

## FCRA - CHANGE IN MORE THAN 50% OF BOARD MEMBERS



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### INTRODUCTION

- 1.1.1** Under Foreign Contribution Regulation Act, 2010 (FCRA) any change in the board members in excess of 50% shall be made with prior permission. This condition is a part of the undertaking provided by the applicant at the time of making application for 'registration' or 'prior permission'. Therefore, even though it is not mentioned in the Act or the Rules, it becomes binding on all the organisations by virtue of the undertaking given at the time of making application for 'registration' or 'prior permission'.

## UNDERTAKING GIVEN AT THE TIME OF REGISTRATION

**1.2.1** A declaration and undertaking is given along with Form FC-3 at the time of making application for registration. The relevant extract of the undertaking under form FC-3 is as under :

- (ii) to obtain prior permission for change of Members of the Executive Committee/ Governing Council, if, at any point of time, such change causes replacement of 50% or more of such Members as were mentioned in the application no. .... dated ..... for registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and undertake further not to accept any foreign contribution except with prior permission till the permission to replace the office-bearer(s) has been granted.

**1.2.2** It can be seen that the undertaking provides for seeking prior permission before there is a change in more than 50% of the board members which were mentioned in the application for registration. For example, if there were seven board members at the time of making application for registration then any change in the board in excess of three members shall be made with prior permission. In other words, if the fourth member out of these seven members wants to resign or retire it should be with prior permission.

## UNDERTAKING GIVEN AT THE TIME OF PRIOR PERMISSION

**1.3.1** A declaration and undertaking is given along with Form FC-4 at the time of making application for prior permission. The relevant extract of the undertaking under form FC-4 is as under :

- (ii) to intimate within thirty days regarding the change of Members of the Executive Committee/Governing Council, if, at any point of time, such change causes replacement of 50% or more of such Members as were mentioned in the application No. .... dated ..... for prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and undertake further not to accept any foreign contribution except with prior permission till the permission to replace the office-bearer(s) has been granted.

**1.3.2** It can be seen that the undertaking provides for informing after there is a change in more than 50% of the board members which were mentioned in the application for prior permission. For example, if there were seven board members at the time of making application for prior permission then any change in the board in excess of three members shall have to be intimated. In other words if the fourth member out of these seven members resigns or retires it should be intimated to the Central Government.

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## **HOW TO COMPUTE 50% IF THE BOARD HAS BEEN EXPANDED**

- 1.4.1** It may so happen that the board of an organisation is expanded after registration. In such circumstances, the law shall apply only to the number of board members which were mentioned at the time of making application. For example, if there were seven board members at the time of making application and later on the board was expanded to 12 members. In order to comply with the FCRA laws, at least four of the Board members mentioned at the time of making application should continue. If more than 50% of the seven board members retire/resign then prior permission should be taken.

## **WHAT IF MORE THAN 50% CHANGE HAPPENS FOR REASONS BEYOND CONTROL**

- 1.5.1** There may be a change of more than 50% in the board as discussed above for reasons such as death or election by voting etc. which are not in the control of the organisations. In such cases the organisation should inform the Central Government immediately after such change has occurred and get retrospective approval.

## **WHAT IF MORE THAN 50% CHANGE HAS ALREADY HAPPENED DUE TO IGNORANCE OF LAW**

- 1.6.1** There may be a change of more than 50% in the board as discussed above, due to ignorance of law. In such cases the organisation should inform the Central Government immediately after becoming aware of such requirement and request for condonation of the lapse. The Central Government may consider the matter if the reasons are justified. The intent of this law is not to harass or to interfere into the governance of genuine NGOs. The primary purpose of this law is to prevent unscrupulous practices where FC registered associations are taken over by changing the governance structure.

## **DOES THIS LAW APPLY TO ORGANISATIONS REGISTERED UNDER THE REPEALED FCRA 1976**

- 1.7.1** The undertaking regarding change of more than 50% board member was there in the old form FC-8 also. In fact this undertaking became a part of the application form for registration with effect from 27.12.1996 when the erstwhile form FC-8 was

amended. In other words, all organisations who have applied for FCRA registration after 27th December 1996 have given the undertaking regarding prior approval for change in more than 50% of the board members. **Therefore, technically all organisations who have applied after 27th December 1996 are bound by this law. The organisations who have applied and obtained registration before 27.12.1996 are not subject to this provision.**

## CONCLUDING REMARK

- 1.8.1** This provision is a part of both the old and new FCRA. Therefore, it is necessary to seek prior approval in case of more than 50% change in board members. Further, those organisations who have not taken permission, even after such change has occurred, should apply for permission and condonation. This issue becomes even more important keeping in view that FCRA registration is subject to renewal every 5 years. The defaulting organisations may face problem at the time of renewal.
- 1.8.2** Further, as has been analysed above, there is no provision in the Act or the Rules, this condition is a part of the undertaking provided by the applicant at the time of making application for 'registration' or 'prior permission'. Therefore, it could be debated whether a form could create a legally enforceable procedure without being supported by the Act or the Rules, because forms are mere extension of the Act & Rules and cannot have procedures independent or distinct from the primary Act & the Rules thereof.

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