

## **FOREIGN CONTRIBUTION REGULATION ACT – RECENT AMENDMENTS**

Foreign Contribution Regulation Act, 2010 ('FCRA') got the assent of the Honourable President on 27<sup>th</sup> September 2010 and came into force with effect from 11<sup>th</sup> May 2011. By virtue of this, the earlier Foreign Contribution Regulation Act, 1976 got repealed. The preamble to the current act states that it is 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 the 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. The Ministry of Home Affairs, Government of India administers the Act, as it involves safeguarding national security.

The Central Government ('CG') vide Notification G.S.R. 349(E), dated 29<sup>th</sup> April 2011 notified Foreign Contribution Regulation Rules, 2011 ('FCRR'). To bring in more transparency and better governance, FCRR were amended subsequently in the year 2012 vide G.S.R. 292 (E), dated 12<sup>th</sup> April 2012 and in the year 2015 vide G.S.R. 966(E), dated 14<sup>th</sup> December 2015. Most recently, FCRR were amended in 2019 vide G.S.R.199(E), dated 7<sup>th</sup> March 2019.

This article provides a glimpse of such recent amendments, while providing the provision as was existing before such amendment.

### 1. Definition of 'bank account' under FCRR:

Clause (aa) was introduced in Rule 2(1) to define the word 'bank account' to mean a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS).

It may be relevant to note that PFMS [previously called as Central Plan Scheme Monitoring System (CPSMS)] is a Government of India public financial management reforms initiative which monitors programs in the social sector and tracks funds disbursed. Given the large number of programs on which the money is spent in the country, PFMS ensures that the money is spent according to its intended purpose and provide an accounting of the same.

### 2. Intimation of receiving foreign contribution:

As per Rule 6, any person receiving foreign contribution in excess of rupees one lakh or equivalent from any of his relatives in a financial year shall inform the CG within 30 days from the date of receipt of such contribution, in form FC-1. Previously the filing of form FC-1 was manual and was later made online. Under 2019 amendment, the documents to be annexed to the form were also made to be uploaded electronically online.

### 3. Prior permission to accept foreign hospitality:

As per Rule 7, any person belonging to specified categories in section 6 of FCRA (like member of legislature, office-bearer of a political party, judge, government servant, etc) who wishes to avail any foreign hospitality shall apply to CG for its prior permission in form FC-2. Previously the filing of form FC-2 was manual, and it shall now be filed electronically online.

4. Application for registration / prior permission to CG:

As per Section 11(1) of FCRA, no person having a definite cultural, economic, educational, religious or social programme shall accept any foreign contribution unless such person obtains a certificate of registration from CG.

As per Section 11(2) of FCRA, any person as referred in Section 11(1) above may, if not registered with the CG, accept any foreign contribution only after obtaining prior permission of CG. Such permission shall be valid for a specific purpose and such foreign contribution shall be from a specific source.

As per Rule 9(1), the application for registration shall be made to CG in form FC-3A and in case of prior permission, it shall be in form FC-3B. Previously it used to be in form FC-3 for both the purposes.

5. Renewal of registration certificate:

As per Rule 12, every certificate of registration issued to a person shall be liable to be renewed every five years from the date of its issue in a proper application, and such application to the CG should be made six months prior to the date of expiry of such certificate. Such application should be made electronically online in form FC- 3C. Previously it used to be in form FC-3, commonly with application for registration or prior permission explained earlier.

In case no application for renewal is made or if the application made is not accompanied by requisite fee, the validity of the registration shall be deemed to have ceased from the date of completion of five years from the date of registration. In case a person provides sufficient ground, in writing, explaining the reasons for not submitting the certificate for renewal within the time stipulated, the CG may accept his application for considering the delay, upon paying requisite fee, but not later than one year after the expiry of the original certificate of registration. Previously this extended period was up to four months beyond the date of expiry only.

6. Application Fees:

The fee for initial application for registration was increased from INR 1,000 to INR 3,000. In case of application for prior permission, it was increased from INR 2,000 to INR 5,000. For renewal of registration, the fee was increased from INR 500 to INR 1,500. A late fee of INR 5,000 was introduced in case of applications for renewal with delay.

7. Intimation of changes to CG:

Rule 17A was introduced as part of FCRR 2015 amendment. As per the said rule, as stood at that time, a person who has been granted registration or prior permission should intimate CG electronically in form FC-6, within 15 days, of any change being i. change in name of association or address within the state ii. change in its nature, aim or objects, iii. change in its bank and / or branch of the bank and / or designated foreign contribution account number and iv. change in 50% or more of key members of the association as reported in the application for registration / renewal / prior permission.

Vide 2019 amendment to FCRR, a new clause viz., intimation towards change in bank and / or branch of the bank for the purpose of utilising the foreign contribution after the same has been received, was introduced.

Till 2019 amendment, any of the above changes were to be intimated in form FC-6 electronically. Now forms FC-6A to FC-6E were introduced for intimating each such specific purpose separately, as detailed in the table provided in later paragraphs.

8. Changes to forms under FCRR:

It may be noted that forms specified to be filed under FCRR are meant for specific purposes. However, in amendments, the purpose meant for some forms was changed without change in the form number. For example, form FC-4 as per 2011 FCRR was meant for making application for prior permission of CG u/s 11(2) of FCRA specified earlier, and form FC-4 as per 2015 amendment was meant for annual return to be filed for intimating the foreign contributions received during a financial year. It might be confusing for users while downloading online if they are not aware of such changes. An attempt is hereby made to summarise the purposes and its relevant form & due dates, as stipulated by corresponding amendment rules.

Sl. No	Rule	Purpose	Form as prescribed under			Due Date
			2011 Rules	2015 Amended Rules	2019 Amended Rules	
1	6	Intimation to CG of foreign contribution received by an individual by way of gift from relative	FC-1	FC-1	FC-1	30 days from the date of receipt of contribution
2	7(1)	Application to CG seeking prior permission to accept foreign hospitality	FC-2	FC-2	FC-2	Prior permission. Two weeks before the proposed date of onward journey. In case of emergent medical aid, within 60 days of such receipt of hospitality.
3	9(1)(a)	Application for registration u/s 11(1) of FCRA to receive foreign contribution	FC-3	FC-3	FC-3A	NA
4	9(2)(a)	Application for prior permission u/s 11(2) of FCRA to receive foreign contribution when no registration under FCRA is available.	FC-4	FC-3	FC-3B	Prior to receipt of foreign contribution
5	12(2)	Application for renewal of registration certificate	FC-5	FC-3	FC-3C	Six months before the date of expiry of the certificate of registration.
6	17(1)	Annual Return intimating the details of foreign contributions received during the year, duly annexing income and expenditure account, receipts and payments account and	FC-6	FC-4	FC-4	9 months from date of closure of financial year, ie., December 31 in case financial year is ending on Mar 31.

		Balance Sheet. Form shall be duly certified by a CA.				
7	17(3)	Intimation about foreign contributions in the form of articles during the year. Form shall be duly certified by a CA	FC-7	FC-1	FC-1	9 months from date of closure of financial year, i.e, December 31 in case financial year is ending on Mar 31.
8	17(4)	Intimation about foreign contributions in the form of securities during the year. Form shall be duly certified by a CA	FC-8	FC-1	FC-1	9 months from date of closure of financial year, i.e, December 31 in case financial year is ending on Mar 31.
9	17A(1)(i)	Intimation to CG of change in name and / or address within the state of the association / person	NA	FC-6	FC—6A	Within 15 days of such change
10	17A(1)(ii)	Intimation to CG of change in nature, aim, objects and registration with local / relevant authorities of the association / person	NA	FC-6	FC-6B	Within 15 days of such change
11	17A(1)(ii)	Intimation to CG of change of designated FC receipt-cum-utilisation bank account of the association / person	NA	FC-6	FC-6C	Within 15 days of such change
12	17A(1)(ii)	Intimation to CG of opening additional foreign contribution utilisation accounts of the association / person	NA	FC-6	FC-6D	Within 15 days of such change
13	17A(1)(i)	Intimation to CG of change in 50% or more of the original key members of the association	NA	FC-6	FC-6E	Within 15 days of such change
14	18	Intimation to CG of receipt of foreign contribution received by a candidate for election	FC-9	FC-1	FC-1	Within 45 days of nomination as election candidate
15	24(1)	Application seeking permission for transfer of foreign contribution by a registered person to another registered/unregistered person	FC-10	FC-5	FC-5	Prior permission

#### 9. DARPAN Registration:

Union Home Ministry vide its public notice in October 2017 mandated that every person / NGO who wish to receive any foreign donations / contributions should get registered on the online platform, NGO-DARPAN and obtain DARPAN ID. This was an initiative by NITI Aayog for ensuring better transparency, efficiency and accountability in foreign contributions. In January 2019, the CG relaxed this mandatory norm and made DARPAN registration & quoting of DARPAN ID optional.

## 10. Compounding of Offences under FCRA

Vide notification no. SO 2291(E), dated June 5, 2018 and notification no. SO 3716(E), dated July 27, 2018 the CG notified revised matrix towards compounding of offences under FCRA, by superseding earlier notifications issued in 2011 and 2016 in this regard. The revised matrix is as under:

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

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

contribution involved. The offences mentioned above shall be compounded by the Director, or, the Deputy Secretary in-charge of the sections responsible for the administration of the Act.

Conclusion:

Non-adherence to the provisions of FCRA leads to cancellation / suspension of registration. Being a law dealing with national security, its violation leads to severe penalties besides imprisonment. Hence, one should be very cautious and keep updated with amendments thereof.

The readers may refer earlier articles published in the SBS Wiki journals of February 2016 and July 2017 on the subject matter on <https://www.sbsandco.com/wiki>.