

Research Paper

Acceptance of foreign contribution by non-profit organizations



Business Laws

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RESEARCH PAPER



For the uninitiated, Foreign Contribution Regulation Act, 2010 (“**FCRA**”) is the law that governs how non-profit ventures accept donations from foreign sources. Although we have written a lot of blog posts pertaining to the Foreign Contribution Regulation Act, 2010 and its predecessor in 1976, we realized that there are some very common clarifications that people still have. We are providing some background here – while non-profits operate without a profit motive, they will still need funds to pay their expenses, hire employees, take office space and conduct operations. Investors and lenders do not see business sense in making investment or granting loans to these ventures. Therefore, funds for non-profits can be generated through revenues from operations, external donations or a combination of both. Without FCRA, donations can only be taken within the domestic market (which is of course, very limited). A non-profit’s horizon widens significantly if it can access foreign sources of money. In fact, even accepting donations from Indian companies which are subsidiaries of foreign parents requires FCRA compliance as these are considered foreign sources of money. Many people (especially wealthy individuals) are taking to non-profit ventures to find an outlet for their charitable instincts. Profitable companies are also establishing independent non-profit arms. These non-profits or non-government organizations can be structured as trusts, societies and non-profit companies under section 8 of the Companies Act, 2013 often need to find professionals who can help them with FCRA related work.

GENERAL



As the Preamble suggests, the Foreign Contribution (Regulation) Act, 2010, is intended to consolidate the law regulating 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. The Act extends to the whole of India, to

its citizens outside India and also to associate branches or subsidiaries outside India, of companies or body corporate, registered or incorporated in India. Foreign Contribution (Regulation) Act, 2010 prohibits certain classes of persons from receiving 'foreign contribution'. It also restricts certain classes of persons from accepting foreign hospitality while visiting any country or territory outside India, without the prior permission of the Central Government. The Act provides that persons having definite cultural, economic, educational, religious and social programmes should get themselves registered with the Government of India before accepting any 'foreign contribution'. In case a person falling in the above category is not registered with the Central Government, it can accept foreign contribution only after obtaining prior permission of the Central Government. The Act casts certain obligations on banks in relation to the receipt of foreign contributions. The Act stipulates that every person who has been granted a certificate of registration/prior permission as stipulated in the Act shall receive foreign contribution in a single account and only through such branches of a bank as may be specified in his/her application. It strictly prohibits the receipt or deposit of any other funds (other than foreign contribution) in such accounts. The Act mandates that every bank or authorized person in foreign exchange shall report to specified authority, the prescribed amount of foreign remittance, source and manner in which foreign remittance was received and other particulars in such form and manner as may be prescribed.

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. Any permission to accept foreign hospitality granted under Section 9 of the repealed Act would also be deemed to be the permission granted under the Act until such permission is withdrawn by the Central Government. Reserve Bank had been issuing guidelines from time to time under the Foreign Contribution Regulation Act, 1976 advising banks, that while accepting 'foreign contribution' for onward credit to the accounts of persons, it needs to be ensured that the concerned persons/organizations are registered with the Central Government or has the prior permission to receive such foreign contribution if required by law, and that no branch other than the specified branch accepts 'foreign contribution'. Banks were also advised to forward the report of receipts of such contributions to the Central Government. Some irregularities and deviations from the prescribed procedures were noticed in the implementation of the repealed enactment. Banks and financial institutions are required to

strictly adhere to the provisions of the new Act while dealing with the receipt of foreign contributions. The Act stipulates that certain persons are totally barred from accepting any foreign contribution. The term 'foreign contribution' is defined in the Act to mean the donation, delivery or transfer made by a foreign source of any article (not being an article of gift for personal use, the market value of which is not more than the specified amount), currency (whether Indian or foreign) or any security. The following are the persons prohibited from accepting foreign contribution: 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 entity controlled or owned by the Government; d) member of any legislature; e) political party or office bearers thereof; f) organizations of a political nature as may be specified; g) associations or companies engaged in the production or broadcast of audio news or audiovisual news or current affairs programs through any electronic mode or form or any other mode of mass communication.

FOR E I G N C O N T R I B U T I O N R E C E I V E D T H R O U G H A S C H E D U L E D B A N K

Section 17 is of special importance to bankers. It states that 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. Such person can open one or more accounts in one or more banks for utilizing the foreign contribution received by him. However, no funds other than foreign contribution shall be received or deposited in such account or accounts. The Act makes it mandatory for every bank or authorised person in foreign exchange to report to such specified authority (a) the 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. Every person who has been granted a certificate or given prior approval under the Act has to 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. Further, every person receiving foreign contribution has to 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.

1. **What is the time period required for getting registration certificate after sending signed application with all documents? What is the time period required for getting prior permission after submitting documents to Ministry?**

The law prescribes a 90-day period for granting registration / prior permission. In reality, it can take up to 6 months. Where a donation is being taken for multiple projects, e.g. a slum development program, education, environment preservation, etc. then it can even take longer.

2. **Who can certify documents, whether CA certification will do?**

Self-certification by the Chief Functionary in the organization is sufficient for the application and the undertaking. If you like, you can get the incorporation documents certified by a gazetted officer. Under the law there is requirement for a certificate of recommendation to be provided by the District Collector or a Ministry/ Department of the Central or State Government. In practice, a letter from the branch manager of the bank where a separate bank account has been opened to obtain foreign donations is typically supplied. Banks also attach a disclaimer stating that they are not responsible for the actions of the company (other than what is imposed under law).

3. **Whether there is a need to visit Ministry of Home Affairs for registration or only postal communication will serve the purpose.**

After filing from FC-3 / FC-4 online, postal communication is all that is required to send a hard copy form to the Ministry. You do not need to visit the Ministry in person. However, the Ministry may request clarifications from you in case it notices any defects or inconsistencies in the application. You can send replies through registered post (so that you get an acknowledgement) or you can personally visit the ministry to take a receiving on a copy of the documents you file.

4. **If prior permission is taken for a specified number of donors, whether that will be permission for one time and we need to get prior permission again if further contribution is to be accepted.**

Prior permission is only valid for one-time donation. A fresh application will have to be made for any new donation, and there must be a minimum gap of 6 months.

THINGS TO KNOW ABOUT THE REGULATION



The Central Government has framed the Foreign Contribution (Regulation) Rules, 2011 for carrying out the provisions of the Act. The Rules, inter alia, provide for Guidelines for the Central Government for declaration of an organisation to be of a political nature, the nature of activities which would be treated as speculative activities, what constitutes administrative expenses, procedure for availing of foreign hospitality by specified categories of persons, procedure relating to application for obtaining 'registration' or 'prior permission' to receive foreign contribution, whom to make application for compounding, procedure for transferring foreign contribution to other registered or unregistered persons, the Forms to be used for various purposes etc. Rule 13 of the said Rules mandates that 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. It is important to note that in terms of Rule 15, 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 banking authority concerned till the Central Government issues further directions in the matter. In case a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the above condition would apply to the person to whom the fund has been transferred. Rule 16 of the said Rules provides that every bank has to 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. Such report has to 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.):

It has been made a duty of the bank concerned to 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 also has to include the aforesaid details.

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About the author:

The author is a corporate lawyer empaneled with Evaluator. Views expressed are personal.