

## FAQ's on FC(R) A

**Q.1 Is FCRA regulated by Reserve Bank of India (RBI)?**

Ans. FCRA is internal security legislation and it is not regulated by RBI. It is regulated by the Ministry of Home Affairs, Government of India.

**Q.2 Is Foreign Exchange Management Act (FEMA) also applicable to foreign contribution received by Indian NGO?**

Ans. FEMA is a fiscal legislation coming under the Ministry of Finance, Government of India. It does not apply to foreign contribution received by Indian NGO.

**Q.3 Is it necessary to have registered NGO in order to get FCRA registration?**

Ans. Section 2(1)(a) of FCRA defines the term association as :

“ 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 ;

The Act does not specify registration as a condition precedent to for the purposes of this act. It is not necessary for an association to be a registered one but there must be some documentary evidence to establish the existence and activities of the association. But for all practical purposes registration is a defacto necessity.

**Q.4 Is it necessary to obtain registration under Section 12A of the Income Tax Act in order to apply for registration under FCRA.**

Ans. The FCRA does not specify registration under the Income Tax Act as a condition precedent for registration under FCRA. Infact, there are numerous instances of organisation having FCRA registration with Income Tax registration. But, since Income Tax registration is mandatory in nature, ideally Income Tax registration should be completed before applying for FCRA registration.

**Q.5 What are the different forms of registration possible under FC(R)A to receive Foreign Contribution?**

Ans. There are two ways of registration possible under FC(R) A”

(i) Regular registration (Apply in Form F.C 8) under this registration, there is no restriction (either the total amount or from specific donor) for receiving Foreign Contribution.

(ii) Prior permission (Apply in Form F.C 1A) under this registration, the permission is granted for a

specific amount from a specific donor. A letter of intent from the donor to donate the amount must be enclosed along with the application form (Form F.C 1A).

However, in both the above cases, it is imperative to file the annual return in Form F.C 3.

**Q.6 Are donation received in kind considered as foreign contribution?**

Ans. The definition of the term 'foreign contribution' is wide enough to include donations received in kind. The definition of 'foreign contribution' says that any donation, delivery or transfer made by any foreign source, of article, currency or foreign security.

**Q.7 Will the consultancy income of an NGO be considered as foreign contribution?**

Ans. The definition of 'foreign contribution' includes all kinds of foreign receipts. It does not distinguish between a commercial receipt or a voluntary contribution. Therefore, the consultancy income should also be considered as foreign contribution. The intent of FCRA is to regulate the foreign receipts of certain specified association and individuals irrespective of the nature of receipt, unless it is specifically excluded in FCRA.

**Q.8 Will donations received in Indian rupees in India from a foreigner be considered as foreign currency?**

Ans. Yes, money received from a foreign source, whether in India or outside India, whether in Indian currency or foreign currency is considered as foreign contribution.

**Q.9 Will funds received from an NRI in foreign currency be considered as foreign contribution?**

Ans. NRI's are not covered within the definition of 'foreign source'. Therefore, any amount received from NRI will not be considered as foreign contribution.

**Q.10 Will United Nations or World Bank be considered as foreign source?**

Ans. No, Central Government has notified in the official gazette that agencies of United Nations and certain other international organisations shall not be treated as foreign source, for the purposes of the Act.

**Q.11 Can political parties receive foreign contribution?**

Ans. FCRA specifically debar political parties from receiving foreign funds. Political parties cannot receive foreign fund under any circumstances. Neither can they apply for registration nor can they apply for prior permission on casetocase basis.

**Q.12 Which are the organisations/individuals specifically debarred from receiving foreign contribution?**

Ans. Section 4 of FCRA specifies that the following persons cannot receive 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 corporation.
- (d) member of any legislature
- (e) Political party or officebearer thereof.

The above mentioned persons cannot receive foreign contribution subject to certain exceptions specified in section 8 which are as under:

“ (a) If they receive foreign funds by way of salary, wages or remuneration for services rendered.

(b) If they receive payment in ordinary course of business transaction in India by such foreign organization or source.

(c) If the funds are received in the course of international trade or commerce or in the ordinary course of business transacted outside India.

(d) Payment is received as an agent of a foreign source of organization in relation to any transaction made by such foreign organization with the governance.

(e) If the payment is received by way of gift or presentation as a part of any Indian delegation within the norms of acceptance described by Central Government.

(f) Payment is received from relative staying abroad. Such payments should be received with prior permission only if it exceeds Rs.8, 000.00.

(g) Payment is received through official channel, post office or any authorized dealer in the ordinary course of business”.

**Q.13 Can an organisation of political nature receive foreign contribution and register itself with FCRA?**

Ans. Organisation of Political nature is not eligible for registration under FCRA. However such organisation can apply for prior permission on case to case basis. An organisation of political nature is an organisation which is associated or close to political parties. The Central Government has published a list of organisations which are considered as organisation of political nature.

**Q.14 Does FCRA apply to ordinary citizens?**

Ans. Apart from the persons mentioned in Section 4 (as discussed above) all individual are entitled to receive foreign funds without any restrictions. In other words, FCRA is not applicable to private individuals. The only exception in this regard is receipt of stipend or scholarship from foreign source in excess of Rs.36, 000.00 should be reported to Central Government by virtue of Section 7.

**Q.15 Does FCRA apply to commercial or business organisation?**

Ans.

Movement of foreign funds in the normal course of commerce and business is outside the purview of FCRA. Therefore, business organisation need not worry about FCRA as FCRA is only an internal security enactment. However, the provision of Foreign Exchange Management Act, 1999, which is a financial legislation, would be applicable.

**Q.16 What is the statutory condition for receiving foreign contribution?**

Ans.

Under Section 6 of FCRA, it is clearly provided that any organisation having a definite cultural/ social/ educational/ religious/economic object shall only accept foreign contribution after satisfying two conditions :

- (i) It must register itself with the Central Government.
- (ii) It must agree to receive foreign contribution only through one specific bank account.

**Q.17 What is the checklist of documents to be filed with an FCRA application?**

Ans.

The following documents must be filed for obtaining registration:

- i) Form FC8 duly filled up in triplicate.
- ii) Audited statement of accounts of past three years.
- iii) Annual Report specifying activities of past 5 years.
- iv) Detail of the beneficiaries and detail of the socioeconomic factors of the region in which the NGO is working.
- v) List and geographical detail of the state, and districts proposed for work.
- vi) Certified copy of the Registration Certificate
- vii) Certified copy of the Byelaws and Memorandum and Article of Association whichever is applicable.
- viii) Copy of certificates of exemption or registration issued by the Income Tax Department u/s. 80G and 12A.
- ix) Copy of any prior permission granted to the organization.
- x) Copy of resolution of Governing Body of the organisation, authorizing the registration under FCRA.
- xi) Copy of Power of Attorney or the resolution of Governing Body by which the Chief Functionary is authorized to submit FC8.
- xii) List of present members of the Governing Body of the organisation and the office bearers.

- xiii) Copy of any Journal or other publication of the organization.
- xiv) If the association is having any parent or sister or subsidiary organisation which is registered under the FCRA then the registration number along with Ministry of Home Affairs file number should be mentioned.
- xv) If the association has submitted any application earlier then its reference number should be mentioned.
- xvi) If the association has received any foreign contribution with or without the prior approval of the Central Government, then the detail should be given.

**Q.18 What is the time limit of making an application for registration?**

Ans. No specific time limit has been provided under FCRA for making an application, unlike Income Tax Act, which requires an organisation to apply within one year from its creation or registration under section 12A. Normally FCRA is granted after 3 years of active existence.

**Q.19 What is the time limit for processing the application for registration?**

Ans. There is no time limit mentioned under the FCRA either for granting or rejecting the application. Normally, the application is expected to be processed within a period of six months but it is found that applications for registration are delayed for even two to three years.

**Q.20 An undertaking is required to be given by Chief functionary, what are its implications?**

Ans. The application form which is FC8, was amended vide Foreign Contribution (Regulation) (Amendment) Rules, 1996[GSR 592(E), dt. 27.12.1996]. After the amendment an undertaking has to be given by the Chief Functionary, affirming that the information's are correct and the organisation would undertake to abide by the following :

- (i) Inform within 30days regarding change of name, address, objects, etc. with evidence.
- (ii) Not to accept any foreign contribution without prior permission, if more than 50% of the office bearers as were mentioned in the application for registration are changed or replaced.
- (iii) Not to change the bank account or branch of the bank without prior permission.
- (iv) Not to accept foreign contribution before the registration is granted or with prior permission only.

As discussed above, that after 27.12.1996, all organisations applying for registration are required to give an undertaking which, among other conditions, specifies that foreign contributions, specifies that foreign contribution should not be accepted if more than 50% of office bearers, as were

mentioned in the application for registration are changed or replaced. But the organisations who had applied before 27.12.1996 and were registered, are not bound by any such undertaking. The undertaking is a part of Form FC8 and nothing in this regard has been mentioned in the FCRA. Therefore, those organisations who are not signatory to such undertaking are legally not bound by the clauses of the undertaking. The undertaking in the earlier form did not have the clause of change in more than 50% of office bearers. In the absence of any specific provision in the FCRA, the undertaking given in Form FC8, does not create any mandatory obligation on the older organisations. But, it is advisable to inform such changes and get them officially regularised.

**Q.21 Can an NGO have foreigner on board at the time of registration?**

Ans. Under FCRA, an organisation registered in India, having a definite cultural, economic, educational, religious or social programme is entitled to apply for registration. An organisation can apply for FCRA registration even when it has foreigners as its member/board members. The only issue relevant in this regard is that FCRA authorities may exercise greater vigil and caution in processing such application. But as a matter of internal practice FCRA is not granting registration to organisation with foreigners on board. Such registration are given only in exceptional circumstances, very few instances are available.

**Q.22 Is FCRA application be recommended by some local authority?**

Ans. Foreign Contribution Amendment Rules, 2000, inserted clause 10A in Form FC1A, requiring the insertion of a certificate from a competent authority. This certificate can be given by any one of the following :

- (1) Collector of District
- (2) Department of the State Government
- (3) Ministry or Department of the Government of India In this certificate the competent authority certifies the address and the field of activities in which the organisation is working. It also states that there are no adverse antecedents of the organisation, the proposed activities will be beneficial to the people living in that area and the detail of prior permission if taken earlier.

**Q.23 What is the remedy if an application is rejected?**

Ans. If an application is rejected and the applicant believes that an unjust order was passed against her/him, then he can appeal to High Court within a period of sixty days from the date of the order of rejection. The period of sixty days should be counted from the date of the order and not the date of receipt of the order.

**Q.24 The authority to whom the application for registration is to be made?**

Ans. To apply for registration, Form FC8 along with enclosures is required to be filed in duplicate to the Secretary, Government of India, Ministry of Home Affairs, Internal Security Wing FCRA, 4th Floor, Lok Nayak Bhawan, Near Khan Market, New Delhi 110003.

**Q.25 Is it possible to receive foreign contribution prior to FCRA registration?**

Ans. An association or an organisation can receive foreign contribution even without registration with prior permission from the FCRA department. Foreign funds and materials can only be received under two circumstances

- i) the organisation has obtained permanent registration from the FCRA department.
- ii) the association or the organisation obtains prior permission from the FCRA department on case to case basis

**Q.26 What is the procedure for obtaining prior permission?**

Ans. The Organisation is required to apply in Form FC1A for prior approval to the FCRA department along with the required documents.

**Q.27 What is the checklist of documents to be submitted for getting prior permission?**

- Ans.
- i) Form FC 1A, duly filled up in triplicate.
  - ii) Audited statement of accounts of past three years.
  - iii) Annual Report specifying activities of past 3 years.
  - iv) Details of the beneficiaries and details of the project for which foreign contribution is expected.  
The detail should include narrative as well as financial details.
  - v) Letter of commitment from the foreign donor agreeing in principle to provide funds.
  - vi) Certified copy of the registration certificate under the Societies Act/ Companies Act.
  - vii) Certified copy of the Byelaws and Memorandum and Article of Association whichever is applicable.
  - viii) Copy of certificates of exemption or registration issued by the Income Tax Department under sections 80G or 12A.
  - ix) Copy of any prior permission granted to the organisation.
  - x) Copy of resolution of governing body of the organisation, authorising the prior permission.

xi) Copy of power of attorney or the resolution of governing body by which the Chief Functionary is authorized to submit FC1A.

xii) List of present members of the governing body of the organisation and the office bearers. xiii) Copy of any journal or other publication of the organisation.

**Q.28 What is the time limit for making application for prior permission?**

Ans. An application for prior permission in Form FC1A can be made any time after the legal constitution of an organisation. But it is important to have a written commitment (Letter of Intent) from the donors.

**Q.29 What if funds are received prior to getting a prior permission?**

Ans. If the funds are credited in the bank account prior to the receipt of approval from the FCRA authorities, then the funds should not be applied for the purposes for which they are received i.e. it should be kept intact and should be spent only after getting prior permission.

If the application is rejected then the funds have to be refunded back to the respective donors. The refund of fund back to the foreign agencies may involve legal formalities under Foreign Exchange Management Act, depending on the quantum of contribution received.

**Q.30 What is a time limit for granting prior permission?**

Ans. The FCRA department should dispose of a application of prior permission within a maximum period of 120 days.

**Q.31 What if the application is not disposed of within a period of 120 days?**

Ans. The proviso to Section 11 provides that if the prior permission is not granted within the prescribed time limit, then the applicant can assume that the prior permission is deemed to have been granted. The deeming provision provides an automatic right for receiving foreign funds, to the applicant organisation even in the absence of any written communication from the FCRA department. Before invoking the deeming provisions, the recipient organisation should wait for a reasonable period from the end of 120 days to ensure that the communication is not in postal transit.

**Q.32 What is the law about opening of bank account?**

Ans. As per Section 6(1)(b), every organisation, which has either registered itself with the Central Government in accordance with the FCRA rules or has obtained prior permission, shall receive foreign contribution only through one such bank account as specified in its application for registration

for prior permission.

Form FC8 and Form FC1A which deal with the application for registration and prior permission respectively, require the mention of separate bank account number and the branch of the bank.

**Q.33 What is the procedure for changing bank accounts?**

Ans. When a change of bank account becomes a necessity by virtue of relevant and justifiable reasons the following procedure may be followed :

- (i) A new bank account which is proposed to be designated bank account should be opened by depositing the minimum amount required for opening of the account.
- (ii) The proposed account, since it is subject to approval, should not be opened with foreign funds.
- (iii) An application to the FCRA authorities should be made by citing the relevant and justifiable reasons for such change along with complete details of the old account as well as the new account.
- (iv) After receiving the permission from FCRA authorities, the entire unspent balance of foreign contribution from the old designated account should be transferred to the new account.
- (v) It is not necessary to close the old account. Therefore, the organisation may use the old account as a local account. But it is desirable to close the old account, to ensure that even by mistake the foreign funds are not credited to the old account.

**Q.34 Is change in signatory of bank account is required to be reported?**

Ans. Change in signatories of bank accounts is a routine procedural issue and therefore need not be informed to the FCRA authorities. The undertaking given by the Chief functionary in the form FC8 for informing the changes in the bank account is only about change of the bank or branch of the bank. Any procedural changes in the same bank account do not require an approval of the FCRA authorities.

**Q.35 What if there is a change in account number due to computerization?**

Ans. Many designated FC bank account numbers have been changed due to computerisation. In such cases, it is advisable to inform the FCRA authorities about such changes. The new account number should be used for all subsequent reporting and correspondence purposes.

**Q.36 Does FCRA allow maintenance of separate bank accounts for separate donors?**

Ans. It has been seen that some donors insist of maintenance of separate bank account specifically for their grant and utilisation thereof. But under FCRA, all foreign contributions should be received in one designated bank account only and utilized also from the same bank account only. Therefore, under no circumstances, separate bank account should be opened for receiving funds from various donors. Thus NGOs cannot open separate bank accounts for separate donors from whom foreign contributions have been received.

**Q.37 Can an NGO have more than one account for project purposes?**

Ans. As per clarification given by Ministry of Home Affairs vide no. II/21022/52(52)2006-07 FCRA (MU) dated 22.07.2008 all foreign contributions should be received in and utilized from designated bank account only. All the expenses for the projects in relation to which the funds have been received should be made from this account only.

Opening of an imprest or project area account should not be confused with having more than one account for FCRA purposes. Under FCRA at any given point of time, there can be only one designated bank account for receipt and utilization of foreign funds.

**Q.38 Can an inter project loan be received in FCRA account?**

Ans. In our opinion, inter project transaction does not entail receipt of any fresh foreign contribution, such transaction do not violate any provision of FCRA. But it should be ensured that such transactions are made within the FC projects of the organisation. In case, there is a loan or advance received from some other organisation then if it is a FC receipt it should be received in the designated bank account only.

**Q.39 Is bank interest earned on foreign funds part of foreign contribution?**

Ans. There is no mention made in the Act or the Rules regarding the treatment of interest earned from the designated bank account. In the absence of any clear cut provisions, the normal practice is to consider interest earned on FCRA funds as foreign contribution only. This argument has been further justified in the amendment to FC3 Form vide GSR 557 (E) dated 26th July, 2001 wherein a column has been added to report the interest income as well. Thus any interest earned should be disclosed in FC3 and also the FCRA receipt and payment account.

**Q.40 Can FDR's be created out of FC bank balance?**

Ans. As far as the creation of fixed deposits of FCRA funds is concerned, there does not seem to be any bar

on it. All the funds are required to be received in the designated bank account but any temporary surplus funds may be placed in fixed deposits with the bank, pending utilisation for the objects for which they were received. Care should be taken that the investment is in compliance with the section 11(5) of the Income Tax Act.

**Q.41 What is the treatment if fixed asset is created from Foreign Contribution as well as domestic funds?**

Ans. Any asset created out of foreign funds should be recorded in the FC books of account only. FC asset will continue to remain an FC asset irrespective of time factor or closure of the project. At times it may so happen that a portion of the asset is funded from domestic sources. For instance, a building constructed on a land purchased from domestic sources. In such cases, the cost of the land should be reflected in the domestic books of account and the cost of the building should be shown in the FC books of account. Only the consolidated, statement will show the total cost of land and building together.

**Q.42 What is the procedure to be followed on sale of joint fixed assets?**

Ans. If an asset purchased out of FCRA funds is sold, then the amount received on sales of such asset should be shown as foreign receipts. There might be circumstances where assets are created out of both FCRA as well as domestic funds. In such cases, apportionment of the sale receipts should be made on a suitable and reasonable basis out of the sale consideration receipt and the amount, pertaining to foreign contribution portion of the asset should be considered as foreign contribution receipt. The funds generated from a FC asset being a FC receipt should be deposited in the designated bank account.

**Q.43 Can an organisation take loan from local sources for FC project?**

Ans. An organisation may use domestic funds for FC projects temporarily in the absence of receipt of FC funds in time. However, when the funds in FC account are available the advance must be settled forthwith. All the original bills must be kept in FC account and photocopies may be kept in local contribution account.

**Q.44 Can FCRA fund be given to another NGO?**

Ans. FCRA funds can be given to another NGOs only if the other NGO also possesses FCRA registration.

**Q.45 As the FC funds cannot be given to any unregistered NGO, does it imply that funds cannot be transferred to village level SHG's who may not have FCRA registration?**

Ans. As already discussed, the second or subsequent recipient is also required to possess FCRA registration or prior permission. Therefore on strict interpretation of FCRA laws, it is not possible to give revolving funds as loans to community based organisations not possessing FCRA registration. The intent of statute does not seem to be in favour of preventing deserving village based organisations from availing funds meant for them. The amendment made in FC3 vide GSR 557 (E) dated 26th July, 2001 has specifically included Micro Finance Projects and SHG as heads of utilisation of foreign funds. In our opinion and in the light of the amended FC3, funds disbursed for revolving funds and micro finance activities should be shown as utilisation in FC3 and also as expenditure in the Income and Expenditure Account. When loans are recovered the money should be redeposited in the FCRA bank account and should be considered as foreign contribution received and when the loans are given out again the same should be considered as utilisation and expenditure in the year of the disbursement. For control purposes, separate records of the disbursement or receipt of the revolving funds should be made.

For large organisation having project in various parts of India it may be difficult to redeposit in the designated bank account. But under the prevailing provisions of FCRA, it is advisable to receive all such recoveries in the designated bank account only.

**Q.46 Can FCRA funds be transferred to general fund?**

Ans. It has been seen that, many NGOs transfer the surplus of income over expenditure to the general fund in the local books of account. A general fund being an unrestricted fund at the discretion of the organisation is at times confused to be a local fund. But, all funds created from foreign contribution should be reflected in FC books of account only. As a result, an organisation can have two general funds, one, created from foreign funds and other from domestic funds. The same is true for the corpus and other funds also.

**Q.47 Can domestic contribution be mingled with foreign contribution?**

Ans. The organisation should distinguish between domestic and foreign contribution. Only foreign contribution should be received in the designated bank account. Possibility of mingling of domestic donation with foreign contribution is there because even funds from overseas in foreign currency may be domestic donation. For example, donation received from an NRI in foreign currency is not a foreign contribution if the NRI holds a valid Indian passport. On the other hand donation received from foreigner in India in Indian rupees is a foreign contribution.

So an organisation should take great care and caution in segregating the foreign contributions and domestic contribution. Accordingly only foreign contribution should be received in the designated bank account and reflected in the FC books of account. Mingling of domestic funds is not allowed.

**Q.48 What is the treatment of undisclosed/anonymous donations?**

Ans. Many organisations, at times, receive funds through direct credit in their bank account from various overseas sources where the donor's identity may not be available. In such a case the organisation should ask its bank to trace the source of donation i.e. identity of donor, origin of country. The details if obtained from the bank should be reported in the Form FC3 else the organisation should report in Form FC3 all such anonymous donations on the basis of bank advices.

**Q.49 What is the accounting method for foreign contribution received in kind?**

Ans. As per rule 8(1)(a), account has to be maintained for foreign contribution received in kind. Form FC6 provides the format for recording the receipt as well as the utilisation of contributions received in kind. The entries made in FC6 should correspond with entries made in Form FC3.

**Q.50 Does FCRA impose 'cash basis' method of accounting?**

Ans. No, FCRA does not impose any particular method of accounting. But it does have certain specific reporting requirements which have to be complied diligently.

**Q.51 What documents are required to be filed annually?**

Ans. Every organisation which receives foreign contributions shall file an annual return in Form FC3 under rule 8(2) within 120 days of the closure of the year. The following should be submitted in duplicate duly signed by the chief functionary and certified by the chartered accountant: i) Form FC3, ii) Balance Sheet and statement of Receipt and Payment exclusively for foreign contribution received and utilised during the year.

**Q.52 It is necessary to file annual return even when the organisation does not receive any foreign contribution?**

Ans. If an organisation having FCRA Registration does not receive any foreign contribution, even then it should file nil returns. It is mandatory to file Form FC3 every year as long as the organisation wants to validly retain its registration. The Ministry of Home Affairs (FCRA division) in its press note dated 09.01.1998 has specifically clarified that even if no foreign contribution is received, filing of nil return is mandatory. In the same press note it has been clarified that nonsubmission of return in time or furnishing of false submission would constitute violation of the provision of the Act and attract

penal consequences.

**Q.53 Who should make the declaration and authentication in the annual return?**

Ans. The FC3 form is required to be signed by the Chief Functionary of the organisation and a certificate is also required to be given by a Chartered Accountant giving a brief summary of the FCRA funds movement and the opening & closing balances of FCRA Funds.

The Term “Chief Functionary” has not been defined in the FCRA Act or Rules. Normally the head of the organisation should be construed as the Chief Functionary. The organisation may also designate any office bearer as the Chief Functionary through a General Body/Governing Body resolution, for the purposes of filing the FCRA returns, Forms etc.

**Q.54 What is the implication for delay in filing of annual return?**

Ans. FCRA is silent about consequences for delay in filing FC3. It can be construed that an NGO would stand the risk of losing the FCRA registration if it does not file returns properly but whenever an NGO is not able to file FC3 by 31st of July, it should write a letter to the FCRA office explaining the circumstances causing the delay. Normally FCRA authorities condone such delay in filing of returns.