGARATAM
 GRACIAS SUKSAMA TINGKI BIYAN SHUKRIA
 ARIGATO HUI WADEEJA MAITEKA
 SHUKURIA EKHMET HATUR GUI
 GOZAIMASHITA MERASTAWHY SANCO MAAKE
 EFCHARISTO AGUYJE FAKAUE KOMAPSUMNIDA LAH
 JUSPAXAR BAIKA TAVTAPUCH MEDAWAGSE
 GRAZIE MEHRBANI PALDIES
 YOU
 BOLZIN MERCI
 UNALCHEESH EKOJU SIKONO MAKETAI MINMONCHAR

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