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About AccountAid India
AccountAid India is a private consulting firm that provides advice and guidance on accounting and regulatory issues affecting NGOs. It conducts research, training workshops and publishes several short newsletters such as AccountAble, AuditAble and Lekhayog. Each issue covers a particular regulatory or accounting topic. Most of these are available at www.AccountAid.net.

AccountAid India and its associates do not provide any liaison services with the FCRA Department or accept fees or fee-based assignments from implementing NGOs.

AccountAid India welcomes any queries or questions that you might have on any aspect of FCRA, grant management, accounting and regulation of NGOs. Please write to us at query@accountaid.net.

The most reliable and comprehensive guide to FCRA 2010. Includes:

- Background
  - History
  - Numbers and Trends
- Legal Intricacies
  - Purpose
  - Jurisdiction
  - Foreign Contribution
  - Donors
  - Recipients
  - Foreign Hospitality
  - Prohibitions and Penalties
- Procedures and Practice
  - Formalities
  - Intimations
  - Permissions
  - Annual Returns
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  - Compliance
  - FCRA Mysteries
- Detailed Guidance
  - Filling up FC-3
  - Filling up FC-4
  - Filling up FC-5
  - Filling up FC-6
  - Filling up FC-7
  - Filling up FC-8
  - Filling up FC-10

The book will also be very useful for auditors and lawyers who advise NGOs as well as bankers who need to report regularly to FCRA authorities.
AccountAble Handbook

FCRA 2010
Theory and Practice

Foreign Contribution (Regulation) Act, 2010
Foreign Contribution (Regulation) Rules, 2011

SANJAY AGARWAL
B.COM. (HONS.), FCA

***
Dedicated to the memory of
Sh. Radhey Lal ji Agarwal
(1914-2006)
my father, guide and ideal,
who taught me the value of moderation
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PREFACE TO THE SECOND EDITION

A law that places restraints on charity sounds like bad policy. Yet that is precisely what the FCRA does. It forces NGOs and others in India to get Government permission before accepting foreign donations. This sounds bureaucratic and presumptuous. As a result, a large part of enforcement resources goes into frisking the innocent - while creating an illusion of great activity. Due to this, the FCRA Department is left with little time or resources to understand the sector or focus on organisations that misuse funds.

Is FCRA bad policy? A significant part of the foreign donations enters India avowedly to improve Indian culture, society and religion. There is another component which attempts to promote legislation for a better society. However, as Ms. Pushpa Sundar has shown the impact of foreign contribution is mixed (even though it is beneficial on the whole). The Government, therefore, believes that it must be regulated.

This book is an attempt to understand and explain the controversial Foreign Contribution (Regulation) Act 2010. This replaces an earlier law passed in 1976. Early indications are that FCRA 2010 will be enforced more strictly than FCRA 1976. The Department is being strengthened by adding more people. Critical processes are being computerised. There is also a perceptible change in tone - FCRA is not being viewed as an enabling legislation by the Department. Another critical change is the introduction of compounding fees. This has made it simpler for the Department to penalise a larger number of offences, without getting into time-consuming court cases.

The first edition of this book was widely appreciated, partly perhaps because it was the only book available on FCRA at the time. People also liked its relatively simple language and emphasis on practical application. The present edition is markedly different due to several reasons. Firstly, FCRA 2010 is more complex than FCRA 1976. Secondly, the NPO programs have evolved. Thirdly, we now understand much more about FCRA than we did earlier. As a result, the book has been completely restructured. While the first edition focused on formalities, this one gives considerable attention to interpretation as well. This required a large number of section references and explanations. Most of these are technical and would tend to clutter up the book for a general reader. These have all been moved to the end.

It is, therefore, hoped that this edition will be useful both to NGOs and donor Agencies, as well as to the accounting and legal professionals. As CSR grows over the next few years, the book will also be of interest to foreign MNCs and Corporate Foundations in India - many of them will find FCRA to be a legal minefield in working with Indian NGOs.

This edition took several years in writing and re-writing. A number of persons provided valuable support in researching the data, proofing the manuscript, and tracking down references. I would specially like to thank Anil Baranwal, Aditya Agarwal, Soumyasree Mullick, Ankur Agrawal, Lalbabu Sah, Madan Bashyal, Anup Aryal, Santosh Baniya, Mukul Mishra, Sunita Rawat, Amit Sinha, Vipul Aggarwal and Renu Agarwal for their help in this process. Prof. Jane Schukoske read through parts of the manuscript,
offering valuable comments and suggestions. Still, a number of errors probably remain - I will be grateful if my learned colleagues and practitioners point these out for correction in future editions. Angshuman De designed the cover and completed the layout, working under an impossible timeline, during peak festival season. I would also like to thank PRINTWORKS for meeting a stiff deadline in printing this publication.

Chetan, Aditya and Renu willingly gave up their claims on my time during the period when this book was being written - their unstinting support is like an ever-present warm glow in my life.

The publication of this revised edition of the book has been made possible under an agreement with Ford Foundation’s Delhi office (Civil Society Portfolio). I would also like to thank Ms. Vanita Mukherjee, who directed this portfolio, for her encouragement and patience during the years this book was researched.

Last but not least, I would like to thank each one of the NGO functionaries, auditors, CSR practitioners and grant-makers who have shared their knowledge and difficulties with us - during workshops, through email, over phone and in personal meetings.

14-Nov-2012

Sanjay Agarwal
PREFACE TO THE FIRST EDITION

Foreign Contribution (Regulation) Act, 1976 is a curious piece of legislation. The Act has only 31 sections: a very short and simple piece of law by any standard. It has also been amended only once in the last 26 years. Very few cases have gone to court under FCRA.

The Act was essentially designed to prevent flow of foreign funds to political parties in India. It was brought in after a big controversy erupted in 1967 over the possible use of foreign funds in parliamentary elections. By 2002, there were similar laws operating in many countries across the world, including USA, UK, France, Japan, Germany, Canada, Russia, Malaysia, and Spain.

In 1984, the law was amended to regulate flow of funds to charitable organisations more closely, based on the Government's perception that some of these organisations may be used to channelize funds to political parties. This has resulted in a lot of paper-work and confusion for non-profits working in India. Reflecting this confusion, one of our first issues on FCRA was titled 'Mysteries of FCRA'!

With time, the mysteries have reduced somewhat. The FCRA Department has also adapted a citizen's charter and has tried to streamline its working. However, much remains to be done.

One peculiar implication of the 1984 amendment has been that FCRA is now commonly perceived as a law focusing on the NGOs. While this was not the intention of the law, this is what may actually have happened, given the fact that most of the time FCRA Department is dealing with NGOs.2

The present handbook is designed primarily for use by NGOs, who often find themselves on the receiving end, so far as FCRA is concerned (no pun intended). Similarly, consultants and auditors, who have to advise NGOs on FCRA, would also find the book useful. Some sections would be of interest to grant-making Agencies working in India, who sometimes find that their programs and projects fall foul of FCRA provisions.

Many Agencies located abroad are not aware that such a law exists, and, therefore, sometimes find it difficult to understand why their projects are delayed. This handbook may help give them an overview.

30-Jun-2002
I. BACKGROUND

“The horror of that moment,” the King went on,
“I shall never, never forget!”

“You will, though,” the Queen said,
“if you don’t make a memorandum of it.”

—Lewis Carroll, Through the Looking Glass (1871)
1. History

...there came one bleak Monday morning when a Treasury audit pointed up serious 
discrepancies in the conduct of the Circus reptile fund over the period of five years before it was 
frozen by the fall.

—John le Carré, The Honourable Schoolboy (1977)

Foreign funding of elections is neither fictional nor new.\(^3\) There had been some murmurs about 
inflow of foreign funds since the 1920s.\(^3\) However, these did not lead to any legislation.

When Parliamentary elections took place in India in 1967, Cold War was at its peak. India, with its stated 
policy of non-alignment, was an important playground for the world powers. Congress had tragically 
lost two popular leaders since the decade began, and was in the young hands of Smt. Indira Gandhi.\(^5\) It 
won a majority, but lost ground, reduced to a shadow of its former glorious self.\(^6\) Shortly thereafter, allegations surfaced in the US Press that CIA had provided funds to some of the election candidates.\(^7\) This led to a furor in the Parliament, and a debate.\(^8\) The then Home Minister, Sh. Y.B. Chavan, promised a law to tackle this menace.

Four years later, in Dec'73, a bill was tabled in the Rajya Sabha by the then Home Minister, 
Sh. Umashankar Dikshit. It was referred to a Joint Parliamentary Committee.\(^9\) The Committee submitted 
its report in Jan ’76. However, before the law could be debated properly, the nation had gone into a paroxysm. Sh. Jaiprakash Narayan launched the ‘Citizens for Democracy’ movement in May ’74, and led a campaign to oust the Bihar government. Then he set his sights on Delhi, and organised a ‘March on Parliament’ in March ’75. His charter of demands included the dissolution of the Bihar assembly, corruption eradication and electoral reforms.\(^10\) The Government panicked. A national emergency was declared on 25th June 1975, and led to a general suspension of civil rights. Most of the opposition was either arrested, or went into hiding.

In this state of paralysis, the Foreign Contribution (Regulation) Act was passed in 1976 by the Parliament, amid empty opposition benches. Rules were also proclaimed in 1976, and the Act became operational immediately. The Act allowed NGOs to receive foreign contribution without any restriction.\(^11\) However, they were required to report the amount received and spent each year.

The Emergency led to strange doings. A Ten-point Program for the progress of the nation was 
launched. Slums were cleared at the point of bayonets. Men across the country were cajoled into nasbandi.\(^12\) India was on the verge of turning into a police state.\(^13\)

Fortunately, the moment passed. Mrs. Gandhi pressed the reset button, and announced 
Parliamentary elections in 1977. The establishment thought that the people were deeply appreciative of 
the general improvement in law and order. However, Congress lost seats across the country, being reduced to just 189 seats, a historical low for a party that had led a great nation to independence. The opposition had fought the elections as an alliance called Janata Party. Despite a clear mandate, Janata Party could not manage the contesting egos of its leaders. The coalition split in 1979, leading to resignation of the Prime minister, Sh. Morarji Desai. Chaudhary Charan Singh, who was projected as the next
Prime Minister resigned three weeks later. The coalition fell apart, paving the way for fresh general elections in January 1980.

By this time, both the Congress and the Indian voter had learnt their lessons. Congress came back to power with a thumping majority. In February 1982 it set up a one-man commission headed by Justice P.D. Kudal, a former judge of the Rajasthan High Court, to look into the sources of funds for Sh. Jaiprakash Narayan's movement.

This commission, known as the Kudal Commission, looked high and low, far and wide. It was tasked to examine the funding of four organisations.14 It ended up examining hundreds of NGOs and thousands of documents. Its term was extended several times.15 The report came out in seven instalments over three years.16 It consisted of more than 1,600 closely-typed, A4 pages. It would have been impossible to read for most of us.

But the Government read it with concern. The immediate result was the passing of an ordinance on 20th October ‘84.17 This ordinance modified the 1976 Act, making several changes.18 All NGOs now had to register or get prior-permission before accepting any foreign contribution. Further, they were not allowed to pass it on to another NGO which did not have FCRA registration or prior permission.

In an entirely unconnected tragedy, ten days later, Mrs. Gandhi was dead, murdered brutally by her own personal security guards. Her son, Sh. Rajiv Gandhi was anointed the next Prime Minister. A modern, pleasant person, he had a different agenda - education and technology. He pushed India towards Information Technology, which eventually turned it into a major IT powerhouse.

Nevertheless, the establishment was not happy with the FCRA 1976. The Oct’84 ordinance was an after-thought, only a temporary solution. Much more remained to be done with regard to funding of NGOs. In 1986, the Estimates Committee suggested that the Act should be revised. In 1988, a Committee of Secretaries was tasked with refining the law, to make it more effective and usable. However, nothing came of this.19

The FCRA Department brought this up again and again over the next ten years. But, except for some tinkering with rules and forms, an amendment to the Act remained out of reach. The Government seemed pre-occupied with other problems in the neighbourhood, and within the country itself. There was political instability at the centre, as the Congress rapidly lost its electoral base, after the unseating and eventual tragic murder of Sh. Rajiv Gandhi.

By the end of the ‘90s, the eclipse of Congress was almost complete. A coalition of parties, led by BJP, came to power. This coalition, called NDA, started work on revising the FCRA around 2001. However, the Government changed before the Bill could be finalised and tabled.

When the Congress came to power at the head of a coalition, it set to work on refining the draft. Some elements from the earlier draft, related to missionary activity, were retained. Others were added. A draft was released among the NGOs in 2005 and debated.20 The Bill was then revised and tabled in Rajya Sabha in Dec’06 as Foreign Contribution Regulation Bill, 2006. It was immediately referred to the Standing Committee for Home Affairs. The Committee invited comments from the public and other stakeholders, and also heard a large number of persons. The Bill was cleared by the Committee in Oct’08, with some recommendations for changes.21 After this, the Bill remained in limbo for nearly two years, giving rise to the hope that it had been forgotten.

And then suddenly, on 19-Aug-10, the Bill was discussed in the Rajya Sabha and passed. It then went to Lok Sabha on 27th August and was passed the same day by a voice vote. The debate on the
BACKGROUND// History

Bill is interesting, if for no reason than the fact that almost every MP was in agreement with the purpose and provisions of the bill. Following this, the Bill received Presidential assent on 26-Sep-10 and was published in the Gazette the next day.

However, this kind of an Act cannot be implemented without rules and forms. Apparently these were not ready in September '10. The Ministry drafted these, and put these up on its web-site in Mar’11, inviting comments and suggestions from the public. Many NGOs and networks responded. A final version of the rules was notified on 29th April 2011. This incorporated some minor changes.

The Foreign Contribution Regulation Act, 2010 and Rules thus came into force on 1st May 2011. It had taken the Government nearly 27 years to mould the law in the way it wanted.

International Environment

The international flow of business remittances was relaxed from the 1990s - this trend continues till date. However, the flow of international aid had remained relatively unregulated in the 20th century. This changed after 9/11.

In February 2001, the FATF had issued a prescient alert on misuse of charities for funding terrorism. Seven months later, the 9/11 attack occurred. Some charities were implicated in the funding of this attack. As a direct result, the US passed Patriot Act in Oct-01. This required closer scrutiny of international grants. The UN Security Council came up with a list of organisations involved in supporting terrorist activities.

The FATF issued a special report on misuse of Trusts for terror funding. It also became more active, roping in new member states in its fight against laundering of money, including India.

This saw introduction of new legislation and rules. The Prevention of Money Laundering Act was passed in 2002 and implemented in 2005. Cooperation between PMLA and FCRA authorities increased. The revised FCRA Bill was introduced in 2006. As it remained in the works for a long time, the US authorities became impatient. The slow progress in overhauling FCRA was mentioned in a Mar '11 US report. Coincidentally, the FCRA rules were notified shortly thereafter.

The Globalisation of FCRA

Restrictions on foreign donations to political parties are not found in India alone - these exist in many countries, including industrially advanced and otherwise liberal democracies of the West. A 2003 survey of 111 countries across the world showed that 64% restrict foreign donations in domestic elections, including most of the European countries. However, some countries extend these restrictions to NGOs as well.

Countries with restrictions on foreign contributions can be clubbed into three groups:
Countries such as Algeria, Azerbaijan, Belarus, China, Eritrea, Ethiopia, Indonesia, and Saudi Arabia also regulate NGOs’ access to foreign donations through regulatory or administrative means. Such restrictions have increased significantly in the last one decade. This trend is likely to continue for some time, as civil society becomes more globalised and more involved in social and political change across the world.

<table>
<thead>
<tr>
<th>Group</th>
<th>Election Funding</th>
<th>NPO funding</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Complete ban</td>
<td>Restricted</td>
<td>Bangladesh, Egypt, India, Jordan, Russia, Peru, Turkmenistan, Uzbekistan, Venezuela</td>
</tr>
<tr>
<td>B</td>
<td>Complete ban</td>
<td>Unrestricted</td>
<td>Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Estonia, France, Georgia, Greece, Iceland, Ireland, Japan, Latvia, Macedonia, Moldova, Poland, Portugal, Singapore, Slovakia, Slovenia, Turkey, Ukraine, United Kingdom, USA</td>
</tr>
<tr>
<td>C</td>
<td>Partial ban</td>
<td>Unrestricted</td>
<td>Canada, Croatia, Germany, Israel, Lithuania, Romania, Spain</td>
</tr>
</tbody>
</table>
2. **Numbers and Trends**

‘Yes, I did,’ said Alice: ‘several thousand, I should think.’

‘Four thousand two hundred and seven, that’s the exact number,’ the King said, referring to his book.

—Lewis Carroll, Through the Looking Glass (1871)

Before we get into the law itself, let us take a quick look at the money received as foreign contribution and the organisations affected by FCRA.

**How Many?**

At present, 39,236 organisations have valid FCRA registration. Another 631 received prior-permission over 2010-12. Out of these, a majority of organisations have chosen social objectives, along with other objectives:

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Registered</th>
<th>Prior-Permission</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social</td>
<td>32,904</td>
<td>487</td>
<td>33,391</td>
</tr>
<tr>
<td>Educational</td>
<td>23,102</td>
<td>381</td>
<td>23,483</td>
</tr>
<tr>
<td>Economic</td>
<td>10,801</td>
<td>151</td>
<td>10,952</td>
</tr>
<tr>
<td>Cultural</td>
<td>10,483</td>
<td>112</td>
<td>10,595</td>
</tr>
<tr>
<td>Religious</td>
<td>8,461</td>
<td>40</td>
<td>8,501</td>
</tr>
</tbody>
</table>

The breakup of organisations with religious objectives is:

<table>
<thead>
<tr>
<th>Religion</th>
<th>Registered</th>
<th>Prior-Permission</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian</td>
<td>6,765</td>
<td>23</td>
<td>6,788</td>
</tr>
<tr>
<td>Hindu</td>
<td>738</td>
<td>8</td>
<td>746</td>
</tr>
<tr>
<td>Muslim</td>
<td>457</td>
<td>4</td>
<td>461</td>
</tr>
<tr>
<td>Others</td>
<td>301</td>
<td>3</td>
<td>304</td>
</tr>
<tr>
<td>Buddhist</td>
<td>180</td>
<td>2</td>
<td>182</td>
</tr>
<tr>
<td>Sikh</td>
<td>20</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8,461</strong></td>
<td><strong>40</strong></td>
<td><strong>8,501</strong></td>
</tr>
</tbody>
</table>

**State wise Distribution**

What do these numbers look like across states? Tamil Nadu tops the list with 5,090 registered organisations - Daman & Diu is at the bottom, with just three.
**Reporting to Government**

The law requires that FC-6 must be filed even if no foreign contribution is received in a year. However, only about 21,22,000 organisations file their FC-6 each year. The balance 20-22,000 seems to be

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Tamil Nadu</td>
<td>4,383</td>
<td>3,127</td>
<td>1,695</td>
<td>1,049</td>
<td>1,128</td>
<td>5,090</td>
</tr>
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<td>Andhra Pradesh</td>
<td>4,389</td>
<td>2,916</td>
<td>1,675</td>
<td>1,335</td>
<td>1,072</td>
<td>4,941</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>3,000</td>
<td>2,555</td>
<td>746</td>
<td>815</td>
<td>601</td>
<td>3,846</td>
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<tr>
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<td>2,918</td>
<td>2,060</td>
<td>1,207</td>
<td>1,468</td>
<td>573</td>
<td>3,305</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>2,632</td>
<td>1,749</td>
<td>719</td>
<td>778</td>
<td>433</td>
<td>3,070</td>
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<tr>
<td>Karnataka</td>
<td>2,235</td>
<td>1,861</td>
<td>699</td>
<td>669</td>
<td>932</td>
<td>2,897</td>
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<tr>
<td>Kerala</td>
<td>1,624</td>
<td>1,101</td>
<td>228</td>
<td>348</td>
<td>1,361</td>
<td>2,413</td>
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<tr>
<td>Orissa</td>
<td>2,221</td>
<td>977</td>
<td>694</td>
<td>705</td>
<td>166</td>
<td>2,342</td>
</tr>
<tr>
<td>Delhi</td>
<td>1,731</td>
<td>1,132</td>
<td>329</td>
<td>422</td>
<td>229</td>
<td>2,174</td>
</tr>
<tr>
<td>Bihar</td>
<td>1,756</td>
<td>1,210</td>
<td>948</td>
<td>953</td>
<td>161</td>
<td>1,880</td>
</tr>
<tr>
<td>Gujarat</td>
<td>1,335</td>
<td>1,127</td>
<td>331</td>
<td>349</td>
<td>371</td>
<td>1,747</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>679</td>
<td>472</td>
<td>155</td>
<td>197</td>
<td>215</td>
<td>819</td>
</tr>
<tr>
<td>Manipur</td>
<td>650</td>
<td>516</td>
<td>464</td>
<td>346</td>
<td>128</td>
<td>734</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>637</td>
<td>382</td>
<td>149</td>
<td>152</td>
<td>48</td>
<td>734</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>633</td>
<td>436</td>
<td>222</td>
<td>251</td>
<td>130</td>
<td>713</td>
</tr>
<tr>
<td>Assam</td>
<td>376</td>
<td>258</td>
<td>138</td>
<td>126</td>
<td>152</td>
<td>464</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>384</td>
<td>249</td>
<td>80</td>
<td>92</td>
<td>71</td>
<td>434</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>266</td>
<td>199</td>
<td>77</td>
<td>90</td>
<td>114</td>
<td>317</td>
</tr>
<tr>
<td>Haryana</td>
<td>212</td>
<td>125</td>
<td>45</td>
<td>35</td>
<td>45</td>
<td>257</td>
</tr>
<tr>
<td>Punjab</td>
<td>174</td>
<td>141</td>
<td>20</td>
<td>30</td>
<td>96</td>
<td>249</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>143</td>
<td>78</td>
<td>22</td>
<td>32</td>
<td>34</td>
<td>187</td>
</tr>
<tr>
<td>Nagaland</td>
<td>158</td>
<td>120</td>
<td>79</td>
<td>56</td>
<td>46</td>
<td>187</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>149</td>
<td>136</td>
<td>38</td>
<td>39</td>
<td>121</td>
<td>185</td>
</tr>
<tr>
<td>Goa</td>
<td>125</td>
<td>129</td>
<td>11</td>
<td>70</td>
<td>111</td>
<td>172</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>131</td>
<td>95</td>
<td>21</td>
<td>47</td>
<td>35</td>
<td>169</td>
</tr>
<tr>
<td>Tripura</td>
<td>118</td>
<td>85</td>
<td>48</td>
<td>31</td>
<td>22</td>
<td>144</td>
</tr>
<tr>
<td>Pondicherry</td>
<td>105</td>
<td>71</td>
<td>27</td>
<td>18</td>
<td>21</td>
<td>120</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>64</td>
<td>38</td>
<td>9</td>
<td>13</td>
<td>14</td>
<td>74</td>
</tr>
<tr>
<td>Mizoram</td>
<td>55</td>
<td>40</td>
<td>23</td>
<td>15</td>
<td>24</td>
<td>71</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>57</td>
<td>50</td>
<td>31</td>
<td>37</td>
<td>13</td>
<td>67</td>
</tr>
<tr>
<td>Sikkim</td>
<td>20</td>
<td>18</td>
<td>8</td>
<td>10</td>
<td>11</td>
<td>28</td>
</tr>
<tr>
<td>Andaman &amp; Nicobar</td>
<td>16</td>
<td>15</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Dadra &amp; Nagar Haveli</td>
<td>12</td>
<td>12</td>
<td>8</td>
<td>9</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td>Daman &amp; Diu</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

**Total** | **33,391** | **23,483** | **10,952** | **10,595** | **8,501** | **39,867**
BACKGROUND/ Numbers and Trends

quite regular in not filing their FC-6! This eventually leads to cancellation of their FCRA registration.61

Often this is done en-masse and makes headline news. For instance, 8,673 organisations had their FCRA registration cancelled in Oct’05 for non-filing of FC-3. Later, 378 had the registrations restored.62 Apparently, a number of these had been filing their FC-3 regularly. However, these had either not reached FCRA Department or the file was not updated.

Similarly, FCRA registration of 4,138 organisations has been cancelled in Jul-Aug’12 for violations. A majority of these appear to be cases where FC-3/6 is not being filed and the organisation is untraceable at recorded address. However, there are a number of cases, where the NGOs have been filing their FC-3/6 regularly, and have also sent address change intimations.

Hopefully, this problem will reduce as more and more FC-6 are filed online, and the FCRA Department computerises its database.

How Much?
Let us now look at how much money do these organisations receive.63

<table>
<thead>
<tr>
<th>Inflow of Foreign Contribution (Rs. Crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>91-92</td>
</tr>
<tr>
<td>95-96</td>
</tr>
<tr>
<td>99-00</td>
</tr>
<tr>
<td>03-04</td>
</tr>
<tr>
<td>07-08</td>
</tr>
<tr>
<td>09-10</td>
</tr>
</tbody>
</table>

Receipt of foreign contribution has been growing at a compounded annual rate of 11.69%.

The Reality of Growth
What contributes to this rate of growth? Firstly, there is inflation. Budgets have to increase every year just to remain at the same level in real purchasing power. Secondly, Rupee has constantly weakened against US dollar.64 The following chart shows the amount of foreign contribution, adjusted for inflation.65

<table>
<thead>
<tr>
<th>Foreign Contribution-Adjusted for Inflation (Rs. Crores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>91-92</td>
</tr>
<tr>
<td>95-96</td>
</tr>
<tr>
<td>99-00</td>
</tr>
<tr>
<td>03-04</td>
</tr>
<tr>
<td>07-08</td>
</tr>
<tr>
<td>09-10</td>
</tr>
</tbody>
</table>
Large Recipients...
With the continuing erosion of Rupee, a crore today is not what it used to be. In 91-92, just 249 associations received over a crore. By 2009-10, this had risen to 1,906 associations.

The following table shows state-wise data available for these large recipients. This includes both donor agencies, as well as implementing NGOs. This would result in some double-counting.

<table>
<thead>
<tr>
<th>States</th>
<th>2008-09</th>
<th></th>
<th>2009-10</th>
<th></th>
<th>2010-11</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rs. croses</td>
<td>Org.</td>
<td>Rs. croses</td>
<td>Org.</td>
<td>Rs. croses</td>
<td>Org.</td>
</tr>
<tr>
<td>Delhi</td>
<td>1,835</td>
<td>224</td>
<td>1,618</td>
<td>233</td>
<td>1,723</td>
<td>243</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>1,320</td>
<td>300</td>
<td>1,338</td>
<td>291</td>
<td>1,215</td>
<td>273</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>1,015</td>
<td>219</td>
<td>1,071</td>
<td>216</td>
<td>922</td>
<td>203</td>
</tr>
<tr>
<td>Karnataka</td>
<td>826</td>
<td>202</td>
<td>845</td>
<td>210</td>
<td>780</td>
<td>211</td>
</tr>
<tr>
<td>Kerala</td>
<td>803</td>
<td>167</td>
<td>706</td>
<td>168</td>
<td>681</td>
<td>143</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>773</td>
<td>179</td>
<td>704</td>
<td>179</td>
<td>666</td>
<td>175</td>
</tr>
<tr>
<td>West Bengal</td>
<td>450</td>
<td>119</td>
<td>407</td>
<td>112</td>
<td>499</td>
<td>118</td>
</tr>
<tr>
<td>Gujarat</td>
<td>358</td>
<td>92</td>
<td>276</td>
<td>75</td>
<td>239</td>
<td>78</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>128</td>
<td>61</td>
<td>98</td>
<td>54</td>
<td>145</td>
<td>59</td>
</tr>
<tr>
<td>Orissa</td>
<td>148</td>
<td>54</td>
<td>126</td>
<td>44</td>
<td>121</td>
<td>44</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>118</td>
<td>14</td>
<td>135</td>
<td>17</td>
<td>117</td>
<td>14</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>91</td>
<td>27</td>
<td>79</td>
<td>27</td>
<td>104</td>
<td>33</td>
</tr>
<tr>
<td>Bihar</td>
<td>119</td>
<td>42</td>
<td>98</td>
<td>43</td>
<td>97</td>
<td>42</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>120</td>
<td>45</td>
<td>94</td>
<td>41</td>
<td>95</td>
<td>37</td>
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<tr>
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<td>107</td>
<td>37</td>
<td>105</td>
<td>35</td>
<td>86</td>
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<td>26</td>
<td>75</td>
<td>31</td>
<td>79</td>
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<tr>
<td>Punjab</td>
<td>111</td>
<td>15</td>
<td>76</td>
<td>14</td>
<td>78</td>
<td>16</td>
</tr>
<tr>
<td>Assam</td>
<td>56</td>
<td>19</td>
<td>65</td>
<td>20</td>
<td>59</td>
<td>19</td>
</tr>
</tbody>
</table>
Curiously, the average amount received per large organisation has steadily dropped from Rs.4.50 crores in 2008-09 to Rs.4.24 crores in 2010-11. This could be due to the on-going recession in Western economies, or part of a long term drop in international aid to India.

**Top Donor Countries**
Where does all this money come from? The MHA reports for last fifteen years (1996-97 to 2009-10) list more than 180 countries, ranging from USA to countries like Belgium, Mauritius, Sweden, Austria, and UAE. There are also smaller donors who are not listed individually.

The following graph summarizes the contribution of top five donor countries over past four years (1996-97 to 2009-10):
The MHA annual report also lists the names of top fifteen donors every year. This information has been added up for the last four years. The following chart shows donors who have made it to the top:

**Top Donors of Foreign Contribution (Rs. crores)**

<table>
<thead>
<tr>
<th>Donor</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>World Vision International</td>
<td>1428</td>
<td>1428</td>
<td>1734</td>
<td>2185</td>
</tr>
<tr>
<td>Fundacion Vicente Ferrer</td>
<td>1039</td>
<td>1039</td>
<td>1046</td>
<td>1103</td>
</tr>
<tr>
<td>Gospel for Asia Inc</td>
<td>2949</td>
<td>1269</td>
<td>1131</td>
<td>3106</td>
</tr>
<tr>
<td>Action Aid International</td>
<td>1428</td>
<td>1428</td>
<td>1428</td>
<td>1428</td>
</tr>
<tr>
<td>Compassion International</td>
<td>2009</td>
<td>2009</td>
<td>2009</td>
<td>2009</td>
</tr>
<tr>
<td>Plan International</td>
<td>302</td>
<td>302</td>
<td>302</td>
<td>302</td>
</tr>
<tr>
<td>Shyam Shyam Dham Samiti</td>
<td>355</td>
<td>355</td>
<td>355</td>
<td>355</td>
</tr>
<tr>
<td>Liaison Office of The Dalai Lama for Japan</td>
<td>321</td>
<td>321</td>
<td>321</td>
<td>321</td>
</tr>
<tr>
<td>BKE</td>
<td>268</td>
<td>268</td>
<td>268</td>
<td>268</td>
</tr>
<tr>
<td>A.S.A</td>
<td>296</td>
<td>296</td>
<td>296</td>
<td>296</td>
</tr>
<tr>
<td>Oxfam India Trust</td>
<td>448</td>
<td>448</td>
<td>448</td>
<td>448</td>
</tr>
<tr>
<td>Global Fund to Fight Aids, Tuberculosis &amp; Malaria</td>
<td>587</td>
<td>587</td>
<td>587</td>
<td>587</td>
</tr>
</tbody>
</table>

The chart shows the contributions in crores for each year from 2006-07 to 2009-10.
**Top Receivers of Foreign Contribution**

The MHA web-site also lists organisations who receive more than a crore each year. This data has been aggregated for last five years (2006-07 to 2010-11). The following chart shows those who made it to the top of this list:
II. LAW

What man's law shall bind you if you break your yoke but upon no man's prison door?
What laws shall you fear if you dance but stumble against no man's iron chains?
And who is he that shall bring you to judgment if you tear off your garment yet leave it in no man's path?

—Kahlil Gibran, The Prophet (1923)
As we often look at the intent behind a human act, so must we look at the intent behind the FCRA 2010. This has changed dramatically, as compared to FCRA 1976. While the old Act was focused on the functioning of democratic institutions, the new Act drops this altogether from the preamble. Instead the emphasis is on ensuring that foreign contribution is not used ‘for any activities detrimental to the national interest’.

A breakdown of the preamble brings this out more clearly:

<table>
<thead>
<tr>
<th></th>
<th>FCRA 1976</th>
<th>FCRA 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activity</strong></td>
<td>regulate the acceptance and utilisation</td>
<td>regulate the acceptance and utilisation</td>
</tr>
<tr>
<td><strong>Material</strong></td>
<td>foreign contribution or foreign hospitality</td>
<td>foreign contribution or foreign hospitality</td>
</tr>
<tr>
<td>** Receivers**</td>
<td>persons or associations</td>
<td>individuals or associations or companies</td>
</tr>
<tr>
<td><strong>Players</strong></td>
<td>1. Parliamentary institutions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. political associations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. academic and other voluntary organisations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. individuals working in the important areas of national life</td>
<td></td>
</tr>
<tr>
<td><strong>Objective</strong></td>
<td>function in a manner consistent with the values of sovereign democratic republic</td>
<td>[prevent] any activities detrimental to the national interest</td>
</tr>
</tbody>
</table>

This is a landmark shift, but it only reflects what the FCRA Department has actually been doing since the mid-'80s. There have been few recorded instances of politicians accepting donations from foreign sources. Acceptance of foreign contribution by politicians was in any case a tainted activity at the best of times, and once the prohibition came into force, the flow dried out almost totally.

However, with the general growth in civil society movement across the world and in India, the FCRA Department has spent more and more time dealing with NPOs. This is reflected in the new preamble.
The best way to cut through the legalese and understand the intent of the Government is to refer to the following statement, the clearest that one has seen so far:

‘The regulations have been so framed that while legitimate charitable social, educational, medical and activity that serves any public purpose is allowed, foreign money does not dominate social and political discourse in India. There is enough money for charity within India. Enough money can be raised within India for charitable causes, the social causes. But, if you want to access foreign money, then one has to come under a system of regulation.’72 [Emphasis added]

Thus the Government is no longer concerned just with keeping the Elections free from foreign money. The Government now wants to ensure that

Raising the Drawbridge

Many cultures in Asia have had a fear of foreigners, and have tried to insulate themselves, often with disastrous consequences. In the 19th century, Japan did not want Western missionaries or traders on its shores, though the Dutch had been given a license to trade. This incensed the Americans, who made several attempts to breach the castle. Finally, in 1842, Commander Perry, at the head of a flotilla imposed a naval blockade. He gave the Japanese three days to open their economy to the US, or else! The Japanese blinked and gave in.

However, Japan then embarked on a national mission to regain its self-esteem. People were trained in combat, and infused with a martial spirit. Exactly one hundred years after Commander Perry’s blockade, Japan attacked the Pearl Harbour in 1942. The US responded in 1945, with Hiroshima and Nagasaki.

This long-running feud between two great pacific nations appears to have ended with Japan embracing modern economic ideas, and demilitarising the nation. Its defence is presently guaranteed by the US military.

The Great Wall of China

According to a charming story, in 1421 the Chinese Admiral Zheng He built a huge flotilla of more than one hundred ships, and sailed around the world to America, stopping in India on the way.73 When he returned to China, the Emperor was furious. He ordered all the ships to be burned, and forbade any further adventures. Barricaded behind The Great Wall, China did not want any contact with the rest of the world.

However, this isolationist sentiment was not reciprocated by the world. The British fought the Opium Wars with the Chinese Emperor in mid-19th century for the right to sell opium to his citizens. The defeat of the Chinese led to decades of turmoil and reciprocal humiliation. One of the clauses of the Tianjin treaty stated that the British shall no longer be called ‘Barbarians’ by the Chinese!74

China finally became free of colonial powers in 1949. However, the economic and cultural isolation continued for another 30 years under Mao Tse Tung, leading to impoverishment and a nation pedalling on bicycles. Private ownership of cars was prohibited. Finally, in 1980, China opened up its economy to the world. The so-called ‘Barbarians’ rushed back with their dollars and pounds. The first private car in China was imported in 1986.

Today China has overtaken Japan as the world’s second largest economy. And it is one of the biggest markets in the world for luxury cars.
the discussion on political and social issues is not influenced excessively by foreign funds.

If we consider the preamble, the provisions of the Act, and the Hon. Minister's statement together, we might conclude that the Government does not want foreign-funded organisations to participate in debate on controversial political, economic, communal or religious issues. Indeed, FCRA 2010 goes well beyond the conventional public and national interest. The objectives of FCRA now also include:75

- Preventing conversion (by inducement or force) from one religious faith to another76
- Protecting the security, strategic, scientific and economic interest of the State

The first of these focuses on the activities of religious and missionary organisations. The second reflects concerns arising out of protests around issues such as large dams, nuclear power, acquisition of land for industries and infrastructure, etc. The FCRA 2010 wags a finger at social activists, telling them to layoff or else!

The interpretation offered in this book flows from the above statement of intent.77
4. Jurisdiction

This seemed to Alice a good opportunity for making her escape; so she set off at once, and ran till she was quite tired and out of breath, and till the puppy's bark sounded quite faint in the distance.  
—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

Like most laws, FCRA 2010 applies to the whole of India. What does this mean? This means that it applies to anyone resident or present in Indian Territory, whether such a person is an Indian or a foreigner. However, its applicability effectively stops the moment a foreigner steps outside India. This means that normally a foreigner cannot be extradited from another country to face charges under FCRA 2010.78

This exemption does not apply to Indian citizens abroad. This means that a person with an Indian passport would remain covered by FCRA, no matter where she or he lives. However, in some countries, a resident Indian citizen would still be entitled to seek court protection from extradition.

The Act also applies to foreign branches or subsidiaries of Indian companies. This would include other existing or proposed forms of companies, such as producer companies, section 25 companies, one-person companies, etc.

It also applies to foreign branches of other corporate bodies such as limited liability partnerships79, charitable societies, cooperative societies, MACS,80 government corporations, universities, religious bodies (churches, deities, ashram, math), non-profit corporations, professional bodies, etc.81 However, these should have been registered or incorporated in India.

What about branches of foreign companies or corporate bodies in India? These are covered by the fact of their being in Indian Territory.

Repeal of FCRA 1976

With the passing of FCRA 2010, FCRA 1976 has been repealed with effect from 1-May-2011.82

However, to ensure administrative continuity, many of the permissions and prohibitions made under FCRA 1976 will continue to remain effective. These have been listed specifically in section 54.83

Additionally, section 6 of General Clauses Act, 1897 is also applicable.84 This section deals with effects of repeal of various laws. It ensures that actions taken under the repealed Act remain effective.85
The entire law revolves around foreign contribution. What is this ‘foreign contribution’?86

**Defining Foreign Contribution**

To put it simply, practically anything received from a foreign source is foreign contribution.87 This ‘anything’ could be an article (such as clothes, books, wheat), currency (money) or securities (shares, debentures, etc.).

Secondly, this anything should be received directly or indirectly from a foreign source. We will discuss this in more detail in the chapter titled Donors. In general, any source that is controlled by foreigners is a foreign source.

Thirdly, the transaction should be donative, to some extent. This means that purely business transactions are excluded, as implied by the word ‘donation’. This element of generosity is also implicit in the word ‘contribution’ itself.88

**Commercial Receipts**

The above interpretation is also supported by explanation 3 to section 2(1)(h). This tells us that if you received fees or money for sale of goods etc. from a foreign source, then it will not be treated as foreign contribution.89 This happy explanation clears up the air around payments for school fees, handicraft items, consultancy fees, etc.90 Fees from foreign delegates or participants in a conference or seminar is also exempt from FCRA.91

However, there is a very important qualifier in this

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clause. This payment should be in your ‘ordinary course of business, trade or commerce’. This means that if an organisation is selling handicrafts in general, and receives payment from a foreigner, then it would be alright. However, if an ordinary NGO loads up a consignment of old newspapers and sends it off to a foreign country for a million dollars, then that would be bad, very bad. And it would be against the law.

Secondly, the payment should be towards cost of goods or services. This means the goods or services should be sold at normal prices.

**Grants to For-Profits**

Sometimes, a foundation or an NPO (client / customer) may make a payment to a for-profit organisation out of FCRA funds. This payment could be for services or for products, which the for-profit is ordinarily providing to its other customers or clients. Or it could even be a subsidy.

**For Services**

A payment for services could be for taking up contracted activities or providing services to specified individuals or NGOs. The receivers of the services are generally nominated or selected by the client. In some cases, the client may reflect this in its own accounts as a grant or a program services payment.

Will this be treated as foreign contribution? It appears that it will not be, considering explanation 3 discussed above. Still it would be advisable to remove any ambiguity in the documentation, so that the payment is clearly contracted as a payment of fees. This will help avoid unnecessary confusion and litigation.

What if the payment is for activities beyond the normal business of the for-profit? Or the receivers of services are selected by the business at its own discretion? It is likely that FCRA would be attracted.

**For Products**

What if the payment was for supplying products to NGOs etc.? The delivery is made like other normal business transactions. This would be somewhat similar to a florist delivering flowers on behalf of a customer to the given address. In such a case, the payment will not be treated as foreign contribution in the hands of the supplier.

However, it is likely to be treated as foreign contribution when the products are received by the NGOs. Therefore, the recipient NGO should reflect this in their FCRA records and reports.

In the above case, the choice of NGOs or beneficiaries is dictated by the customer who placed the order. What if the supplier had full discretion in selecting the beneficiaries? In such a situation, the supplier might also need FCRA registration!

**Subsidy**

What if the grant is in the form of a research or marketing subsidy for the business organisation, say one which is selling solar energy panels? Such a payment would fall within the definition of foreign contribution. However, in most cases, no formalities might be required, as section II applies only to organisations with specified programs. In most cases, a business organisation does not have any of the programs listed in that section.

What happens if the subsidy is directly related to providing products at lower costs to specified NGOs etc.? In such a case, depending on the facts, this might be viewed as foreign contribution in the hands of
the receivers. Therefore, the recipient NGO should reflect this in their FCRA records and reports. For more on this, please refer to Businesses on page 75.

**Conclusion**

Based on the above, foreign contribution can be represented in the following manner:

![Diagram showing the components of foreign contribution: Foreign Source + Article, Currency, Securities + Donative Transaction = Foreign Contribution]

However, receipt and use of foreign contribution is restricted only for certain type of persons. For some persons (politicians, bureaucrats, etc.) it is totally prohibited. For others (such as NGOs), it is regulated only if they are engaged in certain types of programs. This is discussed in more detail in Chapter 7: Receivers. Others (ordinary citizens) should report foreign contribution if they get too much of it from foreigners related to them!

**What’s Covered**

The definition of foreign contribution focuses on three items:

**1. Articles**

In the context of FCRA, articles mean physical things, mostly material.\(^{108}\) This would cover things like vehicles, relief items, equipment, clothes, etc. for distribution or general use.

Items given for personal use to an individual are exempt up to Rs.25,000 each.\(^{109}\) This exemption often causes confusion. The exemption is on gifts for personal use, not for distribution to others or for use in the organisation.\(^{110}\) If a foreign donor gives your NGO 5,000 blankets for distribution to the people, would that be exempt? No, unless the items are directly distributed by the donor to the community.

This will also cover items such as donated paintings and other valuable collectibles, such as postage stamps and rare items. Therefore, if a foreign artist donates a future Mona Lisa to you, make sure you include it in your FC-6 and FC-7.

Does the definition also include *written* articles?\(^{111}\) For instance, if a foreigner sends you a thoughtful article on child rights, would that be foreign contribution? The language used here implies that the law is more concerned with physical things than intellectual. So probably you can continue exchanging articles over email, without having to report these under FCRA!

How about land? Is land an article? Land may not sound like an article to many of us, but it will not be wise to push this too far! Land is best treated as an article for the purpose of FCRA.
2. Currency

Currency means notes and coins which are currently accepted as money or circulate as a medium of exchange. This may be Indian or foreign. This means that if a foreigner gives you Indian rupees, it will still be foreign contribution. On the other hand, if an Indian gives you dollars, it will not be treated as foreign contribution.

3. Securities

What about securities? This used to mean shares and debentures, before smart people made up lots of new ones out of thin air. The new definition includes virtually any financial product which is transferrable, or can be traded in the market or with others. FCRA 2010 has done this by linking the definition of securities to Sec. 2(h) of Securities Contracts (Regulation) Act, 1956. The old reference to FERA 1973 has been updated to FEMA, 1999. Specifically shares, bonds, debentures, hundis, promissory notes, bills of exchange, etc. are covered by this.

Awards & Prizes

Are international awards to NGOs restricted under FCRA 2010? It appears that an award from a foreign source to an NGO would be foreign contribution. It should be banked in FCRA account and reported as such. If the NGO does not have FCRA registration, it should delay the remittance till prior-permission is granted.

What if the awardee is an individual? In most cases, FCRA would not be attracted. However, if the individual is listed in section 3 or has a definite program, then FCRA is likely to be attracted.

What if the remittance is for a lottery or a prize won in a competition? If the lottery or the competition is organised as a business, then the remittance is unlikely to be covered. Similarly, if the competition is organised by a recognised educational institution, it may be covered by the exception under section 4(g). However, if the competition is organised by an NGO with foreign funds, it would be best to exercise caution. Such a prize may be treated as foreign contribution.

And What’s Not...

Now let’s look at what is left out of the definition of foreign contribution. Services of volunteers are not covered by the definition. Similarly, if a foreign source, such as an MNC, seconds or deputes an employee to an NGO that would not be covered by the definition of foreign contribution.

Other Forms of Currency

What about old coins and notes, which are no longer in circulation? These will be covered under the definition of ‘article’. Same rule will apply to other precious items, such as gold, silver and gems. Are traveller’s cheques, debit/credit cards, ATM cards, cashier’s cheques, electronic transfers, mobile wallets, etc. currency? From a literal perspective, these are not - you cannot use them as you would use currency notes or coins. However, considering that these are all backed by currency and are a medium of exchange, it would be best to treat these also as currency.
Going further, intellectual property rights are not covered by the definition. If a foreigner wills or gifts you a copyright, a patent, or gives you a complimentary license to use their work in India, then that would not be covered by the definition of foreign contribution. Thus, receiving free or discounted licenses from software companies for use of their software is not prohibited. Use of web-space on a Google server, even if free, would not be restricted by the present definition. Similarly, if a donor directly pays (a vendor) for or maintains your web-site free of charge, this will not be treated as foreign contribution.

The same logic applies to downstream income from the rights. For instance, what would happen if a foreign writer gifts you the right to royalty income from sale of his books in India? Strictly speaking, the gift of the right will not be foreign contribution. Therefore, income arising from royalties on the book will also not be foreign contribution.

Similarly, if a foreign MNC allows you to use part of their office for your work, without charging anything for it, the gift would not be covered by the definition of foreign contribution.

Your participation in a workshop without any charge is also not covered by the definition. Similarly, foreign hospitality or sponsored trips to other countries etc. are not prohibited, unless you are covered by section 6.

Do remember however, that the above list is only for understanding the functioning of the law. A systematic use of the above for deliberately circumventing FCRA will probably be unwise. It might also lead to further tightening of the provisions for everyone in future.

**Scholarships & Stipend**

Strictly speaking, the above definition of foreign contribution covers scholarships and stipends also. However, these have been exempted from regulation even for sensitive categories, such as politicians, bureaucrats, journalists etc. By inference then, ordinary citizens can accept these without any restriction. The old requirement of reporting these in form FC-5 has also gone.

The exemption covers ‘scholarship, stipend or any payment of like nature’. Neither of these terms has been defined in the Act. Let us consider these one by one.

**Scholarship**

One MHA publication states that ‘scholarship includes stipend or other such payment for tuition fees, purchase of books, clothing,
study material, education tools, educational aids, etc."123

This view is broadly supported by the meaning given in Oxford dictionary, which defines this as ‘the status or emoluments of a scholar given financial support for education in reward for academic merit by a school, college, or university; an instance of this’.124 And who is a scholar? Oxford places the various meanings squarely in an academic context:

- A person receiving formal teaching from another, a pupil, spec. (a) a schoolchild; (b) a person taught by a particular teacher or instructor;
- A learned or erudite person, orig. esp. in the classics, now in languages, literature, or any non-scientific subject, an academic.; With specifying adjective: a person with a specified aptitude for study.
- A student who in reward for academic merit is given financial support for education by a school, college, or university.

Webster’s endorses this view by defining scholarship to mean ‘financial aid given to a student (as by a college or foundation) to assist in the cost of education’.125 [Emphasis added]

The Major Law Lexicon offers a short entry on scholarship - Black’s does not even do that, confirming that academicians rarely go to court over monetary matters!

What does one make of this? Scholarship means assistance given to students or learned persons, primarily for advancing their own education or learning. It is usually given by a college etc. but also by charitable organisations, such as foundations and philanthropists.

**Stipend**

The MHA publication implies that stipend is a kind of scholarship. However the usual meaning of stipend is somewhat different.

Oxford tells us that it means ‘a salary or fixed regular sum paid for the services of a teacher, public official, or (esp.) a minister of religion.’ It also offers a sub-sense of ‘any fixed regular payment; spec. (a) a pension; (b) an allowance.’126 Webster’s secularizes this definition by taking the clergy out of the picture, and suggests that it could also be for defraying expenses.127

Black’s supports the American view of stipend partially, calling it ‘a salary or other regular periodic payment’. However, it also mentions the ecclesiastical meaning of ‘a tribute to support the clergy, usu. consisting of payment in money or grain’.128 The Major Law Lexicon also offers the same meaning: ‘a provision made for the support of the clergy; salary; settled pay.’129 Stipend also refers to the monthly allowance paid by Chartered Accountants to articled assistants.130

What does this mean? Stipend has been used after scholarship, implying that its meaning is subsidiary to that of scholarship itself. This would mean that the interpretation provided by MHA is correct. Stipend would thus mean payments made to students, trainees, etc. to meet the cost of their studies or training.

What about stipend paid to clergy in India? Would that be permitted or regulated? As mentioned earlier, payment of salaries, wages and other remuneration is exempt from regulation under FCRA. Therefore, stipend paid to clergy by a foreign source would be exempt under sec. 4(a), if not under sec. 4(g).


**Payment of a like nature**

What is meant by ‘payment of a like nature’? Any payment which is similar in nature to a scholarship would also be exempt from regulation under the Act. This phrase should be interpreted carefully, so as not to extend such payments beyond the meaning of ‘scholarship’ itself.

**Fellowships**

This brings us to the question of fellowships. Would fellowships be exempt from FCRA, or would these be restricted? The Major Law Lexicon tells us that fellowship means a sum of money granted for advanced study or research, and includes the stipend of a fellow of an educational institution. Oxford also supports this meaning, as does Webster’s.

A Legal Glossary issued by the Government defines this as ‘a sum of money granted for advanced study or research; the stipend of a fellow of an educational institution’. The Government of India regularly awards a number of fellowships for research and study.

Scholarships and fellowships are often used interchangeably in practice. However, scholarships are normally granted for studies up to graduation. Fellowships are normally for undertaking advanced study and research projects after graduation, often outside the normal curriculum.

What does this tell us? Would fellowships be exempt from regulation under FCRA? It appears that if a fellowship is granted by a recognised educational institution, primarily for advanced study and research, it might be exempt. However, if the organisation is not a recognised educational institution, it might be difficult to view the fellowship as ‘payment of a like nature’. Therefore, payment of fellowship by donor agencies and NGOs would not be exempt from FCRA.

What happens if the fellowship is really a small program grant to an individual? One critical change is that the FCRA 2010 has been extended to individuals also. Therefore, in such cases, the receiver would need FCRA registration or prior-permission.

**Fellowship or Salary?**

Is it permissible to make regular fellowship payments to journalists, artists, activists, researchers, etc. in the form of salary? The answer depends on the relationship and the nature of activities.

Salary or fee is normally given to persons who deliver services to the organisation in return. Therefore, these are payments against consideration. A payment made to another person, where no service is delivered in return becomes a donative payment.

One must therefore carefully examine the contract and the facts of the case. What is the relationship between the NPO and the person? Is the person really working as an employee? Like a paid researcher? Or a consultant to the NGO? Is the person a professional consultant, working with other organisations also? Does the person pay service tax?

Next comes the question of consideration. Is the NGO getting some services in return? Is the person helping the NGO deliver services to its beneficiaries? Will the researcher deliver a publication in return?
If the answer to some of these questions is 'yes', then the payment would be treated as salary, wages or other remuneration.\textsuperscript{139}

As always, it is advisable to take an interpretation that helps further the purpose of the law, and not defeat it. Camouflaging a fellowship or a program grant as salary or consultancy payment is not a good idea and should be avoided.
6. Donors

You give but little when you give of your possessions. It is when you give of yourself that you truly give.

–Kahlil Gibran, The Prophet (1923)

FCRA 2010 is not aimed at donors in general. It is also not aimed at foreigners as such. It is aimed at restricting the influence of foreign donors. These have been defined as ‘foreign source’.

A long list of such foreign sources is given in the Act. This list covers practically any person or organisation which might be under control of foreigners. Some sources such as the UN, which are under international control, have been exempted. Let us look at this in some detail.

Foreign Source

A foreign source may be primarily foreign, or it may be a secondary foreign source.

Colours of Xenophobia

While Asia often faces accusations of being insular and closed, in fact many other nations also display similar traits. And have done so for hundreds of years.

The US, proud of its melting-pot label, has a Constitution which bans foreign-born persons from the office of the President. President Obama produced his birth certificate after being hounded by some politicians. As did Governor Bobby Jindal – facing similar controversies.

In France, this fear shows up repeatedly, and in strange ways – sometimes in banning the turban, and at other times the *burkha*. Front National, a right wing party accused of being xenophobic, is doing quite well, thanks to Marine Le Pen, a new, charismatic leader. Mr. Richard Millet, a respected editor, has added more fat to the fire by penning *A Literary Eulogy for Anders Breivik*.

Germany, always fearful of turning anti-Semitic again, is finding that multi-culturalism is failing. An anti-immigration book by Mr. Thilo Sarrazin has become a run-away best-seller, forcing mainstream politicians like Chancellor Angela Merkel to acknowledge popular sentiment against foreigners.

UK, one of the most liberal and colourful nations in the West, finds increasing number of takers for the anti-immigration views of BNP.

And Norway, one of the most peaceful countries in world, witnessed a traumatic killing spree last year, apparently motivated by one individual's fear of foreigners.

Probably xenophobia remains the same across the world. Only the colours and languages keep changing.
**A. Primary Foreign Source**

Foreign source is defined in section 2(1)(j). However, the definition is an ‘inclusive’ definition. This means that the list provided in section 2(1)(j) is not complete or exhaustive.

This is a very important feature. Suppose there is a source ‘xyz’ which appears to be foreign, based on common sense. However, it is not listed in section 2(1)(j). How will ‘xyz’ be treated?

It will be treated as a foreign source. Why? Because the definition is not exhaustive. This allows the courts to treat other sources also as foreign.

The sources listed in this section can be classified under five categories, as shown in the chart.

These categories are discussed below:

**1. Individuals**

*Foreigners*

How do you know whether a person is a foreign source or not? This is based on his or her citizenship. Curiously, this apparently leaves out people who do not have citizenship of any state.

The country of stay is not important. This means that a foreigner staying in India, working in India, earning money in India will still remain a foreign source.
However, an Indian citizen working abroad, getting salary from a foreign company will not be a foreign source. On the other hand, if a foreigner acquires Indian citizenship, then he or she will become an Indian source. Similarly, if an Indian becomes a foreign citizen, then he or she will become a foreign source.

**Indians Abroad**

Indians form one of the largest diaspora, next only to the Chinese. More than two crore Indians live abroad - and this number keeps growing every year. Indians living abroad fall mainly in three categories: Non-Resident Indians (NRIs), Persons of Indian Origin (PIO) and Overseas citizens of India (OCI).

**a. Non-resident Indians (NRIs)**

In general, NRIs are not a foreign source. They might be working or settled abroad but are still Indian citizens. One such example is Prof. Amartya Sen, Nobel Laureate, working abroad, but holding an Indian passport.

However, the term NRI is sometimes used very casually. Therefore, it is best to confirm this by asking whether the person has become a foreign citizen. If the answer is ‘no’, then funds given by him / her will be treated as Indian.

**b. Persons of Indian Origin (PIOs)**

Who are persons of Indian origin? One example is Shri V. S. Naipaul, Nobel laureate. His grandfather left India to settle in Trinidad, where his father was born. Shri Naipaul was also born in Trinidad. Later, he became a British citizen.

Shri Naipaul is eligible to apply under the Indian Government’s PIO Card scheme. If he applies and gets this card, then he will get some extra facilities, such as visa-free travel to India. However, he will not get any political rights, such as right to vote in India.

Persons of Indian origin are treated as a foreign source. It does not matter whether they hold the PIO card or not.

**c. Dual Citizenship (OCI)**

In 2004, the Government introduced the concept of Overseas Citizens of India (OCI). This means that Indians who have acquired foreign citizenship can also remain Indian citizens, with limited rights.

Does this make a difference so far as FCRA 2010 is concerned? Surprisingly, the answer is ‘no’.

Section 2(1)(j)(x) says clearly that a citizen of a foreign country is a foreign source. In the case of dual-citizenship, a person will be an Indian citizen but will also be a foreign citizen. Thus, he or she will attract
clause (x) and will be treated as a foreign source!

Continuing with Shri Naipaul’s example, what happens if he is granted OCI status? Nothing. He will still be treated as a foreign source.

2. Government

Government of a foreign country or territory is a foreign source. What is a foreign country or territory? Any region that is not a territory of India is foreign territory. Territories of India are listed in First Schedule and Article 1(3) of the Constitution.

Where a country is going through a civil war, several groups may be fighting to control the nation. When does one of these groups become government of the country? When the Indian Government recognizes it. For example, India did not recognize Taliban as government of Afghanistan during the years it was administering large parts of Afghanistan. However, this distinction is more important for diplomatic relations than for FCRA. So far as FCRA is concerned, both (recognized Government and unrecognized one) will be treated as a foreign source.

Agencies of a foreign government are also treated as a foreign source. This includes bilateral aid agencies, such as DFID, USAID, CIDA, SIDA, etc.

This also includes various ecclesiastical institutions under the authority of the Holy See, of the Church of England, or of any other similar religious institutions appointed under authority of a foreign Government.

3. International Agencies

What is an international agency? The Act does not say anything on this. In common usage, ‘agency’ means an organization providing a public service. In some cases, agency may also mean a special Government Department (e.g. USAID) concerned with a specific field. When such an organization operates on an international scale, it is called an ‘international agency’. International agencies may be bilateral (USAID, DFID, SIDA, etc.) or multilateral.

All international agencies are a foreign source. However, multilateral agencies such as UNO, its specialized agencies, IMF, World Bank are not treated as a foreign source. Apart from these, Government can also exempt other international organizations from the definition. As many as 128 organisations have been notified as non-foreign sources under FCRA, 2010.

Why this ‘discrimination’? Well, the reason appears to be that multilateral agencies such as UN, etc. are not under control of a single nation or group. It is assumed, therefore, that their funds will not be used to subvert Indian institutions.

Work Permits

FCRA 1976 also had a special category of agencies that were exempt from FCRA. Any foreign institutions permitted to work in India by Indian Government were not a foreign source. However, this was available only if the Government had issued a Gazette notification permitting the organisation to work in India.
This clause has been dropped in FCRA 2010. This means that foreign agencies working in India under Government permits will also be treated as a foreign source.

4. Non-profit organisations

Foreign trusts, foundations, societies, clubs and other associations also are foreign sources. These are discussed below in more detail:

a. Trusts

Foreign trusts are a foreign source. What is a foreign trust? The Act does not say this. The Act does not even define a trust. Normally a trust formed or registered abroad would be a foreign trust. A trust mainly financed by foreigners is also a foreign trust. A trust includes an endowment. What about a trust formed in India by a foreigner? Such a trust would be under Indian jurisdiction, and therefore not a foreign trust as such. However, the trust would need FCRA registration or prior-permission to accept the initial corpus from the foreigner who formed it. Secondly, any funds received from foreigners would be treated as foreign contribution. This would also include any interest etc. earned on the initial corpus donated by the foreigner.

b. Foundations

Foundations are also like trusts, though sometimes the term is also applied to other type of organisations. The section talks about two types of foreign foundations:

a. a foreign foundation as such
b. a foreign foundation which is mainly financed by a foreign country

c. Societies, Clubs, etc.

Societies, etc. formed or registered outside India are treated as foreign sources. What if a society was formed by Indians living abroad? The society will still be treated as a foreign source. This reasoning also applies to clubs formed outside India. A club has been usefully defined as ‘a definite association organised for an indefinite period, not an ephemeral meeting for a particular occasion, to be lost in the crowd at its dissolution.’ Examples include groups formed for raising funds for Indian NPOs, often called ‘Friends of …..’. These groups are covered under this clause, even if these are not formally registered as a society. Similarly, all associations of individuals formed or registered outside India are a foreign source.

What about a society or club formed in India by foreigners? The same reasoning would apply as in the case of a trust formed in India by a foreigner (see Trusts above).
d. Corporations

What is a corporation? It has four key features:176

(i) It is an entity recognized by law;
(ii) It has a personality of its own, distinct from the persons who formed it;
(iii) It has only those powers, which its constitution gives it;
(iv) It has perpetual succession.

A corporation is similar to a company, but can be formed under another law or by charter.

Under English law, churches are recognised as ecclesiastical corporations, or corporations created for
furtherance of religion.177 These include both corporations sole178 (bishops, parsons, vicars, etc.) as well
as corporations aggregate179 (deans and chapters). In the USA these are called religious corporations or
religious societies.180

All corporations, whether formed under law, or deemed to be such,181 are treated as foreign sources.182

e. Trade Unions

A trade union formed or operating in a foreign country (or territory) is a foreign source.183 It does not mat-
ter whether it is registered there or not.

What is a trade union?184 Black's Law Dictionary defines this as 'a union composed of workers of the
same or of several allied trades'.185 A wider definition is given in the Trade Unions Act, 1926.186

5. Business Organisations

Six types of business organizations are listed: a) a foreign company, b). subsidiary of a foreign company,
c) registered or main office of a foreign company or its subsidiary, d) a foreign corporation, e) a multi-
national corporation, and f) a company controlled by foreigners.

All six are treated as foreign sources.

a. Foreign Company

What is a foreign company? Any company or association or body of individuals incorporated outside
India is a foreign company.187 It also includes a company covered by section 591 of the Companies Act,
1956.188

b. Subsidiary

Any subsidiary of a foreign company is also treated as a foreign company. It does not matter if the sub-
sidiary itself is an Indian company.189

When does a company become a subsidiary of another?190 This has been defined in sec. 4 of the
Companies Act, 1956 and can be fairly complicated.191 In simple terms, company B can become a sub-
sidiary of company A in at least four ways:
(i) A controls the board of B;
(ii) A controls more than 50% of the voting power (in general meetings) in B;
(iii) A holds more than 50% of the equity shares in B;
(iv) B is a subsidiary of A under the laws of A's home country (the country where A was formed).

There is also the concept of grand-subsidiary, which is like a grand-child. For example, in the above case, if C is a subsidiary of B, then C will also be a subsidiary of A.

c. Registered Office

This is a new clause, introduced in FCRA 2010. Accordingly, ‘the registered office or principal place of business’ of a foreign company or its subsidiary will also be a foreign company.192

‘Registered office’ means the address of the company as recorded with the Registrar of Companies, or a similar officer. What would be the principal place of business for a foreign company? This normally means the place from where the company is controlled or managed, and not where it does most of its business.193

In essence, the Head Office of a foreign company (or its subsidiary) will also be treated as a foreign company. It does not matter whether the Head Office is located within India or outside.

d. Corporation

Corporations can be for-profit or not-for-profit (discussed under Corporations on page 51). For-profit corporations formed or incorporated in a foreign country are foreign source, irrespective of ownership.

e. Foreign MNC

Multi-national Corporations (MNCs) are treated as a foreign source.194 However, the term MNC has a special meaning under FCRA.195

The definition of an MNC under FCRA 2010 has two requirements:
1. The corporation should have been formed in a foreign country.
2. The corporation should have a presence in two or more countries.196

What does this mean? If an Indian corporation starts operating in a foreign country, it will not become an MNC (foreign source) for the purpose of FCRA. However, a foreign MNC will be treated as a foreign source.

f. Company under Foreign Control

The last category is that of ordinary companies. These are treated as a foreign source, if more than 50% of their share capital is held by foreigners.197 Who could be these foreign shareholders?198 The clause lists five types:

i. Foreign Government,
ii. Foreign citizens,
iii. Corporations formed abroad,
iv. A trust, society or association, which has been formed or registered abroad,
v. Foreign company, including a foreign MNC.

This sounds simple and fair enough on paper. However, in practice, some confusion might arise.

Firstly, the Act does not specify a date of reckoning or source document for assessing the share-holding pattern. For instance, it would have been simple enough to say ‘as at the date of last book-closure’ or ‘as per the company’s last annual return’.

This creates a problem, because in many listed companies, the shareholding pattern fluctuates on a daily basis. It is also not necessary that a sale of shares will actually be registered with the company, before the shares are sold again.

Secondly, shareholding pattern in the modern, inter-connected world can be very complex, with multiple layers of holding companies, nominees, and other such clever devices. Many Indian companies cannot therefore really tell you with any certainty as to whether they are owned by foreigners or Indians.

This problem is partly due to the fact that FCRA 2010 has used a legacy definition from FCRA 1976. This definition does not recognise the economic liberalisation which started in the ‘90s. The definition also does not recognize the fact that there are more ways than one to control a company. Most widely-held companies can be easily controlled if you have just about 20-25% shares directly under your control. Then again, you don't really have to hold shares in order to control a company.199

How do we resolve this for practical purposes? If a company is known to be under foreign control, then it should generally be treated as a foreign source.200 In other cases, it would be best to ask the donor company to confirm whether they are under foreign control. A simple questionnaire to help the donor respond is given as Donor Questionnaire on page 324. The donor company’s response should be used as the basis for deciding whether the donation should be treated as foreign contribution.

Alternatively, you can search the internet for ‘shareholding pattern of [xyz company]. This will usually take you to a site showing the SEBI filing of the company. This filing shows foreign shareholding clearly.

What about foreign companies, which have come under Indian control? These will still be treated as a foreign source.

Group Companies

What about a company which is part of a foreign group? For instance, a foreign MNC incorporates a company in India and take up 45% shares. It also supplies all the knowhow, management, etc. The MNC effectively controls the Indian company, though it is not a subsidiary.201 Will this company be treated as a foreign source?

It appears that the company will not be treated as a foreign source, as it is not covered by the definition given in FCRA 2010. Being part of a foreign MNC’s group is not enough to make it a foreign source.

B. Secondary Foreign Source

All the sources mentioned above are clearly foreign or under foreign control. Apart from these, FCRA also uses the concept of secondary sources.
According to this, Indians and Indian organisations take on the character of a foreign source, to the extent that they deal with foreign contribution. Any foreign contribution handled by a secondary source remains foreign, even when it is passed on to another organisation.

This cycle continues endlessly. Even if the foreign contribution passes through hands of ten or more Indian receivers, it will still remain foreign!

**Interest on FCRA Bank Balance**

Using this logic, interest earned on foreign contribution also remains foreign. This was not given clearly in FCRA 1976. A modification of Form FC-3 in 2001 helped clarify the situation somewhat. FCRA 2010 now drives the final nail in the coffin of this controversy. This is in the form of an explanation added to sec. 2(f)(h). Accordingly, any interest earned on money in FCRA bank accounts will be treated as foreign contribution. It would not matter that the bank where the interest is being earned is Indian.

**Other Interest**

A person might argue – what if I had kept FCRA funds in a term deposit in another bank? What happens to the interest received on that? The explanation apparently covers this by adding the phrase ‘interest thereon’. This will clearly be foreign contribution.

**Other Income**

What about non-interest income which arises from foreign contribution? Will this be treated as foreign contribution?

Would it cover, for instance, income earned from sale of milk, if the cows were purchased with foreign contribution? What about the milk of second generation cows?

The phrase ‘any other income derived from the foreign contribution’ is sandwiched by interest on both sides. Therefore, it would appear that the primary intention is to focus on interest and other similar income. On the other hand, it could mean that rent received for a building could be foreign contribution, if the building is purchased with foreign contribution. This is so because the rent is clearly ‘derived from’ the building. The same reasoning could apply to an IGP set up and run mainly with foreign contribution. Dividend received on FCRA shares would also be foreign contribution.

What happens to the problem of milk? If the dairy is being run with foreign contribution, the income from sale of milk would no doubt be foreign contribution. It can also be argued that the milk would
remain foreign contribution, even if the cows were foraging on their own. However, the link becomes more tenuous if we look at second generation cows. You could possibly trace the second generation milk to the foreign contribution, but it may no longer be derived from foreign contribution!

**Pass-through Donations**

In some cases, donors may contribute small amounts to charities of their choice through a giving portal or website. The amounts donated are received into the portal's account, and are then passed on to the charity chosen by the donor. The portal may withhold a small charge for administration. How does this affect the FC status of the donation?

If the donor is a foreign source, the funds will clearly remain foreign contribution. What if the donor is an Indian, and the portal is owned by a foreign charity? Will this donation convert into foreign contribution?

Theoretically speaking, the answer apparently depends on the degree of control exercised by the foreign charity. If the charity is authorised to choose the donee or influence the nature of the programs activities, the donation can be viewed as foreign contribution. However, if the charity has no role, except to pass on the donation to the NGO, then it could be argued that the money would remain non-foreign.

In practice, however, it might be simpler to treat all such donations as foreign contribution.

**Non-foreign sources**

These consist mainly of two categories: Indian sources, and exempt sources.

**Indian Sources**

All Indian citizens are treated as Indian source. It does not matter whether they live in India or abroad. It also does not matter whether the funds are given in Indian currency or foreign currency. As mentioned earlier, OCI and PIO are not included in this category. Secondly, organisations formed and registered abroad are not treated as Indian source, even if these are controlled exclusively by Indian citizens.

**Becoming Indian**

When does foreign contribution become Indian, if at all? When foreign contribution is paid to an Indian during ordinary business, then it loses its foreign character. For instance, profit earned by exporters is not foreign contribution. Similarly, if an NGO pays salary to an Indian employee out of foreign contribution, the money then becomes Indian. The Indian receiver can donate a part of this to another NGO, without having to check FCRA registration.

What if the first NGO directed the employee to make a donation to the second NGO? FCRA will immediately come into play. The money will be treated as foreign contribution in the hands of second NGO. What if the employee donates part of their salary back to the first NGO? The answer will depend on the facts of the matter. If the transaction looks like a genuine voluntary donation, it will not be foreign
contribution. However, if this looks like merely a ploy to convert foreign contribution into Indian, then it will not be permitted. The creative and the adventurous would do well to read section 35 before planning such a transaction.  

**Exempt Sources**

The second category of non-foreign sources consists of multilateral organisations such as the United Nations, its specialised agencies, World Bank, IMF and other notified organisations. A complete list of such organisations is given as *Non-foreign Sources* on page 190.

Funds from these organisations should be treated as Indian funds for purposes of FCRA. These should not be deposited in the FCRA designated bank account or reported to FCRA as foreign contribution.

**‘Prohibited’ Sources**

Are there any sources from which you should not accept funds? The Government has banned a number of organisations under The Unlawful Activities (Prevention) Act, 1967 as terrorist organisations (see *Banned Sources* on page 194). This also includes reference to a long list of Al-Qaeda organisations maintained by the UN Security Council. Funds should not be accepted from these organisations.

Curiously, FCRA 2010 does not empower the Government to prohibit any source. At best, the Government can put it on the list of sources for which prior-permission is required. This is done by notifying their names in the Gazette.

This will mean that you need prior-permission to accept funds from such sources. It would not matter whether you have FCRA registration or not.

**Due Diligence**

The FCRA Department recommends that you conduct due diligence on the donor itself. This means checking whether the donor is associated with any banned organisations or has an unsavoury reputation. Also in some cases, the donor may obtain sensitive information or documents from you. These can be misused to launder illegal funds.

Sometimes, a donor agency may provide funds for program activities which are not permitted under Indian law. It is the receiver’s duty to guide the donor in this regard. Therefore read the terms of the grant carefully. These should not violate any Indian law.
7. Receivers

And you receivers - and you are all receivers - assume no weight of gratitude, lest you lay a yoke upon yourself and upon him who gives.

—Kahlil Gibran, The Prophet (1923)

There are three main categories of receivers under FCRA 2010:

- **Prohibited**
  - Media
  - Judiciary
  - Bureaucracy
  - Politicians
  - Quasi-Political Organisations

- **Regulated**
  - NPOs
  - Charitable Individuals

- **Unrestricted**
  - Businesses
  - Private Individuals

The first category consists of sensitive persons, where no foreign contribution is permitted. The Government has taken what is called a-\textit{priori} position on this. This is broadly in line with what happens across the world - there are at least 40 nations which prohibit any foreign contribution or donation to its politicians.\textsuperscript{217} India seems to be in distinguished company here.

The second category is more controversial. This is where many nations find themselves on the receiving end of foreign aid, in more ways than one!\textsuperscript{218} Some have enacted laws to prevent the influence of foreign donors. These include Bangladesh (1982), Peru (2006), Russia (2006), Uzbekistan (2007) and Venezuela (2010). Others, such as China, Pakistan, Sri Lanka, Indonesia and Ecuador regulate activities of NPOs through indirect legislation.
The third category is residual. Very few modern countries place any restrictions on ordinary citizens and businesses receiving foreign remittances through banking channels. India now joins this group of select few by asking individuals to report foreign contribution from relatives. No reporting, however, is required for business receipts.

Let us now look at each of these categories in more detail.

A. Prohibited

This is the inner circle of Indian democracy, the *Deewan-e-Khas*, where no entry of foreign contribution is permitted. It mainly comprises of key democratic institutions: Legislative, Judiciary and the Executive. Media has also been covered, considering its importance in a democracy.

Exceptions

There are some exemptions, though. Normal commercial transactions, such as payment of remuneration, royalty, subscriptions, advertising charges, etc. are free of all restrictions. Similarly, remittances from relatives are exempt, though people receiving more than one lakh annually should report this to the Government.

Also exempt is receipt of scholarship, stipend, etc. This is a relaxation over the previous FCRA 1976, which barred journalists from accepting such payments.

While above individuals are prohibited, this does not extend to their relatives. This might encourage some people to accept contribution in the name of close relatives. This should be avoided, as it creates a personal risk for the concerned relatives, and is against the spirit of the law.

1. Media

News media, considered the fourth estate of the society, is sometimes accused of being the fifth column instead. This perception makes it a good candidate for being placed under prohibited category, so far as foreign contribution is concerned.

What does media consist of? Broadly, two categories are now covered: Print and Electronic.

a. Print Media

Print media refers to registered newspapers. The term ‘news-
paper’ includes news-magazines also. It is compulsory to register any printed periodical which contains ‘public news or comments on public news’. The prohibition is applicable only for select staff of a registered newspaper. The terms correspondent, columnist etc. indicate a regular relationship with the newspaper and not a casual one, such as a freelance writer or an occasional contributor of articles. Cartoonists have also been prohibited to make sure that the fabled Indian sense of humour is not unduly influenced by other nations!

Who is not covered? Photographers, layout designers, graphic artists, administrative or technical staff, etc. are left out of the prohibition. It also appears that foreign journalists would not be covered by this prohibition, as they do not belong to a newspaper registered in India. Similarly an Indian correspondent of a foreign newspaper will not be covered—unless the newspaper obtains registration in India.

b. Electronic Media

When FCRA 1976 was enacted, electronic media was entirely under State control and was left out of the FCRA. In the early ‘90s the field was opened up to private players as well. However, FCRA 1976 continued to remain focused on print media.

This gap in regulation of foreign contribution has been closed now. FCRA now covers producers and broadcasters of:

- audio news,
- audio visual news, and
- current affairs programs.

This means that organisations engaged in the above are completely barred from accepting foreign contribution. They cannot access foreign contribution for non-news programs either. The broadcast is not restricted just to TV and Radio, but to any electronic mode or form. Broadcasting news through handheld mikes is also prohibited!

However, community radio is not covered under the prohibition, so long as you comply with the licensing guidelines.

The definition of electronic media has been widened and linked to Information Technology Act, 2000. This means that transmission of the above three kinds of programs through internet, podcasts, pen-drives, CDs, etc. is also restricted. Internet news groups could be a victim, if these are sponsored or supported with foreign contribution.

Two important exceptions should be noted. Firstly, the restriction applies to any organisation which is engaged in such production or broadcast. There is a distinction between producing an occasional program, and being engaged in production of such programs. To be engaged means continuous activity of the same nature. This means that there is no restriction on an NGO producing an occasional apolitical documentary.

Secondly, the restriction is on associations and companies engaged in production or broadcasting. This means that individual producers or broadcasters are apparently not covered by the prohibition, and can continue Twittering and blogging even if they get foreign contribution.

A second part of the restriction covers journalists associated with electronic media. This is similar to the print media. However unlike print media, this restriction also covers foreign electronic media persons based in India.
Coverage and Content

The restriction on media is with regard to foreign contribution only. They can accept foreign hospitality without any restriction.

The restrictions on print media are limited to registered newspapers only. This is clearly defined in PRBA 1867, and covers items which fulfil all the three conditions:

1. Are printed
2. Are produced periodically
3. Contain
   - public news
   - comment on public news

Electronic media envisaged in FCRA 2010 also has to satisfy three conditions:
1. It is produced or broadcast by an association or company,
2. Through any electronic mode, and
3. Contains:
   - Audio news
   - Audio visual news
   - Current affairs programs

Clearly the definition of content is wider than for print-media. Apparently the news does not have to be public news. What is news? A dictionary defines news as consisting of:

- information, esp. when published or broadcast, about important or interesting recent events;
- such events themselves as a subject of report or talk;
- newly received or noteworthy information about matters of personal, local, etc., interest.

Reading the section and the Act in its entirety, it would appear that the law is not interested in personal or family news. Rather it covers only those items in which a larger number of people might be interested.

Secondly, current affairs programs are also covered. This phrase appears to be quite tricky, and has not been defined anywhere. Oxford mentions that it covers ‘matters of public interest in progress’.

2. Bureaucrats

Bureaucrats are barred from accepting any foreign contribution. This covers all Government servants, no matter what their level in the hierarchy. It also covers employees of Government corporations or any other organisation that is controlled by the Government. This restriction applies to these individuals in their personal capacity. It does not apply to NGOs where they might be Board members.

The term Government covers both Central as well as State Governments. Does it also cover local self-government bodies such as Panchayats and Municipalities? It would be safe to presume that it does. Therefore, employees of Panchayats and municipalities should also be treated as Government servants for purpose of FCRA.

Bureaucrats should obtain permission for accepting any foreign hospitality outside India. This restriction does not apply when the hospitality is offered within India or is purely casual, such as a dinner invitation.
Payments which are left out of this restriction are the same as for journalists, and include remuneration, business payments, royalty, remittances from relatives, scholarship, etc. However, these payments might be subject to service rules.

Honorary advisers, consultants, auditors, etc. are apparently left out of the above definition, as none of these persons can be treated as employees of the Government. Similarly, social activists appointed to statutory bodies such as Child Welfare Committees etc. are probably not covered by the definition. The same logic applies to autonomous bodies such as Universities. However, it would be advisable for such persons to confirm this with their own administrative supervisors.

3. Judiciary

Sitting judges\(^{240}\) are prohibited from accepting any foreign contribution. This apparently applies to judges of all courts - Supreme Court, High Courts, as well as Subordinate Courts.\(^{241}\)

Such judges should obtain permission for accepting any foreign hospitality outside India.\(^{242}\) This restriction does not apply when the hospitality is offered within India or is purely casual, such as a cup of coffee or a dinner invitation.

Payments which are left out of this restriction are the same as for journalists, and include remuneration, business payments, royalty, remittances from relatives, scholarship, etc. However, acceptance of these payments might be subject to court rules.

4. Politicians

This consists of four categories: election candidates, elected representatives, political parties, and office-bearers of such parties. All four are barred from accepting any foreign contribution. Elected representatives and office bearers of political parties must seek Government permission for accepting foreign hospitality.\(^ {243}\)

Legislature

Which elections / legislature does the law refer to in the previous paragraph? Following bodies are easily recognised as law-making bodies:\(^ {244}\)

- Both Houses of Parliament (Rajya Sabha and Lok Sabha)
- All legislative assemblies / Councils at State level
- Legislative assemblies of Union Territories and of Delhi
- District and Regional Councils in Assam, Meghalaya, Tripura, Mizoram

However, many people might not ordinarily see the following as law makers. Nevertheless, these are also defined as legislature under the Act:

- All municipalities\(^ {245}\)
- All Panchayats\(^ {246}\)

This means that restrictions under FCRA extend to local councillors as well as Panchayat members. Further, in the case of Panchayats, all three levels (village, intermediate, and district) are covered. Nagar
Panchayats are also covered under the definition of municipality.

**Election Candidates**

Anyone who has filed nomination papers for any election to a legislature is an election candidate. As discussed earlier, this would include candidates for municipal and Panchayat elections as well. As FCRA applies both to party candidates as well as independents, identifying nominated candidates can be a bit of a bother.

Election candidates are prohibited from receiving foreign contribution from the moment they are nominated till the time they are declared as defeated. If they are elected, then the prohibition will continue till their term ends. This restriction does not apply to ordinary salary, business payments, gifts from relatives, scholarships, etc. listed in section 4. This only leaves program grants to be considered.

What about foreign contribution received before being nominated? FCRA sets up a flashback window of 180 days for this. Any foreign contribution received within this period needs to be reported after a person is nominated. For more on this, please see Receipt by Election Candidate: FC-9 on page 101.

Unlike other politicians, election candidates do not have to seek permission for accepting foreign hospitality. Presumably, once they have filed their nomination, they will be too busy in campaigning to think of foreign jaunts.

So how does one figure out whether a grantee is an election candidate? Remember that the restriction applies only to the individual - not to the organisation in which the person works or to which he/she belongs. Further, in practice, program grants are rarely made to individuals. Therefore, this is not likely to be a real issue in practice. Nevertheless, if one is planning to make a program grant to an activist or an individual, it would be best to obtain a signed declaration that the person has not filed his/her nomination papers for any impending elections.

**Political Parties**

Two types of political parties are covered by the Act. One is those which are already recognized by the Election Commission and have been notified. As of 28-Dec-11, as many as 1,367 political parties had been notified by the Election Commission under three categories. Over the last decade, new political parties have registered at an average rate of about 50 per year!

The second category is those parties which have not yet been registered, but call themselves political parties. They may or may not have sponsored candidates for elections to the Parliament, State Assemblies, municipalities or a Panchayat.

Acceptance of foreign contribution by all such parties is prohibited. The prohibition also extends to their office-bearers. Remember however, that normal business transactions, remuneration for services, scholarships, etc. are not prohibited for the office-bearers.

**Government**

Can you give funds to Central Government without FCRA permission? Section 51 specifically exempts transactions between Central Government and foreign governments from FCRA. This means that bilateral aid is not covered by FCRA.
What happens if the foreign aid is given to a state Government? State governments are apparently not free to accept aid from foreign governments directly, as foreign affairs are the domain of the Central Government.254

What about giving funds to a *Panchayat* or a Municipality? Would FCRA apply to such payments? It would be best to avoid giving foreign contribution to Panchayats and Municipalities.255 Alternatively, competent legal advice should be obtained before funding them.

What is the position with regard to other organs of the Government, and autonomous bodies? Some of these have been exempted from FCRA 2010. Please see *Government Organisations* on page 77 for more on this.

**Quasi-political Organisations**

Sometimes an organisation may have an indirect political agenda, even though it is not directly engaged in electoral politics. This allows it to provide support to a particular political party or a political ideology. FCRA 2010 prohibits such organisations from accepting any foreign contribution. This is a little more stringent than FCRA 1976, which allowed such organisations to receive foreign contribution on a case-by-case-basis (in theory at least).256

The office-bearers of such an organisation are not prohibited from accepting foreign contribution or foreign hospitality. This does not mean that they can accept foreign contribution on behalf of the organisation, but only in their personal capacity or as ordinary citizens.

Who is to be treated as a quasi-political organisation? This has been a grey area since the original FCRA 1976 came into force. The Act listed four grounds on the basis of which an organisation could be termed as an ‘organisation of a political nature’:257

- The activities of the organisation
- The ideology being spread by the organisation
- The program of the organisation
- Its association with activities of a political party.

**Identifying Quasi-political Organisations**

The same four criteria have been carried forward to the FCRA 2010 as well.258 However, bowing to demands from voluntary sector, the Government has provided additional guidelines for this.259 An organisation can now be notified as a quasi-political organisation, only if it meets any one or more of the criteria laid down in rule 3. This rule sets out three independent tests. An organisation passing any one of these tests can be designated as a quasi-political organisation.

1. **Stated Objectives**
   Do the organisation's memorandum,260 bylaws or other documents contain political objectives? Does it promote political goals or interests of its members?

2. **Actual Activities**
   Does the organisation participate in political activities? Do its activities include steps towards advance-
ment of political interests of its members? Does it habitually engage in common methods of political action (e.g. strikes, blockages, mass arrests)\textsuperscript{261} to support public causes? In some cases, FCRA Department may view activism as political activity.

3. **Associates**

Is it a front or a mass mobilisation organisation for a political party? Examples include Students’ Unions, Workers’ Unions, Youth Forums, and Women’s Wings etc.

**What is Political?**

These tests add some clarity to the issue. However, one important question remains. What does the word ‘political’ mean in a legal sense? Surprisingly, there appears to be no legislative definition of this popular word. It is not defined anywhere in FCRA 2010. It is also not defined in other allied acts to which FCRA 2010 refers or in the Constitution itself.\textsuperscript{262} Turning to dictionaries, we find:

- Black’s Law Dictionary defines political as ‘pertaining to politics; of or relating to the conduct of government’. And what does politics itself mean? This is defined as ‘the science of the organisation and administration of the state’.\textsuperscript{263}

- According to Shorter Oxford Dictionary, politics is:
  
  The art or science of government, dealing with the form, organization, and administration of a state or part of a state, and with the regulation of its relations with other states. Public life and affairs involving the authority and government of a state or part of a state.\textsuperscript{264}

Closer to home, a legal glossary published by the Central Government defines political as pertaining to the policy or the administration of a State or government.\textsuperscript{265}

What are we to make of the above? It would appear that any activities that are directly related to Government policies or administration would probably be called political.

Under FCRA 1976, political was generally interpreted as pertaining to ‘electoral politics’. However, the new interpretation goes well beyond ‘electoral politics’. It could affect a gamut of civil society work ranging from advocacy on public policy, legislation, human rights, displacement issues, civil administration, all the way to implementation of Government schemes.\textsuperscript{266} Work involving rights-based approaches may need to be recalibrated to exclude ‘common methods of political action’.\textsuperscript{267}

Is this a reasonable interpretation? It is difficult to say with certainty. However, if one considers the Preamble to FCRA 2010, the statement of the Government, and the focus of the Act and the rules, it would seem that the Government is keen to ensure that civil society remains apolitical in the widest sense of the word. Especially those sections which have access to foreign funds.

**Restriction on the Organisation**

Does the restriction apply only to use of foreign funds or to the entire organisation? For instance, if an FCRA registered organisation uses Indian funds to support such work? Would that be permissible? Rule 3 talks about the organisation as a whole, and not just about use of FCRA funds. Therefore, an organisation which is registered or wishes to register under FCRA should avoid use of ‘common methods of political action’.
Forms of Organisation

What kinds of organisations are covered by this rule? Apart from formal organisations (societies, associations, Trade Unions, etc.), the rule covers:

- Voluntary Action Groups
- Mass organisations
- Special Interest Organisations, composed of farmers, workers, students, youth
- Other organisations

This listing appears to be wide enough to cover all sorts of alliances and groupings known to modern civil society. The statement ‘steps towards advancement of political interest of such groups’ is particularly expansive, and may affect a number of movements and programs. This means that FCRA registered NPOs might not be able to agitate for simple things such as better Government policies for a particular group of people.

B. Regulated

This is the Deewan-e-Aam of the FCRA, where entry of foreign contribution is permitted, but regulated and monitored. This applies to persons, as defined in FCRA 2010. However, it does not apply to all persons - it applies only to those persons who have a definite program. This boils down to individuals and organisations involved in charitable or social development work.

1. NPOs

In practice this is the most important category, since bulk of the foreign contribution is received and reported by Not-for-Profit Organisations (NPOs). The Act itself does not use this term, and for good reason too. NPOs come in a large variety of forms, with varying objectives.

Form of NPO

The Act identifies two broad categories: Sec. 25 Companies and Associations.

Sec. 25 Companies

These are companies (private or public) formed in the normal course and registered with one of the Registrars of Companies in India. However, there are two important differences: i. These are mainly focused on charitable, social or other publicly useful objects, ii. These do not allow dividends or any benefits to the shareholders / members.

Once a company fulfils the above conditions, they are issued a license under section 25 of the Companies Act, 1956. This allows them to drop the words ‘Ltd.’ or ‘Pvt. Ltd.’ which all other companies are required to add to their name. However, the liability of their members continues to be limited, just like other companies.
Section 25 companies are treated on a par with other NPOs for FCRA 2010.273

**Associations**

‘Association’ has been defined in the widest terms possible in the Act.274 This includes all forms of ‘association of individuals’. It does not matter whether these are registered or not. It does not even matter whether these are incorporated or not. All that matters is that the association has an office in India.

To add clarity, the definition specifically mentions all societies, whether registered or not. Finally, all other organisations are also included, for good measure.

Two points emerge from the above. Firstly, it must be an association of individuals. At first glance, it appears that an association of societies,275 such as a federation, is apparently not covered.276 However, it would safe to assume that federations are also covered, as the second part of the definition extends to all organisations.

Secondly, it must be an association of individuals. When does a body of individuals become an association?277 All the available definitions point to ‘a common purpose’ as the single most important attribute.278 A group of individuals without a common purpose is just people - it is not even a gathering. A secondary attribute is a sense of coming together, of joining with others.279 The third important attribute is a sense of continuity. If people join up one Sunday for a picnic, it cannot be called an association. However, if they join up to go on a picnic regularly, it becomes an association.

Does the above definition include a Trust? If a public charitable trust is formed by an individual, who then appoints one or more Trustees, does it become an association of individuals? Probably not. However, an organisation does emerge from this process. Therefore, it would be best to treat all Trusts as being covered by the second part of the definition.280

What about other artificial juridical persons, such as deities? The Act is silent about these.281

To sum this up, all forms of organisation, whether societies or Trusts, whether registered or not, are covered by FCRA 2010. But all are not prohibited from receiving or using foreign contribution. This depends on their objectives.

**Objectives of the NPO**

Contrary to popular perception, FCRA 2010 does not apply to all charitable programs. In fact, the word charitable does not occur anywhere in the Act or the Rules. Rather, the Act regulates foreign contribution only for particular programs.282

**Coverage**

For an NPO to be covered by sec. II of FCRA, its activities should meet three characteristics: 1. These
should be definite. 2. These should constitute a program. 3. These should have been specified (under FCRA). Only the area where all three overlap, is covered by FCRA.

**Definite**

Anything that is clearly defined is called *definite*. Oxford dictionary defines this as ‘having fixed limits or form; determinate, certain, precise, specific’; In FCRA 2010, definite has been used as an adjective for programs. This means that the programs which a person undertakes should be determinate, certain, precise, specific.

How do you establish this definiteness? In the case of formal organisations, this is usually done by looking at the Trust Deed or the Memorandum of Association. These will clearly state the purpose or the objectives of the organisation.

In the case of non-formal organisations, this can be a tough nut to crack. If the organisation has issued a manifesto or any other public document about its objectives, then this can be treated as a source for establishing definiteness. A project proposal or approval can also be used to assess the definiteness of activities.

**Program**

The second attribute is that the person should be undertaking a program. What is a program? Turning again to Oxford, we find that a program is ‘a plan or outline of (esp. intended) activities’ Oxford also tells us that this word is often colloquially used to mean ‘a planned series of activities or events’ even though this is not the correct meaning of the word.

**Specified**

Finally, the definite program should relate to specified areas of activity. We know already that NPOs with political programs cannot get any foreign contribution at all. Apart from these, FCRA applies to the following programs (mnemonic CREES):

- Cultural
- Religious
- Economic
- Educational
- Social

What does this mean? In principle, it means that FCRA will not apply to a program that is not covered under *any* of the above five categories. For this purpose, it does not matter that an activity has been listed in form FC-6, which is essentially a compilation of what registered NPOs have been reporting to the Department.

**FCRA Categories**
Let us look more closely at each of these categories, which have not been defined legislatively:

i. Cultural

Cultural pertains to culture. But what does culture mean? Keeping aside the sense of growing crops, Oxford tells us that culture could mean any of the following:

- The cultivation or development of the mind, manners, etc.; improvement by education and training.
- Refinement of mind, tastes, and manners; artistic and intellectual development; the artistic and intellectual side of civilization.
- A particular form, stage, or type of intellectual development or civilization in a society; a society or group characterized by its distinctive customs, achievements, products, outlook, etc.
- The distinctive customs, achievements, products, outlook, etc., of a society or group; the way of life of a society or group.285

Thus, any programs connected with arts, intellect, customs, perspective, way of life, etc. would be cultural. Work related to cultural heritage, tribal customs, ethnic studies, popular culture, etc. would also come under this category.

View from FCRA

How does the FCRA Department view cultural activities? According to one publication, following are the examples of activities permitted for cultural organisations:286

- Celebration of national events (Independence/Republic day/festivals).
- Theatre/films/puppet show/road show, etc.
- Maintenance of places of historical and cultural importance.
- Preservation of ancient/tribal art forms.
- Preservation & promotion of cultural heritage & literature of India.
- Cultural shows.
- Any other activities related to the above.

ii. Religious

The word religious pertains to religion.287 And what does religion itself mean? Oxford offers at least three current senses:288

- A state of life bound by religious vows; the condition of belonging to a religious order, esp. in the Roman Catholic Church.
- Belief in or sensing of some superhuman controlling power or powers, entitled to obedience, reverence, and worship, or in a system defining a code of living, esp. as a means to achieve spiritual or material improvement; acceptance of such belief (esp. as represented by an organized Church) as a standard of spiritual and practical life; the expression of this in worship etc.
- A particular system of such belief.

In practice, this means that any programs related to a recognised or emerging religious system would be covered by the definition.

Other belief systems such as secularism, humanism, Marxism, etc. are not covered by the definition.
of religion, even though some of their adherents might seem quite religious in their ideological fervour. The Act is also silent about the emerging category of SBNR - Spiritual But Not Religious.289

**View from FCRA**

How does the FCRA Department view religious activities? According to one publication, following are the examples of activities permitted for religious organisations:290

- Celebrations of religious functions/festivals etc.
- Construction/repair/maintenance of places of worship, religious schools.
- Education of priests and preachers
- Dissemination of the message of goodwill, etc. from the holy books.
- Publication and distribution of religious books/literature.
- Maintenance of priests / preachers / other religious functionaries.
- Any other activities related to the above.

**iii. Economic**

*Economic,* when used as an adjective, means ‘of, pertaining to, or concerned with economics; relating to the wealth of a community or nation’.291

Economics, disparagingly called the ‘dismal science’ once upon the time,292 is now understood as:

- the branch of knowledge that deals with the production and distribution of wealth in theory and practice
- the application of this discipline to a particular sphere
- the condition of a state etc. as regards material prosperity293

What does one make of this? Apparently, any programs designed to enhance production of wealth in general or for a specific community, industry or region would be economic programs. By extension, ideas about distribution or redistribution of wealth would also be covered. However, economic should be distinguished from commercial.

What about an individual’s personal economic program, such as earning a month’s salary? Or that of a company to make profits for its shareholders? These appear to be out of the domain of FCRA.

**View from FCRA**

How does the FCRA Department view economic activities? According to one publication, following are the examples of activities permitted for economic organisations - however, commercial or profit-making activities are not permitted:294

- Micro-finance projects, including setting up banking co-operatives and self-help groups.
- Self-sustaining income generation projects/schemes.
- Agricultural activities.
- Rural development programmes/schemes.
- Animal husbandry projects.
- Setting up and running handicraft centres/cottages and *khadi* industry/social forestry projects.
- Vocational training, tailoring, motor repairs, computers etc.
- Projects for income generation activities or any other developmental projects for urban slum
development.
- Any other activities related to the above, not being commercial activities.

### iv. Educational

A program pertaining to education is known as *educational*. What is education? *Education* refers to:
- The systematic instruction, schooling, or training of children and young people, or, by extension, instruction obtained in adult life
- The whole course of such instruction received by a person.
- Provision of this, as an aspect of public policy.
- The development of mental or physical powers; moulding of (some aspect of ) character.\(^{295}\)

What about diffusion of knowledge, through publication of books, conferences, debates? Strictly speaking, education involves an active element of instruction. Publication of books, maintaining web-sites with various kinds of information, etc. appear to be more like passive activities, which merely make knowledge available to those who seek it.

However, considering the purpose of the Act (especially its concerns with influence of foreign money on social and political discourse), it is better to take a wide view of the term.\(^{296}\)

Therefore, for the purpose of FCRA, education can be taken to mean:
- Systematic education, instruction, schooling or training to the people, whether young or adult;
- Scholastic instruction as well as education necessary for the work of life;
- Promotion of conferences and discussion;
- Public policy related to education.

Is research covered by the definition? Apparently not, as research merely involves a search for knowledge. There is no element of educating others in research itself, though the results may later be used to provide education.\(^{297}\)

Education can be provided as a charitable objective or as part of one's trade. For instance, a school run by a Trust is usually considered charitable. However, training provided by an HRD consultant is not. Are both these restricted under FCRA? No - only the first is restricted. The second is exempt under explanation 3 to sec. 2(1)(h). Going one step further, fees received from foreign students in schools and colleges would also not be restricted.

This helps us develop an important test. Where education or training is imparted as an end in itself, with a charitable purpose, it would fall within the restriction of FCRA. Where education or training is given as part of one's trade or business, it would not be restricted under FCRA.\(^{298}\)

**View from FCRA**

How does the FCRA Department view educational activities? According to one publication, following are the examples of activities permitted for educational organisations.\(^{299}\)
v. Construction and maintenance of schools/colleges.
v. Construction and running of hostels for poor students.
v. Grant of stipends/scholarships/assistances in cash or kind to poor/deserving children.
v. Purchase and supply of educational material-books, notebooks, etc.
v. Conducting adult literacy programs.
v. Conducting Research.
v. Non-formal education/schools for the mentally challenged.
v. Non-formal education projects/coaching classes.
v. Any other activities related to the above.

v. Social

What kind of programs would fall under social category? Much depends on how you interpret ‘social’. Oxford Dictionary offers a large number of meanings. Of these, the following appear to be relevant:

- Of or pertaining to the mutual relationships of human beings or of classes of human beings; connected with the functions and structures necessary to membership of a group or society.
- Concerned with or interested in the constitution of society and the problems and issues presented by this.
- Of an activity etc.: performed to benefit or improve the condition of society.

If you interpret this in a strict sense, then social programs would be restricted to those that pertain to relationships between people. However, if you take a wider interpretation, larger planetary issues such as environment could also be included. Similarly, issues such as animal welfare, encouragement of philanthropy, simple charity or relief could be covered by extending the definition of social programs.

View from FCRA

How does the FCRA Department view social activities? According to one publication, following are the examples of activities permitted for social organisations:

- Construction/running of hospitals/dispensaries/clinics.
- Construction of community halls etc.
- Construction and Management of old age homes.
- Welfare of the old aged persons or widows.
- Construction and management of orphanage.
- Welfare of the orphans.
- Construction and management of dharamshalas/shelters.
- Holding of free medical/health/family welfare/immunisation camps.
- Supply of free medicine, and medical aids, including hearing aids, visual aids, family planning aids, etc.
- Provision of aids such as tricycles, callipers, etc. to the handicapped.
- Treatment/rehabilitation of drug addicts.
- Welfare/empowerment projects/schemes for women.
- Welfare of children.
- Provision of free clothing/food to the poor, needy and destitute.
LAW/ Receivers

- Relief/rehabilitation of victims of natural calamities.
- Help to the victims of riots/other social disturbances.
- Digging of bore wells.
- Sanitation including community toilets etc.
- Awareness camps/ seminars/ workshops/ meetings/ conferences.
- Providing free legal aids/running legal aid centres.
- Holding sports meet.
- Promoting awareness about Acquired Immune Deficiency Syndrome (AIDS)/ Treatment and rehabilitation of persons affected by AIDS.
- Welfare of the physically and mentally challenged.
- Welfare of the Scheduled Castes.
- Welfare of the Scheduled Tribes.
- Welfare of the Backward Classes.
- Environmental programs.
- Survey for socio-economic and other welfare programs.
- Preservation & maintenance of wild life.
- Preservation of natural resources.
- Awareness against social evils.
- Rehabilitation of victims of heinous crimes.
- Rehabilitation of beggars, bootleggers, child labour etc.
- Creating awareness about Government schemes & laws to general public.
- Any other activities related to the above.

Other Areas

Apparently, CREES leaves out large areas of work done by NPOs. For instance, health is not listed. This would mean that most hospitals do not need FCRA. Similarly, sports such as cricket do not appear to be covered, unless you treat them as social (or religious!) activities.

Other common areas of charitable work that do not appear in the list are:
- Philosophical or Scientific
- Spiritual
- Research
- Training

Have these areas of charitable work have been left out purposefully or due to an oversight? Are these already covered by one of the six areas covered by FCRA? It would be best for you to seek independent legal advice before taking any important decisions regarding this.

2. Corporate Foundations

Another emerging category is Corporate Foundations. These are mostly set up by an MNC or a foreign company as an independent trust in India. However, these are mainly used for CSR activities. Their money also comes mainly from the parent company. Such a foundation will need FCRA registration to
receive funds from any foreign source, including the parent company. If these funds are given to other NGOs, they should treat the money as foreign contribution. However, if the Corporate Foundation is set up and funded by an Indian Company or an Indian MNC, then it will be treated as an Indian source.

3. Charitable Individuals

FCRA 2010 has extended the definition of receivers to individuals. When you read this with section 11, it becomes clear that an individual running a program with foreign contribution needs FCRA registration. Why this change?

In some cases, NPOs were reportedly receiving foreign contribution in the Chief Functionary’s personal bank account. The money was then spent directly from there. The changed definition is designed to plug this loophole. At the same time, banks have been alerted to this requirement. A payment from a foreign donor agency may be returned by your bank, unless you show prior-permission or prove that it is a business payment.

Similarly, fellowships awarded to individuals would be covered by this restriction, if there is any program component or activity in the fellowship. In most cases, research grants made to individuals by donor agencies would be covered by this. This was not the case earlier, as individuals were not covered by FCRA 1976.

Once again not all programs are covered by this restriction. It applies only where the program is cultural, religious, economic, educational or social. This aspect has been discussed in more detail under the heading Objectives of the NPO on page 66.

However, in practice this might create difficulties. As mentioned earlier, the program has to be definite. How will this definiteness be established? An individual will not have a written Memorandum of Association from which this could have been proven easily. Probably, the Department will have to collect other evidence to show that the individual has a definite program.

Can an individual get FCRA registration or prior-permission? Possibly yes, in theory. However, in practice, it is likely to be difficult. Firstly, all the forms have been designed keeping an association in mind. Secondly, section 12(4)(a)(vi) calls upon the Government to ensure that the person is ‘not likely to use the foreign contribution for personal gains’. How will this be done? Will an officer in FCRA department be willing to make that judgement and sign his / her approval?

It seems very unlikely.

4. Charitable HUF

The same restriction now applies to HUFs as well. HUFs are traditional joint family structures in India, known as Hindu Undivided Family. The head of the family is known as the Karta (Chief Functionary). The rest of the family members are known as coparceners. HUFs are legally recognised in India, particularly for tax-collection.

FCRA 2010 now brings HUFs also into the net. This means that HUFs are now under the same restriction as any other NPO. If an HUF takes up a definite and specified program (see Objectives of the NPO on page 66), it should get FCRA registration or prior-permission.

Can an HUF get FCRA registration or prior-permission? It is likely to face the same difficulties as a
charitable individual, though an HUF does maintain separate books of accounts.\textsuperscript{309}

5. **Charitable Business**

If a business takes up a definite and specified program (see *Objectives of the NPO* on page 66), it should get FCRA registration or prior-permission.\textsuperscript{310}

C. **Permitted**

This is the residual category which is not prohibited or regulated under FCRA 2010. However, there is no blanket exemption. In some cases, a private individual or a business may also find itself covered by FCRA 2010.

1. **Private Individuals**

   This term is not defined in the Act or the rules. By inference, private individuals are people who are not:
   \begin{itemize}
   \item in Government employment
   \item in the Judicial services,
   \item involved in politics,
   \item employed by print or electronic news media,
   \item running a charitable program.
   \end{itemize}

   In general, private persons are free to receive any foreign contribution for business or personal transactions. They are also free to receive financial assistance as beneficiaries.\textsuperscript{311}

**Remittances from Relatives**

FCRA 2010 places a reporting requirement for money received from foreigner-relatives. This comes into play if the total amount received from a foreigner-relative is more than Rs. 1 lakh in a financial year (April-March). The report must be given in form FC-1, within 30 days.\textsuperscript{312}

Does one have to report this for all relatives? No, this applies only when the remitter has foreign citizenship. In such cases, it applies irrespective of whether the relative is living in India or abroad. It also does not matter whether the amount is in Indian currency, as material or as shares.\textsuperscript{313}

What kinds of transactions are likely to be reported? Indian parents receiving regular support from their children will have to file form FC-1, if the children have taken on foreign citizenship. A parent whose son / daughter has acquired British citizenship, will have to report an emergency remittance for, say, heart surgery. If the child gifts the parents a house in India, that will also require reporting in form FC-1. However, non-donative transactions are not covered by this. For instance, if the house had been sold to the parents instead, it would not have to be reported.

This also applies to Indians settled abroad. If an Indian is settled in USA and marries an American, then probably he/she will have to report the diamond wedding ring as well! Similarly, a naturalised Indian citizen will need to report any major gifts from his/her parents and other relatives.
This also covers foreigners resident in India, who get money from their relatives back home or even in India. It would not apply if the concerned relative is an Indian.

And what does relative mean? The definition\textsuperscript{314} has been linked to the Companies Act, 1956, which provides for 24 different kinds of relatives.\textsuperscript{315} At that, the list is fairly narrow\textsuperscript{316} - it leaves out all kinds of uncles, aunts and cousins, unless they happen to be members of your HUF\textsuperscript{317}

As mentioned earlier, remittances from relatives are permitted for public figures as well. However, they should file form FC-1 in the same manner as private individuals.

2. Businesses

Are business organisations covered under FCRA? FCRA applies to all persons, as defined in sec. 2(l)(m). This specifically includes a sec. 25 company - but not other types of companies. This clearly indicates that business-oriented companies are not the primary target of FCRA.\textsuperscript{318} This view is also supported by the fact that business transactions of NPOs themselves are exempt from regulation.\textsuperscript{319} Nevertheless, some transactions may be restricted under FCRA. See Grants to For-Profits on page 39 for more on this.

CSR

What about corporate philanthropy? Many business groups now run elaborate CSR programs.\textsuperscript{320} Usually, the program is run through a separate foundation. In such a case, the foundation will be treated like any other NPO. However, the situation is less clear if the company decides to run it directly, through a wing or department.

Such a direct effort could take two shapes. First scenario is where the company views this primarily as business expenditure. In such a case, the company would most likely not be covered by sec. 11 of FCRA. In the second scenario, if the philanthropy effort assumes a central place in the Company’s work, then sec. 11 could be attracted. Such a company should approach its lawyers for advice.\textsuperscript{321}

Another peculiar situation is likely to arise out of changes in Income Tax Act.\textsuperscript{322} The definition of ‘charitable purpose’ has been modified. Due to this, some NPOs have set up separate entities for business-like activities. These might be set up as for-profit organisations. They also pay income tax. Would FCRA 2010 apply to such organisations? This remains to be seen.

3. Cooperative Societies

Are cooperative societies covered under FCRA? This is a tricky question.\textsuperscript{323} While sec. 25 companies and societies have been specifically listed in FCRA, cooperative societies have not been mentioned. Nevertheless, the definition of an association is wide enough to bring cooperative societies as well into the net.\textsuperscript{324}

However, in order for FCRA to become applicable, their activities must also be covered by sec. 11.\textsuperscript{325} Whether their activities constitute a definite program or not will depend on the facts of each case.

Let us consider economic activities - which are the primary reason for their existence. In general, a cooperative society must be established to ‘promote the economic interest of its members, in accordance with cooperative principles.’\textsuperscript{326} This mostly means selling products, or providing services to members or
to others on behalf of the members. The profit earned from this activity is distributed among the members. This is very similar to what a for-profit company does. Would this constitute an economic program?

Most likely not. In general FCRA does not apply to commercial activities. Therefore, cooperatives would not attract FCRA so long as they stick to their primary objective as outlined in sec.4 of the Cooperative Societies Act, 1912.

However, if a cooperative takes up other programs which do not directly contribute to its primary, economic objective, then such activities will attract FCRA. Please also see Grants to For-Profits on page 39 for more on this.

4. Producer Companies

By law, a producer company can only carry on activities listed in sec. 581B. Further, there is no bar on their raising funds through donations, grants or other means.

But are producer companies covered under FCRA 2010? Whether they are covered or not, their business receipts will be exempt from FCRA. What happens if you want to make a grant to a producer company?

By one argument, a producer company can be said to be running a definite economic program. It is also an organisation. Therefore, it would need FCRA registration for accepting foreign grants.

On the other hand, producer companies have been around since February 2003. FCRA 2010 was formulated around 2005. It has specifically included sec. 25 companies. However, there is no mention of producer companies. Clearly if the legislature wanted to bring producer companies under FCRA 2010, this could have been done easily.

Business or professional concerns are also not covered by FCRA 2010. As mentioned earlier, the Act even exempts business receipts of NPOs, journalists, etc. This exemption covers all kinds of business enterprises, whether proprietary, partnership, corporate, HUF, or other.

On the whole, it appears that producer companies are out of FCRA ambit, so long as they limit their work to commercial activities. However, if they take up CREES programs, then FCRA registration or prior permission will be required. For more on this, please also see Commercial Receipts on page 38 and Grants to For-Profits on page 39.

5. Liaison Office

International donor agencies sometimes set up liaison offices in India. This matter is regulated under FEMA 1999. Permission to open this office is granted by RBI when you apply in form FNC. The application is forwarded through a bank in India. The liaison office can only undertake specified activities:

i) Representing in India the parent company/group companies.

ii) Promoting export/import from/to India.

iii) Promoting technical/financial collaborations between parent/group companies and companies in India.

iv) Acting as a communication channel between the parent company and Indian companies.

When applied to NPO sector, this means that the Indian office will merely coordinate with grantees and consultants, forward grant applications, etc. It will not take up actual program work, research or con-
ferences, etc. by itself. Strictly speaking, it probably should not take up program monitoring or financial monitoring by itself. Remittances can be accepted only from Head Office. In view of this, no FCRA permission or registration is required for liaison offices.

**Branch Office**

What about branch offices of foreign donors? Do these need FCRA permission? A branch office is an extension of the main agency itself. It can take up program activities, make grants directly, and do most of the things that the parent office can do. Therefore, a branch office would need FCRA registration or prior-permission to accept any foreign contribution, including that from its Head Office.

**6. Government Organisations**

What about Government Organisations? Are these exempt from FCRA? Yes and no.

If an organisation meets the following two conditions, it is totally exempt from FCRA 2010:

1. It is established by a Central or State Act.
2. Its accounts are **compulsorily** required to be audited by the CAG.

Examples of such organisations could be state Tea / Coffee Boards, Municipal Corporations, state Development Authorities, Universities, etc. Other Government organisations might not be exempt, either because they are not established under a Government Act or because their accounts are not compulsorily audited by the CAG. In all cases, it is important to obtain a written confirmation from the organisation that they are exempt from FCRA under the above notification.
8. Foreign Hospitality

‘Take some more tea,’ the March Hare said to Alice, very earnestly.
‘I’ve had nothing yet,’ Alice replied in an offended tone, ‘so I can’t take more.’

—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

Foreign hospitality is an alternative form of foreign contribution. Its definition is similar to foreign contribution. Let us first look at this. There are three key elements in this definition:

1. There must be a deliberate offer.
2. It must be made by a foreign source.
3. It should involve travel to foreign country. Alternatively, it could involve hosting or medical treatment in a foreign country.

Secondly, the restrictions on foreign hospitality apply only to a very select group of persons. These are:

1. Members of any Legislature, including Panchayats
2. Office bearers of political parties
3. Judges
4. Government servants
5. Employees of a corporation or other Government controlled body

This leaves out other persons in sensitive positions, such as election candidates and journalists, who are otherwise prohibited from accepting foreign contribution.

Thirdly, these restrictions apply only when the concerned persons are abroad.

In such a case, they should obtain prior-approval of the Central Government. The application must be made in form FC-2. There is no basic exemption limit for this. See Hospitality: FC-2 on page 105 for more on this.

What happens if a person is abroad and falls ill suddenly? Can the person accept medical assistance from a foreign source? Yes – this is permitted. However, the person should intimate the Government of this within one month of accepting the assistance.
9. Prohibitions and Penalties

As they walked off together, Alice heard the King say in a low voice, to the company generally, ‘You are all pardoned.’ ‘Come, THAT’S a good thing!’ she said to herself, for she had felt quite unhappy at the number of executions the Queen had ordered.

—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

FCRA 2010 contains a large number of prohibitions and penalties. Procedures for prosecution, penalty, compounding, etc. have also been strengthened, as compared to FCRA 1976.

Prohibitions

There are a number of things that are generally or specifically prohibited under FCRA. Some of the key prohibitions are:

1. Giving to Unregistered Persons

Foreign contribution must not be passed on the persons who do not have FCRA registration or permission. It should also not be given to persons under prohibition.\(^3\)

2. Using for Other Purposes

Foreign contribution should not be used for ‘other purposes’.\(^3\) What does this mean? It should be used only for the purpose for which you registered or received prior-permission. For example, if you register under FCRA for educational purposes only, you should not spend foreign contribution on religious activities.

3. Political Activities

Organisations with FCRA registration or prior-permission should not get involved in any political activities. The definition of political activities now extends beyond electoral politics.\(^3\) The prohibition is not just on using foreign contribution for political activities - it is on the entire organisation.

4. News Media

No foreign contribution can be given to media, whether print or electronic. The restrictions do not cover normal business transactions or foreign hospitality.\(^3\) NGOs with FCRA registration should not engage in circulating public news etc. through print or electronic means.
5. Speculative Activities

Activities or investments linked to market forces are treated as speculative. This specifically includes shares and mutual funds. Other activities, such as chits or clever schemes for investing in land or plantations are also speculative. Foreign contribution should not be used for these. However, debt-based secure investments are allowed. So are fixed deposits in banks, etc.

You should maintain an investment register also. It would be best if this register is started from 1st April 2011 itself.

What about FCRA investments made in mutual funds etc. in the past? Should you sell these off immediately? FCRA 2010 is silent on this. Probably the best course would be to sell these at the earliest opportunity, before the end of the financial year.

6. Administrative Expenses

Only upto 50% of foreign contribution can be used for administrative expenses. This limit applies to organisation with FCRA registration as well as to those with prior permission. This percentage is calculated on foreign contribution received during the financial year. The limit applies to all foreign contribution taken together, and not to individual projects. If you are likely to use more than 50% on administration, you should get prior-approval from the Government.

What are administrative expenses? These are defined in the rules.

<table>
<thead>
<tr>
<th>Rule 5</th>
<th>Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person</td>
<td>Remuneration and Travel to Office Bearers</td>
</tr>
<tr>
<td>(ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel</td>
<td>• Remuneration and travel to Managerial Staff</td>
</tr>
<tr>
<td>• Recruitment of Managerial Staff</td>
<td></td>
</tr>
<tr>
<td>(vii) legal and professional charges</td>
<td>Fees to consultants, professionals, auditors, lawyers etc.</td>
</tr>
<tr>
<td>(vi) cost of writing and filing reports</td>
<td></td>
</tr>
<tr>
<td>(iv) cost of accounting for and administering funds</td>
<td>Salaries of Accountant, Cashier etc.</td>
</tr>
<tr>
<td>(v) expenses towards running and maintenance of vehicles</td>
<td>Vehicle fuel and maintenance</td>
</tr>
<tr>
<td>(viii) rent of premises, repairs to premises and expenses on other utilities</td>
<td>Rent and Repairs</td>
</tr>
</tbody>
</table>


### Exceptions

Some expenses have been specifically excluded:  

<table>
<thead>
<tr>
<th>Exception</th>
<th>Applies to</th>
</tr>
</thead>
</table>
| (i) salaries or remuneration of trainers  
(ii) salaries or remuneration of surveyors and analysts | NGO primarily engaged in research and training |
| Direct expenses in providing services, such as:  
(i) salaries of doctors in a hospital  
(ii) salaries of teachers in a school | Welfare oriented organisations |

In addition to the above, following expenses are apparently not included in administrative expenses:  

1. Fund-raising expenses  
2. Purchase of capital items, other than office equipment  
3. Purchase of vehicles, building, etc.  
4. Insurance of assets  
5. Medicines, books, other items for distribution among communities  
6. Advertisement and publicity expenses  
7. Salary of non-managerial staff  
8. Interest paid to bank, bank charges, hospitality expenses, etc.

### Difficulties

Rule 5 talks about ‘personnel for management of activities’ of the organisation. Does this mean managerial staff or does it include program staff as well? Similarly does it include support staff, such as drivers and caretakers? The two provisos at the end also appear to imply that salary for program staff of five categories (trainers, surveyors, analysts, teachers, and doctors) alone is excluded from administrative expenses. This would mean that salary etc. of all other staff should be included in administrative expenses!

Then there is the question of overlap. What happens if the chief functionary is also working in the
organisation as a doctor or a teacher? Clause 5(i) calls for inclusion of his/her salary in administration. The second proviso excludes it.

Similarly, clarity is needed on other expenses such as fuel and maintenance of ambulances, school buses, fees paid to resource persons, etc.

Then again, how do you treat grants to other organisations, when made by an Indian agency with FCRA registration? Should these be treated as program expenditure for the funding agency? Or should these be reduced from the total amount utilised?

Another related question is the limit of 50% itself. If the definition of ‘personnel for management of activities’ is restricted to managerial staff alone, then the limit appears to be too liberal. If it covers program staff as well, then it might be too restrictive.\textsuperscript{370} Also do organisations with prior-permission have to obtain FCRA approval again\textsuperscript{371} for exceeding the limit of 50% on administrative expenditure?

The mechanism for enforcing the rule is also not clear. How will the Government collect and evaluate this information? Form FC-6 does not call for administrative expenses to be reported separately. It is also not clear whether compliance will be assessed yearly or at the time of renewal.

Finally, section 8(l)(b) compares payments with receipts in a financial year for calculating the limit of 50%. Ideally, amount spent on administration should be compared with total foreign contribution utilized in a financial year.

Overall, the law limiting administrative expenses is not drafted very clearly, and may cause much confusion. It might also be difficult for auditors to provide much guidance on this issue.\textsuperscript{372}

**Implications**

What happens if the limit is too low for you? Ideally you should apply for increasing the limit.\textsuperscript{373} You have to provide clear justification for this.

What if you are not able to keep the expenses within 50%?\textsuperscript{374} You are likely to receive a show-cause notice, leading to suspension of FCRA or face difficulties in renewing your FCRA registration.\textsuperscript{375}

**Penalties**

No law works unless it has teeth and can bite. FCRA 2010 has more teeth and they are sharper than FCRA 1976.\textsuperscript{376} However, you need the sanction of the Central government to bring any of the offences to court.\textsuperscript{377} In other words, a private person cannot file a case against anyone under FCRA 2010.

Let us look at what can happen if you fall foul of the law. The offences listed in the Act have been classified into five different categories.

**I. Unlawful acceptance of Foreign Contribution or Hospitality**

The most serious offence under FCRA occurs when foreign contribution reaches persons in prohibited category.\textsuperscript{378} Next in the hierarchy is when a person accepts foreign contribution without permission. In both cases, the person who accepted the foreign contribution as well as those who were involved in the transaction are liable.

Offences of this nature, and the related penalties are tabulated below:
Offence / Event
Foreign contribution is accepted by:
• Politician
• journalist (print or electronic)
• media organisation (print or electronic)
• judge
• Government servant
• employee of public sector or Government controlled company
• political party
• organisation of political nature

Person at risk
• Person who accepts the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter

Penalty / Action
• Seizure / disposal / confiscation of foreign contribution
• Additional fine (up to five times in value) if original foreign contribution has been spent
• Imprisonment up to five years and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event
Foreign contribution is accepted by any person in India (or an Indian citizen outside India) on behalf of prohibited persons

Person at risk
• Person who accepts the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter

Penalty / Action
• Seizure / disposal / confiscation of foreign contribution
• Additional fine (up to five times in value) if original foreign contribution has been spent
• Imprisonment up to five years and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event
Foreign contribution (in form of currency) is delivered by any person in India (or an Indian citizen outside India) to a prohibited person

Person at risk
• Person who delivers the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter

Penalty / Action
• Seizure / disposal / confiscation of foreign contribution
• Additional fine (up to five times in value) if original foreign contribution has been spent
LAW// Prohibitions and Penalties

- Imprisonment up to one year and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

**Offence / Event**
Foreign contribution (currency) received by A for C is delivered by A to different person B

**Person at risk**
- Person who delivered the foreign contribution (A)
- Office bearers in case the person is an organisation
- Person who advised or assisted in the matter

**Penalty / Action**
- Seizure / disposal / confiscation of foreign contribution
- Additional fine (up to five times in value) if original foreign contribution has been spent
- Imprisonment up to five years and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

**Offence / Event**
Foreign contribution (currency) is delivered by the recipient to a person who is likely to deliver it to prohibited or unauthorised persons

**Person at risk**
- Person who received/delivered the foreign contribution
- Office bearers in case the person is an organisation
- Person who advised or assisted in the matter

**Penalty / Action**
- Seizure/disposal/confiscation of foreign contribution
- Additional fine (up to five times in value) if original foreign contribution has been spent
- Imprisonment up to five years and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

**Offence / Event**
Prohibited person accepts gift or presentation as part of an Indian delegation, but without following Central Government rules

**Person at risk**
Person who accepted the gift or presentation

**Penalty / Action**
- Imprisonment up to one year and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

**Offence / Event**
Foreign contribution is accepted by a person (with a specified program) without FCRA registration or prior permission
Person at risk • Person who accepted the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter
Penalty / Action • Prohibition on using or dealing with unspent amount
• Penalty ranging from 2-5% of the amount
• Seizure / disposal / confiscation of foreign contribution
• Additional fine (up to five times in value) if original foreign contribution has been spent
• Imprisonment up to five years and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event Foreign hospitality is accepted by:
• politician
• office bearer of a political party
• judge
• Government servant
• public sector employee without prior-approval or medical emergency
Person at risk Person who accepts foreign hospitality
Penalty / Action • Imprisonment up to one year and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event Person or association (having FCRA registration / permission) transfers foreign contribution to unregistered person without permission
Person at risk • Person who transfers the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter
Penalty / Action • Imprisonment up to one year and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event Person prohibited under sec. 10 delivers foreign contribution to another
Person at risk • Person who delivers the foreign contribution
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter
LAW// Prohibitions and Penalties

Penalty / Action • Imprisonment up to three years and/or fine
• Additional fine up to the value of contribution delivered

Offence / Event Person under FCRA suspension accepts or utilises foreign contribution without prior-approval
Person at risk • Person under suspension
• Office bearers in case the person is an organisation
• Person who advised or assisted in the matter
Penalty / Action • Imprisonment up to five years and/or fine
• Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

II. Misuse of Foreign Contribution

If foreign contribution is not used according to FCRA provisions, or is misused for nefarious activities, the concerned person can lose their FCRA registration. The foreign contribution can be seized and confiscated. The concerned persons might even be fined or imprisoned. In this context, lack of any activity is also punishable - by withdrawal of FCRA registration!

Offence / Event • Lack of reasonable activity for two continuous years or becoming defunct
• Person holding FCRA registration / permission becomes defunct or ceases to exist
Person at risk Registered person / organisation
Penalty / Action • Cancellation of FCRA registration
• Prohibition on grant of registration or permission for three years
• Control of foreign contribution and related assets with Government Authority
• Management of organisation’s activities by Government Authority
• Disposal of all the assets by the Government

Offence / Event Engaging in any disqualifying activities listed in section 12(4)
Person at risk Person who engaged
Penalty / Action Denial of FCRA registration, renewal or prior-permission

Offence / Event Continuation of FCRA registration is against public interest
Person at risk Registered organisation / person
Penalty / Action
- Cancellation of FCRA registration
- Prohibition on grant of registration or permission for three years
- Control of foreign contribution and related assets with Government Authority
- Management of organisation's activities by Government Authority
- Disposal of all the assets by the Government

Offence / Event
Person uses foreign contribution for speculative purposes
Person at risk
- Individual / organisation
- Office bearers in case the person is an organisation
Penalty / Action
- Imprisonment up to one year and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event
Person uses foreign contribution for other purposes
Person at risk
- Individual / organisation
- Office bearers in case the person is an organisation
Penalty / Action
- Imprisonment up to one year and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

Offence / Event
Person uses more than 50% of foreign contribution for administrative expenses without prior approval
Person at risk
- Individual / organisation
- Office bearers in case the person is an organisation
Penalty / Action
- Imprisonment up to one year and/or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

III. Defaults in Documentation / Intimation

Failure to file a report or providing false information to the Government can lead to various kinds of penalties.

Offence / Event
Making incorrect or false statement for FCRA registration or renewal
Person at risk
Registered person / organisation
Penalty / Action
- Cancellation of FCRA registration
LAW// Prohibitions and Penalties

- Prohibition on grant of registration or permission for three years
- Control of foreign contribution and related assets with Government Authority
- Management of organisation's activities by Government Authority
- Disposal of all the assets by the Government

<table>
<thead>
<tr>
<th>Offence / Event</th>
<th>Seeking FCRA registration or prior-permission through fraud, false representation or concealment of material fact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person at risk</td>
<td>Individual/ organisation</td>
</tr>
<tr>
<td>Penalty / Action</td>
<td>Imprisonment upto six months and/ or fine</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offence / Event</th>
<th>Person fails to intimate receipt of foreign hospitality though required under sec. 9(e)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person at risk</td>
<td>Person who received hospitality</td>
</tr>
<tr>
<td>Penalty / Action</td>
<td>Imprisonment up to one year and/ or fine</td>
</tr>
<tr>
<td></td>
<td>Five-year prohibition on acceptance of foreign contribution in case of repeat conviction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offence / Event</th>
<th>Person fails to intimate receipt, source and utilisation of foreign contribution though required under sec. 9(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person at risk</td>
<td>Individual/ organisation</td>
</tr>
<tr>
<td>Penalty / Action</td>
<td>Imprisonment up to one year and/ or fine</td>
</tr>
<tr>
<td></td>
<td>Five-year prohibition on acceptance of foreign contribution in case of repeat conviction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offence / Event</th>
<th>Person gives false intimation about foreign contribution under sec. 9(c) or in the annual FCRA return (sec.18)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person at risk</td>
<td>Individual/ organisation</td>
</tr>
<tr>
<td>Penalty / Action</td>
<td>Imprisonment up to six months and/ or fine</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Offence / Event</th>
<th>Person holding FCRA registration / permission does not file FC-6 etc. or files it incorrectly</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
Person at risk: Individual/ organisation
Penalty / Action:
- Audit of accounts by Government officer
- Cancellation of FCRA registration

Offence / Event: Person registered under FCRA fails to apply for renewal in time
Person at risk: Person registered under FCRA
Penalty / Action: Lapse of FCRA registration

Offence / Event: Required accounts and records are not maintained properly
Person at risk:
- Individual / organisation
- Office bearers in case the person is an organisation
Penalty / Action:
- Cancellation of FCRA registration
- Imprisonment up to one year and/ or fine
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

IV. Non-compliance with FCRA provisions

There are a number of regulatory provisions, such as deposit of funds in designated bank account, maintenance of records in a particular manner, etc. Failure to comply with these can also lead to a show-cause notice, and penalty.

Offence / Event:
- Foreign contribution is not deposited in designated FCRA bank account
- Non-FCRA funds are deposited in designated FCRA bank account
Person at risk:
- Individual / Organisation
- Office bearers in case the person is an organisation
Penalty / Action:
- Imprisonment up to one year and/ or fine
- Cancellation of FCRA registration
- Five-year prohibition on acceptance of foreign contribution in case of repeat conviction

V. Miscellaneous Offences

Action or penalties are also prescribed for other offences or lapses that may occur:

Offence / Event: Violating any provision of FCRA
Person at risk: Person with FCRA registration or prior-permission
Penalty / Action: Freezing of FC utilisation or further receipts without prior-permission
LAW/// Prohibitions and Penalties

Offence / Event
• Violating any provision of FCR Act, rules or any order
• Violating any terms and conditions of registration certificate

Person at risk
Registered person / organisation

Penalty / Action
• Cancellation of FCRA registration
• Prohibition on grant of registration or permission for three years
• Control of foreign contribution and related assets with Government Authority
• Management of organisation’s activities by Government Authority
• Disposal of all the assets by the Government

Offence / Event
Contravention or likely contravention of FCRA provisions

Person at risk
• Individual
• Organisation

Penalty / Action
Inspection of accounts and records, with or without notice

Offence / Event
Actual contravention of FCRA provisions

Person at risk
• Individual
• Organisation

Penalty / Action
• Seizure of accounts and records
• Seizure / disposal / confiscation of available foreign contribution

Offence / Event
Violating any provision of FCR Act or rules

Person at risk
• Individual
• Organisation

Penalty / Action
Non-renewal of FCRA registration

**Government Powers**

The new FCRA allows the Government to do a lot more than just collecting fines. If the Government receives information that foreign contribution is being misused, it can take more drastic action.

**Inspection, Search & Seizure**

If the Government suspects that an organisation or person is violating FCRA, it can initiate an inspection. This can be done by a Gazetted Officer (Group A). Alternatively, the Government can authorise any other officer or organisation to conduct the inspection.
During the inspection, if it appears that the person has indeed violated FCRA, then the related records or assets etc. can be seized. This seizure is an administrative action. Records can be kept by the Government for up to six months only, if no case is filed.\textsuperscript{515}

If other assets (currency, shares, material etc.) are seized, then the list of seized items must be certified by a Magistrate.\textsuperscript{516} The seizure is then reported to a Sessions Court\textsuperscript{517} so that it can adjudicated.

**Confiscation**

A seizure of assets is only an administrative action. The seized property cannot be retained by the Government unless a Judge reviews the seizure. The Judge should conclude that the seizure is justified. He/she can then pass an order for confiscation of the property. This allows the Government to retain or deal with the assets.\textsuperscript{518} Alternatively, the Judge can release the property back to the owner or rightful claimant.\textsuperscript{519} This can be done after the concerned person has been given an opportunity to present their side.\textsuperscript{520}

Adjudication can be done by the local Sessions Court, without any limit on the value of the property. Some cases can be dealt by an Assistant Sessions Judge also - the limits on value of property for this will be notified by the Government.\textsuperscript{521}

The confiscation order issued by an Assistant Sessions Judge can be appealed against. This appeal must be filed within one month of receipt of order.\textsuperscript{522} The appeal can be filed in the local Sessions Court. However, if the confiscation was ordered by the Sessions Court itself, then the appeal must be filed in the High Court.

**Suspension**

The next step is suspension of FCRA registration. Suspension is an interim step if the Government is not sure about cancelling the FCRA registration.\textsuperscript{523} A written order is needed for suspending FCRA registration. The suspension can be for up to 180 days (about 6 months). No show-cause notice is necessary for suspending FCRA registration.\textsuperscript{524}

During the suspension, the NGO / person cannot receive any foreign contribution.\textsuperscript{525} If any foreign contribution is to be accepted, then prior-approval from the Central Government is needed. For this the NGO / person has to make an application.\textsuperscript{526}

Similarly, the unspent foreign contribution with the NGO / person is frozen. It cannot be used without prior approval of the Government. This approval can be given only for up to 25% of the unspent foreign contribution.\textsuperscript{527} The balance 75% must remain unspent till the suspension is in force.

**Cancellation**

Cancellation can occur after suspension, if the Government’s doubts are confirmed. It can also happen
directly after an inquiry or an inspection. However, a show cause notice must be issued to the NPO before cancellation. The NPO will then offer reasons as to why the registration should not be cancelled. If the NPO does not respond to the notice within the time given in notice, then the registration can be cancelled without hearing the NPO. If the registration is cancelled, the foreign contribution and assets of the NPO will be managed by the Central Government.

Once an NPO’s registration is cancelled, it cannot get FCRA registration for three years. It cannot even get prior-permission during this period.

**Grounds for Cancellation**

There can be a number of reasons for cancelling an NPO’s FCRA registration:

1. The NPO made a false statement or incorrect statement in its application for registration or renewal. This also applies if the false / incorrect statement is made during the processing of registration or renewal.
2. The NPO has violated any conditions given in the registration letter or the renewal letter.
3. Cancellation of the NPO’s registration is in public interest.
4. The NPO has violated FCRA law, rules or an order.
5. The NPO remains inactive for two continuous years.
6. The NPO has become defunct.

**Custody and Management**

What happens to the foreign contribution and assets of the organisation during suspension? These remain with the organisation. However, restrictions are placed on the use. See Suspension on page 91 for more on this.

What happens if the registration is cancelled? The assets and contribution can no longer be managed by the organisation itself. The ownership and possession will be transferred to the Central Government. The premises may be locked up and assets remain idle. Alternatively, the Government might decide that these should be used for public benefit. In such a case, the foreign contribution can be utilised for public benefit. This will be done by the prescribed authority. The Government can also sell off some of the assets, if required for managing the activities.

In some cases, the FCRA registration of the organisation may be restored later on. If this happens, then all the funds and assets in custody of the authority will also be returned.

**Defunct Organisations**

Sometimes an NPO is wound up under law. This happens either under the registering law or under Court supervision. In such cases, usually, the net assets are transferred to another organisation with similar objectives. What if the registering law is silent on this? In such case, the Government can issue directions regarding FC assets. The assets will then be disposed off by the prescribed authority.

The above will also apply if the organisation has stopped functioning or has become defunct.
**Funds in FCRA Bank**

What happens to the money lying in designated bank account? The balance in the designated FCRA account will remain in custody of the concerned bank for the time being. \(^{544}\) The Central Government might eventually ask the Bank to transfer the funds to the prescribed authority or allow the authority to utilise these. The rules are not clear about the bank's responsibility for secondary FCRA bank accounts. \(^{545}\)

FCRA inquiries usually take time to conclude. Sometimes, an organisation might use this time to clear out the FCRA bank account. The funds could be transferred to a trusted person. In such a case, the above rule will apply to this person as well. \(^{546}\)

Will this extend to the funds transferred to sub-grantees as well? This is not clear from the rules.

**Relief**

The Government can also provide relief in some cases. These include:

1. Allowing a higher proportion of administrative expenditure \(^{547}\)
2. Revision of its orders \(^{548}\)
3. Compounding of offences, by paying extra fee \(^{549}\)
4. Condoning late filing of application for renewal \(^{550}\)

**Compounding**

FCRA 2010 has introduced a provision for compounding of offences. \(^{551}\) This allows the Government to enter into a compromise with the offender. He can simply pay a compounding fee, instead of facing court proceedings, and possibly a fine and imprisonment. \(^{552}\)

In theory, all the offences under the Act are eligible for compounding. \(^{553}\) However, only notified offences can be compounded in practice. Following offences have been notified for compounding so far: \(^{554}\)

<table>
<thead>
<tr>
<th>Nature of offence</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accepting a cheque or draft for foreign contribution without registration or prior permission (^{555})</td>
<td>Rs. 10,000 or 2% of the foreign contribution involved, whichever is higher.</td>
</tr>
<tr>
<td>Depositing a cheque or draft for foreign contribution without registration or prior permission (^{556})</td>
<td>Rs. 25,000 or 3%, whichever is higher.</td>
</tr>
<tr>
<td>Accepting and using foreign contribution for specified purpose without FCRA registration or prior-permission (^{557})</td>
<td>Rs. 1,000,000 or 5%, whichever is higher.</td>
</tr>
<tr>
<td>Accepting foreign contribution in kind without registration or prior permission (^{558})</td>
<td>Rs. 10,000 or 2%, whichever is higher.</td>
</tr>
</tbody>
</table>

If a similar offence is repeated by a person within three years, it cannot be compounded again. \(^{559}\)
Secondly, compounding is feasible only before prosecution is started.\textsuperscript{560} If a complaint has been filed in the court, then compounding is no longer an option.

What happens if the money is transferred electronically into a person's account, without their consent?\textsuperscript{561} This probably does not constitute an offence - till the time the person starts using the money.

If the offence is for not filing a document or filing it incorrectly? In such a case, the person may also be asked to file the missing document etc. before the offence is compounded.

\textit{Procedure for compounding}

Make an application on plain paper for this.\textsuperscript{562} The application should be addressed to the Secretary, Ministry of Home Affairs.\textsuperscript{563} The application will be decided by the Director or Deputy Secretary.\textsuperscript{564}

An application fee of Rs.1000 is to be paid for this.\textsuperscript{565} This is in addition to the penalty that may be levied if the Government agrees to compound the offence.\textsuperscript{566}

\textit{Revision}

FCRA 2010 also introduces revision of orders. These are meant to correct obvious errors. A revision can be made by the Government on its own. This can be done only within one year of date of the order.\textsuperscript{567}

A revision can also be made if the concerned person applies for a revision.\textsuperscript{568} In this case, the time limit is one year from the time when the order was received.\textsuperscript{569} However, the Government can allow a delayed application also. This can be done if the applicant could not make the application due to unavoidable reasons.

Application for revision should be made to Secretary, Ministry of Home Affairs, Government of India, New Delhi. No form has been prescribed for this - it can be made on plain paper or your letterhead. A banker's cheque or Demand draft for Rs.1,000 should be sent along with this.\textsuperscript{570}

A revision can only be made if no appeal has been filed in a court. Further, the time for an appeal should have expired. Alternatively, the person should have waived off the right to appeal.\textsuperscript{571}

\textit{Appeal}

An appeal against confiscation can be made within one month (see \textit{Confiscation} on page 91 for more on this). The appeal should be made by the NGO / person whose assets have been confiscated.

Appeals against other orders must be made within sixty days of receipt of order. These appeals are to be made in the High Court.\textsuperscript{572}

Who can appeal and what kind of orders are appealable?\textsuperscript{573}

- An organisation declared to be an organisation of political nature\textsuperscript{574}
- A person denied permission to accept foreign hospitality
- A person or association denied prior-permission or FCRA registration\textsuperscript{575}
- A person whose FCRA registration certificate has been cancelled\textsuperscript{576}

All the above appeals will be governed by Code of Civil Procedure, 1908.\textsuperscript{577} This contains various procedures and rules related to the appeals. It also allows the Court to condone delay in filing of appeal, if there are sufficient reasons for the delay.\textsuperscript{578}
III. PRACTICE

‘You may call it nonsense if you like,’ she said, ‘but I’ve heard nonsense, compared with which that would be as sensible as a dictionary!’

—Lewis Carroll, Through the Looking Glass (1871)
10. Formalities

‘I'm afraid I can't put it more clearly,’ Alice replied very politely, ‘for I can't understand it myself to begin with; and being so many different sizes in a day is very confusing.’

—Lewis Carroll, Alice's Adventures in Wonderland (1865)

FCRA 2010 is more ‘formal’ than FCRA 1976 was. It calls for various kinds of formalities. These range from a simple intimation about a receipt or a change, all the way to submission of annual returns. Most of the formalities are for recipient NPOs, though some involve banks and individuals as well. In this chapter we take a quick look at these. A chart showing an overview is given under The Formality Tree on page 98. Details are discussed in subsequent chapters.

Intimations

The rules introduce several new intimations. These are to be filed for informing the Government of a transaction or change.

• Form FC-1 is for informing the Government about receiving large gifts from relatives. This applies to all individuals and HUFs. The cut-off is Rs. one lakh in one financial year. This should be filed within thirty days of receipt. For more on this, please see Remittances from Relatives on page 74. The form is given on page 285. Method of filling and filing the form is explained under Gift from Relative: FC-1 on page 100.

• Persons holding public office have to inform the Government of any foreign hospitality in the form of emergency medical aid. Intimation is not required if the value of the assistance was one lakh or less. Give this information on plain paper within one month of receipt. For more on this, please see Emergency Hospitalisation on page 100. A sample letter is given on page 318. This does not apply to candidates for election, journalists, etc.

• Candidates for election, including Panchayat elections, should file FC-9. This must be done within 45 days of nomination. Details of foreign contribution received within the preceding 180 days are to be given in this form. For more on this, please see Receipt by Election Candidate: FC-9 on page 101. The form is given on page 309.

• Persons holding prior-permission or FCRA registration can open and operate secondary FCRA bank accounts. However, they should send an intimation to FCRA Department for each bank account on plain paper. This should be done within 15 days of opening the account. For more on this, please see Opening a Secondary Bank Account on page 101. A sample letter is given on page 314.

• An NPO registered under FCRA or holding prior-permission must inform the Ministry of any changes in its name, address, registration, nature, aims, objects etc. This must be done within 30 days of the change. For more on this, please see Change in Name / Address of the Organisation on page 102. The format recommended by FCRA Department is given as Intimation - Change of Name or Address on page 315.

• Banks are required to report two kinds of transactions to the Government. The first is where a remittance has been received by someone without FCRA registration or permission. The second is where a person receives more than one crore rupees in a period of thirty days. These intimations should be sent
within 30 days. For more on this, please see *Reporting by Banks* on page 103. Sample letters are given on pages 319 and 320.

**Permissions**

Intimations involve sending information after something has happened. Permissions should be taken before doing something. FCR Rules call for following permissions:

- Persons who want to accept foreign contribution regularly should apply in form FC-3 for registration. For more on this, please see *Registration: FC-3* on page 109. The form is given on page 288. Method of filling and filing the form is explained on page 209. This form must be filled online.

- Persons who cannot get FCRA registration should apply for prior-permission in form FC-4. For more on this, please see *Prior-Permission: FC-4* on page 105. The form is given on page 292. Method of filling and filing the form is explained on page 160. This form must be filled online.

- The FCRA registration is now valid only for five years. Apply well before time (6 or 12 months) for a renewal in form FC-5. For more on this, please see *Renewal: FC-5* on page 110. The form is given on page 297. Method of filling and filing the form is explained on page 167.

- In case of second or subsequent receipt, the transferor can apply for prior-permission in place of recipient. The form for this kind of a proxy-permission is FC-10. For more on this, please see *Proxy Permission: FC-10* on page 108. The form is given on page 310. Method of filling and filing the form is explained on page 188.

- If 50% or more of the original office-bearers change, apply for revalidation. For more on this, please see *Change of Office-bearers* on page 112. The form is given on page 297. Method of filling and filing the form is explained on pages 167 and 111. You cannot accept any fresh foreign contribution till the revalidation is complete.

- If you have to accept some foreign contribution in the meanwhile, apply for interim prior-permission in form FC-4. For more on this, please see *Prior-Permission: FC-4* on page 105. The form is given on page 292. Method of filling and filing the form is explained on pages 160.

- If you want to change the FCRA designated bank account, apply in given proforma. For more on this, please see *Change of Designated FCRA Bank Account* on page 113. The proforma is given on page 312.

- Persons holding public office should apply in form FC-2 before accepting foreign hospitality. There is no lower cut-off, though a dinner invitation or a lift is exempt. This must be done at least 14 days in advance. For more on this, please see *Hospitality: FC-2* on page 105. The form is given on page 286. Guidance on filling the form is given under *Filling up FC-2* on page 105. The form is now filled online.

**Annual Returns**

Organisations which are registered under FCRA or have prior-permission should file three returns each year. All three have to be filed, even if no contribution is received or used during the year.

- Form FC-6 is an annual report on how much foreign contribution has been received and used during the financial year. This includes contribution in money as well as in kind. This is to be filed by 31st December each year. For more on this, please see *Cash or Kind: FC-6* on page 116. The form is given on page 384. Method of filling the form is explained on page 169. This form is filled online.
PRACTICE// Formalities

• In addition to this, form FC-7 is to be filed for each financial year. This should give details of foreign contribution in kind. This also must be filed by 31st December each year. For more on this, please see Articles Register: FC-7 on page 117. The form is given on page 305. Method of filling the form is explained on page 180.
• Finally, form FC-8 is to be filed for each financial year. This should give details of foreign contribution in the form of shares etc. This also must be filed by 31st December each year. For more on this, please see Securities Register: FC-8 on page 118. The form is given on page 307. Method of filling the form is explained on page 184.

Records

FCR Rules call for exclusive accounts and records for foreign contribution:
• Separate set of accounts should be kept. These should be exclusively for foreign contribution. For more on this, please see Account Books on page 122.
• A separate set of records also should be kept. These should be exclusively for foreign contribution. For more on this, please see Records on page 124.
• An investment register has to be kept for any investments made with foreign contribution. This is distinct from the return in form FC-8. For more on this, please see Investment Register on page 125.

Publication

In general, most NPOs prefer to keep their accounts to themselves. However, some organisations have started publishing accounts regularly, in print or on web-sites. FCR Rules now call for organisations receiving foreign contribution in excess of one crore to publish summary data annually. For more on this, please see Publication of Accounts on page 128.

Appeals, etc.

Finally, the rules provide for:
• Revision of certain orders passed by the Government. For more on this, please see Revision on page 94.
• Appeal against confiscation of assets. This should be filed in the High Court within one month of receiving the confiscation order. For more on this, please see Confiscation on page 91.
• Appeal against certain other Government decisions. This should be filed in the High Court within 60 days of date of order. For more on this, please see Appeal on page 94.

The Formality Tree

As mentioned earlier, many formalities now grow on the FCRA tree, even though the number of forms has increased only by two. In all cases, a paper application needs to be filed. This is applicable, even where the form is otherwise filed electronically. The following chart gives an overview of the FCRA formalities.
11. Intimations

‘...Trojans, don’t trust this horse. Whatever it is, I’m afraid of Greeks even those bearing gifts.’

—Virgil, The Aeneid

A. Gift from Relative: FC-1

The law relating to this has already been discussed under the heading Remittances from Relatives on page 74. Briefly, this form needs to be filed by all Indians, whether in India or abroad, whenever they receive a remittance / gift exceeding Rs.1 lakh from a foreigner who is related to them. Foreigners living in India should file this form if they receive a remittance / gift from a non-Indian relative.

Form FC-1 is to be filed within thirty days of receipt of the contribution. The cut-off limit is Rs. 1 lakh per annum. If you have received exactly Rs. 1 lakh, you don’t have to file this intimation. If you have received a total of Rs. 90,000 in March’12 and another 80,000 in April’12, you still don’t need to file the return.

What if you received Rs.80,000 in April’12, and another Rs.30,000 on 25th December ’12? Clearly, you should file form FC-1. The question is when should this be filed? The clock starts when the total remittance crosses Rs.1 lakh. You should therefore file the form by 24th January 2013.

Let us now suppose that you receive another Rs.50,000 on 1st March 2013? File the form again by 31st March 2013.

Filling the form is relatively simple. Apart from basic information, item 5 asks for your Permanent Account Number (PAN). Total amount of foreign contribution received till date should be mentioned against item 6. Item 7 asks for details of the remittances – these should be listed separately for each remittance.

Item 8 is related to the relative, who sent you this remittance. If possible, get his / her tax registration number and provide this here, along with the country where he/she is residing.

Give the name and other details of the relative under item 9. The current nationality and passport details (passport number, name on passport, place issued, date of expiry) also needs to be given.

The form should be signed and then sent by registered post to the Ministry of Home Affairs. Keep a Xerox copy for your record, along with proof of despatch.

B. Emergency Hospitalisation

Provisions related to foreign hospitality have been discussed under Foreign Hospitality on page 78. If a section 6 person accepts emergency medical assistance while abroad, they should inform the Central Government. This must be done within one month of the event. This is required only if the value of the assistance was more than Rs. one lakh.

How should this intimation be given? It can be on plain paper, and include the following information:

1. Source of foreign hospitality
2. Approximate value in INR
3. Purpose / reason for providing the hospitality
4. Manner in which it was utilised.

The letter should be signed and then sent by registered post to the Ministry of Home Affairs. Keep a Xerox copy for your record, along with proof of despatch.

C. Receipt by Election Candidate: FC-9

Requirements related to election candidates have been discussed under *Election Candidates* on page 62. Briefly, election candidates cannot accept any foreign contribution from the moment they are nominated. If they had received any contribution before being nominated, then this has to be reported in form FC-9. The time window for the period of receipt is 180 days prior to being nominated.

Filling the form is not very difficult:

- Items 1-5 ask for personal particulars of the individual.
- Item 6 asks for details of the nomination. Legislature covers all legislative bodies ranging from the Parliament to the Panchayat.
- Items 7-10 ask for details about the contribution itself.
- Items 11-12 ask for details of the donor / giver, and the nature of your relationship (relative, donor, friend, etc.).
- Item 13 asks for information on how the contribution was utilised.
- Finally, any other significant information worth disclosing should be given under item 14.

The form has to be signed by the election candidate in presence of a Group A Gazetted officer or a Class I Magistrate, who will countersign the form.

Form FC-9 should be filed within 45 days of being nominated. It should be sent by registered post. Keep a Xerox copy for your record, along with proof of despatch.

What happens if a person received a remittance from a foreign relative in August 2011, filed form FC-1, and is then nominated for elections in October '11? This is not very clear from the rules. Therefore, in such a case, it would be best if the person filed form FC-9 again.

D. Opening a Secondary Bank Account

All FCRA funds must be first received in a designated bank account. This account is noted on the FCRA registration certificate or prior-permission. Can these funds be transferred to other bank accounts afterwards?

Under FCRA 1976, opening secondary bank accounts for utilising the funds in other locations was difficult. Specific permission was required in each case. This has been relaxed now. NPOs can open multiple secondary bank accounts for utilising the foreign contribution. This facility is available to organisations with prior-permission as well.

Conditions

However, these accounts must be reserved exclusively for foreign contribution to prevent mixing of funds. No domestic funds must be deposited in this account. Secondly, these funds should always be
first received through the designated FCRA bank account. This means any fresh receipts of foreign contribution must be first deposited in the designated FCRA bank account. These should not be deposited directly in the secondary bank account. A mistake in this can lead to cancellation of registration. Going further, even transfers between secondary bank accounts are not permitted by FCRA Department.

Is there a way to ensure that FCRA funds are not deposited directly in a secondary account by mistake? This can be done by using a modified resolution for the secondary bank account, which directs the bank to permits credits only if these come from the designated FCRA bank account. This will also prevent inter-account transfers between secondary bank accounts.

**Intimation**

No permission is required for opening a secondary bank account. There is no restriction on number of accounts or locations. However, you must send an intimation to FCRA Department each time such an account is opened or closed. This should be done within 15 days of opening the account.

This intimation can be on the organisation's letterhead. No form has been specified (see Intimation - Secondary Bank Account on page 403 for a suggested format). The intimation should be sent by registered post. The proof of posting should be kept along with a copy of the letter.

**E. Changes**

Whether an organisation is registered under FCRA or is under prior-permission, some changes should be intimated to the FCRA Department. This should be done within 30 days of the change. The intimation can be sent on your letterhead, by registered post. If you have an official document to prove the change, this should also be attached. What kinds of changes are covered by this?

1. **Change in Name / Address of the Organisation**

If the organisation's formal, registered name is changed for any reason, this should be intimated. Usually, the concerned registrar will issue a fresh certificate of registration or modify the original, with attestation. A self-attested copy of this should be enclosed with the intimation.

If the organisation moves to a new address, the new address should be intimated to FCRA Department. If this is not done, FCRA letters / notices may not be delivered to you. After informing FCRA Department, visit MHA's FCRA web-site (http://www.mha.nic.in/fcraweb/fc8_statewise.aspx). Check your address to make sure that your address has been updated. It is not necessary to enclose proof of this change, unless one is easily available.

How are these changes to be intimated? FCRA Department has provided a form for this (Intimation - Change of Name or Address on page 315).

**Documents to be enclosed**

1. Copy of FCRA registration certification / prior-permission
2. Attested copy of Society registration certificate showing new name (if applicable)
3. Copy of Board resolution for change of name / address

2. Change in Registration

What kind of changes can occur in an organisation's registration? An organisation can change its form. In some cases, a society may receive a new registration certificate due to bifurcation of the state in which it is registered. These changes should be intimated to the Department, along with the new / modified registration certificate.

3. Change in Nature

FCRA classifies organisations into five categories: cultural, religious, economic, educational or social. Some organisations may also have multiple classifications, as their activities fall in several categories. This is known as the nature of an association. Is this classification important? Strictly speaking, an organisation registered with FCRA Department only as 'social' cannot take up other work with FCRA funds. For instance, it cannot take up micro-credit or religious work with foreign contribution. This will be permitted only if it adds these categories to its FCRA classification.

If there is any change in the nature of the organisation as above, this should be intimated to the Department.

4. Change in Aims and Objects

Finally, any modification in the aims and objects clause of the organisation should be intimated. These changes are normally done after meetings, resolutions, etc. and have to be recorded with the registering authority. The intimation should be sent as soon as it is effective. A copy of the changed memorandum or addendum to Trust Deed etc. should be sent along with the letter.

F. Reporting by Banks

The role of banks in regulating foreign contribution has been enhanced. Under section 17(2), banks are required to report certain remittances to the Government. There are two kinds of remittances which have to be reported:

1. Where a person receives foreign contribution, without FCRA registration or prior-permission.
2. Where a person receives foreign contribution of Rs.1 crore or more within 30 days.

In both cases, the report is to be sent within 30 days. In order to comply with these requirements, most banks will have to modify the software they use, and the information that they collect from their customers.

As noted above, there are two different reports:

1. Receipt without Permission

This report is required only for people who are otherwise required to obtain FCRA registration or prior-
permission under sec. II.\textsuperscript{612} Therefore, this report is only needed for NGOs and persons with a charitable program (see \textit{Regulated} on page 65 for more).\textsuperscript{613}

Banks are expected to monitor direct receipts from foreign sources, as well as from secondary foreign sources.\textsuperscript{614} This may be quite difficult in practice, as banks will have to check all credits into NGO accounts, not just foreign remittances.\textsuperscript{615} Therefore, banks are likely to do this only on a best effort basis.

No form has been prescribed for this. A suggested format for the report is given as \textit{Bank Report – Receipt without Permission} on page 319.

\textbf{2. Large Receipts}

This report is required for all persons who receive foreign contribution. It does not matter whether a person is registered under FCRA or has prior-permission. It also does not matter whether the person is under regulated, prohibited or permitted category.\textsuperscript{616} The only condition is that total receipts of foreign contribution (in a calendar month)\textsuperscript{617} should be more than one crore.\textsuperscript{618}

What is the purpose of this? The idea is to strengthen the monitoring mechanism of the FCRA Department. This will also allow them to keep tabs on any large remittances to bureaucrats, politicians, etc. that go unreported. They might also visit an NGO quickly and figure out whether the funds might be misused.

No form has been prescribed for this. A suggested format for the report is given as \textit{Bank Report – Large Receipts} on page 320.

What happens if an organisation received Rs.1.5 crore in one remittance, but without permission? Should the bank send both the reports? As the rules stand now, probably yes.
12. Permissions

'Let the jury consider their verdict,' the King said, for about the twentieth time that day.
'No, no!' said the Queen. 'Sentence first - verdict afterwards.'
'Stuff and nonsense!' said Alice loudly. 'The idea of having the sentence first!'

—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

A. Hospitality: FC-2

Restrictions on foreign hospitality have been discussed under Foreign Hospitality on page 78. If a person is required to obtain prior-approval for foreign hospitality, then the application is to be made in form FC-2 (see Form FC-2 on page 286). This application can be filled online (http://www.mha.nic.in/ fcra.htm). The online application should be printed, signed and sent to FCRA Department. It should reach the Department at least two weeks before the date of departure. You also need to enclose:
1. Invitation letter from the host
2. Administrative clearance from the concerned Ministry or Department

Filling up FC-2

Items 1-6 seek information about the applicant. Item 7 asks for status with reference to section 6. Of these, sub-items (a) to (e) are related to section 6. In addition, the Government has the power to extend this to other persons. Choose (f) if you fall in this category.

Items 8-10 ask for particulars of your itinerary. Item 11 seeks details of the host. Get this information beforehand, including particulars of important office bearers of the host. This becomes more complicated if the sponsor and the host are in two different countries. Repeat the information under item 11 for both the host as well as the sponsor. Under item 14, specify how you are connected with the host / sponsor. This could be as a delegate, speaker, committee member, honorary adviser, observer, etc.

Item 13 covers specific details of the hospitality that you expect to avail. Give an estimate of the value of the hospitality under item 15.

B. Prior-Permission: FC-4

NPOs can accept foreign contribution only if they are registered or have prior-permission. Registration is usually granted only to NPOS with a satisfactory track record of at least three years. If this condition is not fulfilled, NPOs should obtain permission for each grant or donation. This applies to individuals with a charitable program also.

The permission is valid only for the specified purpose, and from one or more named sources.
there is any change in the purpose, the NPO must get the permission revalidated. Similarly, if the donor
for the project changes midway, the permission lapses, and has to be revalidated. This involves applying
again in form FC-4. In each case, a commitment letter from the donor should be enclosed with the application.

The permission is given only for a specified amount, though the amount can be received in multiple instalments. There is no lower or upper limit on the amount for which permission can be sought or granted. There have been cases where permission amounts run into several crores. However, applications for large amounts face more scrutiny.

**Grounds for Denial**

What are the grounds for denial of prior-permission? These have been listed in section 12(4). Permission (or registration) can be denied if the applicant is fictitious or *benami*. Permission can also be denied, if a person has a bad track record, such as a court case for religious conversion or creating communal tension or disharmony.

Permission might be denied if an individual has been convicted under any law. This restriction also kicks in if there is a pending case against the individual. The nature of the conviction or the offense has not been specified. The Act also implies that once a person has been convicted, the prohibition will continue lifelong.

What if the applicant is an association or a society? In such cases, the provision applies to directors and office-bearers, who should all have a clean record. And who are office-bearers? Does the term cover only designated persons like President, Treasurer, etc. or does it also include plain members of the Executive Committee? Once again the term has not been defined anywhere. However, it appears that for FCRA 2010, all members of the Executive Committee (or Governing Council) are covered by the term. In the case of Trusts, all trustees would be covered.

Similarly, permission can be denied if a person has been found guilty of diverting or misusing any funds. Unlike religious conversion or communal disharmony, in this case, the person should actually have been convicted. Mere filing of a case or complaint will not disqualify the applicant. Another clause allows the Government to deny permission if the money might be diverted for personal gain, or for undesirable purposes. The phrase ‘undesirable purposes’ is not defined legislatively. Considering the context, it would probably mean use for socially deplorable activities such as gambling, drinking, immoral activities, etc.

Permission may not be granted if a person might encourage sedition or violence to achieve its objectives. According to Edward Jenks, sedition is ‘perhaps the vaguest of all offences known to the Criminal Law’. The Supreme Court has provided a clearer definition. This definition is wide enough to cover any activity which might create discontent or contempt for the administration.

Similarly, permission can be denied if the person has contravened any provision of FCRA 2010 or has been prohibited from accepting foreign contribution.

Apart from the above, permission can also be denied on grounds of negative impact on national security, law and order, etc. This covers the following:

1. Sovereignty and integrity of India
2. Public interest
3. Freedom or fairness of elections to any legislature, including *Panchayats* and municipalities
4. Friendly relations with a foreign State
5. Social harmony
6. Incitement of an offence
7. Life or physical safety of any person
8. Security, strategic, scientific or economic interests of the State

Items 6 to 8 are new additions in the present Act. Of these, item 8 appears to have been inspired by a similar provision in the RTI Act. Under this, prejudicial effect on ‘the security, strategic, scientific or economic interests of the State’ can be a ground for denial of information sought.

Some of the above grounds for denial are difficult to prove and may lead to litigation, as has happened in the past. They are nevertheless within the legitimate domain of governance, being primarily related to law and order. However, FCRA 2010 steps onto more slippery ground, when it empowers the Government to assess ‘reasonableness’ of the program activities of NPOs. This is required before an NPO is granted prior-permission or registration.

Copy of Order

If permission is denied by the Government, it has to record the reasons for the denial in its order. A copy of the order is also to be given to the applicant. This provision did not exist in the old FCRA 1976. However, in view of a string of adverse court judgments, the FCRA Department had already started giving reasons for denial. The new provision makes this more formal.

What kind of reasons might one expect in the order? The order is unlikely to describe the process or the reasoning which was followed by the Government in passing the order. However, the grounds for denial, as discussed above are likely to be given in the order. Where the information is sensitive, it can be withheld by the Government.

Time Limit

How much time would be taken in processing an application for prior-permission? FCRA 2010 says that the permission would ordinarily be given within 90 days. However, this is a statement of intention, and it is not binding on the Government to take a decision within 90 days. If the Government is not able to process the application within this period, it can simply tell the applicant that it will take more time (as much as 6-8 months).

Further, the confusing provision about deemed prior-permission has now gone. Therefore, the applicant should wait for the permission to be actually granted or denied. They can also track the status of their application on the internet at http://www.mha.nic.in/fcra.htm.

When does the 90 day period start? From the date of filing the application online? Or from the date the printed copy reaches the Ministry with the fees? It would be safe to presume that the clock will start ticking only when the fee reaches the Ministry.

Old Permission – FCRA 1976

What about those who had received prior-permission under FCRA 1976? Will these remain valid? If an
NPO had a valid, unutilised prior-permission on 1-May-2011, then this will remain valid under the new Act also.\textsuperscript{656} They will have to apply for a new permission / registration when the entire amount has been received.

**Proxy Permission: FC-10**

In general, the receiver of foreign contribution should have prior-permission or FCRA registration. This is sometimes difficult for smaller NGOs who want to collaborate in, say, a network program. FCRA 2010 introduces a new facility for such cases. This is available if the donor / transferor is already registered under FCRA in India.\textsuperscript{657} In such cases, the FCRA registered nodal agency can apply for prior-permission on behalf of the recipient. For this, the transferor should apply in form FC-10. Upto 10\% of the total contribution received during the year can be transferred in this manner.

**The 10\% Limit**

Does the 10\% limit apply for each source or for the total contribution received during the year? Apparently, the limit applies to 10\% of the total received from all the sources taken together.\textsuperscript{658} A related question is whether this limit applies individually to each transferee, or to all of them taken together? Once again, it appears that the limit applies to all transferees taken together. For example, you cannot transfer 10\% each to five different transferees. But you can transfer 2\% each to five different transferees. At this point you will exhaust your limit under rule 24(1).

Then again, does the 10\% limit apply to all secondary transfers or only to ones where proxy-permission is taken? Clearly, it applies only to cases where proxy-permission is taken under rule 24(2). Transfers to NGOs with FCRA registration / permission will not be counted for this limit.

**Secondary Transfers**

The transferor should make sure that the receiver’s FCRA registration is current and valid.\textsuperscript{659} Donor agencies should also take the following precautions:

1. Consider obtaining a written letter from each FCRA partner (whenever you make a disbursement) in the following format:\textsuperscript{660}

   “This is to certify that our organization/institution has a valid registration #................ / prior permission under the Foreign Contribution Regulation Act 2010 (FCRA). We also confirm that we have not been barred from receiving foreign contribution or put on the list for prior-permission by the Ministry of Home Affairs, Government of India. Further, there is no undisposed show-cause notice issued by FCRA Department to us.

   The banking information provided to you is same as the one authorized by the FCRA Department in their approval letter. Our office operates from the same premises as mentioned in the FCRA registration notification.

   We undertake to utilize the foreign contribution received from you strictly according to provisions of FCRA and Foreign Contribution (Regulation) Rules, 2011. We also undertake to reflect the receipt and utilisation of these funds in form FC-6.’

   [In case the address mentioned in the FCRA does not match the current address, a change of
address notification sent to FCRA Department to be attached, with proof of posting.]
2. Transfer the funds directly to the FCRA designated account. Or, if you are sending a cheque or draft, add the payee's FCRA account number to the cheque.661
3. Consider setting up an internal process for one of your officers to visit the FCRA web-site and confirm that the NGO's FCRA number is listed as current on the web-site.662
4. Make sure all the secondary transfers made to other NGOs are reported in your FC-6.663

C. Registration: FC-3

As mentioned earlier, NPOs can accept foreign contribution only if they are registered or have prior-permission.664 Registration is usually granted only to NPOs with a satisfactory track record of at least three years.665

Track Record

How is the track record judged?666 The criteria are now formally listed in sec. 12(4). The applicant should not be fictitious or benami.667 This means that the organisation should have a functional office or address, and should be known in the neighbourhood by its name. The person should not have a bad track record, such as a court case for religious conversion668 or creating communal tension or disharmony.669

If the applicant is an individual, he / she should not have been convicted under any law. This restriction also kicks in if there is a pending case against the individual.670 The nature of the conviction or the offense has not been specified.671 The Act also implies that once a person has been convicted, the prohibition will continue lifelong.672

What if the applicant is an association or a society? In such cases, the provision applies to directors and office-bearers, who should all have a clean record.673

The person should not have been found guilty of diverting or misusing any funds.674 The Government should also be convinced that the money will not be diverted for personal gain, or for undesirable purposes.675

Registration would not be granted if a person might encourage sedition or violence to achieve its objectives.676 The definition of sedition is wide enough to cover a number of activities which might create discontent or contempt for the administration.677

The person should not have violated any provision of FCRA 2010 or been prohibited from accepting foreign contribution.678

Granting of registration should also not have a negative effect on:
1. Sovereignty and integrity of India
2. Public interest
3. Freedom or fairness of elections to any legislature, including Panchayats and municipalities
4. Friendly relations with a foreign State679
5. Social harmony
6. Incitement of an offence
7. Life or physical safety of any person
8. Security, strategic, scientific or economic interests of the State

Finally, the Government also has to assess the ‘reasonableness’ of the program activities of NPOs. This is required before an NPO is granted prior-permission or registration. This is usually done by reviewing the financial statements for last three years to see how much funds it has received and spent on programs. The SIB officers also make enquiries in the field area regarding this, in addition to a visit to the office of the NGO itself.

Whether registration is granted or denied, a letter will be sent to the applicant. See Copy of Order on page 107 for more on this. Theoretically, this order can be passed within 90 days, though often it takes more time (6-8 months). See Time Limit on page 107 for more on this.

Cooling-off Period

FCRA 2010 also introduces a cooling-off period. Once you have submitted an application for registration, you cannot submit another application for registration for at least six months. What does this mean? Let’s say that you have applied online for registration on 1st July 2011. This is rejected on 15th October 2011. Can you apply again on, say 30th October’11? No, you are not eligible to reapply for FCRA registration till 31-Dec-11.

However, there is no restriction on applying for prior-permission for a project. Also see Repeat Application on page 166 for more on this.

D. Renewal: FC-5

FCRA Registration is now valid only for five years from date of registration. The date on your registration letter should be taken as your date of registration. This means you should apply for renewal every five years. The application should be made in form FC-5, along with a fee of Rs.500. The renewal process will ordinarily take about 3 months or longer. However, you should apply at least six months in advance of the scheduled expiry, as shown below:

<table>
<thead>
<tr>
<th>Initial Registration</th>
<th>File FC-5 by</th>
<th>Processing Time</th>
<th>Scheduled Expiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Jan-2012</td>
<td>30-Jun-2016</td>
<td>3-6 months</td>
<td>31-Dec-2016</td>
</tr>
</tbody>
</table>

If you are running multi-year projects, the Department recommends that you apply one year in advance. In the above case, you should apply for renewal by 31-Dec-2015.

Should you apply only on the dates mentioned above, or can you apply a little in advance? The dates given above are last dates. Send your application a little before time, so that it reaches the Department before the deadline.

Eventually, the Department also intends to accept renewal applications online. The procedure for this has not been notified yet, but is likely to be similar to FC-3 and FC-4.
Rejection

Normally, the process of renewal is automatic and assured once the application is made in time. The Government can refuse renewal only where an NPO has violated any provision of FCRA law or rules. This might be something common, such as non-filing of returns, or it might be more serious, such as shadow-lending.\(^{691}\)

Delays in Processing

The Department is expected to renew the certificate within ninety days of filing the application. However, if there is a delay, the Government is to write to the NPO, giving reasons for delay.\(^{692}\)

Suppose you applied well in time, but the processing was held up at FCRA Department beyond six months. In such a case, your FCRA registration will still remain valid for the time being.\(^{693}\)

However, make sure that your application has actually been filed and accepted by the Department. Also make sure that your application has not been rejected.\(^{694}\)

Delayed Application

What happens if you forget to apply in time? Your application can be accepted upto four months after expiry.\(^{695}\)

<table>
<thead>
<tr>
<th>Initial Registration</th>
<th>File FC-5 by</th>
<th>Scheduled Expiry</th>
<th>Delayed Filing Upto</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Jan-2012</td>
<td>Forgot!</td>
<td>31-Dec-2016</td>
<td>30-Apr-2017</td>
</tr>
</tbody>
</table>

However, you will have to give reasons as to why you did not file the application in time. The Government also has the option of rejecting your reasons, if these do not seem to be good enough.

Does this mean that the FCRA registration will remain valid even after 31-Dec-16? No, the registration will lapse. The NPO cannot accept any fresh foreign contribution after 31-Dec-2016.

However, the NPO can still apply for renewal till 30-Apr-2017. After this grace period of four months is over, the NPO will have to make a fresh application for registration using FC-3.

Old Registration - FCRA 1976

What about those who had registered under FCRA 1976? When do they apply for renewal? All NPOs which had valid FCRA registration as on 1-May-2011 have had their registration renewed automatically for five years.\(^{696}\) Their present registration will now last till 30-April-2016. They have to apply for renewal latest by 31-October-2015.

If any of these NPOs are implementing multi-year projects, they should apply earlier. Their cut-off date is 30-April-2015.\(^{697}\)

If you forgot to apply for renewal in time, you can file a delayed application within four months of expiry. See Delayed Application above.
E. Change of Office-bearers

A new provision had been introduced in FCRA 1976 by amending form FC-8 in Dec’96. This meant that an applicant had to commit to obtaining permission for change of office-bearers. This was required if the number of original office bearers698 dropped to 50% or less, due to election, resignation, etc. This was designed to prevent ‘transfer’ of NGOs from one group to another, without a revalidation of their FCRA status.

This provision has been expanded further in two ways:699
1. It now covers all members of the Governing Council, and not just those with a formal office.700
2. Persons with prior permissions are also now covered by this clause.

The enlarged coverage of all Governing Council members is probably beneficial. It will allow NGOs to rotate the key offices among Governing Body members. It will not be necessary to approach FCRA for permission in such cases. It will also mean that the number threshold is now higher.701

The requirement plays out differently for an FCRA registered organisation and one with only prior-permission.

—FCRA Registered Organisation

An FCRA registered organisation needs to obtain prior-approval for changing 50% or more of its Governing Council members. This means the change should not be effected till the new members are approved by FCRA Department.

Secondly, while the FCRA Department is processing this approval, the FCRA registration is effectively suspended. The NGO will have to seek prior-permission before accepting any more foreign contribution. However, the NGO can continue spending the foreign contribution it has already received.

—Prior-permission Organisation

Such NGOs do not need prior permission for changing the office bearers. However, they must inform the FCRA Department within 30 days of passing the resolution for replacement. This is necessary only if 50% or more of the Governing Council members are changed. The baseline for comparison is the set of office bearers listed in Form FC-4.

Secondly, they must not accept any more contribution till the approval for change is received. They can continue spending whatever they have already received.

Expansion of Board

The undertaking talks about replacement of office bearers. What if the NGO merely adds new Trustees without removing the original Trustees? For instance, an NGO listed seven Trustees in its FC-4 at the time of FCRA registration in 2010. In 2011, it added four new Trustees, taking the total to 11 Trustees. Does this violate the FCRA restriction? Probably not.

Moving ahead, in 2012, three out of the original seven Trustees resign. The NGO now has 4 original Trustees and another 4 who were appointed after FCRA registration. Does this violate the FCRA restriction?
Probably yes. The NGO should now apply for revalidation of its FCRA registration or prior permission.

**F. Change of Designated FCRA Bank Account**

All FCRA funds are to be received through one particular bank account. This is called the designated FCRA bank account. The bank account number is also mentioned in your FCRA registration letter or prior-permission letter.

Sometimes, the bank allots you a new account number due to computerization, etc. This is not considered a change of bank account. However, you can inform the Ministry through a simple letter about the change.702

What if you want to change the bank account?703 You may be just shifting the bank account from one branch to another. Or you may want to change the bank itself. You need FCRA Department's permission for this.704 Also, there should be good and justifiable reasons for changing the bank account.705

1. **Select the bank**

You should choose the new branch or bank carefully.706 Otherwise your problems may continue.

*Using an existing bank account*

In some cases, you may not have to open a new bank account. You can use an already existing bank account. You may have been using this account for Indian funds or for some other purpose.

If you decide to use an existing bank account, you can just transfer the surplus funds to another account. Leave the minimum balance in the account.

After that, you can go straight to step 3.

2. **Open a bank account**

To open a bank account, you will have to pass a Governing Body resolution first. Normally your bank will give you a format for the resolution. You should pass the resolution accordingly. Alternatively you could use the following format:

Resolved that a current / savings bank account be opened with .......... ..... (name of bank), ................. (location) in the name of the Society.

Further resolved that the said bank be and is hereby authorized to honour all Cheques, Bills of Exchange, promissory notes drawn, accepted and all negotiable instruments whatsoever made and signed on behalf of the Society / Trust by Ms./ Sh..................... (name), ............... (designation), jointly with Ms./ Sh. ............... (name), ............... (designation), of the Society / Trust.

3. **Designating the account for FCRA**

You now have to reserve the account for FCRA purposes. This is done by passing a resolution. The resolution could be worded along the following lines:
Resolved that Foreign Contribution bank operations be transferred to ............... (Account Number/ Bank/Place), and Foreign Contribution bank operations ............... at ................. (existing Account Number/ Bank/ place) be terminated, subject to the necessary prior approval from Ministry of Home Affairs under Foreign Contribution Regulation Act, 2010.
Also resolved that Sh./Ms. ................. Chief functionary, be and is hereby authorized to sign all necessary papers, applications, and other documents as also to take such other actions as may be required to implement this resolution.
In some cases, you may be shifting the bank account to a new location altogether, which is several hundred kilometres from your main office. In such a case, add the following words to the above resolution:
Resolved that an administrative office of ................. (Organisation) be opened at ................. (proposed place), for facilitating program implementation.

4. Filling the application

The Ministry procedure calls for filling an application form for change in the designated Bank Account.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Postal Address</td>
<td>Please give the postal address of the functional / administrative of office. If giving the address of the registered office, make sure that someone will be there to receive letters, etc.</td>
</tr>
<tr>
<td>2: FCRA registration details</td>
<td>Fill the registration/ prior permission no. and date.</td>
</tr>
<tr>
<td>4: Executive Committee/ Governing Body details</td>
<td>Give details of all the members of the Governing Body or Board of Trustees. In case of a company, give details of Board of Directors.</td>
</tr>
<tr>
<td>5: Last three FC-3 returns</td>
<td>Give the year and the date of filing last three returns in old form FC-3 or new form FC-6.</td>
</tr>
<tr>
<td>6: Whether the organization /association is functioning as editor, owner, printer or publisher:</td>
<td>Every newsletter for general circulation, containing public news is a 'newspaper'. See Item 7: Newspapers and Newsletters on page 162 for more on this.</td>
</tr>
<tr>
<td>7: Close links with another NPO</td>
<td>This clause is meant to prevent NPOs from getting FCRA registration through another NPO.</td>
</tr>
<tr>
<td>8: Bank Address</td>
<td>Mention the name and address of the existing as well as the new bank (branch) where the FCRA money will be received.</td>
</tr>
<tr>
<td>8: Bank account number</td>
<td>Mention the existing as well as the proposed FCRA bank account number.</td>
</tr>
</tbody>
</table>
| 9: Reasons for change           | Justification of the proposed change.707}
The format of the application is given on page 312.

The form is fairly easy to fill up. Some of the more complex clauses are discussed below:

5. File your application

Now you are ready to file your application. Just make sure that you are enclosing all the documents listed here. Send the application by registered post to the Ministry's office. There is no filing fee for this application.

Documents to be attached to the form

1. A copy of the initial FCRA registration certificate / prior-permission letter
2. Certified True Copy of Governing Body/ Council resolution for transferring FCRA bank account (Step 3 above)
3. Letter from the new bank where account is opened confirming details of bank account opened exclusively for foreign contribution.

6. Processing

The application will be processed in about 1-3 months. In the meanwhile, continue to use the old bank account for all FCRA transactions. There is no time-limit on processing. The Ministry will inform you of their decision through a new copy of the registration certificate. This will show details of the new bank account. A copy will go to the bank also.

Normally, the permission is granted easily, if the reasons are genuine. However, in some cases, the permission may be refused. In such a case, you cannot use the new account for FCRA purposes. You should either close it down or use it for some other banking purposes.
13. Annual Returns

‘Now, if you only kept on good terms with [Time], he’d do almost anything you liked with the clock. For instance, suppose it were nine o’clock in the morning, just time to begin lessons: you’d only have to whisper a hint to Time, and round goes the clock in a twinkling! Half-past one, time for dinner!’

—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

There are three annual returns which have to be filed: FC-6, FC-7, and FC-8. These have to be filed by every person or organisation registered under FCRA. It appears that all three returns are to be filed whether or not you receive any foreign contribution during the year.

These are also to be filed by those who have received prior-permission. In this case, the return is to be filed if the organisation:

1. has received any foreign contribution during the year, or
2. has a current prior-permission, or
3. has unutilised foreign contribution left over from earlier years.

A. Cash or Kind: FC-6

Form FC-6 is the primary annual report of foreign contribution. It is to be filed for each financial year, beginning with 1st April, and ending 31st March. The last date for filing is nine months from year-end i.e. 31st December.

If you are registered under FCRA, the return should be filed each year, whether or not you receive any foreign contribution. If you had taken only prior-permission, please file the return (FC-6) till you use up all the foreign contribution.

The return can be filed online. After this, a printed copy is sent along with the required documents. Alternatively, you can send it directly by registered post. Online filing of FC-6 is not compulsory.

FC-3 or FC-6?

For 2010-11, this return was to be filed in the old form FC-3 itself. The new form became applicable from financial year 2011-12. Procedure for filing the two forms is the same.

Filling the Return Online

You need an internet connection and Internet Explorer to file the return.

1. Start by visiting the FCRA web-site, currently at http://www.mha.nic.in/fcra.htm. There is a separate link titled ‘FCRA Online Services’. Clicking on this opens a window with five choices. The first option takes you to a login screen.

2. If you have already registered as a user, please login using your login id and password. If not, create
a new user first. Choose ‘FCRA Annual Returns’ while logging in.
3. Open the link titled ‘Instructions for filing’ and read these carefully.
4. Follow the instructions to fill up the form. Save each part as you move through the return. You can come back later and edit the information if you want.
5. When the form has been completed, review it once to make sure that all the details are given correctly. Click on ‘final submit’ when you are ready to file the form.
6. If the amounts filled in Parts 1, 2, and 3 do not tally, the return cannot be submitted. If this happens, recheck and reconcile the figures. Submit the form again.
7. After the form has been submitted, print it in landscape mode. Sign the form and send it to the Ministry by registered post, at the earliest.717
8. Other documents, such as FCRA Balance Sheet, Income & Expenditure Account, Receipts & Payments Account and CA Certificate should be enclosed with the printed copy.718 Send a copy of the designated FCRA bank account statement with the return. This should be certified by the bank. Detailed guidance on filling the form is given under Filling up FC-6 on page 169.

B. Articles Register: FC-7

Form FC-7 contains detailed information about the foreign contribution received during the year, as materials.719 This is in the form of a stock register. It has to be certified by a CA. A copy of the certified register should be filed once a year, any time before 31st December. Information extracted from this should also be reported in form FC-6.

Effective Date
The form should be filed for FY 2011-12 onwards.

Maintaining FC-7

Form FC-7 is given on page 305. But first let us understand some main issues:

Who Should Report?
Every NGO who receives and handles foreign contribution in kind should file form FC-7.720

Only for Non-cash Receipts
FC-7 is used only when an item is received as foreign contribution. It should not be used for keeping record of items bought with foreign funds.721 If you buy material with FCRA funds for distribution, this should be recorded separately in a stock register.722

One page for each item
FC-7 is just like a stock register. So you have to open a separate page for each article. This also means that if you regularly receive two sizes of blankets, then you should open separate sheets for each.723
What if some of the stuff has to be sold...
Sometimes the material cannot be used by the people directly. In such a case, the NGO may sell the material. The money collected from the sale becomes FCRA money. This sale should be recorded in FC-7.

Low-value Items
The Act says that low-value items for personal use will not be treated as foreign contribution.\textsuperscript{724} Does the low-value item exemption apply to material received by NGOs? No, low-value items are foreign contribution, if these are received by an NGO. It is only personal gifts below `25,000 that fall under exemption of section 2(l)(h)(i).

Open a new account each year
Financial year for FCRA ends on 31st March. When you start the register for next year, open up a fresh sheet for each item. This is just like opening new ledger accounts.

Manual or Computerised?
The old rules called only for maintaining the record. Therefore, the register could simply be maintained manually. However, the new rules call for a copy to be filed with the FCRA Department each year. How will you make this copy?

You could make a Xerox of the register, get it stamped by the CA and file it along with the CA certificate. Alternatively, you can also punch the data in Word or Excel, and print a copy for filing with the Department.\textsuperscript{725} This will also make it easier for you to make corrections, if required.

Filing FC-7
Send FC-7, along with CA certificate by registered post to the FCRA Department. It would be best if the form is filed along with FC-6 itself. If that is not feasible, also enclose a copy of the audited FCRA Receipts & Payments Account and Balance Sheet.\textsuperscript{726} A copy of the form that you file (along with proof of despatch) should be retained.

C. Securities Register: FC-8
Form FC-8 contains detailed information about the foreign contribution received during the year, in the form of investments (shares, Fixed Deposits, Bonds, etc.).\textsuperscript{727} Form FC-8 is similar to an investment register. It has to be certified by a CA. A copy of the certified register should be filed once a year, any time before 31st December.\textsuperscript{728} Information extracted from this should also be reported in form FC-6.\textsuperscript{729}

Effective Date
The form should be filed for 2011-12 onwards.
Dis-investment
There are restrictions under Income Tax Act, 1961 and Bombay Public Trust Act, 1950 on holding shares of most companies. Similarly, FCRA itself prohibits investment of foreign contribution in shares, etc. Therefore, if you receive shares as gift, you might have to sell these off quickly. Please consult your tax advisers for more guidance.

Maintaining FC-8

Form FC-8 is given on page 307. But first let us understand some main issues:

Who should report?
Every NGO who has received and is holding foreign contribution in the form of securities should file form FC-8.

Only for Non-cash Receipts
FC-8 is used only when an investment is received as foreign contribution. It should not be used when you use foreign funds to make an investment.730

If you buy investments with FCRA funds, these should be recorded separately in an investment register.731

One page for each item
FC-8 is like an investment register. You have to open a separate page for each security. Thus, a separate sheet should be opened for, say IDBI 7% Bonds, and another for IDBI 8% Bonds.

Sale or Transfer
The money collected from the sale becomes FCRA money. It should be deposited in designated FCRA bank account. The sale should be recorded in FC-8.

If the investments are transferred to another person as a gift, then this should also be recorded in FC-8.

New Register Each Year?
Return in form FC-8 is to be filed for each year. Therefore a new register should be prepared each year. This should include any investments remaining unsold from previous year. This should also show investments received during the year.732

Manual or Computerised?
The old rules called only for maintaining the record. Therefore, the register could simply be maintained manually. However, the new rules call for a copy to be filed with the FCRA Department each year. How will you make this copy?

You could make a Xerox of the register, get it stamped by the CA and file it along with the CA certificate. Alternatively, you can also punch the data in Word or Excel, and print a copy for filing with the Department.733 This will also make it easier for you to make corrections, if required.
Filing FC-8
Send FC-8, along with CA certificate by registered post to the FCRA Department. It would be best if the form is filed along with FC-6 itself. If that is not feasible, also enclose a copy of the audited FCRA Receipts & Payments Account and Balance Sheet.
A copy of the form that you file (along with proof of despatch) should be retained.
14. Accounts and Records

‘Please your Majesty,’ said the Knave, ‘I didn’t write it, and they can’t prove I did: there’s no name signed at the end.’

‘If you didn’t sign it,’ said the King, ‘that only makes the matters worse. You must have meant some mischief, or else you’d have signed your name like an honest man.’

—Lewis Carroll, Alice’s Adventures in Wonderland (1865)

Rules for maintenance of accounts and records apply to all organisations or persons who have FCRA registration or prior-permission. FCRA registered organisations should maintain these so long as they have a valid FCRA registration or unutilised foreign contribution. Those with prior-permission should maintain these till the permission is valid or they have unused foreign contribution.

**Bank Accounts**

Foreign contribution must be kept in separate bank accounts at all times. These accounts must be exclusively for foreign contribution. Two types of accounts are permitted under the Act.

**Designated Bank Account**

This is the primary FCRA bank account mentioned in your application for FCRA registration or prior-permission. This account number is also given in the FCRA registration letter or prior-permission letter from FCRA Department. This account cannot be changed without first getting permission from FCRA Department.

All foreign contribution must first be received into this account. Care should be taken to ensure this as the rule is enforced quite strictly. Any interest or income arising from foreign contribution should also be deposited into this bank account. Similarly, any income from sale of FCRA assets, investments or contribution in kind should be deposited in this account.

What if you are running a micro-finance project with FCRA funds? Where would you deposit the loan recoveries? Depositing these in the designated bank account might create confusion. Therefore, it would be better to use a secondary bank account for depositing these recoveries.

**Secondary Bank Accounts**

As many NGOs work over large areas, it is not feasible for them to use foreign contribution from one central bank account. FCR Rules now allow organisations to open secondary bank accounts for utilising the foreign contribution. However, these must be used exclusively for foreign contribution. No local contribution should be deposited into these. Please see *Opening a Secondary Bank Account* on page 101 for more on this.
Cash Withdrawals

The FCRA Department has advised NGOs not to use ATM cards or debit cards for any of the FCRA Bank accounts. Similarly, cash withdrawals should be avoided, as ‘every cash withdrawal can be suspect.’

Account Books

FCR Rules call for a separate set of accounts to be kept. These should be exclusively for foreign contribution. This would mean that a separate cash book, ledger, and journal book would be necessary for FCRA funds. The voucher files and other supporting documents should also be kept separately. This effectively results in creation of a separate compartment for FCRA funds.

How do you reconcile this with the donor requirements? Many of them ask for separate accounts as well. Further, how would this fit in with your overall system of accounts?

Under law, you need separate accounts books for three streams of funds: FCRA, Income Generating and Others. In addition, a donor might ask for a separate set of accounts. To deal with this, some organisations open a separate cash book for each project.

However, the most efficient method is to use integrated cash books for each stream of funds. This is shown below:
The manual cash log is like a diary, where the cashier quickly notes all receipts and payments, without waiting for the actual head of account or for the allocating the entry to a project. This helps in surprise cash verification and ensures proper cash control.

The formal vouchers are entered in the respective cash / bank book, depending on the stream of funds (FCRA, Indian, IGP). From here, these are posted into the correct project ledger. This ensures that separate donor reports can be generated.

The same scheme applies if your accounts are computerised.

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### Heads of Account

What kind of ledger accounts should be opened in FCRA books? If FCRA reporting requirements are interpreted properly, transactions may have to be classified in three ways:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conventional Accounting Heads</td>
<td>For general reporting to Board, Registrar, public, Income Tax</td>
</tr>
<tr>
<td>2. Donor Budget Heads</td>
<td>For reporting utilisation of funds to donors</td>
</tr>
<tr>
<td>3. FCRA Purpose-wise Heads</td>
<td>For reporting utilisation in Form FC-6</td>
</tr>
</tbody>
</table>
Most accounting programs allow two kinds of classification. For instance, Tally allows one classification through use of Account Heads, and another through Cost Centres. QuickBooks® also allows only two types of classification through use of accounts and class. Therefore, a three-way classification is not feasible using normal accounting software. Further, classifying each transaction in three ways may be time-consuming, and beyond the accounting capabilities of most NPOs.

How can this problem be resolved? The most effective solution appears to be this:
1. Continue accounting for transactions in the present manner, using a two-way classification.
2. Generate general purpose accounts and donor reports as usual.
3. Use a spreadsheet to create the groupings required for classifying expenses in FC-6.

**Records**

What kind of records should be kept for FCRA compliance? Some of the following records are mentioned in the rules. Others should be kept to ensure proper control over foreign contribution.

**Fixed Assets Register**

A register detailing all the fixed assets purchased or acquired with foreign contribution should be kept. This should be kept exclusively for FCRA assets. Following items of information should be captured for each asset:

<table>
<thead>
<tr>
<th>Asset Category:</th>
<th>Page No.:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serial No.</td>
<td>Accounting Year</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------</td>
</tr>
</tbody>
</table>

**Salary Register**

Salary register for people paid with FCRA funds should be kept separately. One consolidated register can be kept for all the persons paid with FCRA funds. The consolidated salary register for FCRA could be either plain or analytical:
Plain Salary Register (FCRA) for the month of ......

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name</th>
<th>Designation</th>
<th>Location</th>
<th>Salary</th>
<th>Allowances</th>
<th>Deductions</th>
<th>Total Payment</th>
<th>Cheque / Transfer Ref.</th>
<th>Signatures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Analytical Salary Register (FCRA) for the month of ......

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name</th>
<th>Designation</th>
<th>Location</th>
<th>Salary (ABC Proj.)</th>
<th>Salary (XYZ Proj)</th>
<th>Salary (EFG Proj)</th>
<th>Total payment</th>
<th>Cheque / Transfer Ref.</th>
<th>Signatures</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

Project-wise salary registers should be avoided. If a person is paid partly with FCRA funds and partly with non-FC funds, his/her name would appear in both.747

Investment Register

If you make any investments with FCRA funds, maintain a separate Investment Register. Such investments would include any kinds of securities, bonds, as well as fixed deposits with bank etc. Investments in co-operative societies, producer companies, etc. should also be listed here. Investments in mutual funds and shares are considered speculative, and hence barred.748
Does the format for an investment register have to be the same as FC-8? FC-8 is designed as a return for securities received during the year as a donation. It is not designed to track investments made by you with FCRA funds. You can therefore choose a simple investment register for complying with rule 4. This works fine if you do not have frequent transactions. This could look like the following:

**FCRA Investment Register of ……………………**

<table>
<thead>
<tr>
<th>Date of Purchase/Sale</th>
<th>Purchase / Sale?</th>
<th>Name of Concern</th>
<th>Description of Security / deposit</th>
<th>Total Quantity</th>
<th>Face Value of each security</th>
<th>Distinctive Numbers</th>
<th>Amount Paid / Received</th>
<th>Reference to entry in FCRA Books</th>
</tr>
</thead>
</table>

Alternatively, you can choose a modified investment register, similar to FC-8.

<table>
<thead>
<tr>
<th>Date</th>
<th>Purchased / Sold?</th>
<th>Name of the seller / buyer</th>
<th>Distinctive Numbers</th>
<th>Total number of securities</th>
<th>Total nominal value of securities</th>
<th>Total amount for which purchased / sold</th>
<th>Reference to entry in FCRA Books</th>
<th>Date</th>
<th>Dividend or interest received</th>
<th>Dates up to which dividend or interest has been received</th>
<th>Reference to entry in FCRA Books</th>
</tr>
</thead>
</table>
Stock Register

Some NGOs distribute various kinds of material to people. These could include school books and supplies, food grains, tarpaulin, pump-sets, solar lighting equipment, medical supplies, etc. These could also consist of IEC material printed and distributed by the NGO. If any of these are purchased with FCRA funds, then the NGO should maintain a stock register. This should be kept separately for FCRA material. In this register, each item of stock is recorded on a separate sheet, as shown below:

Stock of Bleaching Powder (100 gms packing)

<table>
<thead>
<tr>
<th>Date</th>
<th>Particulars</th>
<th>Bill/date</th>
<th>Received</th>
<th>Issued</th>
<th>Balance</th>
<th>Initials</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4.II</td>
<td>Opening Stock</td>
<td></td>
<td></td>
<td></td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>4.4.II</td>
<td>Ralia Ram &amp; Sons</td>
<td>234/4.4</td>
<td>200</td>
<td></td>
<td>240</td>
<td></td>
</tr>
<tr>
<td>7.4.II</td>
<td>For Machera office</td>
<td></td>
<td></td>
<td>150</td>
<td>90</td>
<td></td>
</tr>
<tr>
<td>15.4.II</td>
<td>For Tamang office</td>
<td></td>
<td></td>
<td>50</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>3.5.II</td>
<td>Ralia Ram &amp; sons</td>
<td>325/2.5</td>
<td>200</td>
<td></td>
<td>240</td>
<td></td>
</tr>
</tbody>
</table>

Stock register is usually not required for office stationery, etc. unless this is valuable or stocked in large quantities.

Distribution Register

You might also want to keep a distribution register or other distribution records. This is useful for tracking and proving distribution of material to beneficiaries. Total quantity distributed should be cross-
checked with entries in the stock register. This register could have the following columns:

*Program Registers*

Most NGOs keep a large number of program registers. These are required for program administration as well as for keeping track of program reach and participation of the people. These could include minutes of meetings with community, minutes of staff meetings, attendance records for events and programs, photographs, videos, program diaries maintained by the workers, survey records, etc.

Some of these may be useful for providing the program information for column 14 of FC-6. Others would be required for verifying money spent on various programs and activities. These should be maintained separately for FCRA supported programs.

*Old Records*

How long should you keep FCRA records? The rules are not clear on this. However, rule 17(7) says that annual returns (FC-6, FC-7, FC-8) and annexures should be kept for six years. Therefore, it would be advisable to keep the supporting records also for six years only. These would include vouchers, supports, salary register, stock register, distribution record, program records etc.

*Publication of Accounts*

Publication of accounts is now compulsory if a person receives foreign contribution exceeding Rs. one crore in a financial year. This should be done by the NGO / person who is registered under FCRA or has prior permission. Additionally, the Government will also display this data on its web-site for public information.

*Money, Materials and Securities*

For calculating the amount of one crore, include foreign contribution in all forms, not just money.

*Format*

No format has been specified in the rules. This can be presented in the form of summary Receipts & Payments Account:

<table>
<thead>
<tr>
<th>Receipts</th>
<th>Amount ₹</th>
<th>Payments</th>
<th>Amount ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Opening Balance:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash in Hand</td>
<td>34,000</td>
<td>Purchase of Furniture</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Cash at Bank (FC)</td>
<td>17,00,000</td>
<td>Loan repaid</td>
<td>1,15,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Payment to Creditors</td>
<td>23,000</td>
</tr>
<tr>
<td><strong>Grants</strong></td>
<td></td>
<td><strong>Program Expenses</strong></td>
<td></td>
</tr>
<tr>
<td>Foreign Grants</td>
<td>80,00,000</td>
<td>Watershed Program</td>
<td>30,00,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Education Program</td>
<td>16,00,000</td>
</tr>
</tbody>
</table>
If you want to provide additional information, you can also add the FCRA Balance Sheet:

<table>
<thead>
<tr>
<th>Receipts</th>
<th>Amount ₹</th>
<th>Payments</th>
<th>Amount ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Donations</td>
<td>7,00,000</td>
<td>Micro-credit Program</td>
<td>9,00,000</td>
</tr>
<tr>
<td>Individuals</td>
<td>5,00,000</td>
<td>Emergency Relief</td>
<td>18,00,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rural Development</td>
<td>12,00,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From Investments</td>
<td>13,00,000</td>
<td>Salary</td>
<td>12,00,000</td>
</tr>
<tr>
<td>Bank Interest</td>
<td>3,50,000</td>
<td>Professional Fees</td>
<td>2,50,000</td>
</tr>
<tr>
<td>Other Income</td>
<td>2,00,000</td>
<td>Fuel &amp; Conveyance</td>
<td>2,75,000</td>
</tr>
<tr>
<td>Loan Received</td>
<td>6,04,000</td>
<td>Travel</td>
<td>75,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Audit Fees</td>
<td>50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Printing &amp; Stationery</td>
<td>2,25,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other Expenses</td>
<td>3,00,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Repairs &amp; Maintenance</td>
<td>1,25,000</td>
</tr>
<tr>
<td><strong>Closing Balance:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cash in Hand</td>
<td>50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cash at Bank (FC)</td>
<td>20,00,000</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>1,33,88,000</strong></td>
<td><strong>Total:</strong></td>
<td><strong>1,33,88,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount ₹</th>
<th>Assets</th>
<th>Amount ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust Fund:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Fund</td>
<td>42,00,000</td>
<td>Land &amp; Buildings</td>
<td>15,00,000</td>
</tr>
<tr>
<td>Unrestricted FCRA Fund</td>
<td>8,00,000</td>
<td>Vehicles</td>
<td>20,50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Furniture &amp; Equipment</td>
<td>14,50,000</td>
</tr>
<tr>
<td>Other Funds</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Endowment Fund</td>
<td>96,00,000</td>
<td>Endowment Investments</td>
<td>80,00,000</td>
</tr>
<tr>
<td>Staff benefit Fund</td>
<td>1,50,000</td>
<td>Other Investment</td>
<td>21,00,000</td>
</tr>
<tr>
<td>Fixed Assets Fund</td>
<td>2,50,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unspent Grants</td>
<td>4,00,000</td>
<td>With Beneficiaries</td>
<td>22,00,000</td>
</tr>
<tr>
<td>Revolving Fund</td>
<td>25,00,000</td>
<td>Other Loans</td>
<td>4,00,000</td>
</tr>
<tr>
<td>Loans</td>
<td>6,04,000</td>
<td>Cash and Bank</td>
<td></td>
</tr>
<tr>
<td>Other Liabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creditors</td>
<td>4,25,000</td>
<td>Cash at Bank (FC)</td>
<td>20,00,000</td>
</tr>
<tr>
<td>Exp. Payable</td>
<td>2,75,000</td>
<td>Cash in Hand</td>
<td>50,000</td>
</tr>
<tr>
<td>Surplus</td>
<td>5,46,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>1,97,50,000</strong></td>
<td><strong>Total:</strong></td>
<td><strong>1,97,50,000</strong></td>
</tr>
</tbody>
</table>
Public Domain

How is this information to be published? The rules call for this to be placed in public domain. What exactly does this mean? Is it sufficient if you put the summary accounts on your web-site? Or on a network web-site? Or if these are simply published in a public newspaper or magazine?

Any one of the above three methods would be sufficient compliance with the rules.

Which Years?

Publication is required for the year in which you received Rs. one crore or more. It is also required for the following year, irrespective of how much you received in the next year. The following table shows how this works in practice:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Receipts</th>
<th>Utilisation</th>
<th>Required to Publish?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010-11</td>
<td>1.05 crore</td>
<td>1.0 crore</td>
<td>Yes</td>
</tr>
<tr>
<td>2011-12</td>
<td>95 lakh</td>
<td>90 lakh</td>
<td>Yes</td>
</tr>
<tr>
<td>2012-13</td>
<td>90 lakh</td>
<td>1.05 crore</td>
<td>No</td>
</tr>
<tr>
<td>2013-14</td>
<td>80 lakh</td>
<td>75 lakh</td>
<td>No</td>
</tr>
<tr>
<td>2014-15</td>
<td>1.2 crore</td>
<td>1.1 crore</td>
<td>Yes</td>
</tr>
</tbody>
</table>

In the year 2011-12, the NGO received just Rs. 95 lakh. Why should it publish the account for 2011-12? Because it had received more than Rs. 1 crore in the preceding year. However, in 2012-13, this is no longer applicable, as its receipts during the current year and the preceding year were less than one crore. Same logic applies to 2013-14.

How Long?

How long do you have to keep the summary data in public domain? The time limit given in rule 13 is not clear. It appears that the data should be kept on web for at least two years.

Effective Date

When does this become effective? It would be safe to consider this as applying for financial year 2010-11 onwards.
15. Compliance

“A slow sort of country!” said the Queen, “Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!”

—Lewis Carroll, Through the Looking Glass (1871)

What are the compliance requirements for different categories of people? This chapter provides an overview.

Public Figures

Politicians, journalists, judges, government servants, journalists, etc. all count as public figures. See Prohibited on page 58 for more on this.

In general, public figures should not accept any foreign contribution. They are allowed to accept foreign money if it is related to a professional or commercial transaction. See Exceptions on page 58 for more on this.

They should also not accept any gifts from foreigners - personal gifts valued at less than Rs. 25,000 each do not matter. See Personal Gifts on page 147 for more on this.

If they are planning to go abroad as a guest of a foreigner or foreign organisation, they should obtain prior approval for foreign hospitality. See Hospitality: FC-2 on page 105 for more on this. This restriction does not apply to media-persons or election candidates.

Prior-permission for foreign hospitality is not required if there is a medical emergency while abroad. However, send intimation within 30 days of return. See Emergency Hospitalisation on page 100 for more on this. This requirement does not apply to media-persons or election candidates.

Individual Donors

All foreigners are a foreign source. See Foreigners on page 47 for more on this. This includes PIOs and OCI's, but not NRIs. See Indians Abroad on page 48 for more on this.

Foreign donors should not give money or material to NGOs without FCRA registration or permission. This is especially important if you are giving a large contribution. See Permissions on page 97 for more on this.

Resident foreigners should exercise more care in this, as they are within Indian jurisdiction. See Jurisdiction on page 37 for more on this.

Remember that currency doesn't matter - Indian currency from a foreigner is also counted as foreign contribution. See Currency on page 41 for more on this.

Foreign donors should also disclose their nationality (citizenship) while giving to organisations. This will help the receivers account for their money properly.
Institutional Donors

All foreign organisations or organisations under foreign control count as foreign source. This includes multinational companies. See Government, International Agencies, Non-profit organisations, Business Organisations etc. from page 49 onwards for more on this.

Foreign institutional donors should not give money, material or securities to NGOs without FCRA registration or permission. This is especially important if you are giving a large contribution. See NPOs on page 65 and Corporate Foundations on page 72 for more on this.

Organisations with an office in India should exercise more care in this, as they are within Indian jurisdiction. See Jurisdiction on page 37 for more regarding this.

Donor organisations with offices in India should verify the FCRA status of the receiving organisation before giving funds. For more on this, please see Secondary Transfers on page 108.

Remember that currency doesn't matter - Indian currency from a foreign source is also counted as foreign contribution. See Currency on page 41 for more on this.

Institutional donors such as MNCs, subsidiaries of foreign companies etc. should disclose their foreign source status to the receiving organisations. This will help the receivers account for their money properly. See Business Organisations on page 51 for more about MNCs, foreign companies, etc.

Individuals with a Program

Individuals, firms, etc. with definite CREES programs are covered by FCRA. They should not accept foreign contribution without prior-permission. See Charitable Individuals on page 73 for more on this.

Such individuals should also comply with other requirements listed under NGOs / Charities.

NGOs / Charities

All NGOs or charitable trusts, societies, etc. with a definite CREES program are covered by FCRA. They should not accept foreign contribution without prior-permission or registration. See NPOs on page 65 for more on this.

Foreign contribution should be first deposited in the designated FCRA bank account. See Designated Bank Account on page 121 for more on this. After this it can be transferred to other secondary FCRA bank accounts. See Secondary Bank Accounts on page 121 for more on this.

Foreign contribution should not be mixed with other local funds at any stage. See Loans between FC and Indian on page 149 for more on this.

NGOs or charities should use the foreign contribution according to their FCRA category. The contribution should also be used only for the purpose / project for which it was received. See Change in Nature on page 103 for more on this.

Fixed assets purchased with foreign contribution should be carried as assets on FCRA balance sheet. However, the money spent on purchase should be reported as utilised in FC-6. See Expenditure on Fixed Assets on page 147 for more on this. These assets should not be donated to any NGO / charity which do not have FCRA registration or prior-permission.

All receipts related to foreign contribution (such as interest, hire charges for assets, earnings from
FCRA IGP, etc.) should be accounted in FCRA books. See *Income from FCRA Projects* on page 144 for more on this.

Foreign contribution used for administrative expenses should not exceed 50% of foreign contribution received during the year. See *Administrative Expenses* on page 80 for more on this.

Foreign contribution should not be used for speculative activities or investments. See *Speculative Activities* on page 81 for more on this.

Organisations with FCRA registration or prior-permission should not get involved in any political activities. The definition of political activities is fairly wide. See *Quasi-political Organisations* on page 63 for more on this.

Organisations with FCRA registration or prior-permission should keep separate accounts and records for foreign contribution. See *Account Books* on page 122 for more on this. Old accounts and records should be retained for six years. See *Old Records* on page 128 for more on this.

Organisations with FCRA registration or prior-permission should also file annual returns in forms FC-6, FC-7 and FC-8 each year. These should be filed even if no foreign contribution is received in a year. See *Annual Returns* on page 97 for more on this.

A certified copy of the bank statement should be filed with FC-6. Audited accounts for FCRA funds should also be filed. See *FC-6 Annexures* on page 179 for more on this.

NGOs or charities which receive foreign contribution exceeding one crore rupees in a year should publish summary information on receipt and utilisation on the internet. See *Publication of Accounts* on page 128 for more on this.

Foreign funds or material etc. should not be passed on to any NGO / charity which do not have FCRA registration or prior-permission. See *Secondary Transfers* on page 108 for more on this. This restriction does not apply on business payments to NGOs, consultants, vendors, etc. See *Commercial Receipts* on page 38 for more on this.

Any changes in name, memorandum, objectives, address, etc. should be notified to the FCRA Department within 30 days. See *Change in Name / Address of the Organisation* on page 102 for more on this.

NGOs and charities should ensure that more than 50% of the office bearers listed initially remain on their board. See *E. Change of Office-bearers* on page 112 for more on this.

NGOs and charities with old FCRA registration should apply for renewal by 30th April 2015. See *Old Registration- FCRA 1976* on page 111 for more on this.

NGOs and charities with new FCRA registration should apply for renewal when four years have passed. See *Renewal: FC-5* on page 110 for more on this.

**Bankers**

Bankers should not allow credit of foreign contribution to an NGO’s account if it does not have FCRA registration or prior-permission. See *Reporting by Banks* on page 103 for more on this.

Banks should also allow NGOs etc. to open designated FCRA bank accounts with local funds.

If an NGO receives more than Rs.1 crore in a calendar month, then the bank should send a report to the Ministry of Home Affairs (MHA). See *Large Receipts* on page 104 for more on this.

If a person receives foreign contribution without registration or prior-permission, then the bank
PRACTICE// Compliance

should send a report to MHA within 30 days. See Receipt without Permission on page 103 for more on this.

Banks should also provide certified copies of bank statements for their customers with FCRA registration / permission. These have to be filed with FC-6 each year. See FC-6 Annexures on page 179 for more on this.

Auditors

Auditors should ask their client NGOs to ensure the following:

- FCRA registration or prior-permission has been taken before accepting any foreign contribution.769
- A separate set of account books and records is being kept for FCRA funds and material. See Accounts and Records on page 121 for more on this.
- All foreign contribution is first deposited in designated FCRA bank account. Secondary FCRA bank accounts should not be used for first deposits. See Opening a Secondary Bank Account on page 101 for more on this.
- No inter-bank transfers are being made among secondary bank accounts. See Conditions on page 101 for more on this.
- Application for renewal of FCRA is made well in time. See Renewal: FC-5 on page 110 for more on this.
- Administrative expenditure is kept below 50% of total foreign contribution utilised in the year. See Administrative Expenses on page 80 for more on this.
- Foreign contribution is not invested in shares, mutual funds, etc. See Speculative Activities on page 81 for more on this.
- Foreign contribution is not donated to any other NGO or individual770 without FCRA registration or permission.
- Foreign contribution is not donated to any prohibited person. See Prohibited on page 58 for more on this.
- There is no mixing of foreign contribution and local funds in books or in bank accounts. See Loans between FC and Indian on page 149 for more on this.
- The organisation files FC-6 each year - even if there are no receipts or transactions. See No Receipts? on page 173 for more on this.
- Form FC-7 is prepared and filed if any foreign contribution in kind is received during the year or remains unutilised. An audit certificate is required with this form as well. See Filing FC-7 on page 118 for more on this.
- Form FC-8 is prepared and filed if any shares or securities are received as foreign contribution during the year or remain unutilised. An audit certificate is required with this form as well. See Filing FC-8 on page 120 for more on this.
- Cumulative change in Governing Body members does not reach 50% or more. If it does, then FCRA permission for change of office bearers should be taken. See Change of Office-bearers on page 112 for more on this.
- Any changes in nature, objectives, memorandum, etc. are notified to FCRA Department. See Change in Aims and Objects on page 103 for more on this.
- Any change in address is notified to FCRA Department. Ensure that it has gone on record. See
Change in Name / Address of the Organisation on page 102 for more on this.

Auditors should also verify the figures in FCRA annual financial statements (Receipts & Payments Account, Income & Expenditure Account, Balance Sheet) and issue an audit certificate (per form FC-6) on their letterhead. See CA Certificate on page 178 for more on this.

**Ordinary Individuals**

If you receive money or gifts valued at more than Rs.1 lakh from a foreigner relative, file form FC-1 within 30 days. This also applies to foreigners resident in India. See Gift from Relative: FC-1 on page 100 for more on this.

If you receive a foreign grant for research or any other project activities, apply for prior-permission beforehand. See Prior-Permission: FC-4 on page 105 for more on this.
16. FCRA Mysteries

_Catch-22 did not exist, he was positive of that, but it made no difference._
_What did matter was that everyone thought it existed, and that was much worse..._

—Joseph Heller, Catch-22 (1961)

FCRA is internal security legislation. Its implementation has therefore been shrouded in mystery. Over the last decade, this fog has lifted somewhat. The FCRA Department has made its operations and procedures more transparent. FCRA officers have participated in workshops for NGOs. Still many things about FCRA remain grey and unclear to people. Let us look at some common issues.

A. Registration, Permission, Approvals

Liaison Office

A liaison office of a foreign donor agency or NPO does not need FCRA registration or FCRA prior-permission in India. Instead, RBI permission is required. This is discussed in more detail under Liaison Office on page 76. A branch office will need FCRA registration or prior-permission.

Foreigners on the Board

Can foreigners be appointed on the board of an NGO? Yes - there is no legal bar on this.\(^771\) Can such an NGO get FCRA registration? Unlikely!

Curiously, the FCRA law and rules are silent on this issue. However, the FCRA Department, in practice, turns down such applications.\(^772\) Therefore, it is best to seek prior-approval of Central Government for appointing a foreigner on the Governing Board.\(^773\)

These restrictions apply to the Governing Board or Executive Committee. No permission is apparently needed if you invite a foreigner to your Advisory Board.\(^774\)

Chief Functionary

Who should sign FCRA forms, returns, applications as Chief Functionary? This position, mentioned in all the FCRA forms, is not defined anywhere. In practice, anyone who is authorised to sign documents on behalf of the Board, and is involved in day to day functioning can sign these. It will be even better, if this is recorded in the Board minutes through a resolution. Usually, the Chairperson, President, or Secretary are treated as Chief Functionaries.

In some cases, a Chief Executive Officer, appointed by the Board as an employee, could also sign these documents, as Chief Functionary. This should preferably be supported by a resolution.\(^775\)

Can a foreigner be the Chief Functionary? This should be avoided.\(^776\)
Relatives on Board

*Till death do us part...* holy vows of matrimony notwithstanding, it is not a good idea to keep your spouse on the board.

FCRA people get alarmed when they find assorted sons, parents, in-laws and other family members on the board of an applicant NGO. This often results in rejection of the NGO’s application for FC registration or prior-permission.

Change in Office Bearers

NGOs who have applied for FCRA registration after 27-Dec-1996 have given an undertaking to the Department. According to this, the control of the NGO should remain with the original Governing Board. If 50% or more of the Governing Board gets replaced over time, then:

1. Prior-permission should be taken for the change.
2. Fresh foreign contribution should not be accepted in the interim period.

NGOs who have never filed the revised FC-8 or the new FC-3 will probably continue to be exempt from this. Why? They have not given the self-imposed undertaking on change of office-bearers. The FC-5 for renewal also does not ask for this undertaking.

What about NGOs with prior-permission? If they applied for prior-permission in the new FC-4, then the above restrictions apply to them as well.

SHGs / Mahila Mandals / CBOs

Do SHGs, Mahila Mandals, other CBOs need FCRA permission to accept foreign contribution? This depends on their stage of evolution.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Association 783</th>
<th>Program 784</th>
<th>FCRA Needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>People just meet every week. No formal leadership.</td>
<td>No program. Just a common interest.</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>Meetings continue. A name is given to the CBO. Leaders start emerging.</td>
<td>No program. Just a common interest in savings and credit.</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Group becomes more organised. A membership register is started. Office bearers are appointed.</td>
<td>Objectives of the group are widened and put down in writing.</td>
<td>Maybe</td>
</tr>
<tr>
<td>4</td>
<td>Memorandum of Association is signed. Society is not yet registered.</td>
<td>Memorandum of Associationserves as a definite program.</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>Society is formally registered.</td>
<td>Definite program continues to exist.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Churches and Ashrams

Some organisations set up additional organisations to carry out some of their work. Each of these bodies may specialise in one aspect of the work or be run independently. This is common in the case of religious groups such as ashrams and churches (diocese).

Can the organisations under the main umbrella use the FCRA registration of the parent body?

No. Under FCRA, each of these NPOs is a separate entity and needs independent FCRA registration or prior-permission.

This concept also applies to Federations.

Does Second Receiver Need FCRA?

Yes. The second, third, fourth, fifth and all the subsequent receivers need FCRA registration or prior-permission.

FCRA Grants to Individuals

Can you make FCRA grants to individuals for taking up program work? This is no longer permitted. However, there is no bar on giving grants to individual beneficiaries themselves.

Business People/ Professionals

Profit-oriented organisations are mostly not covered by FCRA. In most cases, these people can receive payments from foreign agencies or out of FCRA funds for ordinary business. However, grants for program work are restricted. Please see Grants to For-Pros on page 39 for more on this.

Electronic Media

FCRA 1976 did not cover electronic media. However, FCRA 2010 does. You are not permitted to give foreign contribution to any one working with electronic media. Please see Electronic Media on page 59 for more information on this.

Shadow-lending

Many organisations find it difficult to get FCRA registration or permission. In some cases, people try a short-cut. They persuade a friendly organisation with FCRA registration to receive the money on their behalf. The FCRA holder receives the money in its bank account. The FCRA holder then withdraws cash and passes it on to the unregistered organisation. Sometimes, the FCRA holder might retain 10-20% of the money for accounting, audit, etc.

This is also known as channelizing. In some cases, the grant-makers might also encourage this in order to get their program going. This is more common in network-funding.

This arrangement is completely illegal. FCRA registration cannot be lent or sub-contracted. If the
arrangement is discovered, then the FCRA Department can penalise all those who are involved in the arrangement, including the grant-making officers. Donor agencies should take extra precautions to ensure that their grant-makers avoid this.

**Advances**

Can you give an advance to the unregistered NGO, instead of a grant? Some donor agencies and large NGOs do this instead of shadow-lending. In such cases, the money is debited to an advance account in the FCRA holder's account books. The unregistered NGO spends the money. Bills and vouchers are taken in the name of FCRA-holder. The FCRA-holder then accounts for the expenses in its books and reports it in FC-6 as its own program.

Is this legally permissible? This seems to be a grey area. Some people argue that the only transactions of a donative nature would be covered. Others say that foreign contribution includes delivery and transfer as well. Secondly, excluding advances would defeat the purpose of FCRA. Therefore, an advance should also be covered under the definition.

Overall, it would be best to avoid giving program advances to unregistered organisations out of FCRA funds.

**Reimbursement**

Does the same logic apply to reimbursement of expenses as well? For instance, you invite a group of persons to a workshop or meeting. You then reimburse their travel expenses with FCRA funds. Would this be permitted under FCRA?

Reimbursement of traveling expenses is on a different footing from giving program advances. There is no intention to bypass FCRA. It is also widely practised. In our view, there seems to be no prohibition against this. However, one should ensure that reimbursement is made against proper travel bills and vouchers. Flat allowances should be minimised.

**Prior permission**

If you have applied for prior permission, then your application will normally be processed within 90 days. The period of 90 days starts from the date when the printed application (with fees) is received at FCRA Department.

What happens if you do not hear from the Ministry even after 90 days? Do you get the permission automatically? No. There is no provision in the new FCRA for automatic grant of permission in case of delay. Just keep checking your permission status online.

**How Much**

In case of prior-permission, you can receive amounts up to the limit given in prior-permission letter. For example, if the permission is in dollars, you can receive that many dollars or equivalent Indian Rupees.

However, if the permission is in Rupees, be careful. Make sure that you do not receive more due to
exchange rate fluctuation.

What happens if you receive more than the amount allowed under prior-permission? Report the actual amount received. Also be prepared to pay compounding fees. See *Compounding* on page 93 for more on this.

**Unused prior-permission**

Suppose FCRA Department gave you prior-permission for $10,000 for a project. But the donor Agency could not give you the funds at that time. Can you now reuse it for another project?

No. Prior-permission is linked to the project and the donor Agency. You can use it only for the approved project. Also, the donor Agency must remain the same.

**Old Applications - FCRA 1976**

Suppose that you had applied for FCRA registration / permission before 1-May-11 in the old form. Your application is still pending for approval. Do you have to make a new application again?

No. The old application will remain valid for processing. However, you will be asked to pay the fees for FC-3 or FC-4 under new rules (Rs. 2,000 or Rs. 1,000).

**B. Fund-raising**

**Foreigners in India**

Foreigners living in India continue to be a foreign source. It does not matter that they are earning their income in India or contributing in Indian rupees. This also includes citizens of other South Asian countries, such as Nepal, Pakistan, Bangladesh, Bhutan, Sri Lanka, Myanmar, etc.

**UN Bodies**

UN and its specialised agencies are not treated as a foreign source. Funds received from them should be deposited in the local bank account. These should be accounted in non-FCRA books. This also applies to World Bank, IMF etc. MHA's FCRA web-site also carries a list of exempt organisations. See *Non-foreign Sources* on page 190 for the current list.

**Fellowships**

General fellowships are no longer exempt from FCRA. Only scholarships granted by educational institutions are exempt. Please see *Fellowships* on page 44 for more on this.
Consultancy Contracts

In some cases, the work done under a fellowship can also be done under a consultancy contract. This is feasible if the work involves research, advice, training, capacity building, etc. In such cases, a definite output (report, paper, etc.) emerges at the end of the work.

Consultancy contracts for such services can be granted to individuals or NGOs. No FCRA permission is required. However, consultancy contracts should not be used to give FCRA grants for program work.

FCRA Interest

There is no bar on earning interest on FCRA funds. However, all such interest should be accounted for as FCRA funds and disclosed in FC-6 and FCRA Receipts and Payments Account. This applies both to money lying in various FCRA bank accounts, as well as to interest earned on fixed deposits and investments made with FCRA funds.

Anonymous Donations

Electronic banking and Internet fund-raising is now wide-spread. You suddenly receive a credit of Rs. 1.5 lakh in your bank account. The donor does not tell you his or her name. What do you do?

Ask your bank to trace back the donation. If it came from an overseas account, transfer it to your FCRA account. Then report it in FC-6 as ‘Anonymous Donation’. Obtain a copy of FIRC (Foreign Inward Remittance Certificate) from the bank and keep it in your records.

Catalogues & Souvenirs

An International Bank or MNC sponsors your catalogue or souvenir. They pay the printers directly. The printers deliver the booklets to you. What happens now? The catalogues or booklets are now foreign contribution. Report these in FC-6 and FC-7.

Religious Books

The same logic applies to religious books. A number of NPOs (churches, ashrams, mosques, etc.) receive books such as Holy Bible, Quran Sharif, Shreemad Bhagvad Gita, etc. from international sources. These are received free of cost. These might be distributed free of cost or sold. These transactions should be recorded and reported in FC-7 and FC-6. If the books are sold, then the sale money should be deposited in FCRA bank account.

Souvenir Advertisements

Your NGO brings out a souvenir. An MNC agrees to insert a full-page advertisement. What do you do with the money? Souvenir advertisements are a grey area. Some people treat these as surrogate donations. Others consider these to be commercial transactions.
If you are using souvenir advertisements to raise funds for your cause, then treat the payment as foreign contribution. It should be deposited in the FCRA bank account and reported in FC-6.

However, if you are only recovering the cost of printing the souvenir, then this transaction could be exempt. In such a case, you can treat this as non-FCRA funds.

**NRI donations**

Indians living abroad are commonly known as NRIs. Their donations to an Indian NGO may be Indian funds or FC funds. If the person holds an Indian passport, then the donation will be Indian funds. If not, then these will be FC funds. The type of bank account or currency does not matter.

This is discussed in more detail under the following headings:

- **Non-resident Indians (NRIs)** (page 48)
- **Persons of Indian Origin (PIOs)** (page 48)
- **Dual Citizenship (OCI)** (page 48)

**Charity Events**

NGOs sometimes organise cultural events for raising funds. At these events, they sell donor passes. These passes are priced very high, to generate a surplus. For example, a ticket for a movie may normally be priced at Rs.200. If it is organised as a charity event, donor pass may be for Rs.10,000 or more. Dinners with celebrities may be priced higher still, though per plate cost is lower. What are the FCRA implications of this?

<table>
<thead>
<tr>
<th>Funded with</th>
<th>FC Implications</th>
<th>Tax Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>FC funds</td>
<td>• All proceeds from tickets or donor passes are FC funds. It is immaterial whether guest is Indian or foreign.</td>
<td>These receipts may be treated as business receipts. If total business receipts exceed Rs. 25 lakh per annum, then an NGO might lose its tax exemption for the year.</td>
</tr>
</tbody>
</table>
| Indian funds    | • Proceeds from Indian guests are Indian funds.  
• Proceeds from foreign guests are FC funds.  
• Sponsorship proceeds from MNCs are FC funds. |                                                                                   |

There can be two situations, depending on how the event was funded:

Separating guests into Indian and foreigners will not be easy. Therefore, implement this only to the extent it is practical. For example, you do not have to bother about segregating counter sales (when received in Indian currency) into Indian and Foreign.

**Art Sale**
Sometimes, an NGO may organise an art exhibition to raise awareness on a social issue. This can be done in several ways:

1. The artists give the painting as a gift to the NGO. The NGO keeps the sale proceeds after expenses.
2. The artists loan the paintings for the exhibition. NGO sells the painting on behalf of the artists. It meets all the expenses of the exhibition. NGO gets a commission on each sale.
3. The NGO organises the exhibition on behalf of the artists as an honorary agent. It recovers the actual expenses from them. Some of the artists voluntarily give an additional amount as donation.
4. The artists, NGO, and the gallery enter into a joint venture. They share the proceeds.

How should this income be treated?

<table>
<thead>
<tr>
<th>Arrangement</th>
<th>FC Implications</th>
<th>Tax Implications</th>
</tr>
</thead>
</table>
| Outright gift of paintings   | • Paintings donated by Indians are non-FC. Receipt from their sale is Indian.  
                               | • Paintings donated by foreigners are FC. Receipt from their sale is FC.        | • Gross receipts might be treated as business receipts. If total business receipts exceed Rs. 25 lakh per annum, then an NGO might lose its tax exemption for the year.805 |
| Sale as Commission Agent     | • Commission income is non-FC.                       | • Only commission income is treated as business receipt. If total business receipts exceed Rs.25 lakh per annum, then an NGO might lose its tax exemption for the year.806 |
| Donation from proceeds       | • Donation given by Indian artists is non-FC.        | • No adverse implication                                                         |
|                              | • Donation given by foreign artists is FC.           |                                                                                   |
| Joint Venture Sales          | • Share of proceeds is non-FC.807                    | • Gross receipts808 might be treated as business receipts. If total business receipts exceed Rs.25 lakh per annum, then an NGO might lose its tax exemption for the year.809 |

Raising funds abroad

FCRA authorities cannot allow multiple accounts for receiving funds.810 Therefore, you cannot open an account abroad in your NGO’s name for raising funds from foreigners. You then have two options:

1. Set up an independent sister concern abroad. They will raise funds for you and transfer these to you.
2. Make an arrangement with a fund-raising group / attorney abroad. They will raise funds on your behalf and transfer these to you. Check the local fund-raising laws before you do this. This arrangement
should also be cleared with RBI. In both cases, the money received will be foreign contribution.

Consultancy Income

Money received towards fees, sale of goods etc. from foreigners is no longer treated as foreign contribution. However, this facility should not be used to take up program work, disguised as consultancy contracts. Also remember that for many NGOs, there are income tax restrictions on taking up such work.

Income from FCRA Projects

Under FCRA 1976, income from FCRA projects was treated as foreign contribution. However, FCRA 2010 exempts commercial receipts from definition of foreign contribution. Does this exemption cover income from FCRA projects also?

Several points arise:
- FCRA 2010 discourages use of foreign contribution to generate business income.
- The exemption is for money received in the ordinary course of business from a foreign source. IGP receipts could be from anyone, including a foreigner.
- Interest on FCRA funds / investments is still considered foreign contribution. This also applies to ‘any other income earned from foreign contribution.’
- FCRA accounts are kept separately. Therefore, any income from FCRA projects would normally be recorded in FCRA Cash book or bank book.

Therefore, in our view, firstly, foreign contribution should not be used to generate income on a commercial basis. Secondly, if there is any incidental income from foreign contribution, then it should be treated as foreign contribution. Some examples are discussed below:

1. Sale of Publications

If a book has been published with FCRA funds, then the sale recoveries (often termed ‘contribution’ or ‘sahyog rashi’) should be kept in FC accounts.

2. Hire Charges

If you recover hire charges for an asset from a project, where should the income be shown?

If the asset is in FC Balance Sheet, then the income should go to FCRA account. These can be shown in FCRA accounts as unrestricted funds (similar to General Fund).

3. Staff Recoveries

NGOs sometimes make recoveries for STD calls, room rent, etc. from staff. Where should these recoveries go?

If the related expenditure (phone bill, office rent, etc.) is booked in FCRA, then the recoveries should
also be credited to FCRA books. Ideally, these recoveries should be credited to the concerned Agency’s project accounts. If this is not required, then these can be taken to FCRA unrestricted funds.

4. Guest recoveries

If you have foreigners staying in your campus, they might contribute some funds to the organisation. How should you deal with these? If the guest is only reimbursing the cost of his/her food, lodging, etc., then the income can be credited to FCRA or Indian funds. The choice depends on where you book your normal kitchen expenses.

However, if the foreigner is giving you more than the cost of stay, then this could be treated as a foreign contribution. If you do not have FCRA registration, then do not accept anything more than the cost of stay from such guests.

5. Recoveries from Beneficiaries

NGOs sometimes make full or nominal recoveries from beneficiaries. These may be for items distributed (books, food, blankets, medicines, etc.). Or these may be for services provided (school fees, workshop fees, medical services, etc.). How should these be shown?

If the recovery is against items purchased from FC funds, then the recovery is FC money. If the recovery is for FC-7 items, then also it is FC money.

In case of services, see how the related expenses are met. For example, if a clinic or workshop is funded by FC funds, then the recoveries must be reported in FC-6.

C. Receipts and Utilisation

When do FC Funds become Indian

Never - so far as NPOs are concerned. FC funds do not become Indian merely by changing hands. It is suspected that even the Holy Ganga cannot purify funds of foreign origin!

When these are spent or given to individual beneficiaries, the funds become Indian. However, if these people give it back to the NGO (for example, repayment of a loan), they again become foreign contribution.

Converting FC Funds

You have FCRA registration and receive FCRA funds for a project. This project is implemented by another NGO, which does not have FCRA registration or permission. Can you give funds to this NGO from your Indian funds? You will then use the project FCRA funds for your own expenses.

At first glance, there seems to be no specific bar under FCRA on this. However, FCRA money must be used for the purpose for which it was received. Therefore, if this comes to the knowledge of FCRA Department, they could inspect your accounts and records. They might also cancel your FCRA registration.
Re-purposing FC Funds

You have received FCRA funds for a specific purpose. Can you use these for another, different purpose? This might happen when you have some left-over project funds, after the project has completed. Sometimes the NPO writes to the donor and gets their clearance for the re-purposing.

In general, re-purposing cannot be done without the donor’s consent. The FCRA law also appears to prohibit this. This is also emphasised in the FCRA advisory. Therefore, FCRA funds should not be used for other purposes, without getting the donor’s consent.

Please also see Change in Nature on page 103 for more on this.

Endowment or Corpus

If you receive money for an endowment or corpus from foreign source, it will remain FCRA funds. Take it into your FC Receipts & Payments Account and report it in FC-6 under item 55(i)(a). Also show it on the Liabilities side of FC Balance Sheet as ‘Endowment Fund’.

Can you utilise a corpus grant for operational or program expenses? This is not a generally accepted practice. Corpus funds should be used only in a critical emergency, when the organisation’s existence is at stake. However, if you are a nominal trust, then there might not be any financial implications of breaking the corpus.

Endowment Investments

You are free to make investments out of Endowment Funds in the normal way. The investments must not be speculative. These can be reported as utilisation in FC-6. But you must show these on the assets side of FC Balance Sheet as ‘Endowment Investments’.

Endowment Income

When you receive interest or dividend on your endowment investments, report these in FC-6 as receipts. When you make a ‘profit’ by sale of investments (capital appreciation), show the entire sale realisation as ‘receipt’ in FC-6.

Reinvestment should again be shown as utilisation.

Bi-lateral funds

Indian Government negotiates bi-lateral funding with other countries. Such funds are received by the Central Government. These are then transferred to states, funding bodies or NGOs. FCRA act does not apply to these transfers.

However if you receive funds directly from a bi-lateral Agency, then these will be FCRA funds.

Unrestricted FC funds
Any income generated from FC funds or assets is kept in FCRA account. Examples are surplus on sale of assets, interest on FCRA bank account, hire charges for FCRA equipment, etc. What should you do with this? There are three possibilities:

What are unrestricted funds? These are similar to General Fund in the Indian section. We use a different name for clarity. You can use these funds to maintain your buildings, meet other institutional expenses or add to your corpus.

You can also use it for any other purpose for which the organisation has been registered with FCRA. How do you find that out? Read the objectives clause of your Memorandum of Association.827

Whatever you do, remember not to move these funds into the Indian section. They must remain in FCRA account. You must also follow all other normal precautions related to FCRA funds.

### Unrestricted FC funds - under Prior Permission

Suppose you do not have FCRA registration. You have been working under prior-permission. Then you can use the unrestricted funds only for the approved project. You cannot use these for general organisational purposes.

### D. Accounts, Records, Reports

#### Expenditure on Fixed Assets

Utilisation reported in FC-6 is based on payments made for program purposes. This includes payments of both revenue and capital nature. Therefore, money spent on buying fixed assets should also be reported as utilised in FC-6. However, depreciation should not be included in FC-6.828

#### Personal Gifts

Many people believe that small value gifts are not foreign contribution. This is not quite correct. Gifts below Rs.25,000 each are exempt only when the gift is given to an individual.829 Secondly, the gift must be for his/ her personal use, such as a shirt or a watch.830

Therefore, if a foreigner gives your NGO a camera worth Rs.20,000, record it in FC-7 and report it in FC-6. If you receive blankets for distribution from a foreign donor, record these also in FC-7 and report the
Old items in FC-7 and FC-6

Sometimes foreign Agencies give away old items to NGOs. Examples are vehicles, refrigerators, computers, fax machines, filing cabinets, etc. The Agencies do not charge any money for this.

These items are foreign contribution. You must record/report these in FC-7. Include these in FC-6 also.

Micro-Credit

What about micro-credit? Foreign contribution for a micro-credit program should be shown in FCRA Balance Sheet and Receipts & Payments Account. Loans disbursed out of these should be shown as an asset in the FCRA Balance Sheet. These should also be shown on the payments side of the FCRA Receipts & Payments Account. The amounts given out as loan should be reported as utilised in FC-6.

When the loans are recovered, these should be deposited in an FCRA bank account. Interest and other charges received on the loans should also be deposited in FCRA Bank account. Both should be disclosed in FCRA Receipts & Payments Account. Both should be reported in FC-6 as second or subsequent receipt.

If any loans are written off, then these should be charged to the Income & Expenditure Account. FC-6 will remain unaffected by this.

Loan or Grant?

Sometimes the treatment of micro-credit funds is quite confusing. The loans given to people are treated as grants in the books. These are charged as expenditure in the Income & Expenditure Account. However, the people are asked to sign loan agreements. They are also told that the loan must be repaid to the NGO. The recovery of the loans is tracked in separate registers. It is not recorded in the account books or reported in audited accounts. It might be deposited in a separate bank account in the NGO's name.

This treatment can raise problems of internal control, wrong accounting and FCRA violation. It should be avoided.

Directed Repayment of Loans

Another variation is when the people are asked to repay the loan to a third party. This is usually a cooperative or another NPO. This organisation is part of the same group of NGOs. Would these funds be treated as FCRA?

Yes. This effectively means a transfer of FCRA funds to the second NGO, channelized through the people. The second NGO should have FCRA registration or prior-permission to accept these funds.

Change of Bank Account Number
Many banks have computerised their accounts over the last 15 years. Your bank may have given you a new number for your FCRA bank account. This number may be different from the one on your FCRA registration letter.

This was not an issue when the funds were disbursed by draft. However, many donor agencies now release funds by bank transfer. They also check your bank account number with the FCRA registration letter. They might refuse to disburse funds if the two numbers do not match.

To avoid this, write a letter to the FCRA Department explaining this. Attach a copy of the bank's letter showing change of account number. Also fill up and enclose Application for Change of Designated Bank Account on page 312. Give the justification for proposed change (item 9) as 'change of account number due to bank computerisation'. The FCRA Department will then issue a revised letter, with the correct bank account number.

**Loans between FC and Indian**

FCRA Department does not allow mixing up of Indian funds and FCRA funds in the bank. This means you should keep track of both funds separately.

However, the Act is not clear about taking or giving loans to the Indian section. The most obvious example is the money required to open the FCRA bank account. This money is always a loan from the Indian section.

Inter-fund transactions are also fairly common in practice. Sometimes an expense is made from FCRA bank. However, part of this is allocated to an Indian donor. This is done using a journal entry, and an inter-fund loan account in books. Similarly, TDS refund for both FCRA and Indian funds comes through one cheque. This has to be settled through a subsequent transfer to the FCRA bank account.

Are these transactions permitted? This is not clear. However, at one place, the Act says that 'no funds other than foreign contribution [should] be received or deposited in [FCRA Accounts]. This could imply that loans should not be taken from Indian section. Secondly, FCRA Department also wants to ensure that FCRA funds are not loaned out to Indian section. If the funds are mixed up, it could make the job of confiscating foreign contribution very complicated! FCRA Department even frowns upon transfers between secondary FCRA bank accounts. Please see Secondary Bank Accounts on page 121 for more on this.

Therefore, transactions between Indian and FCRA sections should be avoided as far as possible.

**Refunds and Transfers**

It might happen that you are unable to use up the funds you have received. Can you refund these back to the donor agency? There appears to be no bar under FCRA on such refunds. However, you should make the refund in foreign exchange. This means you will have to complete the necessary paperwork under FEMA regulations. This is normally done with the help of your bank, which will ask you to fill up form A-2. The remittance should ordinarily be made directly from your FCRA bank account.

In some cases, the donor agency might ask you to transfer the funds to another partner NGO in India. In such a case, make sure that the transferee NGO has a valid FCRA registration or prior-permission to receive the funds from you.
Spending Outside India

What happens if some of the money has to be spent outside India? You might have to spend this money yourself, or through another foreign NGO, which does not have an office in India. There appears to be no restriction under FCRA on this. However, the FCRA Department has stated that activities with foreign contribution should be carried out in India only.842

Further, Income Tax Act ordinarily does not allow a deduction for money spent outside India. Therefore, you should first consult your tax advisers on this.843

You should make sure that the money is sent outside through normal banking channels.

Sale of Fixed Assets

When fixed assets (or raw material, stocks, etc.) are purchased out of FCRA funds, these should be shown in the FCRA Balance Sheet.844 The funds spent on this can be shown as utilized in the FC-6. Later on, if any of these assets are sold off, then the amount recovered should be again shown as receipt in FC-6. If you make a profit or gain in selling the asset, this also should be shown in FC-6. If the asset (for example, land) was funded partially out of FCRA and partly out of Indian funds, the profit should be proportionately accounted in FCRA and Indian funds.

Separate Books

It is absolutely essential for a separate Cash Book and Ledger to be maintained for FCRA transactions.845 Other FCRA related records should also be kept separate.

What if you maintain accounts in a program such as Tally? It is best to open a separate company for FCRA funds. Accounts for different donors can be maintained within this company by defining separate groups. Alternatively, you can use cost centre facility in Tally for this.

Consolidated Accounts

You should only file the FCRA Accounts (Balance Sheet, Income & Expenditure Account and Receipts & Payments Account) with your FC-6. Alternatively, you can file a columnar Balance Sheet etc., with separate columns for Indian and FCRA funds. Please do not file the audited accounts where FCRA and Indian funds have been merged together.

Non-cash Grants in FC-6

Value of all FCRA grants in kind (blankets, shares, securities, vehicles, food, etc.) should also be reported in the FC-6. Both the receipt of such grants as also the utilization should be reported in FC-6.

The quantities for transactions should also be recorded / reported in FC-7.

Second or Subsequent Recipient

If you receive your FCRA funds from another organization which is already registered under FCRA (e.g.,
CRY), then such funds should be shown as ‘Funds received as second or subsequent recipient’ in FC-6. For this purpose, it is irrelevant whether the funds are in Rupees or disbursed by the India office of a foreign funding agency.846

Revising FC-6

If you make a mistake while filing the form online, you can correct it in the paper copy before sending the printed form. The corrected form should be sent with a covering letter, explain the correction.

What if you find the mistake later on, say after six months? There is no provision for revising a form that has been filed already. However, in the past, FCRA Department has been lenient in this matter. You can therefore try and file a corrected form within a reasonable period. You have to prepare a paper FC-6 for this. File a letter explaining the reasons for revising the FC-6, along with the revised FC-6.847

PL-480

PL-480 means Public Law number 480. It was passed a long time ago in United States of America. Indian NGOs have been receiving bulgur,848 oil and milk powder under PL-480. This is distributed to beneficiaries.

These items are received under an agreement between Indian Government and US Government. However, these are routed through USAID and one or more American donor agencies.849

When received in India, these are foreign contribution. The NGO receiving and distributing these must record / report these in FC-7. They should also report the value in FC-6. The NGO must also have FCRA or prior permission to handle these items.

E. Other Issues

Opening Branch Abroad

What should you do if want to expand to a foreign country as well? Can you open offices abroad? FCRA is totally silent on this. However, it appears that:

• An NGO can work abroad or set up an office, if its Memorandum allows it.
• It should obtain CBDT approval for spending money outside India.850
• The foreign contribution should be first received in India, in the designated FCRA bank account.
• A secondary bank account should then be opened in the country of operation.851 Intimation for this account should be sent to FCRA Department.852

In practice, most people prefer to promote a separate non-profit entity in the foreign country. This helps them avoid the complications listed above.

Organisations of a political nature

NPOs holding FCRA registration or prior-permission should not get into any kind of political activity. If
they do, they can be notified as ‘organisation of a political nature’. Their FCRA registration will be can-
celled. They will not be given prior-permission to accept foreign funds. For more on this, please see
*Quasi-political Organisations* on page 63.

**FEMA and FCRA**

If you are registered under FCRA, should you comply with FEMA also?\(^{853}\)

Yes. FEMA is a fiscal law for regulation of foreign exchange. FCRA is an internal security law for regu-
lation of foreign contribution. FCRA is applicable in addition to FEMA.\(^{854}\)

**Foreign Volunteers**

A foreigner can come and work in your NGO without any salary.\(^{855}\) This contribution of services is not
treated as foreign contribution.

**Appeal**

FCRA Department sometimes refuses permanent registration or permission to NGOs. If you wish, you
can appeal against this in the High court within 60 days of the date of the order.\(^{856}\)

Similarly, if your FCRA registration is cancelled, don’t panic. File an appeal in the High Court within
60 days of the order date. If the cancellation is unjustified, the court will restore your registration.

Alternatively, you can ask for revision of the order. However, this is not possible until the time for
appeal has passed. If you wish, you can waive your right to appeal before applying for revision.
IV. Appendices
1. Filling up FC-3

This form is used to apply for FCRA registration (see page 109 for more about this). Application for registration has to be made online in form FC-3 at http://www.mha.nic.in/fcra.htm.

Filling the Application Online

You need an internet connection and a browser to file the application.857

1. Start by visiting the FCRA web-site, currently at http://www.mha.nic.in/fcra.htm. There is a separate link titled ‘FCRA Online Services’.858 Clicking on this opens a window with five choices. The third option provides detailed instructions on filling the registration application. Read these carefully and then choose ‘Online filing of application for grant of FCRA Registration’.

2. You have to first create a user id and password. Make sure that you note down the user id and password. If you are asking someone else to file this on your behalf, get this information for future use.859

3. Once you are logged into the system, follow the online instructions to fill up the application. Save each of the four screens as you move through the application.860 You cannot move on till you have filled all the fields. If you don't have the correct information for a field, you can temporarily fill it with a character or number.861 You must later come back and correct this.

4. When the application has been completed, review it once to make sure that all the details are correctly given.862 Also check that you have collected all the required documents, and the bank draft for Rs.2,000.863 Click on ‘final submit’ when you are ready to file the application.864

5. You can now print the application. Please sign and stamp the form as well as the Undertaking (see Add: Declaration and Undertaking on page 159).

After this, send it to the Ministry by registered post. Please add a covering letter to provide any clarification or information you could not fill in the online form.

Intricacies

Let us now look at some of the more tricky aspects.

Screen I

This is where you provide basic information about the organisation.

Item 1(ii)(a) Registration Number

In many states, trusts are registered only by filing of Trust Deed with a registrar. In such case, the registrar writes a registration number on the reverse of the first page. Provide this as the registration number.865
Sec. 25 companies should click on ‘Yes’, and then give their registration details, even though the form does not mention a company.

**Item 1(ii)(d) PAN Number**

If you are an NPO, you have to give the organisation’s Income Tax PAN. If you do not have a PAN, you can say NA.

**Item 1(iii) Nature of Association**

You can choose more than one, if you have several programs. Keep in mind that if you choose only educational, and then take up economic programs, you are violating FCR Rules.

**Item 1(iv) Aims and Objects**

These should be taken from your memorandum or Trust Deed. Please be very brief while writing, as only 200 characters can be typed, including spaces. Special characters (? . : ; & % etc.) are not allowed. This small paragraph contains 250 characters.

In the second box briefly describe the activities and purpose of programs, which you will take up with FCRA funds. The text is again limited to 200 characters.

**Screen II**

This part is devoted to collecting details about the Governing Body members.

**Item 1(v) Governing Body**

Each person in the Governing Board should be listed here. This includes persons who are on the Governing Board simply as members. After filling details of each person, go through answers to questions (a) through (e). These questions about conviction, offences etc. apply to each person and are offered as a choice between Yes and No. This information is used to automatically fill up responses to question 3 in screen IV.

If these are correct, click ‘Add’. The details will then get added to the table at the bottom. You can also correct the details for each individual. To do this, click on Edit against his/her name in the table at the bottom of the screen.

Let us go back for a minute to the Yes and No choices for Governing Body members. If one of the members has been elected to a Panchayat, he/she is automatically prohibited from accepting foreign contribution. In such a case, you should choose Yes. However, this might mean that the application will be rejected. Therefore, it would be better to advise such a person to resign from the Governing Body. He/she should not be replaced by a close relative either.

While there is no prohibition on members of the same family being on the Board, this is seen as a negative mark, and should be avoided.

The form asks for details of at least two governing body members. In case of unregistered organisa-
tions, give names of at least two key persons, who are responsible for running the organisation.

**Screen III**

This is an additional screen designed to collect summary financial and activity history of the organisation. This part shows up in the online form only, and is related to item 8 of the paper form.

**Last Three Years**

In this segment, give your financial details for last three years. This includes your total expenditure, money spent on welfare and money spent on administration. These figures should be taken from your Income & Expenditure account. Your auditors or accountant will be able to help you with this. The total of welfare and administration expenditure should not exceed the total expenditure.

After filling in these figures, write about major activities taken up in that year. You can use upto 1000 characters for this. These two paragraphs contain 691 characters. Check the financial year showing on top, and click on ‘save data’. Follow the same procedure for the other two years.

**Screen IV**

This is the last input screen where information about associated organisations, past defaults, etc. is collected.

**Item 4(a) Associated Organisations**

Item 4(a) asks about associated organisations. If an associated organisation has been given prior-permission or has FCRA registration, then this should be disclosed. Give the name and address of the other organisation. This item also covers links with a foreign organisation. These should be disclosed even if the foreign organisation is not registered under FCRA. The links can arise as a branch, as a unit or as an associate. Give the name and address of the parent organisation.

If the space is insufficient, or you have to mention multiple organisations, you can write ‘As per Annexure A’. Attach the information in an annexure, when you file the printed copy.

The form then asks for information about associated organisations which have been denied permission (under item 7(iii)). What does the term ‘close links’ mean? This can mean having a common management, functioning from same office, or a general public perception that both are connected. Mention this only if the associated organisation has been denied FCRA or is otherwise prohibited. This also implies that if your organisation is associated with a political or quasi-political organisation, then you are likely to be denied FCRA registration.
**Item 4: Prohibited?**

This information is required under items 4(b)-(e). This covers four kinds of organisations:

- Those which have received an order under section 10
- Those which are covered by a notification issued under sec. II(3)
- Those which have been added to the prior-permission list under section 9(d)
- Those which had some prohibition imposed under FCRA 1976

Please see *Prohibitions* on page 79 for more on this.

**Item 5: Previous Compliance or Default**

This looks at your compliance history. If you have received prior-permission earlier, then you would have filed an annual return in form FC-6. The date of filing this form is to be given against item 5(i)(b).

The next question is more tricky. If you had ever received foreign contribution without registration or permission, you must disclose this here. Also say whether this default was condoned or not. If the default has been condoned, you are eligible for getting prior-permission initially. Later, subject to proper compliance, you can apply for FCRA registration also.

However, if the default is not yet known to the Government, you should brace yourself for further inquiry. At a minimum, compounding fees may have to be paid for the offence.

**Item 6: Newspapers and Newsletters**

If the NPO is bringing out a registered newspaper, then this should be disclosed by checking ‘Yes’ against item 6. Would an NGO newsletter be covered by this? Only if the newsletter is required to be registered under PRBA 1867. In such a case, the NGO should select ‘Yes’. However, it can still get FCRA permission or registration. For this, it will have to obtain a certificate from the Press Registrar of India. This certificate should clearly say that ‘the printed work is not a newspaper in terms of section 1(1) of the Press and Registration of Books Act, 1867 (25 of 1867)’. The certificate should be enclosed with Form FC-3 at the time of filing the printed copy.

**Internet or FM?**

FCRA restrictions have been extended to electronic media as well. Briefly, this would include some parts of internet, radio, as well as TV channels. For more on this, please see *Electronic Media* on page 59.

The present form FC-3 does not seek this information, even though it is sought in form FC-4 for prior-permission. This may be due to an oversight. Nevertheless, it would be best for you to ensure that your electronic media programs are not in violation of FCRA.

**Item 7: Earlier Applications**

If you had ever applied for FCRA registration or prior-permission earlier, then give details of the last application. If you had applied for both at different points of time, fill in the details for both registration as
well as prior-permission.

If permission or registration has been refused for an associated organisation, then this should be disclosed. Disclosure is also needed if an associated organisation has been prohibited from accepting foreign contribution.

**Item 8: Track Record**

Provide brief information about your activities during past three years. This should match the information you provided in Screen III. Additionally, the area of operations should also be specified.

**Item 9: Political Activities**

If your organisation was ever notified under FCRA 1976 or FCRA 2010 as an organisation of political nature, then this fact must be disclosed. The notification number should also be provided.

**Item 10: Bank Details**

Next comes the name of the bank where you have opened an account for receiving foreign contribution. This should be chosen from the drop-down list. You cannot add new names to this list. Remember that NGOs do not have to open current accounts. They can also open savings accounts.

Give the complete address of the branch where your account has been opened. Cross-check this with your pass-book or bank letter. Most banks show the address of the main office as well as the local branch office. Make sure you have chosen the branch address correctly.

Finally give the complete bank account number.

**Item 11: Blacklisted?**

Blacklisting is an administrative action, usually to indicate that an organisation is unreliable or might have diverted funds. The list is sometimes made public also.

If your organisation has been blacklisted, then choose ‘Yes’. Details of the notification or order should also be given.

What if you were blacklisted in the past, but are no longer on the list? The question is in the present perfect tense. Therefore, in such a case, you can choose ‘No’.

Does this apply if the applicant is blacklisted by a private donor or a foreign donor? No, this applies only to blacklisting / debarring by a Ministry, a Government Department or a statutory authority. It would also cover blacklisting by Government organisations such as CAPART.

**Recommendation**

You also have the option of attaching a recommendation letter from a government authority, such as the DM or a State or Central Ministry / Department. In most cases, this letter is difficult to get, and it only speeds up
Please don’t wait for getting this recommendation, if it is likely to take time.

**Add: Declaration and Undertaking**

The paper FC-3 form includes a Declaration and Undertaking. This covers four issues:

1. Informing the Ministry about changes in the organisation’s address, objectives, etc.
2. Prior-permission for change of 50% of office bearers
3. Prior-permission for change of FCRA bank account
4. Commitment on waiting for FCRA registration or permission

This part of the form is not generated when you fill the form online. Add this separately, using the paper format. Sign and stamp this before sending the form.

**Filing the Application**

You can preview the application before clicking ‘Final Submit’. After the application has been submitted online, you can print a copy. This should be signed by the Chief Functionary. Remember to enclose the Declaration and Undertaking as well. A demand draft for Rs. 2,000 is also to be enclosed as processing fees.

Following documents should be enclosed with the application for grant of Registration:

(i) Hard-copy of the online application, duly signed by the Chief Functionary of the association;
(ii) Certified copy of registration certificate or Trust deed, as the case may be;
(iii) Activity Report indicating details of activities during the last three years;
(iv) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
(v) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar of India that the publication is not a newspaper in terms of section 1(1) of the said Act.
(vi) A copy of the PAN, if issued by Income Tax authorities.
(vii) Fee by means of demand draft or banker’s cheque of Rs. 2000/- in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

The complete set should be despatched as early as possible, preferably within seven days. This will help ensure that it reaches the Government within 30 days of the online application. It should be sent by registered post to the Ministry.

What happens if the printed application does not reach the Government within 30 days? The online application already made will be treated as void. You will also not be able to make another application for prior-permission for six months.

Therefore, keep a copy of the entire set, along with the post-office receipt carefully. This will give you a chance to prove that you had actually sent the application in time.

An application sent in the paper form, but not made online, will not be valid. Applications are also rejected if the correct form is not used or these are incomplete.
2. Filling up FC-4

This form is used to apply for prior-permission to receive foreign contribution. (See page 105 for more about this). The application must be made online in form FC-4 at http://www.mha.nic.in/fcra.htm.

Filling the Application Online

You need an internet connection and an internet browser to file the application.903

1. Start by visiting the FCRA web-site, currently at http://www.mha.nic.in/fcra.htm. There is a separate link titled ‘FCRA Online Services’.904 Clicking on this opens a window with five choices. The last option provides detailed instructions on filling the prior-permission application. Read this carefully and then choose ‘Online filing of application for grant of FCRA Prior Permission’.

2. You have to first create a user id and password. Make sure that you note down the user id and password. If you are asking someone else to file this on your behalf, get this information for future use.905

3. Once you are logged into the system, follow the online instructions to fill up the application. Save each of the four screens as you move through the application. You cannot move on till you have filled all the mandatory fields (marked with a red*). If you don't have the correct information for a mandatory field, you can temporarily fill it with a character or number. You must later come back and correct this.906

4. When the application has been completed, review it once to make sure that all the details are correctly given. Also check that you have collected all the required documents, and the bank draft for Rs.1,000. Click on ‘final submit’ when you are ready to file the application.907

5. You can now print the application and send it to the Ministry. Make sure that you have signed the main form, as well as the Undertaking.

Add a covering letter to provide any clarification or information you could not include in the online form.

Intricacies

Let us now look at some of the more tricky aspects. Please note that the sequence and layout of the paper form is slightly different from the online form.

Screen I

Item I(ii)(a): Registration Number

In many states, trusts are registered only by filing of Trust Deed with a registrar.908 In such case, the registrar writes a registration number on the reverse of the first page. Give this as the registration number.

Sec. 25 companies should click on Yes, and then give their registration details, even though the form does not mention a company.
Item 1(ii)(d): PAN Number

If you are an NPO, you have to give the organisation’s Income Tax PAN. If you are an individual, you have to give your personal PAN.

Item 1(iii): Nature of Association

You can choose more than one, if you have several programs. Keep in mind that if you choose only educational, and then take up economic programs, you are violating FCR Rules.

Item 1(iv)(a): Aims and Objects

These should be taken from your memorandum or Trust Deed. Please be very brief while writing, as only 200 characters can be typed, including spaces. No special characters (., ; & % etc.) are allowed. This small paragraph contains 250 characters.

The activities and purpose of the proposed activity should be based on the proposal and the donor’s commitment letter. The text is again limited to 200 characters.

Screen II

Item 1(v): Governing Body

Each person in the Governing Council should be listed here. This includes those persons who are on the Governing Body simply as members. After filling details of each person, go through answers to question 2. These apply to each person and are offered as a choice between Yes and No.

If these are correct, click ‘Add’. The details will get added to the table at the bottom.

Let us go back for a minute to the Yes and No choices for Governing Body members. If one of the members has been elected to a Panchayat, he/she is automatically prohibited from accepting foreign contribution. In such a case, you would have to choose Yes.

However, this might mean that the application will be rejected. Therefore, it would be better to advise such a person to resign from the Governing Body. Preferably, he/she should not be replaced by a close relative either.

While there is no prohibition on members of the same family being on the Board, this is seen as a negative mark, and should be avoided.

Screen II

Item 4: Earlier Applications

If you had ever applied for FCRA registration or prior-permission earlier, then give details of the last application. If you had applied for both at different points of time, fill in the details for both registration as well as prior-permission.
APPENDICES/Filling up FC-4

If permission or registration has been refused for an associated organisation, then this should be disclosed. Disclosure is needed if an associated organisation has been prohibited from accepting foreign contribution.

**Item 4(iii): Associated Organisations**

Please refer to discussion under Associated Organisations on page 156.

**Item 5(a): Branch?**

Item 5(a) asks for the mirror image of the information sought in 4(iii). If an associated organisation has been given prior-permission or has FCRA registration, then this should be disclosed. Give the name and address of the other organisation.

Item 5(a) also covers links with a foreign organisation. These should be disclosed even if the foreign organisation is not registered under FCRA. The links can arise as a branch, as a unit or as an associate. Give the name and address of the parent organisation.

If the space is insufficient, or you want to mention multiple organisations, write ‘As per Annexure A’. Attach the information in an annexure, when you file the printed copy.

**Item 5(b): Prohibited?**

This information is required under item 5(b)-(e). This covers four kinds of organisations. Please see Prohibited? on page 157 and the discussion under Prohibitions on page 79 for more on this.

**Item 6: Previous Compliance or Default**

Item 6(i) looks at your compliance history. If you have received prior-permission earlier, then you would have filed an annual return in form FC-6.916

Item 6(ii) is more tricky. If you had ever received foreign contribution without registration or permission, you must disclose this here. You should also say whether this default was condoned or not. If the default has been condoned, then no problem arises. However, if the default is not yet known to the Government, you should brace yourself for further inquiry.917 Some compounding fees may also have to be paid.

**Item 7: Newspapers and Newsletters**

If the NPO is bringing out a registered newspaper, then this fact should be disclosed by checking ‘No’ against item 7.918 Select ‘Yes’, if it is not bringing out a registered newspaper.

Why this seeming confusion? The form asks for an affirmation that you are not bringing out a newspaper.919 That is why ‘yes’ must be selected if you are not!

Would an NGO newsletter be covered by this? Only if the newsletter is registered under PRBA 1867.920 In such a case, the NGO will have to select ‘No’.
However, it can still get FCRA permission or registration.\textsuperscript{921} For this, it will have to obtain a certificate from the Press Registrar of India.\textsuperscript{922} This certificate should clearly say that ‘the printed work is not a newspaper in terms of section 1(1) of the Press and Registration of Books Act, 1867 (25 of 1867)’.\textsuperscript{923} The certificate should be enclosed with Form FC-4 at the time of filing the printed copy.

\textit{Item 8: Internet or FM?}

FCRA restrictions have been extended to electronic media as well. Briefly, this would include internet, radio, as well as TV channels.\textsuperscript{924}

- If the NGO is producing or broadcasting:
  - audio news,
  - audio visual news, or
  - programs on current affairs,
  then choose ‘No’. If you are not, then choose ‘Yes’.

For more on this, please see \textit{Electronic Media} on page 59.

\textit{Item 9: Blacklisted?}

Blacklisting is an administrative action, usually to indicate that an organisation is unreliable or might have diverted funds. The list is sometimes made public also.\textsuperscript{925}

- Item 9 asks for a confirmation (choose Yes) that the applicant has not been blacklisted or debarred from receiving aid or assistance. Do not give this confirmation if your organisation has been blacklisted. In such a case, choose ‘No’.

- What if you were blacklisted in the past, but are no longer on the list? The affirmation is in the present perfect tense. Therefore, in such a case, you can choose ‘Yes’.

- Does this apply if the applicant is blacklisted by a private donor or a foreign donor? No, this applies only to blacklisting / debarring by a Ministry, a Government Department or a statutory authority. It would also cover blacklisting by Government organisations such as CAPART.\textsuperscript{926}

\textit{Item 10: Track Record}

Describe your work over the last three years. This should be very brief, in just 200 characters. Choose carefully from the activities, so that these give an idea of the nature of your work. Be very economical with words. For instance, don’t start by saying ‘Our organisation has been working for last three years…’. That’s nine unnecessary words and a waste of 54 characters!

- Does this mean the organisation has to be three years old to apply for prior-permission? No. If your organisation has been formed recently, you can describe your work since formation.

- Also attach audited statement of Accounts for last three years, if available. Click ‘no’ only if the organisation has been formed very recently, and you don’t have any audited accounts.

\textit{Item 13: Bank Details}
Next comes the name of the bank where you have opened an account for receiving foreign contribution. Remember that NGOs do not have to open current accounts. They can also open savings accounts. This should be chosen from the drop-down list. You cannot add new names to this list.

Give the complete address of the branch where your account has been opened. Cross-check this with your pass-book or bank letter. Most banks show the address of the main office as well as the local branch office. Make sure you have chosen the branch address correctly.

Finally, provide the complete bank account number.

**Screen IV**

**Item 12: Donor Commitment**

Whether you choose cash or kind, you must specify the currency and the amount. Which currency should you choose? Select the one which is shown in the Donor's approval letter. It does not matter if the remittances come in Rupees or another currency.

Specify the purpose also. Choose one from a dropdown list of 55 objects. If your project is not covered by one of these, or overlaps into several categories, you can choose 'Activities other than those mentioned above'. More specific details should be given while submitting printed copy of the application.

Next specify the geographical area. The form allows you to choose multiple states by holding down ctrl key, while clicking on multiple states.

You also have to enclose a copy of the donor's commitment letter. Along with this a copy of the approved project proposal is required. This should include the total amount, as well as the breakup of the budget.

The paper form is somewhat different from the online form with regard to the source. The online form makes a distinction between proposal approved by a foreign donor, and that approved by a first recipient. If your donor agency has FCRA registration in India, then say 'yes' against 12(d) in the online form. If the funds are coming directly from abroad, or the donor is not registered under FCRA, say 'yes' against 12(c) instead.

**Item 14: Donor Details**

If the donor is an individual, specify the nationality and profession apart from giving present and permanent address. Contact information (email, phone) should also be given, if available. Choose nationality from a drop-down list -confirm this with the donor. Similarly, a drop-down list is provided for the professions, with rather limited choice. Choose the one which is closest to your donor's work.

If the donor is an organisation, similar details are required. Also add the address of the main office, if different from the one that you are dealing with. Attach particulars of the chief functionary and office bearers separately.

The next question offers you a choice: is the donor a foreign government source or government agency? Choose the correct one, and give the name of the Government in the box. What if it is a private source? Choose 'agency', and type 'private source' in the box.

Click on the 'Add Donor' button. If you have only one donor, this completes the form. If the project is being funded by multiple donors, go back to the top of the form, and fill out the details for the second donor.
Recommendation

You can also attach recommendation letter from a government authority, such as the DM or a State or Central Ministry / Department. In most cases, this letter is difficult to get, and it only speeds up the process marginally. Don’t wait for getting this recommendation, if it is likely to take time.

Declaration and Undertaking

The form includes a Declaration and Undertaking. This covers four issues:

1. Informing the Ministry about changes in the organisation’s address, objectives, etc.
2. Prior-permission for change of 50% of office bearers
3. Prior-permission for change of FCRA bank account
4. Commitment on waiting for FCRA registration or permission

This part of the form is generated automatically when you fill the form online. Sign and stamp this also before sending the form.

Filing the Application

You can preview the application before clicking ‘Final Submit’. After the application has been submitted online, you can print a copy. This should be signed by the Chief Functionary. A demand draft for Rs.1,000 is also to be enclosed as processing fees. Make sure that the signed declaration and undertaking is also included. For more on this, please see Declaration and Undertaking above.

Following documents should be enclosed with the application for grant of Prior Permission:

(i) Paper-copy of the online application, duly signed by the Chief Functionary of the association;
(ii) Certified copy of registration certificate or Trust deed, as the case may be;
(iii) Commitment letter from foreign donor specifying the amount of foreign contribution and the purpose for which it is proposed to be given;
(iv) Copy of the project report for which foreign contribution is to be received and utilised;
(v) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar of India that the publication is not a newspaper in terms of section 1(1) of the said Act.
(vi) A copy of the PAN, if issued by Income Tax authorities.
(vii) Fee by means of demand draft or banker’s cheque of Rs. 1000/- in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

The complete set should be despatched as early as possible, preferably within seven days. This will help ensure that it reaches the Government within 30 days of the online application. It should be sent by registered post to the Ministry.

What happens if the printed application does not reach the Government within 30 days? The online application already made will be treated as void. You will also not be able to make another application for prior-permission for six months!

Therefore, keep a copy of the entire set, along with the post-office receipt carefully. This allows you to prove that you had actually sent the application in time.
An application sent in the paper form, but not made online, will not be valid. Applications are also rejected if the correct form is not used or these are incomplete.943

**Repeat Application**

Once you have submitted an application for prior-permission, you cannot submit another application for prior permission for the same project for at least six months. What does this mean?

Let’s say that you have applied online for prior-permission for project A in FC-4 on 1st July 2011. You are not eligible to apply for another prior-permission for project A till 31-Dec-11.944

However, there is no restriction on applying for prior-permission for other projects. There is no bar on making an application for registration either.945 See *Cooling-off Period* on page 110 for more on this.
3. Filling up FC-5

This form is used to apply for renewal of FCRA registration. (See page 110 for more about this). The form is fairly short and simple. It should be signed by the Chief Functionary.

Basic Information

Provide address and contact information under item 1. Under item 2, the nature of the Association (Cultural, Religious, Educational, Economic, Social) should be mentioned. If you have multiple activities (e.g. Economic as well as Social), remember to mention all.

FCRA Registration

Under item 3, give the organisation's FCRA registration information. This information should be taken from your FCRA registration letter. Place of registration refers to the town, district, state mentioned in your address as given in FCRA registration certificate. Enclose a certified copy of the FCRA registration certificate with the paper application.

Date of expiry means your FCRA registration date plus five years. In case you were registered before 1-May-11, mention the date of expiry as 30-April-2016.

Give your PAN number also.

Office Bearers

Give details of current office bearers in table 1(f). This is similar to what is required in FC-3 and FC-4. See Governing Body on page 155 for more on this.

If any of your office bearers have changed since registration, please see Change of Office-bearers on page 112, before filling the form.

Track Record

Under item 4, give year-wise summary of foreign contribution received since your FCRA registration. Under item 5, specify how much contribution you used during each of the years.

Also confirm that you have been following the provisions of FCRA. Ordinarily you should say ‘yes’. If you have faced any proceedings under FCRA, then mention these briefly, and provide current status of the case.

Under item 7, give reasons for seeking renewal of the certificate. This could be something like ‘for continuing our present work with ....’.

Under item 9, state whether your NPO has been blacklisted by any Government Department etc. Please see Blacklisted on page 163 for more on this.
APPENDICES// Filling up FC-5/Filling up FC-6

Other Information

If there is any other relevant information, provide this here.
5. Filling up FC-6

This form is the annual return of foreign contribution. It should be filed before 31st December each year. (See page 116 for more about this). The form is similar to the old FC-3. You can fill the form manually and send it by registered post. Or you can fill it online and send a printed copy with annexures by registered post. The following instructions are mainly for filling the form manually or using Word, Excel, etc. However, the concepts remain the same even if you are filling the form online.

Year

In the subject-line, give the year for which the form is being filled. For example, in case of year 2011-12, you will write “Account of foreign contribution of the year ending on 31st March 2012”.

Heading 1: Association’s Details

Item (i): Name and Address

Fill the name and registered address of the association in block letters (CAPITALS).

Item (ii): FCRA Registration

Fill the FCRA registration number and the date of registration at the top. This information is taken from the FCRA registration certificate.

Item (iii): Prior Permission

You have to fill this if you are not registered under FCRA, and have taken specific prior permission from FCRA for receiving foreign contribution.

Give the number and date of FCRA’s prior permission letter for this grant. If you have received more than one grant during the year under two separate prior permission letters, give reference of both the letters.

Item (iv): Nature of Association

Which category should you tick? Check your initial application for registration or prior-permission. Tick the same category now as you chose earlier.

Item (v): Religious

If you ticked ‘religious’ in item (iv), then also tick whether the association is ‘Hindu’, ‘Muslim’, ‘Christian’,
etc. Again, tick in front of the relevant option. If you tick ‘others’, then write which religion (Jain, Bahai, Parsi, etc.)

**Heading 2: Summary of Receipts**

**Foreign contribution**

Show total foreign contribution received during this year under item 2(i). Ignore any interest earned on FCRA bank balances or investments.

**Interest Income**

Show interest credited by the bank in your FCRA bank accounts under Item 2(ii)(a): Interest on FCRA bank account.

Show interest on investments under item 2(ii)(b): Other interest. This includes interest on fixed deposits also.

**Heading 3: Utilisation Table**

This is the most important heading of form FC-6. Information to be provided under this heading has been split into two heads: one for Cash and another for Kind.

All the information of previous balance available, receipts during the year, funds utilised and balances at the end has to be segregated into cash and kind.

The table given under this heading has six main sections (columns):

- Purpose (column 2)
- Previous Balance (columns 3 - 4)
- Details of Receipts (columns 5 - 9)
- Utilisation (columns 10 - 11)
- Unspent Balance (columns 12 - 13)
- Activity locations (column 14)

**Column 2: Purpose**

This column gives a list of 56 ‘purposes’ for which the money may have been received and utilised. The last purpose (56th) is for the activities which may not be covered by the other 55.

**Classifying your expenses**

Some objects in form FC-6 overlap each other. Still, this table helps FCRA Department analyse the flow of foreign funds into India. Therefore, try and choose the most specific item wherever possible. For example, if you are providing some technical training to ‘rural communities’, then this should be classified under ‘Vocational/ technical training’ and not under ‘rural development’. 
Also keep a copy of the worksheet showing how you have grouped your ledger heads to arrive at the figures in FC-6.

\textit{Columns 3, 4: Previous Balance}

The ‘previous year balance’ column is sub-divided into two: one shows the balance in cash and the other shows balance in kind. In this column you have to show the closing balances (unspent balances) brought forward from the previous year.\textsuperscript{958}

You will find these balances in your FC-6 of the previous year. If you do not have any opening balance under a particular item, just say ‘Nil’.

\textit{Columns 5 to 9: Receipts}

This section has several columns. There are three main sub-sections: ‘As first recipient’, ‘As second / subsequent recipient’ and ‘Total’.

\textit{First Recipient}

For each receipt, check whether you have received it directly from the foreign donor or not.\textsuperscript{959} If yes, you will be known as ‘first recipient’. You will then show the particular receipt in the ‘first recipient’ columns.

\textit{Second Recipient}

If you have received your funds through another FCRA registered NGO or donor agency, then you become a ‘second / subsequent recipient’.\textsuperscript{960} Show this receipt in the column for ‘second recipient’.

Interest earned on foreign contribution should also be shown here.\textsuperscript{961}

What about FCRA loans? Soft loans taken from a foreign source should be deposited in FCRA bank account and reported in FCRA Receipts and Payments Account. These loans should also be reported in FC-6 as receipt of foreign contribution. Repayment of FCRA loan is treated as utilisation of FC funds. See Box: Micro Credit under Defining Foreign Contribution on page 38 for more on this.

\textit{Sale of Assets}

You can sell FCRA assets to any one (whether they have FCRA or not), with the donor’s consent.

If you sell off any asset (purchased earlier with foreign funds), then show the amount received as sale price here (column 7). This can be shown under the activity for which the asset was originally received (such as ‘rural development’).

\textit{Columns 5 and 7: Receipts in Cash}

Most grants come in by cheque or funds transfer. However, some small donations may be in the form of currency or coins.\textsuperscript{962} All such grants or donations should be shown in the ‘cash’ column (either column 5
Dealing with Interest

How do you deal with the interest you reported in the summary? This has to be allocated across various rows in the Utilisation Table, depending on the nature of interest. In all cases, such interest should be shown in the ‘second or subsequent receipt’ column.

1. Earmarked Interest

Some donor agencies ask for accounting of interest earned on their funds lying in the bank account. Such interest can be shown as addition to their funds in column seven of the relevant row. This is the row where their main project funds are shown such as ‘rural development’ or ‘animal husbandry’, etc.

2. Non-Earmarked Interest

However, some agencies do not insist on allocation of interest to their project. Some bank interest, therefore, remains surplus. Such unallocated bank interest can be shown under item ‘56: Other Activities’.

3. Micro-credit Interest

This includes interest and service charges, etc. on micro-credit loans. This income can be shown under item ‘56: Other Activities’, under the sub heading ‘interest / service charges on revolving fund’. You can use column seven for this. Any interest paid out on revolving fund capital can be shown in column ten (utilisation) of the same row.

4. Corpus Interest

This interest income would come from investments made out of Corpus/ Endowment Fund. This can be shown in column seven, against item 55 (i) (a) ‘Establishment of Corpus Fund’.

Alternatively, you can show this income against item ‘56: Other Activities’ as ‘interest on corpus / endowment investments’. Give a footnote showing the nature of this income in the FC-6.

Columns 6 and 8: Receipts in Kind

Sometimes donors give material or assets instead of funds. These are also foreign contribution. Such items may be vehicles, blankets, food, oil, medicine, computers, etc. All such receipts have to be reported here at estimated value. These should match the figures reported separately in form FC-7. Please see Articles Register: FC-7 on page II7 for more on this.

Column 9: Total Receipts

This column is a total of columns 5, 6, 7, and 8. Remember not to add up columns 3 and 4 when you write
the total here.

No Receipts?

What happens if you have not received any foreign contribution this year or since your registration? You should still file a ‘nil’ return each year.969

Columns 10 and 11: Amount Utilised

The funds utilised during the year should be shown in column 10. Pick up the figures from your FCRA Receipts and Payments Account. If you have received materials also, show the utilisation of these items in column 11 as utilised in kind.970

Transfers to Secondary Bank Accounts

A statement showing funds transferred to such accounts for utilisation should be attached to FC-6.971 Funds utilised through secondary FCRA bank account should also be included in normal utilisation figures reported in form FC-6.

Transfers to Other NGOs

Any amount given to another association out of FCRA funds for carrying out a program or under direction of Funding Agency should be shown against item ‘56: Other Activities’.972 Give the FCRA number (or prior permission reference), name and address of the second recipient as a footnote.

Level of Detail

How much detail should be given in FCRA Receipts and Payments Account? This depends on the amount of total funds involved and the nature of programmes. For instance, if utilisation of a crore of Rupees is shown in one line as ‘rural development’, then the purpose of reporting is not met. In such cases, FCRA department might ask for more details or makes a field visit.

Your auditors can guide you in this. However, in general try to break down the figures so that each line item is not more than 5% of total receipts or Rs.1 lakh, whichever is higher.

For example, if your total receipts are Rs.10 lakhs, then try to break down individual line items to Rs.1 lakh or lower. However, if your total receipts are Rs.2 crores, then you can show individual line items up to ten lakhs each.

Columns 12 and 13: Balance

Show the unutilised balance for each item. This should be shown separately for cash and for kind. Figures for column 12 are derived as follows:
The figures for column 13 are worked out as below:
You have to repeat this for each row, till all 56+ rows are completed.

The total of two columns (12 and 13) should then be added. This will give you the Total Unutilised Balance with you at the year-end.

**Loan transactions with Indian Section**

Though FCRA provides for separate watertight compartments for FCRA and Indian funds, this is sometimes difficult to achieve in practice. Two common inter-fund transactions are discussed here:

1. **For Opening Bank Account**

When you opened the FCRA bank account, you might have deposited a small amount in this account from Indian funds. Often this money remains in the bank account. This is shown in the partial FCRA balance sheet here. Note that the FCRA bank account balance of Rs.36,000/- includes Rs.10,000 which was deposited initially to open the account.

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan from Indian Section</td>
<td>FCRA Bank Account</td>
</tr>
</tbody>
</table>

2. **Transactions during the Year**

Can you have loan transactions with the Indian section of your account books? FCRA Department treats this as mixing of FCRA and Indian funds. It should be avoided as far as possible. Please see *Loans between FC and Indian* on page 149 for more on this.

Nevertheless, many NGOs frequently borrow / lend money to the Indian section. This happens when FCRA funds are delayed but the project has to continue. This also happens when a shared expense (such as telephone or rent) is paid out of Indian funds. Part of this may later be allocated to an FCRA project.

What happens if you have such inter-fund loan transactions? How should these be disclosed? Such loans should be shown in the Receipts and Payments Account and Balance Sheet as below:
Column 14: Activity Locations

This new column is designed to help correlate actual activities with money spent. The location is to be specified for each of the row items that you have used. For instance, let us say that you reported some money as used for 45. Awareness Camps, etc. Against this, give the location of each of the events that you organised. If the space is not sufficient, the information can be given as separate annexures.

Most NGOs maintain detailed program records. However, compiling and correlating this information from records may take some time and effort. You also have to make sure that this information is reasonably accurate.

Heading 4: Designated Bank Details

Under FCR Rules, you can receive FCRA funds only through one separate bank account. This bank account number is given in your FCRA registration certificate. This rule also applies to prior-permission cases. Give your FCRA bank account number, name of the bank and address with PIN code (of the branch) here.

Heading 5: Donor Details

Give the details of the donors (who have given foreign funds or materials) here. Donors are subdivided into three categories:

(i) Institutional Donors

All grant-making agencies (and other organisations, such as companies) fall into the category of Institutional Donors. All grants, whether large or small, from such donors should be included here. Examples of such donors are Ford Foundation, Gates Foundation, Dell Foundation, etc.

Name and address of the donor should be written in column 3. Purpose of each grant is to be given in
column 4. Each instalment from the donor agency is to be listed separately along with purpose, date and amount.

Second Recipient

Some Indian Agencies like CRY or CAF may also give you funds from their FCRA account. In such a case, their grant should also be listed here.

Give the name and address of the Indian agency / NGO through whom you have received the funds. Particulars of the original donor do not have to be given.

(ii) Large Individual Donors

If you have received funds/ material which add up to more than Rs.1 Lakh in a year from an individual (person) donor, then list such donors here. Give the name and address of such donors in column 3.

In this case also, all instalments should be listed separately. Give purpose, date and amount under columns 4, 5 and 6.

(iii) Small Individual Donors

If grants from an individual (person) donor add up to less than Rs.1 lakh in a year, the donor is known as ‘small individual donor’. Such donations should be shown here.

Give name and address of such donors in column 3. This is not necessary for donations collected through collection boxes. However, if such collections are very high, FCRA Department may ask questions about the genuineness of such donations.

If you are raising funds online from foreigners, provide space for address etc. so that donors can fill up this information.

In this case also, all instalments should be listed separately. Give purpose, date and amount under columns 4, 5 and 6.

Difficulties

Should NGOs collect name and address of small individual donors? The old FC-3 form called only for purpose and amount to be given for small donors. The new FC-6 apparently calls for all details. This could be due to an oversight. Or this could be due to a general tightening of regulation around anonymous donations.

Whatever the reason, this will probably create practical difficulties in filling up the new FC-6 online, if each such donor is to be added to the donor list first.

Reconciliation

Before the form is finalised and signed, reconcile it for accuracy. This calls for three checks:

Check 1: Tally Tables 3 and 5
Add up all the cash and cheque grants / donations listed in Table 5. These should be the same as grant receipts (in money terms) shown in the FCRA Receipts and Payments Account. Crosscheck the total receipts (including materials grants), with the total receipts shown in column 9 of Table 3 also.988

**Check 2: Cross-check Unutilised Balance in Cash**

The unutilised amount (total of column 12 in Table 3) should be cross-checked with the FCRA Balance Sheet also, as shown below:

- Start with FCRA Bank Balance
- Add: Cash in hand
- Add: Fixed Deposits
- Add: Advance to staff / Imprest
- Add: Advances to suppliers
- Add: Any loan to Indian section
- Less: Loans taken from others
- Less: Loan from Indian section
- Result should be equal to total of column 12

The resulting figure should tally with the unutilised amount in column 12. If you wish, you can attach a copy of this calculation to your paper FC-6.

**Check 3: Crosscheck Balance in Kind**

Similarly the unutilised balance in kind (total of column 13 in Table 3) should be cross-checked with the total unutilised balance shown in FC-7.

**Declaration**

The form has to be signed only at one place (i.e. under the declaration statement) by the Chief Functionary.989 The seal (rubber stamp) of the NGO should also be put.

**Accuracy of Information**

You should take reasonable steps to make sure that:

- The information in FC-6 is accurate.
- No facts have been concealed or suppressed.

Why is this important? If it is found later that you had made a false statement in FC-6, you can face prosecution and penalty.990

**Revising your FC-6**

Can you revise your FC-6 if you find that a mistake has been made? There is no provision allowing or barring this under the Act or rules. Therefore, if the mistake is significant, consider revising it on your own. Send a covering letter with the revised FC-6 explaining the reason for revision.
CA Certificate

This certificate should be given by a Chartered Accountant (preferably your auditor). He/she should indicate his/her name, address and membership number. He/she should also put the seal of his/her firm on the form.991

Auditee

Correct legal name, and complete address is required. This should include state, district and pin code. In case the NPO has a registration number as a society, trust or sec. 25 company, then this should be mentioned along with the state where it is registered.992

Opening Balance

The opening balance should be cross-checked with form FC-6993 of previous year. This would include contribution in kind as well as cash / bank. It should also match the total of columns 3 and 4 in Utilisation Table.

Receipts

All foreign contribution received during the year, whether in cash / bank or kind, is to be reported here. This should match the total of column 9 in Utilisation Table.

Closing Balance

This is the balance remaining unutilised at the end of the year.994 This should match the total of columns 12 and 13 in Utilisation Table.

Maintenance of Accounts

Have the accounts been maintained as per FCRA requirements? Auditors should confirm that the accounts and records are in conformity with section 19 and rule 11.995

Audit of Accounts

The same auditor should also sign the FCRA Receipts & Payments Account, FCRA Income & Expenditure Account and FCRA Balance Sheet in the same manner.996 While signing these statements, reference to the report can be made.997

The certificate can be typed on plain paper. However, it would be better, if the certificate is issued by the auditor on their firm’s letterhead. The auditor is also free to give any clarificatory notes or qualification in the certificate.
Standards

As this is a public assurance engagement, all relevant standards and statements on auditing issued by the AASB should be considered.998

If the NGO has any income generation activities, then mandatory Accounting Standards should be considered when preparing FCRA accounts.999

FC-6 Annexures

Under rule 17, following documents should be attached to form FC-6. The CA certificate should also be attached. The FCRA Statements should all be for year ending on 31st March. These should be based on FCRA books only.1000

i. FCRA Income & Expenditure Account
ii. FCRA Receipts & Payments Account1001
iii. FCRA Balance Sheet
iv. Certified copy of the FCRA designated bank statement1002
v. Statement of transfers to secondary bank Accounts1003

At least two copies should be obtained - one for dispatch to the FCRA authorities along with FC-6, and one for the office record. Send the copy to Ministry with a covering letter, by Registered Post, Acknowledgment Due.1004 Make extra photocopies for dispatch to the donor agencies.1005
6. Filling up FC-7

The following explains how the articles register in form FC-7 should be maintained and filed. See page 117 for more regarding FC-7.

Description of Article

Start with a fresh sheet for each type of item. Remember to open different sheets for different size / packing of the same item.

   Write the name of the article on top. For example, ‘Blankets – large size’ or ‘Cooking Oil – 200 ml. Tins’. If you also receive Cooking Oil in 500 ml tins, open a separate account for these.

Receipts

Numbers refer to column numbers in the form. Enter each transaction separately, in separate rows.

1. Date

Date on which you received the consignment.

2. Donor

Who sent you these items? Give the name and address of the donor here. If you received the items through another NGO, give the name and address of that NGO.

3. Mode

How did the items reach you? This could be by road, rail or in some cases by air. Write the mode here - also give truck / train number, if feasible. In case of some small items, the donor may have given these to you by hand. In this case, the mode will be ‘by hand’.

4. Purpose

Why have these items been sent to you? For this, select the purpose of the donation from the list of 56 activities given in form FC-6. If the material has multiple purposes, you can split the entries to show these.

5. Quantity

The number of units (tins, blankets, etc.) received. If you received 200 tins of 200 ml. each, write 200 tins. Do not write 40 litres.
6. **Approximate Value**

Here you have to write the value of the items received. This does not have to be accurate - a near-about value is good enough.¹⁰⁰⁷

7. **Intimation**

This column is slightly confusing. No separate intimation has to be sent to the Government for each consignment. What you can do it to give the date of filing FC-6 or FC-7 itself.

However, form FC-6/FC-7 will only be filed after the end of the year. So leave the column blank till then. Fill it up after you have sent the FC-6/FC-7 to the FCRA Department.

**Utilisation**

Each issue of items should be recorded in a separate row.

8. **Date**

Give date of issue here.

9. **Beneficiary**

Who received the items that were issued? In most cases, this would be a beneficiary. Give his / her name and address. Each beneficiary should be listed separately, in one row.¹⁰⁰⁸

Sometimes, the items are issued to another NGO. This NGO will then distribute the items in their area. If so, give the name and address of the NGO here.

What if some of the items are sold? In such a case, write the name and address of the person who bought these items.

10. **Purpose**

If the items are sold, then there is no need to write any purpose. In other cases, mention the purpose. For this, select the purpose of the distribution from the list of 56 activities given in form FC-6.

11. **Utilised by NGO**

**Beneficiaries:** Quantity distributed to beneficiaries should be entered here. Make sure that you are using the correct unit.¹⁰⁰⁹

**Damages:** If some of the items were damaged or pilfered, then these should also be entered here.

**Totals:** At the end of the year, total up column II. Work out a rupee value for this. Use the same basis for valuation as in column 6.

**Linking to FC-6:** Enter the final value in column II of FC-6. Select a suitable purpose in FC-6. For example,
<table>
<thead>
<tr>
<th><strong>Date</strong></th>
<th><strong>Name and address of the person for whom received</strong></th>
<th><strong>Mode of receipt</strong></th>
<th><strong>Purpose of receipt</strong></th>
<th><strong>Quantity received</strong></th>
<th><strong>Approximate value of articles received</strong></th>
<th><strong>Date of intimation sent to the Central Government</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>26/2</td>
<td>Lyon, France</td>
<td>Ship</td>
<td>Relief</td>
<td>40,000</td>
<td>4,000</td>
<td>4,000</td>
</tr>
<tr>
<td>28/2</td>
<td>Gajoli (per list)</td>
<td>1/3</td>
<td>Relief</td>
<td>3,200</td>
<td>400</td>
<td>400</td>
</tr>
<tr>
<td>29/2</td>
<td>CDS Kolkata Road (1st receiver)</td>
<td>1/3</td>
<td>Relief</td>
<td>20,000</td>
<td>40</td>
<td>40</td>
</tr>
</tbody>
</table>
this could be ‘5. Rural Development’ or ‘23. Relief for natural calamities’.

If the items were used for mixed purposes, you can split the value and show these in several different rows in form FC-6.

12. Sold off

If the goods were sold, enter the quantity here. The value of sales will be shown as receipt in form FC-6 in column 7. At the same time, the value of sale will also be shown in column II of FC-6.

13. Transferred

If these were returned to donor or given to another NGO, enter the quantity in this column.

14. Sale recovery

In case the items were sold, enter the value (in Rupees) of sale here.

15. Entry reference

This applies only if items were sold and money was recovered for these. Here you have to give reference of the FCRA cash book page and date on which this recovery is shown.

16. Closing Balance

This should be recalculated whenever you make an entry for receipt or for issue.

Declaration and Signature

Each filled up sheet of form FC-7 should be signed at the end of the year. This should be done by the Chief Functionary. Name of the person and seal of the organisation are also required.

Auditing FC-7

FC-7 has to be filed with a CA certificate. Only one certificate is required for the entire FC-7 each year - you don’t need a certificate for each stock item.

This certificate is similar to the one required for FC-6 (see CA Certificate on page 178). However, here only receipt, balance etc. of contribution in kind should be certified.1010

Filing FC-7

After the form is completed, send a copy by registered post to FCRA Department, along with a covering letter.1011 Also include the CA Certificate. Make sure you keep a copy and the proof of posting for your own record.
7. Filling up FC-8

The following explains how securities register in form FC-8 should be maintained and filed. See page 118 for more regarding FC-8.

**Name and Nominal Value**

Start with a fresh sheet for each type of security. Remember to open different sheets for different securities / deposits with the same organisation. Write the name of the security on top at 1. The nominal value (face value) should also be mentioned at 2.

The table is divided into three main parts: Receipts, Dividend, Sale. Numbers refer to column numbers in the form. Enter each transaction separately, in separate rows.

**1. Received / In Hand**

Columns 1-7 are for recording details of securities received.

1. **Date**

Enter the date on which you received the security.

2. **Donor**

Who has given you these securities? Give the name and address of the donor here.

3. **Distinguishing Numbers**

All securities have a distinctive serial number, just like a currency note. Each of these numbers should be mentioned here.

4. **Total**

The total number of shares, bonds, etc. should be mentioned here.

5. **Nominal Value**

Enter the face value of all the securities that were received.
6. RBI Permission

This permission is no longer required, when you receive foreign securities as a gift from a non-resident. However, restrictions under Income Tax continue to apply.

7. Intimation

This column is slightly confusing. No separate intimation has to be sent to the Government for each receipt of securities. What you can do is to give the date of filing FC-6 or the date of filing FC-8 itself. However, these forms will only be filed after the end of the year. So leave the column blank till then. Fill it up at the time of sending the forms to FCRA Department.

II. Dividend / Interest

Columns 8-11 are for recording details of interest or dividend received. These entries should be made only when interest or dividend etc. is received.

8. Date of Receipt

Give date of receipt of interest or dividend here.

9. Amount

The amount of interest / dividend should be entered here.

10. Cut-off Date

Dividend is normally given for each financial year. This may be interim or final. The last date of the financial year should be mentioned here. Similarly, interest is calculated and paid for specified period. The ending date of the period should be mentioned here.

11. Accounting entry

When dividend or interest is received, you will deposit it into the designated FCRA bank account and make an entry in FCRA books. Give reference of this entry (date / voucher number / Book Folio).

III. Sale / Disposal

Columns 12-19 are for recording sale or disposal (e.g. gift, donation) of any securities.
APPENDICES // Filling up FC-8

12. Date

The date of sale or transfer is to be given here.

13. Transferee Details

Name and address of the person / organisation who purchased (or received) the securities from you is to be given.

14. Quantity

Give the total number of shares etc. transferred or sold.

15. Serial Numbers

Give distinctive numbers of the share certificates, etc..

16. Value / Sale Price

In case the securities were sold, enter the value (in Rupees) of sale here.

17. RBI Permission

If the shares / securities are sold to a non-resident person, intimation to RBI is required. In case the shares are gifted to a non-resident, prior approval of RBI must be taken.

18. Intimation to FCRA

No separate intimation is required for each transaction of sale / transfer. Instead date of filing FC-6/FC-8 should be mentioned.

19. Entry in FC Accounts

Reference to the bank remittance (if any), recorded in FCRA books is to be given here.

Declaration and Signature

Each filled up sheet of form FC-8 should be signed at the end of the year. This should be done by the Chief Functionary. Name of the person and seal of the organisation are also required.

Auditing FC-8
FC-8 has to be filed with a CA certificate. Only one certificate is required for the entire FC-8 each year - you don't need a certificate for each stock item.

This certificate is similar to the one required for FC-6 (see CA Certificate on page 178). However, here only the information related to investments should be certified.1018

**Filing FC-8**

After the form is completed, send a copy by registered post to FCRA Department, along with a covering letter.1019 Also include the CA Certificate. Make sure you keep a copy and the proof of posting for your own record.
8. **Filling up FC-10**

Form FC-10 is used for proxy permission. This is taken by transferor NPO for giving funds to an NPO without FCRA registration/ prior permission. See page 108 for more regarding FC-10.

The application in form FC-10 is a paper application, unlike FC-3 or FC-4. No fees are to be deposited while filing this application. No time limit has been given for processing this application. However, it is likely that the application will ordinarily be processed by MHA in about 3-4 months.

**Opening Para**

The application is made by the Chief Functionary of the Transferor NPO. Apart from writing the name of the Chief Functionary, you should specify the section as 7.

**Transferor's Details**

Give your complete contact information, including email and phone numbers. Also provide your FCRA registration details. If you are under prior-permission, give these details. If you have neither of these, you are probably using the wrong form. A self-certified copy of the FCRA registration certificate or prior-permission should be enclosed.

**Transferee's Details**

Give the transferee's complete contact information, including email and phone numbers. Say 'No' with regard to FCRA registration details. Give details of organisation registration against the next item. A copy of the registration certificate is also required. This should be certified as true copy by the transferee NPO's Chief Functionary. Also provide the PAN number of the transferee, if it is available.

**Details of Foreign Contribution**

Next specify how much foreign contribution you plan to transfer. Remember, there is a limit of 10% on the amount you can transfer. See *The 10% Limit* on page 108 for more on this.

**Bank Details**

Next comes the account number, name and address of the bank where the contribution will be transferred. This bank account should be used to hold only foreign contribution. This information should be confirmed with the transferee.

**Other Information**

If there are any special circumstances related to the permission, these should be mentioned here.
Sign-off

The application should be signed off by the Chief Functionary of the transferor NPO. Full name and NPO’s seal should be added. It is not necessary to get FC-10 countersigned by the District Magistrate.1025

Filing the Application

The application should be sent to the MHA by registered post. Unlike the prior-permission, no fee is required for filing FC-10. A copy of the form and proof of posting should be retained.

The approval letter will come directly to the transferor. Do not make the transfer unless the approval is in hand.
9. Non-foreign Sources

(In alphabetical order)

1. African Development Bank (ADB), Abidjan.
2. Afro-Asian Rural Reconstruction Organisation (AARRO), New Delhi.
3. Asia and Pacific Centre of Transfer of Technology (APCTT), New Delhi.
4. Asia-Pacific Association of Agricultural Research Institutions (APAARI), Bangkok.
5. Asia/Pacific Cultural Centre for UNESCO (ACCU), Japan.
10. Bureau (Secretariat) of the Convention on Wetlands (Ramsar), Gland, Switzerland.
13. Centre for Science and Technology of the Non-Aligned and Other Developing Countries (NAM S&T Centre), New Delhi.
15. Commission on Genetic Resources for Food and Agriculture (CGRFA), Rome.
17. Common Fund for Commodities (CFC), Amsterdam, The Netherlands.
18. Commonwealth Agricultural Bureaux International (CABI), UK.
20. Consultative Group on International Agricultural Research (CGIAR), Washington D.C.
23. Department of Economic and Social Affairs, New York.
27. Department of Public Information, New York.
29. Economic Commission for Asia and the Pacific (ESCAP), Bangkok, Thailand.
31. Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile.
32. Economic Commission for Western Asia (ESCWA), Beirut, Lebanon.
33. Food and Agriculture Organization (FAO), Rome.
34. Global Development Network (GDN).
35. Global Environment Facility, Washington D.C.
37. Inter-American Development Bank (IDB), Washington D.C.
38. Intergovernmental Panel on Climate Change (IPCC), Geneva.
40. International Bank for Reconstruction and Development (IBRD), Washington D.C.
41. International Centre for Agricultural Research in Dry Areas (ICARDA), Syria.
42. International Centre for Genetic Engineering and Biotechnology (ICGEB), New Delhi.
43. International Centre for Living Aquatic Resource Management (ICLARM), Philippines.
44. International Centre for the Settlement of Investment Disputes (ICSID), Washington D.C.
45. International Centre for Tropical Agriculture (CIAT), Columbia.
46. International Centre of Research in Agro-forestry (ICRAF), Nairobi.
47. International Civil Aviation Organisation (ICAO), Montreal.
48. International Consultative Group on Food Irradiation (ICGFI), Vienna.
50. International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), Hyderabad.
51. International Development Association (IDA), Washington D.C.
52. International Finance Corporation (IFC), Washington D.C.
53. International Finance Corporation (IFC), Washington D.C.
54. International Food Policy Research Institute (IFPRI), Washington D.C.
55. International Fund for Agricultural Development (IFAD), Rome.
56. International Institute for Tropical Agriculture (IITA), Nigeria.
57. International Irrigation Management Institute (IIMI), Colombo.
60. International Maritime Organization (IMO), London.
61. International Monetary Fund (IMF), Washington D.C.
62. International Narcotics Control Board (INCB), Vienna.
64. International Potato Centre, Peru.
65. International Research and Training Institute for the Advancement of Women (INSTRAW), Santo Domingo, Dominican Republic.
66. International Rice Research Institute, Manila, Philippines.
75. International Water Management Institute (IMI), Sri Lanka.
76. International Wheat and Maize Improvement Centre (CIMMYT), Mexico.
APPENDICES// Non-foreign Sources

78. Multilateral Investment Guarantee Agency (MIGA), Washington D.C.
79. Office for the Coordination of Humanitarian Affairs, New York.
80. Office of Internal Oversight Services, New York.
82. Office of the UN High Commissioner for Human Rights (OHCHR), Geneva.
83. Office of the UN High Commissioner for Refugees (UNHCR), Geneva.
86. Provisional Technical Secretariat (PTS) for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Vienna.
87. Regional Co-ordination centre for Research and Development of coarse Grains, Pulses, Roots and Tuber crops in the Humid Tropics of Asia and the Pacific (CGPRT Centre), Indonesia.
88. Regional Network for Agriculture Machinery (RNAM), Bangkok.
90. Secretariat of the Convention on Biological Diversity (CBD), Montreal.
92. Secretariat of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought /or Desertification, especially in Africa (CCD), Bonn.
93. Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), Bonn.
94. UNEP/CMS Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), Bonn.
105. United Nations International Drug Control Programme (UNDCP), Vienna.
110. United Nations Office for Project Services (UNOPS), New York.
111. United Nations Outer Space Committee.
117. United Nations University (UNU), Tokyo.
118. United Nations Volunteers (UNV), Bonn.
119. Universal Postal Union (UPO), Berne, Switzerland.
120. West Africa Development Association (WARDA), Abidjan.
121. World Food Council (WFC).
122. World Food Programme (WFP), Rome.
125. World Meteorological Organization (WMO), Geneva.
126. World Tourism Organisation (WTO/OMT), Madrid.
127. World Trade Organisation (WTO), Geneva, Switzerland.
10. Banned Sources

1. Babbar Khalsa International
2. Khalistan Commando Force
3. Khalistan Zindabad Force
4. International Sikh Youth Federation
5. Lashkar-e-Taiba/Pasban-e-Ahle Hadis
8. Hizb-ul-Mujahideen/ Hizb-ul-Mujahideen Pir Panjal Regiment
9. Al-Umar-Mujahideen
10. Jammu and Kashmir Islamic Front
11. United Liberation Front of Assam (ULFA)
12. National Democratic Front of Bodoland (NDFB)
13. People’s Liberation Army (PLA)
14. United National Liberation Front (UNLF)
15. People’s Revolutionary Party of Kangleipak (PREPAK)
16. Kangleipak Communist Party (KCP)
17. Kanglei Yaol Kanba Lup (KYKL)
18. Manipur People’s Liberation Front (MPLF)
19. All Tripura Tiger Force
20. National Liberation Front of Tripura
21. Liberation Tigers of Tamil Eelam (LTTE)
22. Students Islamic Movement of India
23. Deendar Anjuman
24. Communist Party of India (Marxist-Leninist) – People’s War, All its formations and front organizations
25. Maoist Communist Centre (MCC), All its formations and Front Organisations
26. Al Badr
27. Jamiat-ul-Mujahideen
28. Al-Quida
29. Dukhtaran-e-Millat (DEM)
30. Tamil Nadu Liberation Army (TNLA)
31. Tamil National Retrieval Troops (TNRT)
32. Akhil Bharat Nepali Ekta Samaj (ABNES)
34. Communist Party of India (Maoist) all its formations and front organisations
35. Indian Mujahideen and all its formations and front organisations
11. Contacting FCRA

Organisation Structure:

Postal Address:
The Secretary,
Ministry of Home Affairs,
Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp, Jantar Mantar
New Delhi-110 001

Phone Numbers:
FCRA - Dir. +91-23438038
FCRA.I +91-23438044
FCRA.II +91-23438042

Visiting Hours:
10 a.m. to 12 noon, Monday through Friday

Email:
For any suggestions and queries regarding FC(R) Act, 2010: ds-fcra@nic.in
For problem in filing online application: clsharma@nic.in
V. ACT AND RULES
The Foreign Contribution Regulation Act, 2010  
(No. 42 of 2010)

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 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.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

Chapter I: Preliminary

1. Short title, extent, application and commencement.
   (1) This Act may be called the Foreign Contribution (Regulation) Act, 2010.
   (2) It extends to the whole of India, and it shall also apply to—
      (a) citizens of India outside India; and
      (b) associate branches or subsidiaries, outside India, of companies or bodies Corporate, registered or incorporated in India.
   (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:
      Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.
   (1) In this Act, unless the context otherwise requires, —
      (a) “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, or not, and any other organisation, by whatever name called;
      (b) “authorised person in foreign exchange” means an authorised person referred to in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;
      (c) “bank” means a banking company as referred to in clause (c) of section 5 of the Banking Regulation Act, 1949;
      (d) “candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature;
      (e) “certificate” means certificate of registration granted under sub-section (3) of section 12;
      (f) “company” shall have the meaning assigned to it under clause (17) of section 2 of the Income-tax Act, 1961;
      (g) “ Foreign company” means any company or association or body of individuals incorporated outside India and includes—
         (i) a foreign company within the meaning of section 591 of the Companies Act, 1956;
(ii) a company which is a subsidiary of a foreign company;
(iii) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
(iv) a multi-national corporation.

Explanation. — For the purposes of this sub-clause, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, —

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
(b) carries on business, or otherwise operates, in two or more countries or territories;
(h) “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 as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
(ii) of any currency, whether Indian or foreign;
(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1. — A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 2. — The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3. — Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;

(i) “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 costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment;

(j) “foreign source” includes,—

(i) the Government of any foreign country or territory and any agency of such Government;
(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
(iii) a foreign company;
(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
(v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
(vi) a 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;
(vii) a 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 of individuals formed or registered outside India;
(x) a citizen of a foreign country;

(k) “Legislature” means –
(A) either House of Parliament;
(B) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;
(C) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963;
(D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;
(E) Municipality as defined in clause (e) of article 243P of the Constitution;
(F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution;
(G) Panchayat as defined in clause (d) of article 243 of the Constitution; or
(H) any other elective body as may be notified by the Central Government;

(l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(m) “person” includes–
(i) an individual;
(ii) a Hindu undivided family;
(iii) an association;
(iv) a company registered under section 25 of the Companies Act, 1956;

(n) “political party” means–
(i) an association or body of individual citizens of India–
(A) to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
(B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No.56/J&K/02, dated the 8th August, 2002, as in force for the time being;
(o) “prescribed” means prescribed by rules made under this Act;
(p) “prescribed authority” means an authority specified as such by rules made by the Central Government under this Act;
(q) “registered newspaper” means a newspaper registered under the Press and Registration of Books Act, 1867;
(r) “relative” has the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956;
(s) “scheduled bank” shall have the meaning assigned to it under clause (e) of section 2 of the Reserve Bank of India Act, 1934;
(t) “subsidiary” and “associate” shall have the meanings, respectively assigned to them in the Companies Act, 1956;
(u) “trade union” means a trade union registered under the Trade Unions Act, 1926;
(2) Words and expressions used herein and not defined in this Act but defined in the Representation of the People Act, 1950 or the Representation of the People Act, 1951 or the Foreign Exchange Management Act, 1999 shall have the meanings respectively assigned to them in those Acts.

Chapter II: Regulation of Foreign Contribution and Foreign Hospitality

3. Prohibition to accept foreign contribution.

(1) No foreign contribution shall be accepted by any—
(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 or any other body controlled or owned by the Government;
(d) member of any Legislature;
(e) political party or office-bearer thereof;
(f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;
(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Explanation. — In clause (c) and section 6, the expression “corporation” means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.
(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe
that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency—

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

4. Persons to whom section 3 shall not apply.

Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,—

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative; or

(f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999; or

(g) by way of any scholarship, stipend or any payment of like nature:

Provided that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

5. Procedure to notify an organisation of a political nature.

The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-
section (1) of section 3:

Provided that the Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

(2) Before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section.

(3) The organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

(6) Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2):

Provided that in case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

6. Restriction on acceptance of foreign hospitality.

No member of a Legislature or office-bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality:

Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

7. Prohibition to transfer foreign contribution to other person.

No person who –

(a) is registered and granted a certificate or has obtained prior permission under this Act; and

(b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part
of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

8. *Restriction to utilise foreign contribution for administrative purpose.*

(i) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

(a) shall utilise such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business:

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

(b) shall not defray as far as possible such sum, not exceeding fifty per cent. of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government.

(2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

9. *Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.*

The Central Government may—

(a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;

(b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;

(e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

(i) the sovereignty and integrity of India; or

(ii) public interest; or

(iii) freedom or fairness of election to any Legislature; or

(iv) friendly relations with any foreign State; or
(v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

10. Power to prohibit payment of currency received in contravention of the Act.
Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency or security and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency or security.

Chapter III: Registration

11. Registration of certain persons with Central Government.
(1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government: Provided that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976, as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of five years from the date on which this section comes into force.
(2) Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source:
Provided that if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.
(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—
(i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or
(ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government; or
(iii) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or
(iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.
12. Grant of certificate of registration.

(1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

(2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3), namely:

(a) the person making an application for registration or grant of prior permission under sub-section (1),—
   (i) is not fictitious or benami;
   (ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
   (iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
   (iv) has not been found guilty or diversion or misutilisation of its funds;
   (v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
   (vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
   (vii) has not contravened any of the provisions of this Act;
   (viii) has not been prohibited from accepting foreign contribution;
(b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
(c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
(d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
(e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any
(f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—
   (i) the sovereignty and integrity of India; or
   (ii) the security, strategic, scientific or economic interest of the State; or
   (iii) the public interest; or
   (iv) freedom or fairness of election to any Legislature; or
   (v) friendly relation with any foreign State; or
   (vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities;
   (g) the acceptance of foreign contribution referred to in sub-section (1),—
      (i) shall not lead to incitement of an offence;
      (ii) shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

(6) The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

13. Suspension of certificate.

(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding one hundred and eighty days as may be specified in the order.

(2) Every person whose certificate has been suspended shall—
   (a) not receive any foreign contribution during the period of suspension of certificate:

   Provided that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

   (b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.


(1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—
   (a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
   (b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
   (c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certifi-
(d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or
(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

15. Management of foreign contribution of person whose certificate has been cancelled.

(1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.

(2) The authority referred to in sub-section (1) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.

(3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said subsection if such person is subsequently registered under this Act.


(1) Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant.

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

Chapter IV: Accounts, Intimation, Audit and Disposal of Assets, etc.

17. Foreign contribution through scheduled bank.

(1) 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:

Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

(2) Every bank or authorised person in foreign exchange shall report to such authority as may be specified —

(a) 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.

18. Intimation.

(1) Every person who has been granted a certificate or given prior approval under this Act shall 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.

(2) Every person receiving foreign contribution shall 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 along with the intimation under sub-section (1).

19. Maintenance of accounts.

Every person who has been granted a certificate or given prior approval under this Act shall maintain, in such form and manner as may be prescribed,—

(a) an account of any foreign contribution received by him; and
(b) a record as to the manner in which such contribution has been utilised by him.

20. Audit of accounts.

Where any person who has been granted a certificate or given prior permission, fails to furnish any intimation under this Act within the time specified therefor or the intimation so furnished is not in accordance with law or if, after inspection of such intimation, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, the Central Government may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or any other officer or authority or organisation, as it may think fit, to audit any books of account kept or maintained by such person and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of auditing the said books of account:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.
Every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, 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.

22. Disposal of assets created out of foreign contribution.
Where any person who was permitted to accept foreign contribution under this Act, ceases to exist or has become defunct, all the assets of such person shall be disposed of in accordance with the provisions contained in any law for the time being in force under which the person was registered or incorporated, and in the absence of any such law, the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed of by such authority, as it may specify, in such manner and procedure as may be prescribed.

Chapter V: Inspection, Search and Seizure

23. Inspection of accounts or records.
If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by—
(a) any political party; or
(b) any person; or
(c) any organisation; or
(d) any association,
it may, by general or special order, authorise such gazetted officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter into or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

24. Seizure of accounts or records.
If, after inspection of an account or record referred to in section 23, the inspecting officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court, authority or tribunal in which any proceeding is brought for such contravention:
Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.
25. Seizure of article or currency or security received in contravention of the Act.
If any gazetted officer, authorised in this behalf by the Central Government by general or special order, has any reason to believe that any person has in his possession or control any article exceeding the value specified in sub-clause (i) of clause (h) of sub-section (1) of section 2 or currency or security whether Indian or foreign, in relation to which any provision of this Act has been or is being, contravened, he may seize such article or currency or security.

26. Disposal of seized article or currency or security.
(1) The Central Government, may, having regard to the value of article or currency or security, their vulnerability to theft or any relevant consideration, by notification, specify such article or currency or security which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner, as the Central Government may, from time to time, determine after following the procedure hereinafter specified.
(2) The article or currency or security seized shall be forwarded without unnecessary delay to such officer as may be specified.
(3) Where any article or currency or security has been seized and forwarded to such officer, the officer referred to in sub-section (1), shall prepare an inventory of such article or currency or security containing such details relating to their description, value or such other identifying particulars as the officer referred to in that sub-section may consider relevant to the identity of the article or the currency or security and make an application to any Magistrate for the purposes of certifying the correctness of the inventory so prepared.
(4) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.
(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, as certified by the Magistrate, as primary evidence in respect of such offence.
(6) Every officer acting under sub-section (3) shall forthwith report the seizure to the Court of Session or Assistant Sessions Judge having jurisdiction for adjudging the confiscation under section 29.

27. Seizure to be made in accordance with Act 2 of 1974.
The provisions of the Code of Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act to all seizures made under this Act.

Chapter VI: Adjudication

28. Confiscation of article or currency or security obtained in contravention of the Act.
Any article or currency or security which is seized under section 25 shall be liable to confiscation if such article or currency or security has been adjudged under section 29 to have been received or obtained in contravention of this Act.

29. Adjudication of confiscation.
(1) Any confiscation referred to in section 28 may be adjudged—
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(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
(b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) When an adjudication under sub-section (1) is concluded by the Court of Session or Assistant Sessions Judge, as the case may be, the Sessions Judge or Assistant Sessions Judge may make such order as he thinks fit for the disposal by confiscation or delivery of seized article or currency or security, as the case may be, to any person claiming to be entitled to possession thereof or otherwise, or which has been used for the commission of any offence under this Act.

30. Procedure for confiscation.
No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency or security has been seized.

Chapter VII: Appeal and Revision

31. Appeal.
(1) Any person aggrieved by any order made under section 29 may prefer an appeal,–
(a) where the order has been made by the Court of Session, to the High Court to which such Court is subordinate; or
(b) where the order has been made by any officer specified under clause (b) of sub-section (1) of section 29, to the Court of Session within the local limits of whose jurisdiction such order of adjudication of confiscation was made,
within one month from the date of communication to such person of the order:
Provided that the appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of one month, allow such appeal to be preferred within a further period of one month, but not thereafter.
(2) Any organisation referred to in clause (f) of sub-section (1) of section 3, or any person or association referred to in section 6 or section 9, aggrieved by an order made in pursuance of section 5 or by an order of the Central Government refusing to give permission under this Act, or by any order made by the Central Government under sub-section (2) or sub-section (4) of section 12, or sub-section (1) of section 14, as the case may be, may, within sixty days from the date of such order, prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, where the appellant is an organisation or association, the principal office of such organisation or association is located.
(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

32. Revision of orders by Central Government.
(1) The Central Government may, either of its own motion or on an application for revision by the person registered under this Act, call for and examine the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

(2) The Central Government shall not of its own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal or an appeal has been filed under this Act.

(5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed.

Explanation. – An order by the Central Government declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to such person.

Chapter VIII: Offences and Penalties

33. Making of false statement, declaration or delivering false accounts.

Any person, subject to this Act, who knowingly, –

(a) gives false intimation under sub-section (c) of section 9 or section 18; or
(b) seeks prior permission or registration by means of fraud, false representation or concealment of material fact,

shall, on conviction by a court, be liable to imprisonment for a term which may extend to six months or with fine or with both.

34. Penalty for article or currency or security obtained in contravention of section 10.

If any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.


Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribu-
tion or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

36. Power to impose additional fine where article or currency or security is not available for confiscation. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the court trying a person, who, in relation to any article or currency or security, whether Indian or foreign, does or omits to do any act which act or omission would render such article or currency or security liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or security or one thousand rupees, whichever is more, if such article or currency or security is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

37. Penalty for offences where no separate punishment has been provided. Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

38. Prohibition of acceptance of foreign contribution. Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of five years from the date of the subsequent conviction.

39. Offences by companies.
(1) Where an offence under this Act or any rule or order made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule or order made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purposes of this section,—
(a) “company” means anybody corporate and includes a firm, society, trade union or other association of individuals; and

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(b) “director”, in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

40. **Bar on prosecution of offences under the Act.**
No court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf.

41. **Composition of certain offences.**
(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by an individual or association or any officer or employee thereof), not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf.
(2) Nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

**Explanation.** – For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.
(3) Every officer or authority referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.
(4) Every application for the compounding of an offence shall be made to the officer or authority referred to in sub-section (1) in such form and manner along with such fee as may be prescribed.
(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
(6) Every officer or authority referred to in sub-section (1), while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires by an individual or association or its officer or other employee to obtain permission or file or register with, or deliver or send to, the Central Government or any prescribed authority any return, account or other document, may, direct, by order, if he or it thinks fit to do so, any individual or association or its officer or other employee to file or register with, such return, account or other document within such time as may be specified in the order.

**Chapter IX: Miscellaneous**

42. **Power to call for information or document.**
Any inspecting officer referred to in section 23 who is authorised in this behalf by the Central Government may, during the course of any inspection of any account or record maintained by any political party, person, organisation or association in connection with the contravention of any provision of this Act, –
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(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or rule or order made thereunder;
(b) require any person to produce or deliver any document or thing useful or relevant to such inspection;
(c) examine any person acquainted with the facts and circumstances of the case related to the inspection.

43. Investigation into cases under the Act.
Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognizable offence.

44. Returns by prescribed authority to Central Government.
The prescribed authority shall furnish to the Central Government at such time and in such form and manner such returns and statements as may be prescribed.

45. Protection of action taken in good faith.
No suit or other legal proceedings shall lie against the Central Government or the authority referred to in section 44 or any of its officers in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or, any rule or order made thereunder.

46. Power of Central Government to give directions.
The Central Government may give such directions as it may deem necessary to any other authority or any person or class of persons regarding the carrying into execution of the provisions of this Act.

47. Delegation of powers.
The Central Government may, by notification, direct that any of its powers or functions under this Act, except power to make rule under section 48, shall, in relation to such matters and subject to such conditions, if any, may be specified in the notification, be exercised or discharged also by such authority as may be specified.

48. Power to make rules.
(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–
(a) the value of the article which may be specified under sub-clause (i) of clause (h) of sub-section (1) of section 2;
(b) the authority which may be specified under clause (p) of sub-section (1) of section 2;
(c) acceptance or retention of gift or presentation under clause (d) of section 4;
(d) guidelines specifying the ground or grounds on which an organisation may be specified as an
organisation of political nature under sub-section (i) of section 5;
(e) the activities or business which shall be construed as speculative business under the proviso to clause (a) of sub-section (i) of section 8;
(f) the elements and the manner in which the administrative expenses shall be calculated under sub-section (2) of section 8;
(g) the time within which and the manner in which any person or class of persons or an association may be required to furnish intimation regarding the amount of foreign contribution received under clause (c) of section 9;
(h) the time within which and the manner in which any person or class of persons may be required to furnish intimation regarding foreign hospitality under clause (e) of section 9;
(i) the manner in which the copy of the order of the Central Government shall be served upon any person under section 10;
(j) the form and manner in which the application for grant of certificate of registration or giving of prior permission under sub-section (1) of section 12;
(k) the fee to be accompanied by the application under sub-section (1) of section 12;
(l) the terms and conditions for granting a certificate or giving prior permission under clause (g) of sub-section (4) of section 12;
(m) the manner of utilising the foreign contribution under clause (b) of sub-section (2) of section 13;
(n) the authority with whom the foreign contribution to be vested under sub-section (1) of section 15;
(o) the period within which and the manner in which the foreign contribution shall be managed under sub-section (2) of section 15;
(p) the form and manner in which the application for a renewal of certificate of registration shall be made under sub-section (2) of section 16;
(q) the fee to be accompanied by the application for renewal of certificate under sub-section (2) of section 16;
(r) the prescribed amount of foreign remittance, the form and manner in which the foreign remittance received by every bank or authorised person in foreign exchange shall be reported under sub-section (2) of section 17;
(s) the time within which and the manner in which the person who has been granted certificate of registration or given prior permission under this Act shall give intimation under section 18;
(t) the form and manner in which account of any foreign contribution and the manner in which such contribution has been utilised shall be maintained under section 19;
(u) the time within which and the manner in which a candidate for election shall give intimation under section 21;
(v) the manner and procedure to be followed in disposing of the assets under section 22;
(w) the limits subject to which any confiscation may be adjudged under clause (b) of sub-section (1) of section 29;
(x) the fee to be accompanied along with every application for revision under sub-section (5) of section 32;
(y) the form and manner for making of an application for compounding of an offence and the fee therefor under sub-section (4) of section 41;
(z) the form and manner in which and the time within which returns and statements to be furnished
by the prescribed authority under section 44; 
(za) any other matter which is required to be, or may be, prescribed.

49. Orders and rules to be laid before Parliament.
Every order made under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

50. Power to exempt in certain cases.
If the Central Government is of opinion that it is necessary or expedient in the interests of the general public so to do, it may, by order and subject to such conditions as may be specified in the order, exempt any person or association or organisation (not being a political party), or any individual (not being a candidate for election) from the operation of all or any of the provisions of this Act and may, as often as may be necessary, revoke or modify such order.

51. Act not to apply to certain Government transactions.
Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.

52. Application of other laws not barred.
The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

53. Power to remove difficulties.
(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.
(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

54. Repeal and saving.
(1) The Foreign Contribution (Regulation) Act, 1976 (hereafter referred to as the repealed Act) is hereby repealed.
(2) Notwithstanding such repeal,—
(a) anything done or any action taken or purported to have been done or taken under the repealed
Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) Any organisation of a political nature, not being a political party, to whom the prior permission was granted under section 5 of the repealed Act, shall continue to be the organisation of a political nature, not being a political party, under clause (f) of sub-section (1) of section 3 of this Act, till such permission is withdrawn by the Central Government;

(c) permission to accept foreign hospitality granted under section 9 of the repealed Act shall be deemed to be the permission granted under section 6 of this Act until such permission is withdrawn by the Central Government;

(d) any association prohibited from accepting any foreign contribution under clause (a) of section 10 of the repealed Act, in so far as it is not inconsistent with the provisions of this Act, shall be deemed to be an association prohibited from accepting any foreign contribution under section 9 of this Act;

(e) permission obtained under clause (b) of section 10 of the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be the permission until such permission is withdrawn by the Central Government;

(f) any order issued under section 12 of the repealed Act shall be deemed to be an order issued under section 10 of this Act;

(g) any order issued under section 31 of the repealed Act exempting any association or any individual shall be deemed to be an order under section 50 of this Act till such order is varied or revoked.

(3) Save as provided in sub-section (2), mention of particular matters in that sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

**Foreign Contribution Regulation Rules, 2011**

1. **Short title and commencement.**
   
   (1) These rules may be called the Foreign Contribution (Regulation) Rules, 2011.

   (2) They shall come into force on the date on which the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) shall come into force.

2. **Definitions.**
   
   (i) In these rules unless the context otherwise requires,-

   (a) “Act” means the Foreign Contribution (Regulation) Act 2010;

   (b) “chartered accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;

   (c) “Form” means a form appended to these rules;

   (d) “section” means section of the Act;

   (e) “year” means the financial year commencing from the 1st day of April and ending on the 31st day of March of the next calendar year;
(2) Words and expressions used and not defined herein but defined in the Act shall have the meaning assigned to them in the Act.

3. **Guidelines for declaration of an organisation to be of a political nature, not being a political party.** - The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds:-

   (i) organisation having avowed political objectives in its Memorandum of Association or bylaws;
   (ii) any Trade Union whose objectives include activities for promoting political goals;
   (iii) any voluntary action group with objectives of a political nature or which participates in political activities;
   (iv) front or mass organisations like Students Unions, Workers’ Unions, Youth Forums and Women’s wing of a political party;
   (v) organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups;
   (vi) any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like ‘bandh’ or ‘hartal’, ‘rasta roko’, ‘rail roko’ or ‘jail bharo’ in support of public causes.

4. **Speculative activities.** -

   (1) The following activities shall be treated as speculative activities:-
   
       (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
       (b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organisation or association.

   (2) A debt-based secure investment shall not be treated as speculative investment.

   (3) Every association shall maintain a separate register of investments.

   (4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

5. **Administrative expenses.** -

   The following shall constitute administrative expenses:-

   (i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;
   (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
   (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
   (iv) cost of accounting for and administering funds;
   (v) expenses towards running and maintenance of vehicles;
(vi) cost of writing and filing reports;
(vii) legal and professional charges; and
(viii) rent of premises, repairs to premises and expenses on other utilities:

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

6. Intimation of receiving foreign contribution from relatives. -
Any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution.

[6A. When articles gifted for personal use do not amount to foreign contribution. -
Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (i) of section (2).]

7. Receiving foreign hospitality by specified categories of persons. -

(1) Any person belonging to any of the categories specified in section 6 who wishes to avail of foreign hospitality shall apply to the Central Government in Form FC-2 for prior permission to accept such foreign hospitality.

(2) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.

(3) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.

(4) In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilised.

Provided that no such intimation is required if the value of such hospitality in emergent medical aid is upto one lakh rupees or equivalent thereto.

8. Action in respect of article, currency or security received in contravention of the Act. -

(1) The Central Government may issue a prohibitory order for contravention of the Act in respect of any article, currency or securities.

(2) The prohibitory order issued under sub-rule (1) shall be served on the person concerned in the following manner:

(a) by delivering or tendersing it to that person or to his duly authorized agent; or
(b) by sending it to him by ‘registered post with acknowledgement due’ or ‘speed post’ to the address of his last known place of residence or the place where he carries on, or is known to have last carried on, business or the place where he personally works for gain or is known to have last worked for gain and, in case the person is an organisation or an association, to the last known address of the office of such organisation or association; or

(c) if it cannot be served in any of the manner aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or carries on, or is known to have last carried on, business or personally works for gain, or is known to have last worked personally for gain and, in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the office of that organisation or association is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

9. Application for obtaining ‘registration’ or ‘prior permission’ to receive foreign contribution.

(1) (a) An application under sub-section (1) of section 11 for registration of a person for acceptance of foreign contribution shall be made electronically on-line in Form FC-3, and shall be followed by forwarding the hard copy of the on-line application duly signed by the Chief Functionary of the association together with the required documents.

(b) The hard copy of the on-line application referred in clause (a) shall reach the Central Government within thirty days of the submission of the on-line application, failing which the request of the person shall be deemed to have ceased.

(c) Any person whose request has ceased under clause (b) of sub-rule (1) may prefer a fresh on-line application with the Central Government only after six months from the date of cessation of the previous application.

(d) A person seeking registration shall be required to open an exclusive bank account to receive the foreign contribution.

(e) The person may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and, in all such cases, intimation on plain paper shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

(2) (a) An application under sub-section (2) of section 11 for obtaining prior permission of the Central Government to receive foreign contribution shall be made electronically on-line in Form FC-4 and shall be followed by forwarding the hard copy of the on-line application duly signed by the Chief Functionary of the Association together with the required documents.

(b) The hard copy of the on-line application shall reach the Central Government within thirty days of filing of the on-line application, failing which the request of the person shall be deemed to have ceased.

(c) Any person whose request has ceased under clause (b) of sub-rule (2) may prefer a fresh on-line application with the Central Government only after six months from the date of cessation of the previous application.

(d) A person seeking prior permission under this rule shall be required to open an exclusive bank account for the receipt of foreign contribution.
(e) A person seeking prior permission under this rule may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and in all such cases intimation on plain paper shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

(3) No person shall prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

(4) (a) An application made for the grant of prior permission shall be accompanied by a fee of Rs.1000/- (One Thousand only).
   (b) An application made for the grant of the registration shall be accompanied by a fee of 2000/- (Two Thousand only).
   (c) The fee may be revised by the Central Government from time to time.
   (d) The fee, as applicable, shall be remitted by demand draft or banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

(5) Notwithstanding anything contained in sub-rules (1) to (4), every application made for registration or prior permission under the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under these rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

10. **Validity of certificate.**

   Every certificate of registration granted to a person under the Act shall be valid for a period of five years from the date of its issue.

11. **Maintenance of accounts**

   Every person who has been granted registration or prior permission under section 12 shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.

12. **Renewal of registration certificate.**

   (1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application.
   (2) Every person shall apply to the Central Government in Form FC-5, six months before the date of expiry of the certificate of registration, for its renewal.
   (3) A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.
   (4) An application made for renewal of the certificate of registration shall be accompanied by a fee of Rs.500/- (Five Hundred only).
   (5) The fee for renewal of the certificate of registration shall be remitted by demand draft or banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.
   (6) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration.
Illustration. - A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016. A request for renewal of the registration certificate shall reach the Central Government, accompanied by the requisite fee, by the 30th June, 2016. If no application is received or is not accompanied by the renewal fee, the validity of the registration certificate issued on the 1st January 2012 shall be deemed to have lapsed with effect from the close of the day on 31st December, 2016.

(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of rule 9.

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee, but not later than four months after the expiry of the original certificate of registration.

13. In the event of receipt of foreign contribution in excess of one crore rupees in a financial year. - 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/she 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. Besides, the Central Government shall also display or upload the summary data of such persons on its website for information of the general public.

14. Extent of amount that can be utilised in case of suspension of the certificate of registration. - The unspent amount that can be utilised in case of suspension of a certificate of registration may be as under:

(a) In case the certificate of registration is suspended under sub-section (1) of section 13 of the Act, up to twenty-five per cent of the unutilised amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received.

(b) The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

15. Custody of foreign contribution in respect of a person whose certificate has been cancelled. - (1) 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 concerned bank concerned till the Central Government issues further directions in the matter.

(2) If a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the provisions of sub-rule (1) of this rule shall apply to the person to whom the fund has been transferred.

16. Reporting by banks of receipt of foreign contribution. - (1) Every bank shall 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.
(2) The report referred to in sub-rule (1) shall 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.).

(3) The bank shall 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 shall include 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.).

17. Intimation of foreign contribution by the recipient. –

(1) Every person who receives foreign contribution under the Act shall submit a report in Form FC-6, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.
(2) The annual return in Form FC-6 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.
(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-7.
(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-8.
(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.
(6) Every such return in Form FC-6 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.
(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.
(8) A ‘NIL’ report shall be furnished even if no foreign contribution is received during a financial year.

18. Foreign contribution received by a candidate for election.

Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in Form FC-9 within forty-five days from the date on which he is duly nominated as a candidate for election.

19. Limit to which a judicial officer, not below the rank of an Assistant Sessions Judge may make adjudi-
An officer referred in clause (b) of sub-section (1) of section 29 may adjudge confiscation in relation to any article or currency seized under section 25, if the value of such article or the amount of such currency seized does not exceed Rs.10,00,000/- (Ten Lakh only).

20. Revision.
An application for revision of an order passed by the competent authority under section 32 of the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper. It shall be accompanied by a fee of Rs.1000/- (One Thousand only) in the form of a demand draft or a banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

An application for the compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper and shall be accompanied by a fee of Rs.1000/- (One Thousand only) in the form of a demand draft or a banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.

22. Returns by the Investigating Agency to the Central Government.
The Central Bureau of Investigation or any other Government investigating agency that conducts any investigation under the Act shall furnish reports to the Central Government, on a quarterly basis, indicating the status of each case that was entrusted to it, including information regarding the case number, date of registration, date of filing charge sheet, court before which it has been filed, progress of trial, date of judgment and the conclusion of each case.

23. Authority to whom an application or intimation to be sent.
Any information or intimation about political or speculative activities of a person as mentioned in rule 3 or rule 4, shall be furnished to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such information or intimation shall be sent by registered post.

24. Procedure for transferring foreign contribution to any unregistered person.
(i) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in Form FC-10.
(2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that
(a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;
(b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
(3) A person who has been granted a certificate of registration or prior permission under section 11 shall...
not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.

(4) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient.]
VI. 1976 ACT AND RULES
The Foreign Contribution (Regulation) Act, 1976

An act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of sovereign democratic republic, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:

Chapter I - Preliminary

Section 1. Short title, extent, application and commencement

(1) This Act may be called the Foreign Contribution (Regulation) Act, 1976.
(2) It extends to the whole of India, and it shall also apply to:
   (a) citizens of India outside India; and
   (b) associates, branches of subsidiaries outside India, of companies or bodies corporate, registered or incorporated in India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Definitions

(1) In this Act, unless the context otherwise requires,-
   (a) “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;
   (b) “candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature;
   (c) “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 as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees;
      (ii) of any currency, whether Indian or foreign;
      (iii) of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);
   [Explanation - A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;]
   (d) “foreign hospitality” means any offer, not being a purely casual one, made by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment;
   (e) “foreign source” includes-
(i) the Government of any foreign country or territory and any agency of such Government,
(ii) any international agency, not being the United Nations or any of its specialized agencies, the World
Bank, International Monetary Fund or such other agency as the Central Government may, by noti-
fication in the official Gazette, specify in this behalf,
(iii) a foreign company within the meaning of the section 591 of the Companies Act, 1956 (1 of 1956),
and also includes-
   (a) a company which is a subsidiary of a foreign company, and
   (b) a multi-national corporation within the meaning of this Act,
(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,
(v) a multinational corporation within the meaning of this Act,
(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if 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) Government of a foreign country or territory,
   (b) 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,
(vii) a trade union in any foreign country or territory, whether or not registered in such foreign coun-
try or territory,
(viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of
trust or is mainly financed by a foreign country or territory,
(ix) a society, club or other association of individuals formed or registered outside India,
(x) a citizen of a foreign country,
but does not include any foreign institution, which has been permitted by the Central Government by
notification in the Official Gazette, to carry on its activities in India;
(f) “legislature” means-
(i) either House of Parliament,
(ii) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either
House of the Legislature of that State,
(iii) Legislative assembly of a Union territory constituted under the Government of Union Territories
Act, 1963 (20 of 1963),
(iv) the Metropolitan Council of Delhi constituted under Section 3 of the Delhi Administration Act,
1966 (19 of 1966),
(v) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure, 1973
(2 of 1974),
(vi) District Councils and Regional Councils in the States of Assam and Meghalaya and in the Union
Territory of Mizoram as provided in the sixth Schedule to the Constitution, or
(vii) Any other elective body as may be notified by the Central Government,
as the case may be;
1033{(g) “political party” means-
(i) an association or body of the individual citizens of India-
(i) which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force the time being; or

(2) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in Column 1 of table I to the notification of the Election Commission of India No. 56\J&K\ 84, dated the 27th September, 1984, as in force for the time being;]

(h) “prescribed” means prescribed by rules made under this Act;

(i) “registered newspaper” means a newspaper registered under the Press and Registration of Books Act, 1867 (25 of 1867);

(j) “subsidiary” and “associate” have the meanings respectively, assigned to them in the Companies Act, 1956 (1 of 1956);

(k) “trade Union” means a trade union registered under the Trade Unions Act, 1926 (16 of 1926).

Explanation- for the purposes of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation—

(a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

(b) carries on business, or otherwise operates, in two or more countries or territories.

(2) Words and expressions used herein and not defined in the Foreign Exchange Regulation Act, 1973 (46 of 1973), have the meanings respectively assigned to them in that Act.

(3) Words and Expressions used herein and not defined in this Act or in the Foreign Exchange Regulation Act, 1973 (46 of 1973), but defined in the Representation of the People Act, 1950 (43 of 1950) or the Representation of the People Act, 1951 (43 of 1951), have the meanings respectively assigned to them in such Act.

Section 3. Application of other laws not barred
The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Chapter II - Regulation of Foreign Contribution and Foreign Hospitality

Section 4. Candidate for election, etc. not to accept foreign contribution-

(1) No foreign contribution shall be accepted by any –

(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 office-bearer thereof.

Explanation- In clause (c) and in section 9, “corporation” means a corporation owned or controlled by government and includes a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

(2) (a) No person, resident in India, and no citizen of India resident outside India shall accept any foreign
contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India, resident outside India shall deliver any currency, whether Indian or foreign which has been accepted from any foreign source, to–

(i) any political party or any person referred to in sub-section (1), or both, or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any association, referred to in sub-section (1) of Section 6, shall deliver such currency–

(i) to any association or organisation other than the association for which it was received, or

(ii) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to an association other than the association for which such currency was received.

Section 5. Organisation of a Political nature not to accept foreign contribution except with the prior permission of the Central Government

(1) No organisation of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Explanation – For the purposes of this section, “organisation of a political nature, not being a political party” means such organisation as the central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party, by an order published in the official Gazette, specify in this behalf.

(2) (a) Except with the prior permission of the Central Government, no person, resident in India, and no citizen of India, resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any foreign currency, on behalf of an organisation referred to in sub-section (1).

(b) Except with the prior permission of the Central Government, no person, resident in India, shall deliver any foreign currency to any person if he knows or has reasonable cause to believe that such other person intends, or is likely to deliver such currency to an organisation referred to in sub-section (1).

(c) Except with the prior approval of the Central Government, no citizen of India, resident outside India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to–

(i) any organisation referred to in sub-section (1), or

(ii) any person, if he knows or has reasonable cause to believe that such person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1).
Section 6. Certain associations and persons receiving foreign contribution to give intimation to the Central Government

(1) No association {other than an organisation referred to in sub-section (1) of section 5} having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association,

(a) registers itself with the Central Government in accordance with the rules made under this Act; and

(b) agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration, and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to 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 it:

Provided that where such association obtains any foreign contribution through any branch other than such branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

(1-A) Every association referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of 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 it.

(2) Every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by him, 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.

Section 7. Recipients of scholarships, etc. to give intimation to the Central Government

(1) Every citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of the scholarship, stipend or other payment received by him and the foreign source from which, and the purpose for which, such scholarship, stipend or other payment has been, or is being, received by him.

(2) Where any recurring payments are being received by any citizen of India from any foreign source by way of scholarship, stipend or other payment, it shall be sufficient if the intimation referred to in sub-section (1) includes a precise information as to the interval at which, and the purpose for which, such recurring payments will be received by such citizen of India.

(3) It shall not be necessary to give such intimation as referred to in sub-section (1) or sub-section (2) in
relation to scholarships, stipends or payments of a like nature, if the annual value of such scholarships, stipends or other payments does not exceed such limits as the Central Government may, by rules made under this Act, specify in this behalf.

Section 8. Persons to whom Section 4 shall not apply-
Nothing contained in section 4 shall apply to the acceptance, by any person specified in that section, of any foreign contribution, where such contribution is accepted by him, subject to the provisions of section 10-

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
(b) by way of payment in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
(c) as an agent of a foreign source in relation to any transaction made by such foreign source with Government; or
(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the regulations made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
(e) from his relative when such foreign contribution has been received with the previous permission of the Central Government:

Provided that no such permission shall be required if the amount of foreign contribution received by him from his relative does not exceed, in value, eight thousand rupees per annum and an intimation is given by him to the Central Government as to the amount received, the source from which and the manner in which it was received and the purpose for which and the manner in which it was utilised by him;

(f) by way of remittance received, in the ordinary course of business, through any official channel, post office, or any authorised dealer in foreign exchange under the Foreign Exchange Regulation Act, 1973 (46 of 1973).

Explanation- In this Act, the expression ‘relative’ has the meaning assigned to it in the Companies Act, 1956 (1 of 1956).

Section 9. Restrictions on acceptance of foreign hospitality-
No member of a Legislature, office - bearer of a political party, (Judge), Government servant or employee of any corporation shall, while visiting any country or territory outside India, accept except with the prior permission of the Central Government, any foreign hospitality:

Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality, an intimation to the Central Government as to the receipt of such hospitality and the source from which, and the manner in which, such hospitality was received by him.

Section 10. Power of Central Government to prohibit receipt of foreign contribution, etc. in certain cases
The Central Government may—
(a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;
(b) without prejudice to the provisions of sub-section (1) of section 6, require any association specified in that sub-section, to obtain prior permission of the Central Government before accepting any foreign contribution;
(c) require any person or class of persons or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
(d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
(e) require any person or class of persons, not specified in section 9, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or person or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially—
(i) the sovereignty and integrity of India; or
(ii) the public interest; or
(iii) freedom or fairness of election to any legislature; or
(iv) friendly relation with any foreign State; or
(v) harmony between religious, racial, linguistic or regional groups, castes or communities.

Section 11. Application to be made in prescribed form for obtaining prior permission to accept foreign contribution or hospitality
(1) Every individual, association, organisation or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or foreign hospitality, shall, before the acceptance of any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.
(2) If an application referred to in sub-section (1) is not disposed of within ninety days from the date of receipt of such application, the permission prayed for in such application shall, on expiry of the said period of ninety days, be deemed to have been granted by the Central Government:

Provided that, where, in relation to an application, the Central Government has informed the applicant the special difficulties by reason of which his application cannot be disposed of within the said period of ninety days, such application shall not, until the expiry of a further period of thirty days, be deemed to have been granted by the Central Government.

Chapter III - Miscellaneous
Section 12. Power to prohibit payment of currency received in contravention of the Act
Where the Central Government is satisfied, after making such inquiry as it may deem fit that any person
has in his custody or control any article or currency, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may be, by order in writing, prohibit such person from paying, delivering transferring or otherwise dealing with, in any manner whatsoever, such article or currency save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency and references in the said sub-sections to moneys, securities or credits shall be construed as references to such article or currency.

Section 13. Recipients of foreign contribution to maintain accounts, etc.
Every association, referred to in section 6, shall maintain, in such form and in such manner as may be prescribed,

(a) an account of any foreign contribution received by it, and
(b) a record as to the manner in which such contribution has been utilised by it.

Section 14. Inspection of accounts or records
If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been, or is being, contravened by-

(a) any political party, or
(b) any person, or
(c) any organisation, or
(d) any association,

it may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit (hereinafter referred to as the authorised officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such authorised officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record:

Provided that no gazetted officer shall be authorised to inspect the account or record maintained by political party, unless he has been holding a Group A post in connection with the affairs of the Union, or a State, for not less than ten years.

Section 15. Seizure of accounts or records
If, after inspection of an account or record referred to in section 14, the authorised officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the court in which any proceeding is brought for such contravention:

Provided that the authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record.

Section 15 A. Audit of accounts
where any organisation or association fails to furnish any returns under this Act within the time specified therefor or the returns so furnished are not in accordance with law or if, after inspection of such returns, the Central Government has any reasonable cause to believe that any provision of this Act has been, or is being, contravened, that Government may, by general or special order, authorise such gazetted officer, holding a Group A post, as it may think fit, to audit any books of account kept or maintained by such organisation or association, as the case may be, and thereupon every such officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise for the purpose of auditing the said books of account:

Provided that any information obtained from such audit shall be kept confidential and shall not be disclosed except for the purposes of this Act.]

Section 16. Seizure of article or currency received in contravention of the Act
If any gazetted officer, authorised in this behalf by the Central Government, by general or special order, has any reason to believe that any person has in his possession or control any article exceeding rupees one thousand in value, or currency, whether Indian or foreign, in relation to which any provision of this Act has been, or is being, contravened, he may seize such article or currency.

Section 17. Seizure to be made in accordance with the Code of Criminal Procedure, 1973
Every seizure made under this Act shall be made in accordance with the provision of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 18. Confiscation of article or currency obtained in contravention of the Act
Any article or currency, which is seized under section 16, shall be liable to confiscation if such article or currency has been adjudged under section 19 to have been received or obtained in contravention of this Act.

Section 19. Adjudication of confiscation
Any confiscation referred to in section 18 may be adjudged
(a) without limit, by the Court of Session within the local limits of whose jurisdiction the seizure was made; and
(b) subject to such limits as may be prescribed, by such officer, not below the rank of an Assistant Sessions Judge, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Section 20. Opportunity to be given before adjudication of confiscation
No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person from whom any article or currency has been seized.

Section 21. Appeal
(i) Any person aggrieved by any order made under Section 19 may prefer an appeal
(a) where the order has been made by the Court of Session, to the High Court to which such Court
(b) where the order has been made by any officer specified under clause (b) of section 19, or to the
Court of Session within the local limits of whose jurisdiction such order of adjudication of con-
fiscation was made, within one month from the date of communication to such person of the
order:

Provided that the appellant court may, if it is satisfied that the appellant was prevented by sufficient
cause from preferring the appeal within the said period of one month, allow such appeal to be preferred
within a further period of one month, but not thereafter.

(2) Any organisation referred to in section 5, or any person or association referred to in section 9, or
section 10, aggrieved by an order made in pursuance of the explanation to sub-section (1) of sec-
tion 5 or by an order of the Central Government refusing to give permission, or by an order made
by the Central Government, under section 5 or section 9 or section 10, as the case may be, may
within sixty days from the date of such order prefer an appeal against such order to the High Court
within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business
or personally works for gain, or where the appellant is an organisation or association, the prin-
cipal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree
and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 (5 of
1908) shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

Section 22. Penalty for article or currency obtained in contravention of Section 12–
If any person, on whom any prohibitory order has been served under Section 12, pays delivers, transfers
or otherwise deals with, in any manner whatsoever any article or currency, whether Indian or foreign, in
contravention of such prohibitory order, he shall be punished with imprisonment for a term which may
extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of
Criminal Procedure, 1973 (2 of 1974), the court trying such contravention may also impose on the person
convicted an additional fine equivalent to the market value of the article or the amount of the currency
in respect of which the prohibitory order has been contravened by him or such part thereof as the court
may deem fit.

Section 23. Punishment for the contravention of any provision of the Act–
(1) Whoever accepts, or assists any person, political party or organisation in accepting, any foreign con-
tribution or any currency from a foreign source, in contravention of any provision of this Act or any rule
made thereunder, shall be punished with imprisonment for a term which may extend to five years, or
with fine, or with both.

(2) Whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made
thereunder, shall be punished with imprisonment for a term which may extend to three years, or with
fine, or with both.

Section 24. Power to impose additional fine where article or currency is not available for confiscation–
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the court trying
a person who, in relation to any article or currency, whether Indian or foreign, does or omits to do any act
which act or omission would render such article or currency liable to confiscation under this Act, may, in the event of the conviction of such person for the act or omission aforesaid, impose on such person a fine not exceeding five times the value of the article or currency or one thousand rupees, whichever is more, if such article or currency is not available for confiscation, and the fine so imposed shall be in addition to any other fine which may be imposed on such person under this Act.

Section 25. Penalty for offences where no separate punishment has been provided
Whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with the imprisonment for a term which may extend to one year, or with fine not exceeding one thousand rupees, or with both.

Section 25-A. Prohibition of acceptance of foreign contribution—
Notwithstanding anything contained in this Act, whoever, having been convicted of any offence under sub-section (1) of section 23 or section 25, in so far such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of three years from the date of the subsequent conviction.

Section 26. Offences by companies—
(i) Where an offence under this act or any rule made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act or any rule made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—
(a) “company” means any body corporate and includes a firm, society, trade union or other association of individuals; and
(b) “director”, in relation to a firm, society, trade union or other association of individuals, means a partner in the firm or a member of the governing body of such society, trade union or other association of individuals.

Section 27. Bar to the prosecution of offences under the Act—
No court shall take cognisance of an offence under this Act, except with the previous sanction of the Central Government or any officer authorised by the Government in this behalf.

Section 28. Investigation into cases under the Act—
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act may also be investigated into by such authority as the Central Government may specify in this behalf and the authority so specified shall have all the powers which an officer-in-charge of a police station has while making an investigation into a cognisable offence.

Section 29. Protection of action taken in good faith

No suit or other legal proceedings shall lie against the Central Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act, or any rule or order made thereunder.

Section 30. Power to make rules

(1) The Central Government may, by notification in the Official Gazette make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the time within which, and the manner in which, intimation is to be given by an association referred to in section 6, with regard to the foreign contributions received by it;
(b) the limits up to which receipt of scholarships, stipends or payments of a like nature need not be intimated to the Central Government;
(c) the time within which, and the manner in which, intimation is to be given by the persons receiving any scholarship, stipend or any payment of a like nature from a foreign source;
(d) the time within which, and the manner in which, a candidate for election should give intimation as to the amount of foreign contribution received by him at any time within one hundred and eighty days from the date when he became such candidate;
(e) the form and the manner in which an application shall be made for obtaining prior permission of the Central Government to receive foreign contribution or foreign hospitality;
(f) the manner of service of the prohibitory order made under section 12;
(g) the form and manner in which account or record referred to in section 13 shall be maintained;
(h) the limits up to which an officer, not below the rank of an Assistant Sessions Judge, may adjudication of confiscation;
(i) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 31. Power to exempt

If the central Government is of the opinion that it is necessary or expedient in the interests of the gener-
The Foreign Contribution (Regulation) Act, 1976

Section 32. Act not to apply to Government transactions
Nothing contained in this Act shall apply to any transaction between the Government of India and the Government of any foreign country or territory.

Foreign Contribution (Regulation) Rules, 1976
(Forms not included)

In exercise of the powers conferred by section 30 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), the Central Government hereby makes the following rules, namely-

Rule 1. Short title and commencement
(1) These rules may be called the Foreign Contribution (Regulation) Rules, 1976.
(2) They shall come into force on the 5th day of August, 1976.

Rule 2. Definitions
In these rules unless the context otherwise requires,-
(a) “Act” means the Foreign Contribution (Regulation) Act, 1976;
(b) “Form” means a form appended to these rules;
(c) “Section” means a section of the Act.
(d) “Year” means the accounting year commencing from 1st day of April and ending on 31st day of March of the next Calendar year.

Rule 3. Application for obtaining prior permission to receive foreign contribution or foreign hospitality
An application for obtaining prior permission of the Central Government to-
(a) receive foreign contribution under sub-section (1) of section 5, or clause (a) of sub-section (2) of that section, shall be made in Form FC-1;
(aa) receive foreign contribution under proviso to sub-section (1) of section 6, or under sub-section (1-A) of that section or clause (b) of section 10, shall be made in Form FC-1A;
(b) accept foreign hospitality under section 916 [or clause (d) of section 10], shall be made in Form FC-2.

Rule 3-A. application for registration
An application for registration of an association referred to in sub-section (1) of section 6 for acceptance of foreign contribution shall be made in Form FC-8.

Rule 4. Intimation regarding receipt of foreign contribution or scholarship or stipend or any payment of a like nature or foreign hospitality
(l) An intimation as to the receipt of-

(a) foreign contribution by an association referred to in sub-section (1) and (1-A) of section 6 shall be
given for every year beginning on the 1st day of April, in Form FC-3 in duplicate, within

[four months] of the closure of the year;

Provided that a NIL report shall also be furnished. The intimation to be furnished for the year begin-
nning on the 1st day of April 1991 shall also include the receipt and utilisation of foreign contribution
during the period commencing from 1st January 1991 and ending on 31st March, 1991;

(b) foreign contribution by a candidate for election, referred to in sub-section (2) of section 6 shall be
given in Form FC-4, within fifteen days from the date on which he is duly nominated as a candidate for
election;

(c) any scholarship, stipend or any payment of a like nature, from any foreign source in relation to
which an intimation is required to be given under sub-section (l) of section 7, shall be given in Form FC-5,
within thirty days of receipt of such scholarship, stipend or other payment of a like nature;

Provided that where the person receiving the scholarship, stipend or any payment of a like nature is
residing outside India, the intimation shall be given within sixty days from the date of receipt of such
scholarship, stipend or other payment of a like nature;

(d) foreign hospitality, referred to in proviso to section 9, shall be given on plain paper within thirty
days from the date of receipt of such hospitality specifying the particulars as to the receipt of such hospi-
tality and the source from which and the manner in which such hospitality was received.

Rule 5. Intimation of receipt of scholarship, stipend or any payment of a like nature, when not necessary
It shall not be necessary for a citizen of India to give any intimation under section 7 regarding receipt of
scholarship, stipend or any payment of a like nature from any foreign source, if the value of such scholar-
ship, stipend or other payment does not exceed, during an academic year, rupees thirty-six thousand.
Explanation- In calculating the value,—

(a) the amount received by the citizen for the purchase of books, clothing and equipment and for sight-
seeing in a foreign country or territory shall be taken into account; but

(b) the amount spent in travel by air in economy class from India to a foreign country or territory and
back to India from such foreign country or territory, and the amount spent by the foreign source in
respect of such citizen towards tuition and other fees, shall not be taken into account.

Rule 6. Authority to whom an application or intimation to be sent-
Any application or intimation referred to in Rule 3, [Rule 3-A] or Rule 4, as the case may be, shall be
made or given to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi, and
such application or intimation shall be sent by registered post.

Rule 7. Manner of service of prohibitory order or any other order or direction-
A prohibitory order under section12 or any other order or direction made or issued under the Act, shall
be served on the person concerned in the following manner, that is to say,—

(a) by delivering or tendering it to that person or to his duly authorised agent; or

(b) by sending it to him by registered post acknowledgement due to the address of his last known
place of residence or the place where he carries on, or is known to have last carried on, business
or the place where he personally works for gain or is known to have last worked for gain, and in case the person is an organisation or an association, to the last known address of the office of such organisation or association;

(c) if it cannot be served in any of the manners aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides, or carries on, or is known to have last carried on, business, or personally works for gain, or is known to have last worked personally for gain, and in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the office of the organisation or association is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

Rule 8. Maintenance of Accounts-

(1) A separate set of accounts and records shall be maintained, exclusively for foreign contribution received and utilised,-

(a) in Form FC-6, where the foreign contribution relates only to articles as referred to in item (l) of sub-clause (c) of clause (l) of section 2;

(b) in the cash book and ledger account on double entry basis, where the foreign contribution relates to currency received and utilised, and a separate bank account shall be maintained in respect of such contribution;

(c) in Form FC-7, where the foreign contribution relates to foreign securities.

(2) Every account specified in sub-rule (l) shall be maintained on an yearly basis, commencing on the 1st day of April each year and every such yearly account, duly certified by a chartered accountant (in Form FC-3 along with a Balance Sheet and statement of Receipts and Payments), shall be furnished, in duplicate, to the Secretary to the Government of India, in the Ministry of Home Affairs, New Delhi, within [four months] of the closure of the year.

Explanation- In this rule, “Chartered Accountant” has the meaning assigned to it in the Chartered Accountants Act, 1949 (38 of 1949).

Rule 9. Limits up to which an officer, not below the rank of an Assistant Sessions Judge may make adjudication of confiscation-

An officer referred in clause (b) of Section 19 may adjudge confiscation in relation to any article or currency seized under Section 16, if the value of such article or the amount of such currency exceeds one thousand rupees but does not exceed fifty thousand rupees.
VII. PARLIAMENTARY REPORT
Summary of Parliamentary Standing Committee Report

The FCRA Bill of 2006 was referred to The Parliamentary Standing Committee on Home Affairs. The Committee submitted its report on 21st October 2008.

The recommendations of the Committee included the following:
1. Indian companies with foreign shareholders of 50% or more should not be classified as ‘foreign source’.
2. Scholarships or stipend for academic pursuits should not be treated as ‘foreign contribution’.
3. Introduce time limit for a decision after an organisation is declared as being of political nature, and provide for an appeal mechanism.
4. Distinguish between foreign hospitality accepted during an official visit and on a personal visit.
5. Allow ‘mother NGO’ to obtain prior permission on behalf of small NGOs getting FCRA funds from it.
6. ‘Administrative Expenditure’ should be defined in the Bill to remove confusion; the limit of 50% is otherwise considered reasonable by the Committee.
7. Introduce time limit of 3 months for dealing with application for FCRA registration.
8. Simplify the requirement of ‘meaningful project for people’ when granting prior-permission. FCRA should not get into the subjective question of whether a project is ‘meaningful’ or not.
9. Requirement of renewal of FCRA registration every five years can be retained – however, the Department should grant the renewal within three months.
10. Banks need to report only bigger remittances (above Rs. 10 lakhs) to the Government.
11. Municipal councils and Panchayati Raj Institutions should also be included in the definition of ‘legislature’. This will place some restrictions on work being done with Panchayat members and candidates for Panchayat elections.
12. Some minor changes are also suggested with regard to imprisonment, fines, and prohibition etc.
(iii) Gist of views/suggestions of Members/individuals/organizations on the Bill and comments of the Ministry of Home Affairs thereon;

(iv) Gist of views/suggestions of various political parties on the Bill and comments of the Ministry of Home Affairs thereon; and

(v) List of Individuals/Organisations who appeared before the Committee.

Committee on Home Affairs
(Constituted on 5 August 2007)

1. Smt. Sushma Swaraj, Chairperson

RAJYA SABHA
2. Shri Rishang Keishing
3. Shri Rama Chandra Khuntia
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri Janeshwar Mishra
7. Shri Prasanta Chatterjee
8. Shri Tiruchi Siva
9. Shri Satish Chandra Misra
10. Shri Sanjay Raut

LOK SABHA
11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
15. Smt. Sangeeta Kumari Singh Deo
16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri Hemant Khandelwal
19. Shri Naveen Jindal
20. Shri Ajit Jogi
21. Prof. K.M. Kader Mohideen
22. Shri T.K. Hamza
23. Shri Ramchandra Paswan
24. Shri Sachin Pilot
25. Shri Ashok Kumar Pradhan
26. Vacant
27. Shri Mekapati Rajamohan Reddy
28. Shri Baju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh
Preface

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Thirty-fourth Report on the Foreign Contribution (Regulation) Bill, 2006 (Annexure I).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred the Foreign Contribution (Regulation) Bill, 2006, as introduced in the Rajya Sabha on 18 December 2006 and pending therein, to the Committee for examination and report within three months. Due to preoccupation of the Committee with other urgent and pressing work relating to Bills and legislative business, extension of time up to the last week of the Monsoon Session (2007) was initially granted by the Chairman, Rajya Sabha, for presentation of the Report. Further extensions were granted by the Chairman, the last being up to the first week of the Monsoon Session, 2008.

3. The Foreign Contribution (Regulation) Bill, 2006 has been brought to consolidate the law to regulate 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 or incidental thereto. The Bill also seeks to repeal the present Act, namely, The Foreign Contribution (Regulation) Act, 1976.

4. The Committee issued a Press Communiqué (Annexure II) on the Bill on 9th February 2007 inviting views/suggestions on the Bill. In response thereof, a large number of memoranda were received. After scrutiny, 52 memoranda were found relevant and forwarded to the Ministry of Home Affairs for their comments. The Committee also sought views/suggestions of various political parties on the Bill and received the same from six political parties (Annexure IV).

5. The Committee in its meeting held on 12th June 2007, heard the presentation of the Home Secretary, Government of India on the Bill and held preliminary discussion thereon. The Committee in its meeting held on 20th June 2007 decided to hear non-official witnesses including representatives of RBI, SBI, ICICI & HDFC Banks as well as some NGOs on the Bill.

5.1 In its sittings held on 16th & 17th July, and 3rd October 2007, the Committee heard the views of Dr. Bimal Jalan, Member of Parliament, Rajya Sabha and ex-Governor, RBI and representatives of the following organizations on the Bill:

(i) Reserve Bank of India;
(ii) State Bank of India;
(iii) ICICI Bank;
(iv) HDFC Bank;
(v) Catholic Bishop’s Conference of India;
(vi) National Council of Churches in India;
(vii) National Council of YMCA of India;
(viii) Representatives of Voluntary Action Network India; and
(ix) Institute of Chartered Accountants of India

5.2 The Committee in its sitting held on 6th November 2007 and 9th January 2008 heard the representatives of Planning Commission on the compatibility of the Bill vis-à-vis National Policy on Voluntary Sector, a policy document of Voluntary Sector Cell, Planning Commission, Government of India. The Committee also heard Heads of the four expert groups who had worked on the draft policy in its meeting held on 9th January 2008.

6. The Committee took up clause-by-clause consideration of the Bill its meetings held on 15th and 16th May, 2008.

6.1 The Committee considered the draft Report in its sitting held on 4th July, 2008 and adopted the same.

7. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

8. On behalf of the Committee, I would like to acknowledge with thanks the valuable contributions made by the witnesses who deposed before it and facilitated the Committee in formulating its views on the Bill.

(Sushma Swaraj)
Chairperson
New Delhi
4 July, 2008
Parliamentary Standing Committee on Home Affairs

Report

The Foreign Contribution (Regulation) Bill, 2006 has been brought with a view to regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or association of companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and to replace the present Foreign Contribution (Regulation) Act, 1976.

1.1 The Foreign Contribution (Regulation) Bill, 2006, *inter-alia* seeks to:-

(i) consolidate the law to regulate, acceptance and utilization of foreign contribution or foreign hospitality and prohibit use of the same for any activities detrimental to the national interest;
(ii) prohibit organizations of political nature, not being political parties from receiving foreign contribution;
(iii) bring association or company engaged in production or broadcast of audio news or audio visual news or current affairs programme through any electronic mode or any other electronic form, or any other mode of mass communication under the purview of the Bill;
(iv) prohibit the use of foreign contribution for any speculative business;
(v) cap administrative expenses at fifty per cent of the receipt of foreign contribution;
(vi) exclude foreign funds received from relatives living abroad;
(vii) make provision for intimating grounds for refusal of registration or prior permission;
(viii) provide arrangement for sharing of information on receipt of foreign remittances by the con-
The Foreign Contribution (Regulation) Act, 1976

2. The Foreign Contribution (Regulation) Act, 1976 was enacted to regulate the acceptance and utilization of foreign contribution or hospitality with a view to ensuring that our parliamentary institutions, political associations, academic and other voluntary organizations as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. The Act was amended in 1984 to extend its provisions to cover second and subsequent recipients of foreign contribution and to the members of higher judiciary, besides introducing the system of grant of registration to the associations receiving foreign contribution.

2.1 As stated in the statement of Objects and Reasons of the present Bill, significant developments have taken place since the enactment of the Act of 1976 and its amendment in 1984 such as change in internal security scenario in the country, ever increasing influence of voluntary organizations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received resulting growth in the number of registered organizations. This, according to the Government, has necessitated large scale changes in the existing Act.

Need for New Legislation

3. The Ministry of Home Affairs informed this Committee that since the amendment of FCRA, 1976 in 1984, the need for a comprehensive review of the Act had been felt due to various factors including (i) recommendations made in the Forty-fifth Report of Estimates Committee of the Eighth Lok Sabha in 1986-87; (ii) recommendations made by the Group of Ministers on Reforming the National Security System in 2001; (iii) difficulties faced in the operation of the act because of large growth in the number of registered organizations and the volume of annual inflow of foreign contribution, and (iv) concerns expressed by Members of Parliament resulting in large number of parliament assurances on amendment of Act, pending for fulfillment.

3.1 This Committee was also informed that as a run-up to the new legislation, the Ministry of Home Affairs had organized a national seminar on FCRA on 24th & 25th June, 2005 which was attended by more than 500 delegates representing various stakeholders. The suggestions given by the stakeholders were considered in detail and suitably incorporated in the draft Bill which proposes to replace the Foreign Contribution (Regulation) Act, 1976.
Presentation on the Bill

4. The Additional Secretary in the Ministry of Home Affairs made a power-point presentation on the Bill before the Committee on 12th June, 2007. He stated that the Bill seeks to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies. The Bill also prohibits acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest. The following salient points were put forth in support of the Bill:-

(i) this Bill is to facilitate foreign contribution for genuine activities;
(ii) transparency in decision making process is the major thrust of the proposed Bill;
(iii) the Bill strengthens the monitoring of receipt and utilization of foreign contribution;
(iv) it prevents diversion of foreign contribution for activities detrimental to national interest;
(v) foreign contribution if intended for genuine activities can be received either by registration or obtaining prior permission of the Central Government;
(vi) the preamble of the Bill outlines the emphasis on consolidating the law to regulate receipt and utilization of foreign contribution and foreign hospitality, and to prohibit acceptance and utilization thereof for activities detrimental to national interest;
(vii) income from or interest accrued on foreign contribution is included in the definition of ‘foreign contribution’ to bring about clarity and ease in accounting;
(viii) amount received as fee, payment in lieu of goods and services rendered, etc. is excluded from definition of ‘foreign contribution’ to facilitate normal business activities;
(ix) individuals are also allowed to receive foreign contribution for carrying out genuine activities;
(x) relatives are out of purview of the Act to facilitate normal family remittances;
(xi) electronic media is included in the prohibited category since it plays an important role in influencing public opinion;
(xii) use of foreign contribution or any income arising out of it for speculative business is not allowed to ensure that foreign contribution is utilized for genuine welfare activities;
(xiii) administrative expenses have been capped at fifty percent of the foreign contribution to prevent diversion of funds from core welfare activities, and to ensure good governance;
(xiv) grounds for refusal of applications for registration/prior permission are spelt out to reduce discretion;
(xv) grounds for refusal of registration/prior permission would be intimated to bring in transparency;
(xvi) registration for a period of five years with a provision for renewal for five years is to ensure weeding out of defunct organizations;
(xvii) provision has been made for cancellation/suspension of registration to ensure compliance of law, and proper monitoring of receipt and utilization of foreign contribution;
(xviii) foreign contribution is to be received in single bank account and utilization is allowed from multiple accounts as suggested by the stakeholders;
(xix) provision for reporting of receipt of foreign remittances through banking channels to strengthen monitoring.
5. The Committee heard a number of witnesses on the Bill including Dr. Bimal Jalan, Member of Parliament (Rajya Sabha) and former Governor, Reserve Bank of India (RBI), representatives of RBI, State Bank of India (SBI), ICICI Bank, HDFC Bank and representatives of various NGOs and other organizations like Catholic Bishop's Conference of India, National Council of Churches in India, National Council of YMCA of India. Witnesses, who deposed before the Committee, have expressed the following major viewpoints/suggestions on the provisions of the Bill:-

5.1 **Suggestions of Dr. Bimal Jalan:** Dr. Jalan appeared before the Committee on 16th July, 2007 and expressed his viewpoints on the Bill. He stated that the NGOs, particularly small organizations engaged in social, health and educational work for disadvantaged sections of the society were highly concerned about the implications of this Bill. His main concern was about cumbersome and bureaucratic administrative provisions in the Bill and requested for review of this aspect with a view to simplifying them. He also made the following suggestions:-

- (i) there should be an “automatic route” for registration of NGO’s which receive grants from Ministries/public sector units/organizations controlled by Central and State Governments. Registration should be automatically granted to such institutions within seven days after filing of applications along with a certificate that those are government-aided. No further information or enquiry is necessary. Similar “automatic routes” have been set up by Ministry of Finance and other economic ministries for granting permission in other areas;
- (ii) accounts of all registered NGOs should be annually audited by qualified Chartered Accountants as per normal procedure. However, there should be no fifty per cent limit on administrative expenditure as provided in the Bill. In respect of service organizations, most of the expenditure could be in the form of salaries allowances for field-work, and it is not possible to differentiate between administrative expenses and other expenses, like salaries;
- (iii) the validity of registration should be for ten years and not five years;
- (iv) except in respect of suspected terrorist activities, there should be no power with the government for search, seizure and discretionary inspection of NGOs as provided in the Bill. In respect of terrorist activities such powers should be exercised under anti-terrorism laws and not under FCR Act. Chapter V of the present Bill should be deleted altogether;
- (v) for NGOs, which are not government aided, registration certificates should be issued within 30 days. There should be provision for electronic filing so that NGOs do not have to visit the Ministry for physical filing or follow-up purposes;
- (vi) if any NGO is suspected of indulging in illegal activities, the government should have the power to cancel registration after giving due notice. However, any other penal action should be taken under laws which are already in place (such as, Foreign Exchange Management Act);
- (vii) the provision in the Bill providing for reporting of foreign remittances by the banks should be deleted as it will put additional burden on the Banks. The Act should provide that where there is evidence of suspicious activities, any information, which is required, will be supplied to the Ministry and penal action may be taken against the banks not furnishing the required information;
- (viii) FCR Act should principally address issues like prohibited class, e.g., political parties, Member of
Parliaments, educational institutions, institutions which government does not want to be aided by the international agencies, auditing of accounts;

(i) there is little possibility of FCRA route being used for terror funding as there are other channels of transferring funds meant for creating internal disturbances, terrorism etc. Making the provisions in the FCR Bill stringent may result in stifling the legitimate activities of the NGOs more than their illegitimate activities. It can also impose burden on NGOs dependent on small grants received from abroad; and

(ii) State-aided agencies, Government-funded agencies, official agencies which are providing funds to any State-recognized agency or anybody who is receiving funds from official, bilateral/multilateral donors, recognized by the Ministry of Finance, may be exempted from the purview of FCRA.

5.2 Views of the representatives of Banks:- The Committee heard the views of the Deputy Governor, Reserve Bank of India, the Chairman, State Bank of India and the representatives of ICICI and HDFC Banks on 16th July, 2007. The views expressed by them have been summarized as under:-

(i) definition of ‘foreign source’ may be modified to exclude Indian companies where the foreign holding is in excess of fifty percent.

(ii) cancellation of permission to receive foreign contribution may be advised through interact to avoid delay in receipt of communication in this regard by the bank.

(iii) five years restriction for renewal could be dispensed with because this can be monitored on a regular basis through an electronic system and a unique identification number.

(iv) there is already a system of reporting suspicious transactions by the bank branches directly to the Financial Intelligence Unit. Any cash transaction above Rs. 10 lakh or small transactions aggregating more than Rs. 10 lakh in a month is also reported. There should be a threshold limit beyond which bank may report. A threshold limit of Rs. 5 lakh or above may be fixed.

(v) the banks could report certain identified types of remittances but it is difficult to report all types of foreign remittances.

(vi) voluminous data on foreign remittances will put an extra burden on the financial institutions, which will increase cost of the banks. It will also divert the focus on monitoring of suspicious transactions.

(vii) registration number allotted by the Ministry of Home Affairs should be unique and a relative bank’s code be incorporated in the registration number so that use of the same certificate for opening an account in different branches of different banks would not be possible.

(viii) monitoring of entire foreign remittances will slow down the foreign fund flow through legitimate channels and encourage hawala channels.

5.3 Views of representatives of NGOs and other organizations: The Committee received several memoranda from various organizations/institutions/individuals. The Committee invited some of them to appear before it to hear their views/suggestions on the Bill. The list of witnesses is at Annexure V. The gist of views given in the written memoranda and those expressed by the witnesses in their oral evidence, are given as under:-

(i) preamble of the Bill should be amended. The use of negative expression ‘to prohibit’ has the potential to curb the freedom of voluntary sector, which works for the betterment of the poor. Therefore,
(ii) definition of 'foreign source' may be modified suitably, so as to exclude Indian companies with more than fifty percent foreign holding from the purview of the definition of "foreign source".

(iii) 'organisation of political nature' may be kept in the 'prior permission category' instead of putting them in the 'prohibited category';

(iv) procedure which has been laid down in the proposed Bill to declare an organization as being an organization of a political nature puts no onus on the Government, after an inquiry, to inform the organization whether it has been declared as an organization of a political nature or not;

(v) the term 'political nature' is very subjective. The Government should specify as to what constitutes an organization of political nature.

(vi) provision under Clause 8(i)(a) prohibiting investment of foreign contribution in speculative business, may be dropped. According to Section 11(5) of the Income Tax Act, there are certain statutory investments in which an NGO can park its funds. Both the Acts should be synchronized in a manner that one does not contradict the other;

(vii) the restriction of fifty per cent on administrative expenditure may not be practical and may have a negative effect on the utilization of funds. Further, administrative expenses cannot be clearly defined;

(viii) the statutory prohibition of fifty per cent should be in the rules and not in the statute;

(ix) there is no time limit for the Government within which it shall grant registration or renew registration, as per the provisions of clauses 1 and 16 (3), respectively. The time limit of ninety days may be provided to bring about transparency and accountability;

(x) registration should be granted liberally and monitoring should be made more effective since certifying/fulfilling of conditions for grant of registration/prior permission is a time consuming exercise;

(xi) one of the conditions for grant of registration stipulates that an organization has not indulged or involved in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another. These expressions are not defined and if these undefined expressions become cause for rejecting an application for registration, then it will have negative effect;

(xii) another condition for grant of registration is that an organization has not created communal tension or disharmony in any district or any part of the country. This is again very broad and undefined expression which may give wide discretion to the concerned authorities;

(xiii) in Clause 12(3)(a)(ii), the term 'inducement' may be replaced by 'deceit or fraud' and the term 'indirectly' may be deleted, as these terms are prone to subjective interpretation;

(xiv) conditions for registration such as activities, not detrimental to national interest; not involving conversion through inducement or force; not to create communal tension or disharmony; undertaking meaningful activity; any pending prosecution for any offence; sovereignty and integrity; are very subjective areas and leave room for wide discretion. These conditions lead to vesting powers with authorities and give scope for corruption;

(xv) clause 12(3) refers to 'meaningful activity'. This prevents a new person from undertaking a good work and also prevents a person presently undertaking a particular activity from expanding to newer programmes;

(xvi) 'meaningful activity' is very subjective, the negative interpretation of which may discourage the
voluntary sector;
(xvii) the words “harmony between religious, racial, social, linguistic, regional groups, caste or communities” mentioned in clause 12(3)(f)(vi) have broad connotations and may lead to subjective decisions;
(xviii) there is no need for proposed renewal of registration as there are several monitoring provisions in the Bill;
(xix) the provision of validity of registration certificate for five years will lead to uncertainty for an organization. The Bill has enough provisions to ensure proper working such as suspension, seizure and also regular submission of accounts, auditing etc. This time limit should be removed;
(xx) furnishing a certificate from an officer of the bank or authorized person in foreign exchange on details of foreign contribution received, is not necessary in view of the provision in the Bill requiring annual report from banks on foreign contribution received;
(xxi) when an organization ceases to exist or its license is suspended, the funds, after selling off assets, should go to another organization, doing a similar service;
(xxii) the provision for appeal provided in Clause 31 should not be limited to certain clauses only and should be made applicable to all sections;
(xxiii) there is no criteria specified or mentioned as to on what ground the Central Government can exempt a particular organization or individual from the operation of clause 50. Procedure for grant of exemption under this clause should be included to bring transparency;
(xxiv) there is no need for a new legislation because enough monitoring is being done through the Income Tax Act, reporting to the Ministry of Home Affairs, etc. For national security concerns, amendments with stringent conditions may be brought in the existing Acts to protect national interest and to curb terrorist activities; and
(xxv) the Bill should be an enabling one and not prohibitive to facilitate the voluntary sector to do or continue to do what they have been doing. The intended purpose of the Bill to prevent mis-utilisation of foreign contribution is already being taken care by FEMA, PMLA and IT Act, etc. The Bill should not be mixed up with the objects of curbing use of funds for terrorism.

5.4 Views of the political parties: In view of the wide implications of the Bill, the Committee sought the views of the major National Political Parties. In response six Political Parties had send their comments on the Bill (Annexure IV). Views contained in the written comments submitted by the Political Parties are briefly summarized as under:-

(i) the preamble of the Bill contains the words “to prohibit” whereas in the existing FCRA, 1976 the words used are “to regulate”. The use of the negative expression - “to prohibit” has the potential to curb freedom of voluntary sector and hinder its functioning which works for the betterment of the poor and marginalized.

(ii) the Bill aims at prohibiting “activities detrimental to national interest” which is a subjective expression and no indicator mentioned anywhere in the Bill as to what constitute activities detrimental to national interest. Therefore, the words “and to prohibit acceptance and utilization of foreign contribution and foreign hospitality for any activities detrimental to the national interest and for matters connected herewith or incidental thereto” be deleted.

(iii) the definition of “a candidate for election” in clause 2(1) (d) is not explicit as to the time from when
a person shall be considered as “duly nominated”. The words “by filing his nomination paper with Returning Officer” be inserted after the words “duly nominated”.

(iv) India is a democratic republic. So everyone has the right to be part of the political process. Clause 3 (1) (f), whereby the organization of political nature is prohibited from accepting foreign contribution as specified by the Central Government, seems to be inconsistent with the rights guaranteed by the Constitution of India. Therefore, Clauses 3(1) (f), 5(1) and 54 (2) (b) be deleted.

(v) in clause 4, the following sub-clause may be added: “(g) by way of scholarship, stipend or any payment of like nature from any foreign source”.

(vi) clause 5 requires reformulation by incorporating within it a time bound post decisional hearing after declaring an organization as an organization of a political nature.

(vii) the term ‘any foreign hospitality’ may require a more focussed and appropriate definition to avoid possibility of uncertainty.

(viii) a provision should be incorporated in the Bill that it shall not be necessary to obtain any permission for accepting foreign hospitality, if such hospitality is in connection with religious programme of an individual provided, an intimation is given to the Central Government within a month of availing hospitality. This is justified in view of the Fundamental Right to Freedom of Religion.

(ix) prohibition on transferring foreign contribution to other person is detrimental to the interest of the voluntary organisations. This means that a voluntary organisation headed by any small group or any right thinking individual will be the ultimate sufferer because they are the people who are working in the remotest parts of the country and they will not get the funds unless registered or have obtained prior permission and will be caught in the quagmire of re-tapism.

(x) the cap of fifty percent on administrative expenses is very high and should be reduced to twenty-five percent. Government should also have the power to relax the provision in appropriate cases.

(xi) clause 9(a) prohibits certain persons or organizations from receiving foreign contribution. Such persons/organizations should be given reasonable opportunity of being heard.

(xii) clause 11(3)(ii) restricts the area or areas in which foreign contribution shall be accepted and utilized, with the prior permission of Central Government. This is unjust, discriminatory and unconstitutional as it violates the right to equality.

(xiii) clause 12 does not prescribe any period within which the Government is to dispose of an application for registration or prior permission. New provisions in this clause may be added prescribing a time period of ninety days for disposing of an application for registration or prior permission. Otherwise the applicant should be deemed to have been granted registration or prior permission.

(xiv) the Bill does not define the words ‘inducement’, ‘indirectly’, “not engaged or likely to engage to propagate sedition etc” leaving it to the subjective interpretation of the authorized official. These words should be appropriately defined.

(xv) clause 12 (3)(a)(vi) states that the authorized officer is required to be satisfied that the organization is “not likely to use foreign contribution for personal gains or divert it for undesirable purposes”. This should also not be left to the subjective assessment of the concerned official and should be appropriately defined. In certain cases, an affidavit can be sought.

(xvi) clause 12 (3)(a)(iii) provides reasons for non-registration of an organization if it is involved in cer-
tain activities. It mentions about ‘communal tension’ or ‘disharmony’ as grounds for disallowing registration and does not mention about any organization promoting caste hatred.

(xvii) clause 12 (3)(b)(c) states that the official is required to determine whether the organization intending to receive foreign funds, has ‘prepared a meaningful project’ and “meaningful activity” for the targeted group. These forward-looking statements are liable to subjective interpretations of the officers and should be appropriately defined. In certain cases, an affidavit can be sought.

(xviii) as per the principle of natural justice, a person cannot be held guilty until proven. However, according to clause 12 (3)(d), even if there is a prosecution pending against the person, he is prohibited from receiving foreign funds. This will restrict the number of organizations from obtaining FCRA registration since false cases and accusations can be levelled against social activists who are working on the right issues on behalf of the marginalized communities.

(xix) in Clause 12(3)(g), it needs to be clarified that the acceptance of foreign contribution shall not lead to incitement of an offence by the applicant. The words ‘by the applicant’ may be inserted after the word “offence”.

(xx) clause 12(4) be deleted as the applicant should always have the right to know the reasons for refusal of his application.

(xxi) clause 16 should contain a provision wherein a person who was made application for renewal of a registration certificate, within 6 months before the expiry of the period of the certificate, it should be deemed to have been renewed in the absence of a decision of the Central Government, before the expiry of the period of the certificate.

(xxii) all organizations receiving foreign contribution should submit yearly audited accounts to the Government, which should also be published through Website.

(xxiii) clause 38 provides for prohibiting an association from receiving foreign contribution for a period of three years from the date of second conviction. It should be amended. Any organization which is convicted of any offence under the Act should be prohibited from accepting foreign contribution for a period of five years from the date of first conviction.

(xxiv) a balance should be maintained between national security concerns and the need to provide a transparent regime for flow of funds for charitable purposes.

(xxv) there are possibilities of by-passing FCRA requirements by channelling the funds through commercial firms as consultant fees, exports etc. There is a need to plug the loopholes by appropriate amendments.

(xxvi) it has often been seen that foreign contributions received for noble activities, are surreptitiously and clandestinely diverted for subversive purpose. Here the question is, who will be monitoring the corpus of the foreign contribution. Hence the need of the hour is to make more specific and stringent provisions in the Bill to prevent such activities.

National Policy on Voluntary Sector vis-à-vis the Foreign Contribution (Regulation) Bill, 2006

6. During the course of examination of the Bill, representatives of some NGOs who appeared before the Committee submitted that the provisions of the Bill were not in conformity with the ’National Policy on
Voluntary Sector’ formulated by the Planning Commission. The Committee noted that the proposal to repeal the FCRA, 1976 and to replace it with a new Act, was considered and approved by the Cabinet on 9th November, 2006 whereas the National Policy had been in circulation in draft form since May, 2005, which was notified by the Planning Commission on 31st July, 2007. The Committee, in view of the concerns raised in different quarters, decided to hear the representatives of the Planning Commission in the matter.

6.1 Principal Adviser and Deputy Adviser, Planning Commission appeared before the Committee on 6th November, 2007 to place the views of the Commission on the proposed Bill vis-à-vis the National Policy on Voluntary Sector. The Principal Adviser during the course of evidence stated that there is no conflict between the Bill and the Policy, as far as the Planning Commission is concerned. He further stated that there is only one major suggestion of the Planning Commission namely; there should be a mechanism of joint consultations where representatives of the Government and concerned NGOs may sit together from time to time and suggest changes to make the FCRA simplified and easier to operate.

6.2 On a query, whether the Planning Commission took into consideration, the recommendations of the Estimates Committee of Lok Sabha and the Kudal Commission while drafting the policy, the Principal Adviser stated that four experts groups had been constituted and all the concerned documentation was taken into account while drafting the Policy. However, the Planning Commission in its written reply had informed as under:

"while drafting the Policy, inputs available in various documents, such as, the earlier Five Year Plans, Action Plan for collaborative relationship between Government & Voluntary Agencies, Report of the Steering Committee on Voluntary Sector for the Tenth Plan, a write-up on the Role of the Civil Society, which appeared in the Tenth Plan Document, and the Kudal Commission Report (1987) on Gandhi Peace Foundation & other organizations were utilized. Shri Sanjay Aggarwal, Account-Aid, who was chairing the Expert Group on Legal & Operating Environment and Financing Issues set-up for revising the Policy, had also consulted the Kudal Commission Report. However, the Forty-fifth Report of the Estimates Committee of the Ministry of Home Affairs presented to the Eighth Lok Sabha could not be referred to, while drafting the Policy".

6.2.1 The Committee, therefore, decided to hear the views of the Heads of four experts’ group and the Secretary, Planning Commission.

6.3 Secretary, Planning Commission along with Senior Adviser, Voluntary Action Cell (VAC) and other representatives of the Commission appeared before the Committee on 9th January, 2008. The Deputy Adviser (VAC), made a powerpoint presentation before the Committee. During the course of presentation he stated that the first draft of the policy was prepared by the Planning Commission during the year 2003 on the recommendations of the joint machinery for collaborative relationship between Government and Voluntary Sector, under the Chairmanship of Deputy Chairman, Planning Commission. The draft policy was then revised after a meeting of 40 experts on the voluntary sector, to improve it. It was also decided to constitute four expert groups to further improve upon the draft policy. The expert groups then met to further modify the policy and on the basis of changes suggested by the groups, a Cabinet Note was pre-
pared. Meanwhile, the draft policy was circulated to concerned Ministries/Departments for obtaining their comments. The draft policy was also forwarded to all States/UTs. The Cabinet considered and approved the policy on 17th May, 2007 and it was notified in the Gazette of India on 31st July, 2007.

6.4 The Deputy Adviser (VAC), Planning Commission further added that the National Policy on Voluntary Sector 2007 was considered as a significant step towards recognition of the contribution of the voluntary sector, as it provided legitimacy to the voluntary sector, as well as brought the desired accountability on their part. He also added that the policy inter-alia provided for review of FCRA from time to time and simplifying its provisions relating to voluntary organizations. According to him, the basic objectives of the policy are as under:-

(i) to create an enabling environment for Voluntary Organisations that stimulates their enterprise and effectiveness and safeguards their autonomy.
(ii) to enable Voluntary Organisations to legitimately mobilize necessary financial resources from India and abroad.
(iii) to identify systems by which the Government may work together with Voluntary Organisations on the basis of the principles of mutual trust and respect, and with shared responsibility.
(iv) to encourage Voluntary Organisations to adopt transparent and accountable systems of governance and management.

6.5 The Committee also heard the heads of expert groups, who had worked on the draft policy, on 9th January, 2008. Commenting on the provisions contained in the policy vis-à-vis the FC(R) Bill, 2006, the Secretary, Planning Commission as well as the heads of expert groups stated that the Bill was not incongruous to the National Policy on Voluntary Sector. He also made the following submissions:-

(i) the Policy only makes a broad suggestion that the provisions of FCRA should be simplified and reviewed from time to time in consultation with the voluntary organizations, so that its implementation becomes effective;
(ii) the Policy was formulated in a participatory spirit, involving a number of voluntary organizations and other stakeholders, over a number of consultations;
(iii) the Policy also suggests having Joint Consultative Forums/Groups of all concerned Ministries/Departments, as well as at State and District levels having representatives of voluntary organizations and Government to discuss mutual concerns on a regular basis;
(iv) it is expected that once such a Consultative Forum is set up by the Ministry of Home Affairs, problems faced by voluntary organizations would be reviewed and resolved on a regular basis.

6.6 The Ministry of Home Affairs, responding to the views of the Planning Commission, stated that the National Policy of Voluntary Sector not only advocates for liberal policy of Government for the growth and development of the voluntary sector but also speaks of tightening administrative and penal procedure to ensure that the incentives were not misused. It was stated that the proposed Bill seeks to achieve the said objectives by putting in place an improved monitoring mechanism and that it was not contrary to the policy. It rather seeks to facilitate voluntary organizations engaged in bonafide activities.
Major issues raised, responses of the Ministry of Home Affairs and Observations/Recommendations of the Committee

7. Several issues/suggestions were raised/made in the written memoranda submitted to the Committee and in the oral deposition of the witnesses and by the Members of the Committee. A statement showing gist of suggestions made and comments of the Ministry of Home Affairs thereon is placed at Annexure - III. The following are some of the major issues raised and the responses of the Ministry of Home Affairs thereon:

7.1 Foreign Source

Suggestion
7.1.1 Definition of 'Foreign Source' may be modified to exclude Indian companies where the foreign holding is in excess of fifty percent since such foreign holding is permitted under FDI or FII norms.

Comments of the Ministry
7.1.2 The definition of 'foreign source' provided in the Bill is along the lines of the provision contained in Section 2(1)(e) of the existing FCR Act, 1976. The said provision in the Bill would not affect the normal operations of Indian companies with foreign holding of more than fifty percent which would be governed by various regulations pertaining to foreign investment. The context of FCRA is different and it is felt that retaining the existing provision would not impact negatively on those who may want to receive foreign contribution from such companies for their legitimate activities.

Observations/Recommendations of the Committee
7.1.3 The Committee feels that the definition of 'foreign source' is vague in relation to the status of the Indian companies with more than fifty percent foreign holding. The Committee has been given to understand that such foreign holding is permitted under FDI or FII norms. The Committee, therefore, recommends that Indian companies, where the foreign holding is in excess of fifty percent, may be excluded from the purview of the definition of 'foreign source' and accordingly the definition may be modified.

7.2 Provision for Scholarship, Stipend Etc.

Suggestion
7.2.1 In clause 4, the following sub-clause be added:
"(g) by way of scholarship, stipend or any payment of like nature from any foreign source."

Comments of the Ministry
7.2.2 The Home Secretary during the course of his oral evidence stated as under:
" ...... we are not providing anything in the Bill, which means that if he is receiving a stipend, he can continue to receive it......however the Ministry will certainly consider the recommendations of the Committee."

Observations/Recommendations of the Committee
7.2.3 The Committee noted that clause 4, as presently worded, does not specifically exclude the receipt of foreign scholarship or stipend by Indian citizens studying in Indian or foreign academic institutions from the prohibition as laid down in clause 3. According to the Committee, scholarship/stipend for academic pursuit ought not to be curbed, directly or indirectly. In this context, the Committee noted that section 7 of FCRA, 1976 does lay down a procedure for giving intimation to Central Government about receipt of scholarships/stipend or any payment of like nature from any foreign source. That section also waives the requirement of giving information if the annual value of such scholarship/stipend or any payment of like nature, does not exceed the prescribed limit.

7.2.4 The Committee is therefore of the considered view that clause 4 may be suitably amended so that the recipients of scholarship/stipend or any payment of like nature from bonafide foreign source do not face any problem in that regard.

7.3 Time-Bound Post Decisional Hearing

Suggestion
7.3.1 Clause 5 requires reformulation by incorporating a time bound post-decisional hearing after declaring an organization as an organization of a political nature not being a political party.

Comments of the Ministry
7.3.2 Clause 5(2) of the Bill deals with the procedure for notifying an organization of a political nature and reads as under:

"Before making an order under sub-section (l), the Central Government shall give the organization in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organization of political nature under that sub-section."

7.3.3 There is, therefore, a provision for giving notice before declaring an association as an organization of political nature. Further, Clause 5(3) provides the association with an opportunity to make a representation against the said notice within a period of thirty days and thereby, the association is provided with a reasonable opportunity of being heard. In view of this provision, there is no necessity for keeping a provision for post decisional hearing. It is also mentioned that a set of guidelines to define an organization of political nature not being a political party, will be included in the rules to be framed under the Act.

7.3.4 The Home Secretary further clarifying the position during the course of his oral evidence, observed as under:

"in clause 5(3) there is a provision of 30 days for notice period and that period may be increased. This is in case of a person wanting to represent against such a proposal. Now there is no time-frame mentioned here for the decision of the authority thereafter. In this case, my suggestion and humble observation is that this thing starts with a notice being given to such a person to say why it should not be prohibited. In other words, this clause starts with the giving of a notice to somebody that why not you should be banned."

Observations/Recommendations of the Committee
7.3.5 The Committee took note of the fact that clause 5(3) provides for a notice period of thirty days for
the organization to represent during the notice served to them. The Committee, however, expresses its concern over the fact that there is no provision or a time frame in the clause for a post-decisional hearing or in other words, there is no provision for an appellate authority before whom an appeal may be made against the Government's decision. In the absence of a time frame and an appellate authority, Government may procrastinate a decision and during this period of animated suspension, the sword of Damocles will be hanging on the organisation. The Committee, therefore, recommends that a time frame may be provided within which the Government has to take a decision on specifying an organization of a political nature not being a political party. The clause should also provide for an appellate mechanism to redress grievances arising out of decisions of the Central Government under sub-clause (l).

7.4 Foreign Hospitality

Suggestion

7.4.1 Most of the Members of the Committee were of the view that the definition of 'foreign hospitality' needs clarity. The words 'purely casual one' in clause 2(1)(i) being ambiguous, also needs to be clarified.

Comments of the Ministry

7.4.2 The Ministry has submitted that the term “foreign hospitality” has been defined in clause 2(1)(i). The restriction on acceptance of ‘foreign hospitality’ as provided for in clause 6 of the Bill, pertains to a limited category of persons viz. member of a legislature, office bearers of a political party, judge, government servant or employees of any corporation/body owned or controlled by the Government. As may be seen that each and every category of person/associations specified in clause 3(1) where restrictions regarding receipt of foreign contribution have been made are not covered by clause 6. The import of this restriction on this limited category of persons is based on the premise that they are not expected to avail of foreign hospitality from any foreign source in view of their official position. Seen in this light, the exception of ‘not being of a purely casual one’ could be interpreted as being self explanatory. However, a doubt could arise with reference to acceptance of foreign hospitality from a citizen of a foreign country who could be a friend, particularly when any type of foreign hospitality is being offered/availed in a purely personal capacity by a person travelling abroad. One way of resolving this doubt is to leave the question of availing of such hospitality to the best judgment of the person concerned depending on what kind of information has to be given to any official authority because the Bill is not seeking to restrict people traveling abroad to meet friends, relatives etc. However, any suggestion that the Committee might make in this regard will be duly considered.

Observations/Recommendations of the Committee

7.4.3 The Committee having discussed the matter at length, comes to the conclusion that the definition of ‘foreign hospitality’ is not clear regarding the status of a person i.e. whether in official or personal capacity, when he/she is on foreign visit. The Committee feels that this aspect should be adequately clarified and accordingly recommends that the words “when on official visit” may be added after the words “a person” in clause 2(1)(i).

7.4.4 Likewise, the Committee is of the view that clause 6 does not clarify the status of a person when travelling abroad i.e. whether in personal or official capacity. The Committee therefore also feels that the
restriction on acceptance of foreign hospitality provided in clause 6 should appropriately apply to a person when one is travelling to a foreign country in one's official capacity.

7.5 Transfer of Foreign Contribution to Others

Suggestion
7.5.1 Prohibition of transfer of foreign contribution to another person implies that an NGO headed by a small group or any right thinking individual, will be the ultimate sufferer because those are the people who are working in the remotest parts of the country and they will not get the funds unless they are registered or have obtained prior permission and will be caught in the quagmire of red-tapism.

Comments of the Ministry
7.5.2 This provision was incorporated in the existing Act in the year 1984 and the same has been retained in the Bill. The objective of this provision is to monitor the utilization of foreign contribution received and also to ensure that such foreign contribution is not diverted to associations whose antecedents and credentials have not been verified by the field agencies. This would prevent diversion and mis-utilisation of foreign contribution received. However, if necessary, this aspect could be appropriately addressed in the rules.

7.5.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

"Sir, we have said that it would come under rules. You have mentioned about present system of monitoring in which there have been shortfalls and ....... some big NGOs are giving something to any one and when its complaint come to the notice, this question will rise. Later, if certificate is to be obtained from District Magistrate that means there has to be some disclosure. In the first instance we want to give it to someone. If we want to give it to someone then is it not necessary to verify him. I think it is necessary.......possibly, the arrangement can be that the prior permission on behalf of that particular association could, perhaps, be taken by the mother NGO so that the problem that is being expressed is addressed."

Observations/Recommendations of the Committee
7.5.4 The Committee felt that due to the restriction as aforesaid, the ultimate sufferers would be the smaller NGOs who are working in remotest parts of the country. They would not get funds unless registered or have obtained prior permission and they will be victims of red-tapism. Therefore, as observed by the Home Secretary, the larger organization or the mother NGO which wants to give funds to smaller organizations should obtain prior permission and clearance for such transfers. The Committee, therefore, recommends that necessary amendment may be made in this regard in clause 7, specifying or laying down that an organization which is seeking to transfer the foreign contribution to any other organization, it should obtain prior permission from the Central Government.

7.6 Administrative Expenditure

Suggestion
7.6.1 Section 8(1)(b) of the Bill is restricting the utilization of foreign contribution for administrative
expenses not exceeding fifty percent of such contribution. The restriction of fifty percent on administrative expenses may not be practical and may have a negative effect on the utilization of funds. Further, administrative expenses have not been defined. If at all the restriction is to be retained, then it should be in the rules and not in the statute. Extent of funds to be used for administrative purposes should be left to the donor and donee to decide. These expenses would not be detrimental to the national interest and are outside the objects specified in the preamble of the Bill. On the other hand, it also suggested that the cap of fifty percent on administrative expenses was very high and should be brought down to twenty five percent. Further, Government should have the power to relax the ceiling in appropriate cases.

Comments of the Ministry

7.6.2 The basic purpose of the Act is to ensure that the foreign contribution received for specific tasks is not utilised for activities other than the stated objectives of the organization. Therefore, a limit of fifty percent on administrative expenses has been provided in the proposed Bill as per the recommendations of 'GoM' to prevent diversion of foreign contribution from the core activities of the association and also to encourage good governance in the voluntary sector. The limit is considered reasonable keeping in view the diverse nature of the activities undertaken by the NGOs. As an illustration, associations engaged in educational and research activities will have higher proportion of administrative expenses. The term 'administrative expenses' could be defined in the Rules.

7.6.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

"if the Committee is of the view that administrative expenditure should be defined and then it should be further reduced, we will most certainly consider this and reduce it."

Observations/Recommendations of the Committee

7.6.4 The Committee is inclined to agree with the view that in the absence of the definition of "administrative expenses", it would be difficult to identify the items of expenditure under that head. The Committee therefore recommends that the term "administrative expenses" may be appropriately defined in the Bill.

7.6.5 Having regard to the two opposing viewpoints on the proposed cap on administrative expenditure and also having regard to the various pros and cons of the matter, the consensus in the Committee was in favour of endorsing the provision of the ceiling of fifty percent, of foreign contribution received in a financial year, to meet administrative expenses, which according to the Committee is a reasonable restriction.

7.7 Time Limit for Registration and Grant of Certificate

Suggestion

7.7.1 Clause 12 does not prescribe any period within which the Central Government is to dispose of an application for registration or prior permission. New provision in this clause may be added prescribing a period of ninety days for disposing of an application for registration or prior permission. If no decision is communicated to the applicant, registration or prior permission would be deemed to have granted.
7.7.2 Clause 16 is silent on the scenario when a person having applied for renewal of certificate of registration within six months before the expiry of the period of the certificate, does not get intimation either about renewal or refusal of renewal, by the expiry date of the certificate. It has been suggested that a deeming provision should be incorporated to the effect that in case no intimation is received by the applicant by the expiry date of the certificate, it shall be deemed that the certificate has been renewed.

Comments of the Ministry
7.7.3 Verification of antecedents and activities of the recipient association and the donor(s) is conducted through designated field agencies. In some cases, a detailed verification of antecedents/activities of recipient associations and donors is required, which is a time consuming process. However, a broad timeframe within which applications will have to be considered/cleared may be prescribed in the rules or guidelines to be framed for implementation of this provision of the Bill.

7.7.4 Home Secretary, further clarifying the position during the course of oral evidence, stated as under:
"......suppose some application of registration or permission have come up then we may need to make enquiries in some cases, even about the donor. So, it may take a little bit of time. You had desired that we should make provisions for prescribing a time limit either in the rules or somewhere else......even for renewal we can make some provision of that kind. Madam, in the last meeting a point was raised that six months before the date of renewal comes to an end, he should be required to give application. If it does not happen during that period, it will be deemed to have been renewed, or, it will remain as a provisional registration. We will certainly make some provisions whereby this concern of the honourable Committee may be adequately addressed"

Observations/Recommendations of the Committee
7.7.5 The Committee observes that clause 12 which is quite exhaustive, does not caste any obligation upon the Central Government to dispose of an application for grant of certificate of registration or for prior permission. Thus an applicant may be kept waiting indefinitely for a decision by the Central Government. The Committee is of the considered view that the Government should consider prescribing a time limit of ordinarily ninety days for taking a decision on an application for grant of certificate of registration or giving prior permission. The Committee is further of the considered view that in case of delay in grant of certificate or prior permission, beyond the normal period of ninety days, it shall be the duty of the central Government to record the reasons for such delay in waiting on the lines of the provisions of sub-clause (4) of clause 12.

7.7.6 The Committee therefore, recommends that the Government should adequately address the suggestion made by it in the preceding para.

7.7.7 The Committee also recommends that in sub-section (c) of sub-clause (3) of clause 12, the word "meaningful" should be omitted as the expression is liable to be interpreted subjectively. The Committee further recommends that the word 'people' appearing in the said sub-section, may be substituted by the word 'society', which is a better expression, with reference to the context.
7.7.8 Like in the case of grant of certificate of registration or prior permission, the Committee feels that in the absence of a time limit for renewal of registration, the applicant may be kept waiting indefinitely for a final decision. The Committee observed that there should be a time limit for the purpose of renewal of registration, which could be ordinarily up to ninety days from the date of application, made under sub-clause (i) of clause 16. The Committee therefore recommends that the Government should adequately address the suggestion made in this regard.

7.8 Reporting of Suspicious Transactions

Suggestion

7.8.1 There is already a system of reporting suspicious transactions by the banks’ branches directly to the Financial Intelligence Unit. Any cash transaction above Rs.10 lakh or small transactions aggregating more than Rs.10 lakh in a month is also reported. There should be a threshold limit beyond which the bank may report. A threshold limit of Rs. 5 lakh or above may be considered.

Comments of the Ministry

7.8.2 The threshold limit for reporting of foreign remittance by Banks is proposed to be kept at Rs.10 lakh and may be finalized at the time of formulation of rules under the Act. The Financial Intelligence Unit shall be the nodal agency for collection of information pertaining to receipt of foreign contribution beyond a threshold limit and repeated transactions, even if the amount is slightly less than, or aggregates to a cumulative amount, which may be slightly less than the threshold limit. Sufficient measures will be taken to avoid additional burden on the reporting entities.

7.8.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

"......it is proposed that to have each and every remittance reported is not required and there would be a threshold limit which would be defined. The threshold limit would be Rs.10 lakh. [If] there is a fund flow of more than Rs.10 Lakh in a transaction or in repeated transactions, then only, the bank will inform the Financial Intelligence Unit. That is also part of further strengthening of the financial monitoring. If anything is found to be suspicious by the bank or the Financial Intelligence Unit, they will report it to the appropriate authority."

Observation of the Committee

7.8.4 The Committee recommends that there should be a threshold limit of Rs. 10 lakh for reporting by banks to specified authority and each bank may be asked to report every foreign remittance above that limit. The Committee, therefore, recommends that the proposed threshold limit may be incorporated in clause 17(2) (a).

Clause-by-clause consideration of the Bill

8. The Committee took up the clause-by-clause consideration of the Bill in its sittings held on 15th and 16th May, 2008 wherein the Home Secretary, Secretary, Legislative Department and Secretary, Department of Legal Affairs were present.
Clause 2

8.1. The clause seeks to define the various terms/expressions used in the Bill.
8.1.1 Clause 2 (1)(i) defines 'foreign hospitality'.
8.1.2 The issue has already been discussed in this report at paras 7.4.1 and 7.4.2. The Committee recommends that the words 'when on official visit' may be added after the words 'a person' in sub-section (i) of sub-clause (l) of clause 2.
8.1.3 Clause 2 (1) (j) defines 'foreign source'.
8.1.4 The status of Indian companies with foreign holdings of more than fifty per cent, in relation to this definition, has been discussed in paras 7.1.1 and 7.1.2 of this report. The Committee recommends that such Indian companies may be excluded from the purview of the definition of 'foreign source' and that sub-section (vi) of sub-clause (j) may be suitably amended.
8.1.5 Clause 2 (1) (k) deals with definition of 'legislature'.
8.1.6 Having regard to the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, the Committee is of the view that Municipal Councils (for small urban areas) and the Panchayati Raj Institutions should also be covered by the definition of 'legislature'. The Committee, therefore, recommends that sub-clause (k) may be amended accordingly.
8.1.7 Subject to the above observations/recommendations, clause 2 is adopted.

Clause 3

8.2 This clause provides for prohibition to accept foreign contribution by certain persons or associations.
8.2.1 The clause is adopted without any change.

Clause 4

8.3 This clause provides that the prohibition to accept foreign contribution under clause 3 shall not apply in case where such contribution is accepted by way of salary, wages or other remuneration from any foreign source or by way of payment in the ordinary course of business transacted in India by the foreign source; or by way of payment in the course of international trade or commerce or in the ordinary course of business transacted outside India or as an agent of foreign source in relation to any transaction made by such foreign source with the Central Government; or State Government or by way of gift or presentation made to him as a member of any Indian delegation if such gift or present was in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or by way of remittance received in the ordinary course of business through any official channel, post office or any authorized person in foreign exchange under the Foreign Exchange Management Act, 1999; or by way of payment received from the relative of any person referred to in clause 3. However, in case any foreign contribution received by any person specified under this clause, such contribution shall be deemed to have been accepted in contravention of the provisions of clause 3.
8.3.1 The issues connected with this clause have been discussed in paras 7.2.1 and 7.2.2 of the Report. The observations/recommendations of the Committee are contained in paras 7.2.3 and 7.2.4 ibid.
8.3.2 Subject to the observations/recommendations contained in paras 7.2.3 and 7.2.4, the clause is adopted.
8.4 This clause lays down the procedure to notify an organization of a political nature.
8.4.1 The issues connected with this clause have been discussed in paras 7.3.1 to 7.3.4 of the Report. The observations/recommendations of the Committee are contained in para 7.3.5 ibid.
8.4.2 Subject to the observations/recommendations made in para 7.3.5, the clause is adopted.

Clause 5

8.5 This clause provides for restriction on acceptance of foreign hospitality.
8.5.1 The issues connected with this clause have been discussed in paras 7.4.1 and 7.4.2 of the Report. The observations/recommendations of the Committee are contained in paras 7.4.3 and 7.4.4 ibid.
8.5.2 Subject to the observations/recommendations made in para 7.4.4, the clause is adopted.

Clause 6

8.6 This clause prohibits the transfer of foreign contribution to any other person.
8.6.1 The issues raised in relation to this clause have been discussed in paras 7.5.1 to 7.5.3 of the Report. The observations/recommendations of the Committee are contained in para 7.5.4 ibid.
8.6.2 Subject to the observations/recommendations made in para 7.5.4, the clause is adopted.

Clause 7

8.7 This clause contains restriction to utilize foreign contribution for administrative purposes.
8.7.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.6.1 to 7.6.5 of the Report.
8.7.2 Subject to the observations/recommendations made in paras 7.6.4 and 7.6.5, the clause is adopted.

Clause 8

8.8 This clause confers power upon the Central Government to prohibit receipt of foreign contribution, etc. in certain cases.
8.8.1 The clause is adopted without any change.

Clause 9

8.9 This clause confers power upon the central Government to prohibit payment of currency received in contravention of the proposed legislation.
8.9.1 The clause is adopted without any change.

Clause 10

8.10 This clause contains provisions relating to registration of certain persons with the Central Government.
8.10.1 The clause is adopted without any change.

Clause 11

8.11 This clause seeks to provide for grant of certificate of registration.
8.11.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.7.1 to 7.7.8 of the Report.

8.11.2 Subject to the observations/recommendations made in paras 7.7.5, 7.7.6 and 7.7.7, the clause is adopted.

**Clause 13**

8.12 The clause confers power upon the Central Government to suspend the certificate of registration up to one hundred and eighty days.

8.12.1 The clause is adopted without any change.

**Clause 14**

8.13 This clause contains provisions relating to cancellation of certificate of registration.

8.13.1 The Reserve Bank of India has suggested that the cancellation of permission to receive foreign contribution may be advised through the website of the Ministry of Home Affairs to avoid delay in receipt of communication in this regard by the Bank. The Committee notes that the Ministry has agreed to consider the suggestion at the time of framing of rules.

8.13.2 Subject to the above, the clause is adopted.

**Clause 15**

8.14 This clause contains provisions relating to management of foreign contribution of person whose certificate has been cancelled.

8.14.1 The clause is adopted without any change.

**Clause 16**

8.15 This clause contains provisions relating to renewal of certificate.

8.15.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.7.2 to 7.7.8 of the Report.

8.15.2 Subject to the observations/recommendations made in para 7.7.8, the clause is adopted.

**Clause 17**

8.16 This clause contains provisions relating to foreign contribution through banks.

8.16.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.8.1 to 7.8.4 of the Report.

8.16.2 Subject to the observations/recommendations made in para 7.8.4, the clause is adopted.

**Clauses 18-22**

8.17 These clauses contain provisions relating to furnishing intimation to the Central Government regarding granting of certificate of registration etc., maintenance of accounts by every person who has been granted a certificate of registration or given prior permission under the proposed legislation, provisions relating to audit of accounts, intimation by candidate for election and disposal of assets created out of foreign contribution.

8.17.1 These clauses are adopted without any change.
**Clauses 23-27**

8.18 These clauses contain provisions relating to inspection of accounts or records, seizure of accounts or records, seizure of article or currency or security received in contravention of the proposed legislation and disposal of seized articles or currency or security.

8.18.1 These clauses are adopted without any change.

**Clauses 28-30**

8.19 These clauses contain provisions relating to confiscation of article or currency or security obtained in contravention of the proposed legislation, adjudication and procedure for confiscation.

8.19.1 These clauses are adopted without any change.

**Clauses 31-32**

8.20 These clauses contain provisions relating to appeal and revision of orders by the Central Government.

8.20.1 Both the clauses are adopted without any change.

**Clause 33**

8.21 This clause provides for punishment of imprisonment for a term which may be extended to three years or with fine or with both for making false statement, declaration or delivering false accounts.

8.21.1 The Committee noted that section 177 of Indian Penal Code (IPC) prescribes punishment of simple imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 1000, or with both, to a person who furnishes false information to any public servant. The Committee also notes that section 181 of IPC prescribes the punishment to a person for giving false statement on oath or affirmation to public servant etc., which may extend to 3 years, and shall also be liable to fine. The classification of offences under the said sections of IPC is comparable to those included in clause 33. In this context, the Committee observed that the punishment prescribed under that clause is not in consonance with sections 177 and 181 of IPC. The Committee therefore recommends that clause 33 may be re-visited so that it is in tune with the said sections of IPC.

8.21.2 Subject to the above, the clause is adopted.

**Clauses 34-37**

8.22 These clauses provide for penalty for article or currency or security obtained in contravention of clause 10; punishment for contravention of any provision of the proposed legislation; confers power upon the court to impose additional fine where article or currency or security is not available for confiscation; provides for penalty for offences where no separate punishment has been provided under the proposed legislation.

8.22.1 These clauses are adopted without any change.

**Clause 38**

8.23 Clause 38 deals with prohibition of acceptance of foreign contribution. It provides for punish-
ment of debarring a person from accepting any foreign contribution for a period of three years for the second or subsequent convictions under clauses 35 and 37.

8.23.1 The Committee felt that in a second or subsequent conviction, a person should be debarred from accepting any foreign contribution for five years instead of three years, as provided in the Clause. The Committee, therefore, recommends that necessary amendment may be made in Clause 38 accordingly.

8.23.2 Subject to the above, the Clause is adopted.

**Clauses 39-41**

8.24 These clauses provide for offences by companies; bar to prosecution of offences under the Act; and composition of certain offences.

8.24.1 These clauses are adopted without any change.

**Clauses 42-54**

8.25 These clauses provide for miscellaneous provisions covering inter-alia power to call for information or document, investigation into cases under the Act, protection of action taken in good faith, power of Central Government to give directions, power to make rules, power to exempt in certain cases etc.

8.25.1 The clauses are adopted without any change.

**Clause 1, the Enacting Formula and the Title**

8.26 Clause 1, the Enacting Formula and the Title are adopted with some changes which are of consequential or drafting nature, namely, “2006” and ‘Fifty-seventh” to be substituted by “2008” and “Fifty-ninth”, wherever these occur.
VIII. PARLIAMENTARY DEBATE - EXTRACTS
Shri Mullappally Ramachandran

The Minister of State in The Ministry of Home Affairs, in the Rajya Sabha on 19-Aug-10:

Sir, on behalf of my senior colleague, Shri P. Chidambaram, I beg to move:

“That the Bill 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 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, be taken into consideration.”

Sir, the present Bill is introduced in the context of increased security concerns and resultant imperatives. The objective is to provide a framework for more effective and transparent regulation of foreign contribution for prevention of activities detrimental to national interest. The views and suggestions of the Ministry of External Affairs, Ministry of Corporate Affairs, Department of Industrial Policy and Promotion in the Ministry of Commerce and Industry and of related agencies have been taken into consideration.

The Bill, along with the Amendments that have been proposed, debars persons, who have been prosecuted or convicted for indulging in activities aimed at religious conversion through inducement of force, from receiving foreign contribution. The Bill also debars persons who have been prosecuted or convicted for creating communal tension or disharmony in any part of the country.

The Bill seeks to impose a ceiling on the percentage of foreign contribution that can be spent for administrative purposes. The Bill seeks to prohibit use of foreign contribution for speculative business. It prohibits associations or companies engaged in production of broadcast of audio-visual news or current affairs programmes from receiving foreign contributions. It provides for weeding out and cancellation of registration of Associations that have remained dormant. The provisions of this legislation will facilitate genuine organisations working in various sectors for charitable purposes. The Bill provides greater accountability, with specific time limits for disposal of cases at different stages. It facilitates Indian nationals receiving foreign remittances from their relatives living abroad.

I request that the Bill be considered and passed.

Shri P. Chidambaram

The Minister of Home Affairs, in the Rajya Sabha on 19-Aug-10:

Sir, I am grateful to the hon. Members for the support they have extended to the Foreign Contribution (Regulation) Bill which was introduced in 2006 but which has come up for consideration and passing in 2010. The foreign contribution law and the rules thereunder were made in 1976. We have examined the working of the law in the last 34 years and we think it is time to replace it by a brand new law. That is why, instead of attempting piecemeal amendments to that law, we are bringing a fresh Bill.

Sir, this Bill has gone through a Group of Ministers; it has gone through the Standing Committee; again, it went through another Group of Ministers; and, finally, the version that is now before the House with official amendments is what is being considered by the House.

Sir, the objectives of the Bill are, indeed, to regulate the acceptance and utilization of foreign contribution or foreign hospitality. We think that this is a matter which requires to be regulated. We cannot have a laissez faire system of either foreign contribution or foreign hospitality. And who are being regulated? Certain individuals are being regulated. Not any individual, but certain individuals are being regulated. Associations are being regulated. Companies are being regulated.

The regulations have been so framed that while legitimate charitable social, educational, medical and
activity that serves any public purpose is allowed, foreign money does not dominate social and political discourse in India. There is enough money for charity within India. Enough money can be raised within India for charitable causes, the social causes. But, if you want to access foreign money, then one has to come under a system of regulation.

The regulation is of two kinds. The first is, certain categories are totally prohibited. Well, that, Sir, is a priori position. You can argue philosophically. But, the Government places before Parliament an a priori position, these people must be prohibited. A minister must be prohibited. A judge must be prohibited. A political party must be prohibited. You may argue, are there not good judges, are there not good ministers, are there not good Parliamentarians who should be allowed to receive money? But, that is a philosophical argument. That is a metaphysical argument. We think that these categories must be prohibited.

The other is, they will be allowed to receive money, but in a regulated manner. That again divides into two categories. The normal rule is, if you wish to receive foreign money, take prior permission. If you wish to avail of foreign hospitality, take prior permission. There is no absolute prohibition. It is simply disclosure and taking prior permission. Then, we say, if the track record of the organization is very good for a period of three years or five years, if you are filing accounts, if you are using the money properly, if there are no complaints against you either by the donor or by the beneficiaries, if you have not violated any law, based upon your track record, we will give you registration which places you in a less restricted regime. You can receive the money, use it and give accounts every year. I think, this classification is logical; some are prohibited, the rest are regulated. Regulation takes two forms. The rule is, take prior permission. When your track record is good, you can graduate to the category of registration. I think, broadly, this should be acceptable to all Members of Parliament. I think, the Standing Committee has accepted it and I am grateful to the Standing Committee for supporting the Bill.

Sir, we have accepted a large number of recommendations of the Standing Committee. We have reworded the preamble. We have said that any fee payment in lieu of certain services rendered will be excluded from the definition of foreign contribution; organizations of the political nature, not being political parties will be placed in the prohibited category. That is the recommendation of the Standing Committee. Use of foreign contribution or any income arising out of it for speculative business will be proscribed. Administrative expenses will be capped at 50 per cent; that again is a recommendation of the Standing Committee.

The registration be granted for a period of five years with automatic renewal for a period of five years to all applicants except those who are defaulters is provided for. A fee will be charged for grant of registration, prior permission and on renewal; the fee will be specified. Rejection will be supported by reasons and reasons will be given in writing. Suspension of a registration certificate can only be for a maximum period of 180 days pending an inquiry. Cancellation of registration will be done only after giving reasonable opportunity of hearing. Foreign contribution will be routed through a single bank account. But, you can open one or more accounts to utilise the foreign contribution. Receipt must be through a single bank account. But, when you spend it, depending upon your area of activity, you can have more than one bank account.

Country-wise information data base will be maintained. The provisions for punishment for violations have been made stricter, and compounding is being provided for minor violations. We have also partly accepted several recommendations, and I won't read them to you.

We have not accepted two recommendations. Restriction on availing a foreign hospitality during visits abroad should apply only when one is travelling in official capacity. Now, this can give rise to problems. If you allow a person to travel in an official capacity and then in an unofficial capacity and then say your prohibition is only when in unofficial capacity, I think, that will lead to problems. It is because he will travel in an official capacity and then avail of the hospitality. The next time, he will say, “I am travelling in a non-official capacity”. I think that is not possible. This we will have to relate to the status of the person,
Likewise, when a foreign company or a foreign individual owns 51 per cent of an Indian company and he makes a foreign contribution, that has to be treated as a foreign contribution. These are only two recommendations that we have not accepted. All other recommendations have been wholly accepted or substantially accepted.

Sir, we are now dealing with nearly 40,000 associations. In fact, the number, as on July, 2010 is, 40,173. My biggest problem when I reviewed this Act is, one-half of the associations do not report the foreign contributions; they do not file accounts. So, what does it mean? It is a way of looking at it. The glass is either half empty or half full. You can say, half the organizations are very honest, so why have regulations of so strict nature? But, you can turn around and say, half the organizations are not so honest, therefore, regulation is necessary.

This is the problem. One half of the organizations do not report their foreign contributions. Therefore, that is a cause for worry. Where is the money that they are getting going? Therefore, today, we have taken power that if the organizations do not file accounts or do not report, then, we have taken the power now, after issuing a show cause notice, their registration will be cancelled, and then further consequences will follow. I think the size of the money that is coming into this country is large; the number of organizations not reporting is one half the number, nearly one half the number, therefore, it is absolutely necessary to have a stricter law rather than a liberal law.

Maybe a time will come when 90% of the organizations are reporting faithfully. They have web sites; they disclose their accounts. Maybe at that time, we can consider a more liberal law. But, today, given the situation in which we are, the amount of money that is coming into the country and the fact that one half of the organizations do not report or do not file accounts, it is necessary to have strict regulation. That is the reason for it. (Interruptions) See, one half, which is reporting, is reporting Rs.10,000 crores. The other half, which is not reporting, let us assume, this is another Rs.10,000 crores. Now, Rs.10,000 crores which have not reported their account for is a very large amount of money. That is why, I think, regulation is necessary.

Sir, many of the things which the hon. Members said have to be dealt with in the rules. They may appear vague, but any law, Mr. Rama Jois knows, if you read it without the rules will appear to be vague. But, many of the things have to be provided for in the rules. Wherever it is necessary, wherever it becomes excessive delegation, we have provided it here. But most of the things have to be done in the rules and guidelines and that is why I think any law which is drafted will appear to vest a large amount of discretion. But the rule making power is intended to control that discretion of power. Many of these will indeed be dealt with under the rules.

Now, Mr. Rama Jois mentioned clause 5. Clause 5 is already there in Section 5 of the present Act. You mentioned Clause 9. Clause 9 is already Section 10 in the present Act. These are not new provisions. These are the provisions which have been repeated because these are wholesale provisions that stood the test of law. 'Political nature', in fact, we have said that the present law is rather vague. The new law says political nature will lay down guidelines, we will frame rules, we will issue a show cause notice, and we will give the reasons why an organisation is being called an organisation of a political nature. We will get their reply, and then we will pass an order either of placing them in the category of organisations of a political nature, and publish that notification. If it is observed, if it is unreasonable, they know how to challenge it in the court of law. In fact, we are making it more transparent, we are making it more rule based and more reason based.

Likewise, Clause 9 is already there in the present Section 10. The point is well taken. Functionaries must exercise powers within reasonable time. One of the reasons why we have not administered this law as effectively as I believe we should have administered is the paucity of human resources in this Division. When you start a Division of this kind you start with the hope that there will be a few hundred organisa-
tions and a few hundred crores will come. But suddenly the whole thing rises at a geometric proportion; the number doubles and doubles every three or four years. The amount doubles and doubles every three or four years.

Unfortunately, our systems do not allow so many hands to come in the Division so quickly. But we are now trying to strengthen the Division. This Division which deals with about forty thousand organisations and deals with about, I do not know, twenty to twenty-five thousand crores of rupees, must indeed have more human resource. But once human resource comes, we will indeed lay down timelines in which each application should be disposed of. In fact, one of my plans is that every application should automatically get on to a website, when it was made. Then if it is returned that should also go on the website, when it was returned for completion of information, then, whether it was either accepted or rejected, all that should go on the website. It will be developed. Once a new law is made, we will develop that.

Sir, administrative expenses are capped at 50 per cent but I wanted to read sub-clause 2 which gives power to the Government to indicate the guidelines for what would be considered administrative expenses. If your administrative expenses exceed 50 per cent, all that is required is you must get the approval of the Government. It is not that you cannot spend 51 per cent. We will now say what would fall in the administrative expenses and that should, as far as possible, not exceed 50 per cent. If it exceeds 50 per cent, you would have to get the approval of the Government.

Sir, renewal is renewal for five years. Now, we think that an organisation should be allowed registration for five years and automatically renewal for five years unless it attracts penal provisions. I think once in five years it is good that organisations receiving foreign money renew themselves. I do not think we can renew for ever. An organisation, in fact, has infinite lifetime, therefore, it is no finite lifetime organisation. I think it is good that once in five years they should come up for scrutiny.

Sir, I accept the suggestion that much of the information and much of the way in which these applications are dealt with must be put on the website and we will certainly follow that.

There were some questions about Clause 6 read with clause 2(1). There is indeed a restriction on accepting foreign hospitality. In the beginning I said, some categories must be restricted because of the office you hold, the status you have, the position you hold must be restricted. If you still want to accept foreign hospitality, you must get prior permission. If a Member of Parliament wants to travel abroad and receive foreign hospitality, then no harm in his applying and the application is invariably granted and foreign hospitality is allowed. Foreign hospitality definition in 2(1) does include boarding and lodging. You have to disclose so and so has invited me and I am staying there for three days, I am going to stay in this hotel and they are going to pay for the hotel and food. That is perfectly logical. Once you accept my philosophy that some categories must indeed be prohibited because of the status, because of the position, they hold. Sir, with these words, I commend the Bill.

There are official amendments. We will take a few minutes to pass the official amendments. I want you to read the Bill with the official amendments. If you read the Bill with the official amendments there will be greater clarity. But, I do take all your points. We will address many of them while the rules are being made.

Shri Ajay Maken

The Minister of State in The Ministry of Home Affairs, in the Lok Sabha on 27-Aug-10
अध्ययन महोत्य, यह विदेशी अभियान (विश्वास) विषय, 2010 अपने आप में ऐतिहासिक तथा गीता का पठार है। यह ऐतिहासिक इसके है, क्योंकि इस बिंदु पर जो कानून था, वह वर्ष 1976 में पारित हुआ था और अब तक लागू था। वर्ष 1976 के बाद इसमें एक बार वर्ष 1984 में संशोधन किये गए और संशोधन के माध्यम से इसके अंदर जज्बी कर दिया गया कि कोई भी व्यक्ति, एसोसिएशन या आर्मेनियाजन अगर कहीं से भी विदेशी अभियान ले, तो उसे रजिस्ट्रेशन कराना पड़ेगा। दूसरा उस वक्त जो संशोधन किया गया, वह यह था कि उसमें कोई भी व्यक्ति, एसोसिएशन या आर्मेनियाजन लेने के बाद अगर किसी दूसरे व्यक्ति को पास-आन करे, तो उसे किस तरह से पास-आन कर सकता है या नहीं कर सकता है, इसे भी रूपोत्तर करने का प्रावधान उसमें किया गया था। तीसरा उसके अंदर हायर जूडीशियर के अभियास को सम्मिलित करके विदेशी अभियान एक्ट के दायरे में लाया गया। इन तीन संशोधनों के साथ 1984 के अंदर आंखियार बार इसमें संशोधन हुआ, लेकिन संशोधन होने के बाद 1986 में एसोसियाइट कमेटी ने पता किया कि इस बिंदु में और ज्यादा नए सिरे से संशोधन करने की जरूरत है। उसके फॉर्मल्यूप 1988 में एक कमेटी आप सेंट्रेटीज का गठन किया गया, उसने भी इस बात की चर्चा की और कहा कि इसके अंदर बदलाव की जरूरत है। वर्ष 1993 के अंदर भी कमेटी आप सेंट्रेटीज ने इस बार में चर्चा करके चेंज करके नए सिरे से लाई की बात कही। वर्ष 2001 के अंदर बंडर संसद में कैविनेट में इसी चर्चा की, लेकिन वर्ष 2001 में कैविनेट पूर्ण रूप से इसके उपर कोई फैसला नहीं ले पाया। उसके बाद बच सुपीए की संसद में आई, तो बाप्पी इस बिंदु को दोपहर पटरी पर लाया गया और इस पर कार्यवाही शुरू हुई और वर्ष 2005 के कैविनेट में इस पर चर्चा हुई और बाद में गुप्त आफ्तपीनस्टन बनाया गया जिसके लिए उनकी सिफारिशें आई। इसका एक ड्राफ्ट बिंदु बाइडन कीनेशन के लिए इंटरनेट पर दे कर लोगों से कमेन्ट के मांगे गए और दो दिन का नेशनल सेमिनार दिली में आयोजित किया गया, जिसमें पांच से से भी अधिक लोगों ने इसका लिया और अपने अपना - अलग टेक होस्पिटल पर अपने कमेन्ट दिए। वर्ष 2006 में जब वह बिंदु राज्य सरकार में आया और तिस्मूर्त 2006 में टेंडिंग कमेटी में गया, तो टेंडिंग कमेटी ने वर्ष 2008 में लगभग 14 सिफारिशें इस बिंदु में दी।

महोत्य, मुझे बताते हुए बुझी हो रही है कि संसद ने 14 में से केवल दो माइनर अमेसेट्स के अलावा बाकी सारी अमेसेट्स स्थायी समिति की मान ली है और मानने के बाद राज्य सभा से बिंदु पास करने के बाद जमा लाये हैं। मेरा आपके माध्यम से नानावस्थाओं से अनुमोदन कि इसमें स्थायी के लगभग सभी अमेसेट्स को मानिता है। राज्य सभा ने पारित कर दिया है। मेरा आपके माध्यम से अनुदान कि यहाँ इस पर चिंताकर और पारित करें।

धार्मिक अवधारण: आदरणीय उपाध्याय महोदय, सबसे पहले में आपके माध्यम से माननीय सदस्यों का धन्यवाद करना चाहूँगा जिन्होंने बल में इससे लिया। उन्होंने न केवल हिस्सा लेने के लिए एवं समर्पण करने के लिए हिस्सा लिया, बल्कि डिवेट का स्टैंड और वहस का स्टैंड अपना अच्छा रखने के लिए भी में बनाई देना चाहूँगा। बहुत अच्छे सुझाव और बहुत अच्छे तरीके से इस बिंदु के बारे में बड़े गहन विचार करके, स्टैंड करने योजनाओं ने इस बात को रखा, खास तौर पर में निश्चित कर दिए साहब का विशेष तौर पर अपने लेना चाहूँगा कि इसके बाद बहुत अच्छे से अपनी वात को रख, इसके लिए में अपनी तरफ़ से इससे और दूसरे सदस्यों को भी बनाई देंगा चाहूँगा।

उपाध्याय महोदय, जैसा कि सब लोगों ने कहा कि यह बिंदु बहुत पहले आ जाना चाहिए था, इसमें काफी समय लगा, यह बात सही है। मैंने जैसे शुरूआत में कहा कि सन् 1984 में जब हम लोगों ने इसमें तीन मुख
विषयों के उपर अमेंडमेंट किया तो उसके एकदम बाद सन 1986 में एस्ट्रेटेंट कमेटी ने उस समय भी कहा था कि इस बिल के अंदर नये तरीके के अमेंडमेंट की जरूरत है। जिसकी वजह से कमेटी ऑफ सेफेटी 1988 में बनई गई, फिर 1993 में बनाई गई और सन 2001 के अंदर भी इस बिल के उपर चर्चा हुई, कैबिनेट के अंदर उस समय तकालीन संकाय के बीच में हुई, लेकिन फैसला नहीं हो पाया। फलस्वरूप जैसे ही यूरोप की संकाय आई, हम लोगों ने इस लिया और सन 2005 के अंदर इस चीज को कैबिनेट में एक वॉल्फसीजिया बिल की फॉर्म में लेकर गए। वहां से फिर युरॉप ऑफ मिनिस्ट्रीज में गए और एक नेशनल सेमिनार भी दो दिन का वहां दिल्ली में रखा गया कि इस बिल को किस तरीके से किया जाए। इसमें हम ये सवाल चाहते हैं कि हम 2006 डिसेंबर के अंदर नागरिक से डिजिंग कमेटी में जब गया तो 2008 अक्टूबर में डिजिंग कमेटी ने इसमें अपनी रिपोर्ट दी। 14 सिफारियों में से मात्र दो छोटी सिफारियों को छोड़ कर डिजिंग कमेटी की सारी सिफारियों को हमने माना।

उपायमोह थीस्ट, मैं अपने माध्यम से सदस्यों को कहना चाहता हूँ कि हम लोगों के इस बिल के माध्यम से मुख्त-दो वक्तव्य हैं। एक तो हम लोग नेशनल इंटरट को, इंटरनेट सिक्योरिटी और वाहर से आए हुए पैसे को हमारे बीच में एक-दूसरे को ध्यान दें, उद्देश्य संबंधी अन्य अन्य अधिकारी काम कर सके, हम चीज को रोकने के लिए और साथ-साथ इसमें जो अंतिम व्यक्ति उनका काम कर रहे हैं, उन्हें मजबूती प्रदान करने के लिए और उन्हें दिक्कत नहीं हो। हम लोगों की चीज़ों ने हम लोगों के इस बिल के अंदर व्यापार में रखा है। मैं आपको बताऊँगा कि, यह आप लोग इस चीज को देखें कि एड्मिनिस्ट्रेटिव एक्सप्सिस्ट के लिए 1976 के एक्ट के अंदर उसका कोई केंद्र नहीं था। हम लोगों ने न केवल 50 प्रतिशत इसमें केंद्र लगाया है, बल्कि जब यह डिजिंग कमेटी में डिस्काउंट के लिए आया तो डिजिंग कमेटी ने कहा कि एड्मिनिस्ट्रेटिव एक्सप्सिस्ट को आये निकल दिया करेंगे, इसकी भी चीजें के तो हम लोगों ने तय किया है। मैं माननीय सदस्यों को बताऊँगा कि हम रूस जब बुत्थ रहे हैं, हम रूस में इस चीज का व्यवस्था करने वाले हैं कि एड्मिनिस्ट्रेटिव एक्स्प्रेस्स का मतलब एजेंट क्या होगा, किसे एड्मिनिस्ट्रेटिव एक्स्प्रेस का मामला है। हमने न केवल एड्मिनिस्ट्रेटिव एक्स्प्रेस का केंद्र किया है, बल्कि एड्मिनिस्ट्रेटिव एक्स्प्रेस क्या होगा, इस चीज की भी हमने चीज़ों की है। हम लोगों ने इस बिल के माध्यम में यह भी कहा है, आया आप सैक्सन- 8(1) (a) देखेंगे तो उसमें हम लोगों ने कहा है कि इस बिल के अंदर हमने प्रावधान किया है कि जो पैसा है, वह स्कूलेटिव पर्याप्तके के लिए नहीं दूसरा होगा। बहुत सारे संटोनें पैसे लेकर आते हैं और उसे संकुलित पर्याप्तके के लिए इस्माइल करते हैं, वह एड्मिनिस्ट्रेटिव फॉक्शन में भी नहीं आता। लेकिन स्कूलेटिव पर्याप्तके के लिए न्यायालय है और उससे पैसा और कमान की मां को होती है। फिर उसे किसी दूसरी तरीके से अपने अन्य दूसरे फायदों के लिए इस्माइल करते हैं। हमने कहा है कि स्कूलेटिव पर्याप्तके के लिए इस बिल के माध्यम से यह पैसा इस्माइल नहीं हो सकता और साथ में यूरॉप ऑफ मिनिस्ट्रीज ने यह भी सिफारिया की है, जिसे हमने माना है कि रूस में हम लोग तय करेंगे कि स्कूलेटिव पर्याप्तके को निकल दिया किया जाए, यह भी रूस के अंदर हम प्रावधान करेंगे कि स्कूलेटिव पर्याप्तके से यह मतलब है, क्या-क्या ऐसे निवेश हैं, पॉर्ट ओर्डर्स ऑफ पार्स अर इन्यांज के अन्य में इस्माइल कर सकते हैं, पर्याप्त या पर्याप्त पर्याप्तके के लिए कर सकते हैं और किस स्रोत से आ रहा है और किस स्रोत के माध्यम से यह पैसा आ रहा है, इस चीज के उपर भी सदस्य प्रारम्भ परिस्थितियाँ हैं। बारे में चीज़ों को जब सदस्य प्रारम्भ
“(i) is not fictitious or benami; (ii) has not indulged in activities aimed at conversion through induce-
ment or force, either directly or indirectly, from one religious faith to another; (iii) has not created com-
munal tension or disharmony in any specified district or any other part of the country; (iv) has not been
found guilty of diversion or mis-utilisation of its fund; (v) is not engaged or likely to engage in propa-
gation of sedition or advocate violent methods to achieve its ends;”

Every bank or authorised person in foreign exchange shall report to such authority as may be spec-
ified: (a) the amount of foreign remittance; (b) the source and manner in which the foreign remittances
were received; (c) other particulars.

...
“Central government may having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with which the activities of any political party by an order published in the official Gazette specified such organisation as an organisation of political nature not being a political party referred to Clause of Sub-Section 1 of Section 3”

 politique आर्ग्नाइज़ेशंस, पॉलिटिकल नेचर की किस प्रकार से होंगी और क्या मापदंड उसमें अपनाया जाएगा, इस विषय की भी हम लोगों ने विस्तार से चर्चा की है।

 उपायक महोदय, कुछ मुख्य बातें जो यहां उठायी गयीं, मैंने उनके बारे में यहां चर्चा की है। यह ऐतिहासिक विल है, जैसा मैंने कहा कि काफी समय से भिन्न-भिन्न सरकारें अलग-अलग इसके लिए कोशिश कर रही थीं। यह एक ऐतिहासिक कदम है। मैं आपके माध्यम से माननीय सदस्यों से कहना चाहूँगा कि इस विल को आप सभी लोग कृपा करके पास करें।
IX. FORMS
### Change of Forms

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<th>Purpose</th>
<th>Old</th>
<th>New</th>
</tr>
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<tbody>
<tr>
<td>Prior-permission for organisations of a political nature</td>
<td>FC-1</td>
<td>None</td>
</tr>
<tr>
<td>Prior-permission for NPOs</td>
<td>FC-1A</td>
<td>FC-4</td>
</tr>
<tr>
<td>Prior-permission for foreign hospitality</td>
<td>FC-2</td>
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<td>Intimation by Election Candidate</td>
<td>FC-4</td>
<td>FC-9</td>
</tr>
<tr>
<td>Intimation for scholarship etc.</td>
<td>FC-5</td>
<td>None</td>
</tr>
<tr>
<td>Record of foreign contribution - articles</td>
<td>FC-6</td>
<td>FC-7</td>
</tr>
<tr>
<td>Record of foreign contribution - securities / shares etc.</td>
<td>FC-7</td>
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</tr>
<tr>
<td>Registration for NPOs</td>
<td>FC-8</td>
<td>FC-3</td>
</tr>
</tbody>
</table>

### Current Forms

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Form No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intimation for receipt from relative</td>
<td>FC-1</td>
</tr>
<tr>
<td>Prior-permission for foreign hospitality</td>
<td>FC-2</td>
</tr>
<tr>
<td>Registration for NPOs</td>
<td>FC-3</td>
</tr>
<tr>
<td>Prior-permission for NPOs</td>
<td>FC-4</td>
</tr>
<tr>
<td>Renewal of FCRA Registration</td>
<td>FC-5</td>
</tr>
<tr>
<td>Annual return of foreign contribution</td>
<td>FC-6</td>
</tr>
<tr>
<td>Annual return of foreign contribution - Articles</td>
<td>FC-7</td>
</tr>
<tr>
<td>Annual return of foreign contribution - Securities / shares</td>
<td>FC-8</td>
</tr>
<tr>
<td>Intimation by Election Candidate</td>
<td>FC-9</td>
</tr>
<tr>
<td>Permission for transfer of foreign Contribution to other NPO</td>
<td>FC-10</td>
</tr>
</tbody>
</table>
Form FC-I

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Intimation to the Central Government of receipt of foreign contribution by way of gift from relative:

1. Name of the recipient in full (in block letters): ___________
2. Date of birth: _____________________________________
3. Name of Father/Husband: ___________________________
4. Permanent address:_______________________________
5. P.A.N. of the recipient in India: __________
6. Amount of foreign contribution received, if it exceeds Rs. 1 lakh or equivalent in a financial year: ______
7. Amount and the Number of the Bank Draft or telegraphic transfer or other communication including the Bank Details: ______
8. Income-tax registration number of the relative abroad and the name of the country of residence: __________
9. Name of the relative and relationship thereof, nationality and passport details: _______________________

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place:_______
Date:_______

Signature of the applicant
(Name, in block letters)
The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Application for seeking prior permission of the Central Government to accept foreign hospitality:

[Note: For foreign hospitality availed in case of emergent medical aid situation, intimation to be given on plain paper to the Secretary, Ministry of Home Affairs at the address mentioned in FORM FC-2, within sixty days of such receipt of foreign hospitality.]

1. Name in full (block letters): ________________________
2. Date of Birth: ________________________
3. Name of father/husband: ________________________
4. Present address: ________________________
5. Permanent address: ________________________
6. Passport particulars (if already in possession): __________
7. Status:-
   a) Member of Legislature: ________________________
   b) Office bearer of a political party.
   c) Judge of Supreme Court/High Court: __________
   d) Government servant: ________________________
   e) Employee of a Company/Corporation: __________
   f) Any other person of class of persons not specified in section 6.
8. Name of countries/places to be visited with duration of stay: ______________________________________
9. The countries and places where foreign hospitality is to be accepted: ________________________
10. Duration and purpose of visit to the country(s)/place(s) mentioned in Column 9 with specific dates: __________
11. Particulars of host(s):-
   a) If an individual, his personal particulars including name, present address, permanent address, nationality, profession: __________
   b) If an Organisation/Institution/Association/Trust/Foundation/Trade Union etc., full particulars thereof including:
      i. Full name and complete address: __________
      ii. Address of Head office/Principal office: __________
      iii. Aims and Objects: __________
      iv. Particulars of important office bearers: __________


12. @ Full particulars, as in Column II(a) and (b) of foreign source, in case the actual source extending the hospitality is located in a country other than actually proposed to be visited: ____________________________

13. Nature and duration of foreign hospitality* proposed to be accepted with specific dates and with specific details: ____________________________

14. Nature of connection/dealing with the host and/or foreign source extending the hospitality: ________________

15. Approximate expenditure to be incurred on hospitality:

16. Any other information of significance which the applicant may like to furnish: ________________

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place: ______

Signature of the applicant

Date: ______

(Name, in block letters)

@Delete if not applicable.
Form FC-3

FORM FC-3
[See rule 9(1)(a)]

No__________                                               Date__________

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Sub: Application for ‘registration’ under section 11(1) of the Foreign Contribution (Regulation) Act, 2010 for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme:

Sir,

I__________ on behalf of the Association named hereafter apply for registration of the Association under clause (a) of sub- section (1) of section 6 of the Act for the acceptance of foreign contribution as per details given below:

1. (i) Name of the Association and its complete postal address:
   a) Name: ____________________
   b) Address:___________________
      Town/City: _____________
      District:________________
      State: _________________
      Pin Code: ______________
   c) Telephone No. of the Association (with STD code):_________
   d) Telephone no.(with STD code)/ Mobile no - of the Chief Functionary: ______________________
   e) E-Mail address:__________________________

(ii) If the Association is a registered Trust or Society please indicate its:
   a) Registration number:_____________
   b) Place of registration:___________
   c) Date of registration:___________
      (certified copy of the registration certificate to be attached).
   d) PAN No:________________

(iii) Nature of Association:___________
   (a) religious (b) cultural (c) economic (d) educational (e)social

Note: If a religious Association, state whether (a) Hindu (b)Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

(iv) Please indicate:
   (a) Main aim(s) and object(s) of the Association (enclose a copy of the Memorandum of Association
(b) Main object(s) and definite programme(s) for which the foreign contribution is to be accepted/utilised:_______________________
(v) Details of names and addresses of the members of the Executive Committee/Governing Council etc., of the Association, starting with the Chief Functionary, in the following table:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name</th>
<th>Name of father/husband</th>
<th>Nationality</th>
<th>Occupation with address of place of work (at the time of filing application, Phone/mobile no. if available)</th>
<th>Post held in the Association</th>
<th>Relationship with other Member(s) of the Exe. Council/Governing body</th>
<th>Address for Correspondence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Enclosed/attached, fee of Rupees (in words)________ only remitted by________ (name of Bank & branch)
Demand Draft/Bankers Cheque No______ dated_________ (in day/mm/year format)

3. Whether any Member of the Executive Committee/Governing Council etc., of the Association, including the Chief Functionary has, in the discharge of his/her official functions or private conduct:
   (a) been convicted by any court of law:________
   (b) a prosecution for any offence pending against him/her :_____
   (c) been found guilty of diversion or mis-utilisation of funds of the Association or any other Association in the past:_____
   (d) has not been prohibited from accepting foreign contribution:_____
   (e) is a Member or Chief Functionary of any other Association against whom an order under section 13 or 14 of the Foreign Contribution (Regulation) Act 2010 (42 of 2010) has been passed:_____

4. Whether the applicant Association:
   (a) is a branch/unit/associate of foreign based organisation or another Association already registered or granted prior permission under the Act. If so, name and address of the parent organisation should be furnished:____________
   (b) attracts section 10 of the Act, if so details of the order passed by the Central Government:____________
   (c) section 11(3) of the Act:____________
   (d) has been directed in terms of section 9(a) of the Act to seek prior permission by the Central Government. If so, the number and date of the relevant order:____________
   (e) had earlier been proceeded against as per provision of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976):____________

5. Whether:
   (i) the association was granted prior permission to receive foreign contribution under the Act or the Foreign Contribution(Regulation) Act, 1976 (49 of 1976) in the past. If so, the Ministry of Home Affairs letter number with date granting such prior permission:____________
   (b) whether the account of the receipt and utilisation of the foreign contribution received above was sent to the Central Government in the prescribed Form. If so, the date of submission of the accounts:________
   (ii) Whether:
   (a) the Association has received foreign contribution without prior permission under the Act in the past. If so, full particulars of the foreign contribution received along with complete address of the bank branch and bank account in which deposited should be furnished:____________
FORMS

6. Whether the Association is functioning as editor, owner, printer or publisher of a publication required to be registered as “newspaper” under the Press and Registration of Books Act, 1867 (25 of 1867). If so, the details there of:

7. Whether:
   (i) the Association ever applied for registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), and if so,
   (a) the number & date of submission of application for prior permission:
   (b) the number & date of the last communication, if any, received from the Ministry:
   (c) whether registration was refused:
   (d) whether application for registration is still pending:
   (ii) whether the Association ever applied for prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), and if so,
          (a) the number & date of submission of application for prior permission:
          (b) the number & date of the last communication, if any, received from the Ministry:
          (c) whether registration was refused:
          (d) whether application for registration is still pending:
   (iii) whether the Association has close links with another Association, or its unit or branch which has been,
          (a) refused registration/ prior permission under the Act:
          (b) prohibited from accepting foreign contribution:

8. Details of:
   (i) the activities of the Association during the past three years:
   (ii) the audited statement of accounts of the Association for the past three years:
   (iii) the area(s) of operation:

9. Whether the Association has been specified as an organisation of political nature, not being a political party, under section 5 of the Act. If so, the details of the notification should be furnished:

10. Details of Bank:
    (i) the name and address of the branch of the bank through which foreign contribution shall be received:
    (ii) the account number in the said branch of the bank:

11. Whether the Organisation/Association has been blacklisted/ debarred from receiving any aid and/or assistance by any other Ministry/Department of Central Government and/or State Government or Statutory Authority, if so the details thereof:

12. Whether a recommendation certificate from any competent authority is attached, (and if so, the details):

13. Any other information, which the Association may like to furnish:

Yours faithfully,
Signature of the Chief Functionary
[Name of the Chief Functionary in block letters]
(Seal of the Association)
Declaration and Undertaking

I hereby declare that the above particulars furnished by me are true and correct and undertake to:

(i) to inform the Central Government (Ministry of Home Affairs) within thirty days, if any change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects together with documentary evidence effecting the change.

(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.

(iii) not to change the Bank and/or branch of the Bank without prior permission of the Central Government [the reason(s) for change of bank or branch of the bank shall have to be relevant and justifiable] and,

Note: – Proforma for change of Bank (or in the branch of the existing bank where exclusive foreign account number is being maintained) or Bank account is available in Ministry of Home Affairs web site________

(iv) not to accept any foreign contribution unless either registration certificate, as applied for herein-above, or prior permission of the Central Government under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) is granted.

Place:___________ Date:___________

[Name of the Chief Functionary in block letters]

(Seal of the Organisation/Association)

List of enclosures attached

With this application:

1.
2.
3.

Note.–
1. Receipt of application for registration is not a commitment for grant registration by the Central Government.
2. An incomplete application i.e., without necessary document(s)/detail(s)/explanation(s) is liable to be rejected summarily.
3. In case the space against any column is insufficient, separate sheet should be attached.
4. Please use BLOCK LETTERS.
5. The application should be signed by the Chief Functionary of the Association.

CERTIFICATE

Recommending grant of registration to receive foreign contribution under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)

This is to certify that the___________(Name of the Association) having its registered office at ___________(Address) has been engaged in undertaking welfare activities in its chosen _______ (Economic, Educational, Cultural, Religious or Social) field. Its aims and objects are to ______________.
The antecedents of the Association and the Member(s) of the Executive Committee/Governing Council (including the Chief Functionary) have been verified and nothing adverse has come to notice.

2. It has undertaken commendable welfare activities in the area and has incurred substantial expenditure (excluding administrative expenditure) amounting to Rs. __________ during the last three years on its chosen ___________ (Economic, Educational, Cultural, Religious or Social) field of activity.

3. Grant of registration to the aforementioned Association to accept foreign contribution under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) is recommended.

(Recommending Authority)**
(Seal of the Recommending Authority)

@Strike out which is not applicable
**(i) District Collector/ District Magistrate
(ii) Ministry/ Department of the State Government
(iii) Ministry/ Department of the Central Government.

Form FC-4

FORM FC-4
[See rule 9(2)(a)]

No................. Date...........

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Sub: Application for ‘prior permission’ under sub-section (2) of section 11 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for the acceptance of foreign contribution by an Association having definite cultural, economic, educational, religious or social programme:

Sir,

I __________, as an individual*, Hindu Undivided Family/ association/ company registered under section 25 of the Companies Act, 1956 (1 of 1956), furnish the following details and apply for prior permission of the Central Government for the acceptance of foreign contribution under the proviso to sub-section (2) of section 11 of the Act:

1. (i) Name of the Association and its complete postal address:
   (a) Name: _______________
   (b) Address: ________________
   Town/City: ________________
District: _____________________
State: ______________________
Pin Code: ____________________
(c) Telephone No. of the Association (with STD code): ________________________
(d) Telephone No. (with STD code) / Mobile No. of the Chief Functionary:
(e) E-Mail address: ________________________

(ii) If the Association is a registered Trust or Society please indicate its:
(a) Registration number: ________________________
(b) Place of registration: ________________________
(c) Date of registration: ________________________
(certified copy of the registration certificate is to be attached).
(d) PAN No: ________________________

(iii) Nature of Association:
(a) religious (b) cultural (c) economic (d) educational (e) social.

Note:—If a religious Association, state whether (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.
(iv) Please indicate:
(a) Main aim(s) and object(s) of the Association (enclose a copy of the Memorandum of Association and/or Articles of Association if applicable): ________________________
(b) Main object(s) and definite programme(s) for which the foreign contribution is to be accepted/utilised: ________________________

(v) Details of names and addresses of the members of the Executive Committee/Governing Council etc., of the Association, starting with the Chief Functionary, in the following table:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name</th>
<th>Name of father/husband</th>
<th>Nationality</th>
<th>Occupation with address of place of work (at the time of filing application, phone/mobile no. if available)</th>
<th>Post held in the Association</th>
<th>Relationship with other Member(s) of the Exe. Council/Governing body</th>
<th>Address for Correspondence</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

(ii) Whether any Member of the Executive Committee/Governing Council etc., of the Association, including the Chief Functionary has, in the discharge of his/her official functions or private conduct:
(a) has been convicted by any court of law: ____________
(b) a prosecution for any offence pending against him/her: ____________
(c) been found guilty of diversion or mis-utilisation of funds of the Association or any other Association in the past: ____________
(d) has not been prohibited from accepting foreign contribution: ____________

2. Details of Fee: An amount of Rs. ____________ (Rupees in words) towards obtaining prior permission for receipt of foreign contribution is remitted by way of demand draft/bankers cheque drawn in favour of the “Pat and Accounts. Office, Ministry of Home Affairs viz., DD No. _________ dated__________

Name of the Bank ____________

3. Whether any Member of the Executive Committee/Governing Council etc., of the Association, including the Chief Functionary has, in the discharge of his/her official functions or private conduct:
(a) has been convicted by any court of law: ____________
(b) a prosecution for any offence pending against him/her: ____________
(c) been found guilty of diversion or mis-utilisation of funds of the Association or any other Association in the past: ____________
(d) has not been prohibited from accepting foreign contribution: ____________
4. Whether:
(i) the Association ever applied for registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), and if so,
(a) the number & date of submission of application for registration: ________________
(b) the number & date of the last communication, if any, received from the Ministry: ________________
(c) whether prior permission was refused: ________________
(d) whether application for registration is still pending: ________________
(ii) whether the Association ever applied for prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and if so, -
(a) the number & date of submission of application for prior permission: ________________
(b) the number & date of the last communication, if any, received from the Ministry: ________________
(c) whether prior permission was refused: ________________
(d) whether application for prior permission is still pending: ________________
(iii) whether the Association has close links with another Association, or its unit or branch which has been,
(a) refused registration/prior permission under the Act: ________________
(b) prohibited from accepting foreign contribution: ________________

5. Whether the applicant Association:
(a) is a branch/unit/associate of foreign based organisation or another Association already registered or granted prior permission under the Act. If so, name and address of the parent organisation should be furnished: ________________
(b) attracts section 10 of the Act, if so details of the order passed by the Central Government: ________________
(c) attracts sub-section 3 of section II clause(a) of the Act: ________________
(d) has been directed in terms of clause (a) of section 9(a) of the Act to seek prior permission by the Central Government. If so, the number and date of the relevant order: ________________
(e) had earlier been proceeded against as per provisions of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976): ________________

6. Whether:
(i) (a) the association was granted prior permission to receive foreign contribution under the Act. If so, the Ministry of Home Affairs letter number with date granting such prior permission: ________________
(b) whether the account of the receipt and utilisation of the foreign contribution received above was sent to the Central Government in the prescribed FC – 3 Form. The date of submission of the accounts be indicated: ________________
(ii) Whether:
(a) the Association has received foreign contribution without prior permission under the Act in the past. If so, full particulars of the foreign contribution received along with complete address of the bank branch and bank account in which deposited should be furnished: ________________
(b) said violation has been condoned by the Central Government: ________________

7. I affirm that the applicant Association is not an owner, printer, publisher, editor of a publication which is registered as “newspaper” under the Press and Registration of Books Act, 1867 (25 of 1867).

8. I affirm that the applicant association is not engaged in the production or broadcast of audio/visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (l) of section 2 of the Information Technology Act, 2000 (21 of 2000).
or any other mode of mass communication.

9. I affirm that the Organisation/Association has not been blacklisted/debarred from receiving any aid and/or assistance by any other Ministry/Department of Central and/or State Government or Statutory Authority.

10. I am enclosing the documents showing the detailed activities of the association during the past three years.

11. I am enclosing the copies of audited statement of accounts of the association for the past three years duly certified by the Chartered Accountant.

12. Data on commitment receipt from donor:
(a) Nature (cash/kind) and value of foreign contribution to be received:
(b) Purpose for which foreign contribution is proposed to be received and utilised indicating the geographical area(s) to be covered:
(c) A copy of the latest commitment letter from donor is furnished:
(d) A copy of the proposal/project which has been approved by the foreign source for funding, including project outlays, budget breakups is enclosed.

13. Details of Bank:
(i) Name and address of the branch of the bank through which the foreign contribution is proposed to be received:
(ii) The account number in the said branch of the bank:

14. Details of foreign source/sources*** from which the foreign contribution is proposed to be received:
(i) If an individual, the personal particulars including name, present address, permanent address, nationality and profession:
(ii) If an organisation/institution/association/trust/trade union etc., full particulars thereof, including
(a) Full name and complete address:
(b) Address of the Head Office/Principal Office:
(c) Particulars of Chief Functionary and Important Office Bearers:
(iii) Whether the foreign source is a Government of a Foreign Country or agency thereof, if so, give details:

Yours faithfully,

Signature of the Chief Functionary
[Name of the Chief Functionary in block letters]
(Seal of the Association)

Declaration and Undertaking

I hereby declare that the above particulars furnished by me are true and correct and undertake to:
(i) to inform the Central Government (Ministry of Home Affairs) within thirty days, if any change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects together with documentary evidence effecting the change.
(ii) to intimate within thirty days regarding the change of Members of the Executive Committee/Governing Council, if any 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
FORMS

collection except with prior permission till the permission to replace the office-bearer(s) has been granted.

(iii) not to change the Bank and/or branch of the Bank without prior permission of the Central Government [the reason(s) for change of bank or branch of the bank shall have to be relevant and justifiable] and,

Note.— Proforma for change of Bank (or in the branch of the existing bank where exclusive foreign account number is being maintained) or Bank account is available in Ministry of Home Affairs website ________

(iv) not to accept any foreign contribution unless either registration certificate, as applied for hereinabove, or prior permission of the Central Government under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) is granted.

Place_______________________ Signature of the Chief Functionary
Date________________________ [Name of the Chief Functionary in block letters]
(Seal of the Organisation/Association)

List of enclosures attached with this application:
1. 
2. 
3. 

Instructions for filling up the Form:

* Please strike off whichever is not applicable. The same instruction applies in respect of choices provided elsewhere in this Form.

** If any of the replies to the four parts in item 3 is “yes”, then full details of the case including the present status of the case must be given, if required on a separate page.

*** If the foreign contribution whether currency or article, is to be received from any person or association who has received the same as first, second or subsequent recipient, particulars of such person or association should be given against column II above.

1. Receipt of application for prior permission is not a commitment for approval by the Central Government.
2. An incomplete application i.e., without necessary document(s)/ detail(s)/ explanation(s) is liable to be rejected summarily.
3. In case the space against any column is insufficient, separate sheet should be attached.
4. Please use BLOCK LETTERS.

CERTIFICATE

Recommending grant of prior permission to receive foreign contribution under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)

This is to certify that the__________ (Name of the Association) having its registered office at__________ (Address) has been engaged in undertaking welfare activities in its chosen__________ (Economic, Educational, Cultural, Religious or Social) @field. Its aims and objects are
to ______________________________.

1. The antecedents of the Association and the Member(s) of the Executive Committee/ Governing Council (including the Chief Functionary) has been verified and nothing adverse has come to notice.

2. It has undertaken commendable welfare activities in the area and has incurred substantial expenditure (excluding administrative expenditure) amounting to Rs_________ during the last three years on its chosen________ (Economic, Educational, Cultural, Religious and Social) field of activity.

3. Grant of prior permission to the aforementioned Association to accept foreign contribution under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) is recommended.

(Recommending Authority)**
(Seal of Recommending Authority)

@ Strike out which is not applicable
** (i) District Collector/ District Magistrate
(ii) Ministry/ Department of the State Government
(iii) Ministry/ Department of the Central Government.

Form FC-5

FORM FC-5
[See rule 12(2)]

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Sub: Application for seeking renewal of ‘registration certificate’ under section 13 of Foreign Contribution (Regulation) Act, 2010 (42 of 2010). (Application for renewal to be submitted six months before the date of expiry of the certificate of registration):

Dear Sir,

I______________, on behalf of the Association named hereafter apply for seeking renewal of ‘registration certificate’, as per details given below:

1. Name of the Association and its complete postal address.
   (a) Name:___________________________
   (b) Address:
   Town/City:________________
   District:_____________________
   State:_______________________
   Pin Code:_____________________

(Recommending Authority)**
(Seal of Recommending Authority)
(c) Telephone No. of the Association (with STD code):____________________
(d) Telephone no. (with STD code)/ Mobile no. of the Chief Functionary:____________________
(e) E-Mail address:____________________
(f) Details of names and addresses of the members of the Executive Committee/ Governing Council
e etc., of the Association, starting with the Chief Functionary, in the following table:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name</th>
<th>Name of father/ husband</th>
<th>Nationality</th>
<th>Occupation with address of place of work (at the time of filing application)</th>
<th>Post held in the Association</th>
<th>Relationship with other Member(s) of the Exec. Council/ Governing body</th>
<th>Address for Correspondence</th>
</tr>
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</tbody>
</table>

2. Nature of Association:____________________
3. Registration number:_____________________
   (a) place of registration:________________
   (b) date of registration:______________
   (c) Date of expiry:____________________
   (d) PAN No., if any:___________________
      (certified copy of the registration certificate to be attached)
4. Foreign Contribution received, if any, since its registration with yearly breakup:____________
5. Details of utilisation of funds:________________________
6. Whether various provisions as stipulated in the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) adhered to:________________
7. Reasons for seeking renewal of certificate:________________________
8. Details of Fee: An amount of Rs. __________ (Rupees in words ___________________) towards renewal of registration is remitted by way of demand draft/ bankers cheque drawn in favour of “Pay” and Accounts Officer, Ministry of Home Affairs viz. DD/Bankers Cheque No. __________ dated __________ Name of the Bank____________
9. Whether the organisation/ Association has been blacklisted/ debarred from receiving any aid and/ or assistance by any other Ministry/ Department of Central and/ or State Government or Statutory Authority. If so, the details thereof:____________.
10. Any other information which the Association may like to furnish:________________________.

I hereby declare that the information furnished above is true and correct.

Signature of the Chief Functionary
[Name of the Chief Functionary in block letters]
(Seal of the Association)
**Form FC-6**

**FORM FC-6**

[See rule 17(1)]

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Account of Foreign Contribution for the year ending on the 31st March............

1. Association details:
   (i) Name and address (in block letters):______________________
   (ii) Registration number and date [under the Foreign Contribution (Regulation) Act 2010] (42 of 2010):___________________________
   (iii) Prior permission and date, if (ii) above is not applicable: __________________________
   (iv) Nature of the Association: (a) Cultural (b) Economic (c) Educational (d) Religious (e) Social.
   (v) Denomination in case of religious Association: (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others

2. (i) Total amount of foreign contribution received during the financial year:

(ii) Interest earned on foreign contribution received during the financial year
(a) In the designated bank account: _________________
(b) On Investments made (Fixed Deposit Receipt etc.) during the year or in the preceding years: _________________

3. Purpose(s) for which foreign contribution has been received and utilised:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Purpose</th>
<th>Previous Balance</th>
<th>Receipt during the year</th>
<th>Utilised</th>
<th>Balance</th>
<th>Place with addresses of specific activities</th>
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<tbody>
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<td>As first recipient</td>
<td>As second/ subsequent recipient</td>
<td>Total</td>
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<td>In cash</td>
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<td>In kind</td>
<td>In cash</td>
<td>In kind (value)</td>
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<tr>
<td>Sl. No</td>
<td>Purpose</td>
<td>Previous Balance</td>
<td>As first recipient</td>
<td>As second/ subsequent recipient</td>
<td>Total</td>
<td>Utilised</td>
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<td>In cash (value)</td>
<td>In cash (value)</td>
<td>In cash (value)</td>
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<td>In cash (value)</td>
</tr>
<tr>
<td>1</td>
<td>Celebration of national events (Independence /Republic day)/festivals etc.</td>
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<tr>
<td>2</td>
<td>Theatre/Films</td>
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<td>3</td>
<td>Maintenance of places of historical and cultural importance.</td>
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<td>4</td>
<td>Preservation of ancient /tribal art forms.</td>
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<td>5</td>
<td>Research</td>
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<td>6</td>
<td>Cultural shows</td>
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<td>7</td>
<td>Setting up and running handicraft centre/ cottage and Khadi industry/social forestry projects.</td>
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<td>8</td>
<td>Animal husbandry projects.</td>
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<td>9</td>
<td>Income generation projects/ schemes.</td>
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<td>10</td>
<td>Micro - finance projects, including setting up banking co-operatives and self - help groups.</td>
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<tr>
<td>11</td>
<td>Agricultural activity.</td>
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<tr>
<td>12</td>
<td>Rural Development.</td>
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<tr>
<td>13</td>
<td>Construction and maintenance of school/ college.</td>
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<td>14</td>
<td>Construction and running of hostel for poor students.</td>
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<tr>
<td>15</td>
<td>Grant of stipend/ scholarship/assistance in cash and kind to poor/ deserving children.</td>
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<td>16</td>
<td>Purchase and supply of educational material - books, notebooks etc.</td>
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<tr>
<td>17</td>
<td>Conducting adult literacy programs.</td>
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<tr>
<td>Sl. No</td>
<td>Purpose</td>
<td>Previous Balance</td>
<td>Receipt during the year</td>
<td>Utilised</td>
<td>Balance</td>
<td>Place with addresses of specific activities</td>
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<td>As first recipient</td>
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<td>In cash</td>
<td>In kind (value)</td>
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<td>18</td>
<td>Education/Schools for the mentally challenged.</td>
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<td>19</td>
<td>Non - formal education projects/ coaching classes.</td>
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<tr>
<td>20</td>
<td>Construction/ Repair/ Maintenance of places of worship.</td>
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<tr>
<td>21</td>
<td>Religious schools/education of priests and preachers.</td>
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<td>22</td>
<td>Publication and distribution of religious literature.</td>
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<td>23</td>
<td>Religious functions.</td>
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<tr>
<td>24</td>
<td>Maintenance of priests/ preachers/ other religious functionaries.</td>
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<tr>
<td>26</td>
<td>Construction of community halls etc.</td>
<td></td>
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<tr>
<td>27</td>
<td>Construction and Management of old-age home.</td>
<td></td>
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<tr>
<td>28</td>
<td>Welfare of the aged/ widows.</td>
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<tr>
<td>29</td>
<td>Construction and Management of Orphanage.</td>
<td></td>
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<tr>
<td>30</td>
<td>Welfare of the orphans.</td>
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<tr>
<td>31</td>
<td>Construction and Management of dharamshala/ shelter.</td>
<td></td>
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<tr>
<td>32</td>
<td>Holding of free medical/ health/ family welfare/ immunization camps.</td>
<td></td>
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<tr>
<td>33</td>
<td>Supply of free medicine, and medical aid, including hearing aids, visual aids, family planning aids etc.</td>
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<tr>
<td>Sl. No</td>
<td>Purpose</td>
<td>Previous Balance</td>
<td>Receipt during the year</td>
<td>Utilised</td>
<td>Balance</td>
<td>Place with addresses of specific activities</td>
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<td>34.</td>
<td>Provision of aids such as Tricycles, calipers etc. to the handicapped.</td>
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<tr>
<td>35.</td>
<td>Treatment/ Rehabilitation of persons suffering from leprosy.</td>
<td></td>
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<tr>
<td>36.</td>
<td>Treatment/ Rehabilitation of drug addicts.</td>
<td></td>
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<tr>
<td>37.</td>
<td>Welfare/ Empowerment of women.</td>
<td></td>
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<td>39.</td>
<td>Provision of free clothing /food to the poor, needy and destitute.</td>
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<td>40.</td>
<td>Relief/Rehabilitation of victims of natural calamities.</td>
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<td>41.</td>
<td>Help to the victims of riots/ other disturbances.</td>
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<tr>
<td>42.</td>
<td>Digging of bore wells.</td>
<td></td>
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<td>43.</td>
<td>Sanitation including community toilets etc.</td>
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<td>44.</td>
<td>Vocational training - tailoring, motor repairs, computers etc.</td>
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<td>45.</td>
<td>Awareness Camp/Seminar/ Workshop/ Meeting/Conference.</td>
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<td>47.</td>
<td>Holding sports meet.</td>
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<tr>
<td>48.</td>
<td>Awareness about Acquired Immune Deficiency Syndrome (AIDS)/Treatment and rehabilitation of persons affected by AIDS.</td>
<td></td>
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<tr>
<td>Sl. No</td>
<td>Purpose</td>
<td>Previous Balance</td>
<td>Receipt during the year</td>
<td>Utilised</td>
<td>Balance</td>
<td>Place with addresses of specific activities</td>
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<td>As first recipient</td>
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<td>In cash</td>
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<td>In cash</td>
<td>In kind (value)</td>
<td>In cash</td>
<td>In kind</td>
<td>In (value)</td>
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<tr>
<td>49</td>
<td>Welfare of the physically and mentally challenged.</td>
<td></td>
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<tr>
<td>50</td>
<td>Welfare of Scheduled Castes.</td>
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<tr>
<td>51</td>
<td>Welfare of Scheduled Tribes.</td>
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<tr>
<td>52</td>
<td>Welfare of the Other Backward Classes.</td>
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<tr>
<td>53</td>
<td>Environmental programs.</td>
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<tr>
<td>54</td>
<td>Survey for socio-economic and other welfare programs.</td>
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<td>55</td>
<td>Establishment expenses -</td>
<td></td>
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<tr>
<td></td>
<td>(i) Assets building:</td>
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<td></td>
<td>(a) Establishment of Corpus Fund, and</td>
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<td></td>
<td>(b) Purchase of land:</td>
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<td>(ii) Construction/ Extension/ Maintenance of office, administrative and other buildings, salaries/honorarium:</td>
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<td>(iii) Publication of newsletter/ literature/ books etc.:</td>
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<td>(iv) Other expenses:</td>
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<td>56</td>
<td>Activities other than those mentioned above (Furnish Details)</td>
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</tbody>
</table>

**CAUTION:** Submission of false information or concealment of material facts shall attract the relevant provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), warranting the appropriate action.

4. Name and address of the designated branch of the bank and account number *(as specified in the application for registration/prior permission or permitted by the government)*

Account No: ______________________
Bank: ______________________
Branch: ______________________
Address: ______________________
5. Donor wise receipt of foreign contribution: (in Rupees)

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Institutional/individual/other donors</th>
<th>Name(s) &amp; Address(es)</th>
<th>Purpose(s)</th>
<th>Date &amp; month of receipt</th>
<th>Amount</th>
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</thead>
<tbody>
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<td>(i) From institutional donors:</td>
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<td>(ii) From individual donor(s), above Rupees one lac:</td>
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<td>(iii) From individual donor(s), below Rupees one lac:</td>
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</table>

Total [(i)+(ii)+(iii)]:

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct. I also affirm that the foreign contribution has been utilised for the purpose(s) for which the Association has been granted registration or prior permission by the Central Government, to the best of my knowledge. I have not concealed or suppressed any fact.

Place: _______ Signature of the Chief Functionary
Date: _______ (Name of the Chief Functionary in block letters)
                          (Seal of the Association)

Certificate to be given by Chartered Accountant

I/We have audited the account of ________________ (name of Association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration) for the year ending 31st March _______ and examined all relevant books and vouchers and certify that according to the audited account:

(i) the brought forward foreign contribution at the beginning of the year was Rs. ______;
(ii) foreign contribution of/worth Rs. ______ was received by the Association during the year;
(iii) the balance of unutilised foreign contribution with the Association at the end of the year was Rs. ______;
(iv) Certified that the Association has maintained the accounts of foreign contribution and records relating thereto in the manner specified in section 19 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) read with rule 16 of the Foreign Contribution (Regulation) Rules, 2011.
(v) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.
The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Intimation about Foreign Contribution (Articles) Account

DESCRIPTION OF THE ARTICLE: ..................................

<table>
<thead>
<tr>
<th>RECEIPT</th>
<th>UTILISATION/DISPOSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Name and address of</td>
</tr>
<tr>
<td></td>
<td>Mode of receipt</td>
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<tr>
<td></td>
<td>Purpose of receipt</td>
</tr>
<tr>
<td></td>
<td>Quantity</td>
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<td></td>
<td>Approximate value</td>
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<td></td>
<td>Date of intimation</td>
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<td>Name and address</td>
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<tr>
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<td>Purpose for which</td>
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<td>Utilised by the</td>
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<td>Sold</td>
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<td>Otherwise transferred</td>
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<td>Reference to entry</td>
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<td>Balance in Stock</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>QUANTITY</th>
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<tbody>
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<td>16</td>
</tr>
</tbody>
</table>

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place................................
Date................................

Signature of the Chief Functionary
(Name of the Chief Functionary in block letters)
(Seal of the Association)
Certificate to be Given by Chartered Accountant

I/We have audited the account of __________ (name of Association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration) for the year ending 31st March ___________ and examined all relevant books and vouchers and certify that according to the audited account:

(i) the brought forward foreign contribution, in kind, at the beginning of the year was Rs. __________;

(ii) foreign contribution, in kind worth Rs. __________ was received by the Association during the year __________;

(iii) (a) the balance of unutilised foreign contribution, in kind with the Association at the end of the year __________ was worth Rs. __________;

(b) That the whole of foreign contribution received in kind has been utilised, leaving no balance at the end of the financial year (strike out whichever is not applicable)

(iv) Certified that the Association has maintained the accounts of foreign contribution and records relating thereto in the manner specified in section 13 of the Foreign Contribution (Regulation) Act (42 of 2010) read with sub-rule (1) of rule 8 of the Foreign Contribution (Regulation) Rules, 2011.

(v) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.

Place: _______ Signature of Chartered Accountant
Date: _______ (Seal, Address and Registration number)
**Form FC-8**

The Secretary to the Government of India,  
Ministry of Home Affairs,  
FCRA Wing/Foreigners Division,  
NDCC-II Building, Jai Singh Road,  
Opp. Jantar Mantar,  
New Delhi-110 001

**Subject:** Intimation about foreign contribution (securities) Account:  
(Description to be provided in the existing format (old) - Rule 8(c),  
Foreign Contribution (Regulation) Rules, 1976 refers)

1. Name of Securities:  
2. Nominal value of each security:

<table>
<thead>
<tr>
<th>RECEIVED / IN HAND</th>
<th>Dividend / Interest</th>
<th>SALE / TRANSFER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Name &amp; Address of the person from whom received</td>
<td>Distinguishing number of each security</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>
DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.

Place: Signature of the Chief Functionary
Date: (Name of the Chief Functionary in block letters)
      (Seal of the Association)

Certificate to be given by Chartered Accountant

I/We have audited the account of ______________________ (name of Association and its full address including State, District and Pin Code, if registered society, its registration number and State of registration) for the year ending the 31st March _______ and examined all relevant books and vouchers and certify that according to the audited account:

(i) The brought forward investment(s) in securities at the beginning of the year was Rs ______;

(ii) That further investment(s) in securities worth Rs ______ was made by the Association during the year ______;

(iii) The total value of investment in securities made by the Association at the end of the year ______ was worth Rs ____________;

(iv) Certified that the Association has maintained the accounts of foreign contribution and records relating thereto in the manner specified in Section 13 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) read with sub-rule (1) of rule 8 of the Foreign Contribution (Regulation) Rules, 2011.

(v) The information in this certificate and in the enclosed Balance Sheet and statement of Receipt and Payment is correct as checked by me/us.

Place: Date:

Signature of Chartered Accountant
(Seal, Address and Registration number)
Form FC-9

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Intimation to Central Government of Receipt of Foreign Contribution received by a candidate for Election [section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):

(Every Candidate for election shall intimate to the Central Government, within 45 days from the date on which he is duly nominated as a candidate for election, the details of the foreign contribution received by him, any time within 180 days immediately preceding the date of his nomination, in Form FC-9)

1. Name in full (in block letters):_____________________
2. Date of birth:_____________________
3. Name of father:_____________________
4. Present Address:_____________________
5. Permanent Address:_____________________
6. Date on which duly nominated as a candidate for election to a Legislature and particulars:_____________________
   (See section 21 of the Act)
7. Full particulars of foreign contribution received within 180 days immediately preceding the date on which duly nominated as candidate for election:_____________________
8. Nature (cash and/or kind) and full details of foreign contribution including value:_____________________
9. The mode, channel of receipt:_____________________
10. Purpose for which contribution was received:_____________________
11. Particulars of the foreign source from which contribution was received:
   (a) If an individual, his personal particulars including name, present address, permanent address, nationality, profession:_____________________
   (b) If an Organisation/Institution/Association/Trust/Foundation/Trade Union etc., full particulars thereof including:
      (i) Full name and complete address.
      (ii) Address of Head Office/Principal Office.
      (iii) Aims and objects.
      (iv) Particulars of important office bearers.
12. Nature of connection/dealing with the foreign source(s):_____________________
13. Details of actual utilisation of the contribution:_____________________
   (a) Specific purposes for which utilised.
(b) Full description of manner in which utilised.
14. Any other information of significance which the applicant may like to furnish:_______________________

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.
Place_______
Date______
Signature of the candidate
(Name, in block letters)

Certificate

Certified that the above declaration was signed by Smt./Shri/Ku ........................ S/o
.............................................resident of ...........................a candidate for election to (.................................*) before me, on
this date...... day....... of month ..............& year .................

Signature
(Name, in block letters)
Designation
(to be signed by a Group A Gazetted Officer** or 1st Class Magistrate).

*Here specify ‘Legislature’ as defined in section 21 of the Act.
** of the State/Central Government

Form FC-10

FORM FC-10
[See rule 24(1)]

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Application for seeking permission for transfer of foreign contribution to other registered/un- registered persons.

Sir,

I , on behalf of the Association named hereafter apply for seeking permission of the Central Government under section _____ of Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for transfer
of foreign contribution to other registered/un-registered persons, as per details given below:

1. Details of the applicant/transferor association:
   (a) Name:
   (b) Address:
      Town/City: ________________
      District: ________________
      State: ________________
      Pin Code: ________________
   (c) Telephone No. of the Association (with STD code): ________________
   (d) Telephone no. (with STD code)/Mobile no. - of the Chief Functionary: ________________
   (e) e-Mail address: ________________
   (f) Registration certificate/Prior permission order details:
      (i) Registration No. (Under FCRA): ________________
      (ii) If not registered under FCRA, prior permission order No. with date: ________________
         (Certified copy of the registration certificate/prior permission order to be attached)

2. Details of the recipient/transferee association:
   (a) Name: ________________
   (b) Address:
      Town/City: ________________
      District: ________________
      State: ________________
      Pin Code: ________________
   (c) Telephone No. of the Association (with STD code): ________________
   (d) Telephone no. (with STD code)/Mobile no. - of the Chief Functionary: ________________
   (e) e-Mail address: ________________
      (i) Whether registered under the Foreign Contribution Regulation Act, 1976 (49 of 1976):
         yes/no
         (a) if yes, details thereof (registration no., date of registration): ________________
            (Certified copy of the registration certificate to be attached)
      (b) If no, furnish the details if it is registered under the Indian Trust Act, 1882 (2 of 1882) or the
         Societies Registration Act, 1860 (21 of 1860) or the Companies Act, 1956 (1 of 1956).
         (a) Registration number: ________________
         (b) Place of Registration: ________________
         (c) Date of registration: ________________
            (Certified copy of the registration certificate to be attached).
         (d) PAN No., if any: ________________

3. Amount of Foreign contribution to be transferred: ________________

4. Mode of the proposed transfer of foreign contribution (cash/cheque/electronic etc): ________________

5. Bank details and account no., in which FC is proposed to be transferred:
   (i) Account No: ________________
   (ii) Name of the Bank: ________________
   (iii) Address: ________________

6. Any other information which the Association may like to furnish: ________________

I hereby declare that the information furnished above is true and correct.
Application for Change of Designated Bank Account

[Application form for seeking change in the designated Bank Account/Bank of the association granted registration/prior permission under FCRA].

No......................                                             Date.....................

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Application for change in the designated Bank/Bank Account of association registered/granted prior permission under Foreign Contribution (Regulation) Act.

Sir,

I ______ on behalf of the Association, whose details are given below, apply for change in the designated Bank Account/Bank of association registered/granted prior permission under the Foreign Contribution (Regulation) Act,1976/Foreign Contribution (Regulation) Act, 2010.

1. Name of the association and its complete postal address:
   Name :________________________________
   Address :_______________________________
   Town/City: ______________________________
   District: _________________________________
   State: ______________ PIN Code: _________
   Phone/Fax No.: _____________
   e mail :___________________

2. FCRA Registration No./Prior Permission letter No.......................... dated................... (Copy of the registration/prior permission letter to be enclosed)

3. Nature of Association:
   (a) religious (b) cultural (c) economic (d) educational (e) social
   Note : If religious association, state whether - (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

4. Name and addresses of the members of the Executive Committee/Governing Council etc. of the association, including the Chief functionary in the following manner:
5. Please indicate date of submission of last three Annual FC-3 returns.

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Date</th>
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</tbody>
</table>

6. Please indicate whether the Association Is functioning as editor, owner, printer or publisher of a Publication required to be registered as ‘newspaper’ under the Press and Registration of Book Act, 1867. If so, the details thereof.

7. Please indicate whether the association has close links with another association, or its unit or branch which has been—
   (a) refused registration under the Act;
   (b) Prohibited from accepting foreign contribution.

8. Please indicate—

<table>
<thead>
<tr>
<th>No.</th>
<th>Existing</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>I.</td>
<td>The name and address of the branch of the bank through which foreign contribution is to be received.</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>The account number in the said branch of the Bank.</td>
<td></td>
</tr>
</tbody>
</table>

9. Justification for proposed change

Yours faithfully,
Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

**Declaration and Undertaking**
I hereby affirm that the information furnished above is correct.
Place:
Date:  

Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

Instructions:

1. Fill in all the details carefully and correctly.
2. Strike off columns which are not applicable.
3. Following documents are to be attached with the application:
   (i) Resolution of Governing Body for proposed change of Bank/Bank Account.
   (ii) Copy of letter granting Registration Number;
   (iii) Certificate from the Bank for the Account to be opened/opened exclusively for FCRA purposes.

**Intimation - Secondary Bank Account**

[On Organisation's Letterhead]

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Intimation to the Central Government of opening a secondary bank account for utilising foreign contribution.

Dear Sir,

As required under rule 9 of the FCR Rules 2011, I __________ (name and designation), on behalf of the Association, am intimating the fact of opening a secondary bank account for the purpose of utilising foreign contribution, as permitted under section 17.

This bank account will be used exclusively for utilising the foreign contribution, and no other funds will be deposited in this account. Foreign contribution will continue to be received in the designated FCRA bank account as mentioned in item 3 below.

1. Name of the Association and its complete postal address:
   (a) Name: ..................................
   (b) Address: ............................
     Town/City: ............................
     District: ..............................
     State: .................................
     Pin Code: .............................
   (c) Telephone No. of the Association (with STD code): ..........
   (d) Telephone no. (with STD code) / Mobile no. - of the Chief Functionary: .............................
(e) e-Mail address: ....................................................

2. FCRA Registration No./Prior Permission letter No.------------------------ dated---------- (Copy of the registration/prior permission letter to be enclosed)

3. Details of the designated branch of the Bank and account number (specified in the application for registration / prior-permission):
   A/c No.: ..............................................................
   Bank: ...............................................................
   Branch: ............
   Address: .............................

4. Details of the secondary Bank account (opened now):
   A/c No.: ..............................................................
   Bank: ...............................................................
   Branch: ............
   Address: .............................
   Date of opening of Bank Account: .....................

I hereby declare that the above particulars furnished by me are true and correct.

Place:.........................
Date:.........................

Signature of the Chief Functionary
[Name of the Chief Functionary in block letters]
(Seal of the Association)

Intimation - Change of Name or Address

[Application form for seeking change in the name/address of the association granted registration/prior permission under FCRA]

No.................. Date..................

To The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Application for change in the name/address of association registered/granted prior permission under Foreign Contribution (Regulation) Act 1976/ Foreign Contribution (Regulation) Act 2010.

Sir,

I, __ on behalf of the Association, whose details are given below, apply for change in the name / address of the association registered/granted prior permission under the Foreign Contribution

1. Name of the association and its complete postal address:

<table>
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<th></th>
<th>Existing</th>
<th>Proposed</th>
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<tr>
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<td>PIN Code</td>
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<tr>
<td>Phone/Fax No</td>
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<tr>
<td>eMail</td>
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</tbody>
</table>

2. FCRA Registration No./Prior Permission letter No.............................. dated................... (Copy of the registration/prior permission letter to be enclosed)

3. Nature of Association:
   (a) religious (b) cultural (c) economic (d) educational (e) social
   Note: If religious association, state whether – (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

4. Name and addresses of the members of the Executive Committee/ Governing Council etc. of the association, including the Chief functionary in the following manner:

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name</th>
<th>Name of father/ husband</th>
<th>Nationality</th>
<th>Occupation</th>
<th>Office held in the Association</th>
<th>Relationship with office bearers, if any</th>
<th>Address</th>
</tr>
</thead>
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</table>

5. Please indicate date of submission of last three Annual FC 3 / FC-6 returns.

<table>
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<tr>
<th>No.</th>
<th>Year</th>
<th>Date</th>
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<td>3</td>
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</table>

6. Please indicate whether the Association Is functioning as editor, owner, printer or publisher of a Publication required to be registered as 'newspaper' under the Press and Registration of Book Act, 1867. If so, the details thereof.

7. Please indicate whether the association has close links with another association, or its unit or branch which has been –
   (a) refused registration under the Act;
(b) Prohibited from accepting foreign contribution.

8. Please indicate –

| (i) The name and address of the branch of the bank through which foreign contribution is received. |
| (ii) Please specify the designated Bank account number in the said branch of the bank. |

9. Justification for proposed change

Yours faithfully,
Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

**Declaration and Undertaking**

I hereby affirm that the information furnished above is correct.
Place:
Date:
Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

**Instructions:**
1. Fill in all the details carefully and correctly.
2. Strike off columns which are not applicable.
3. Following documents are to be attached with the application:—
   (i) Resolution of Governing Body for proposed change of name/address;
   (ii) Copy of letter granting Registration Number;
   (iii) Copy of revised certificate of Registration under Societies Act/Trust Act/Companies Act, whichever is applicable, in the case of change of name request.

**Intimation – Changes in Memorandum, etc.**

[On Organisation's Letterhead]

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

**Subject:** Intimation to the Central Government of change in___ (add nature of change)
Dear Sir,

As undertaken by us while applying for FCRA registration / prior-permission, I __________ (name and designation), on behalf of the Association, am intimating certain changes in the Association.

1. Name of the Association and its complete postal address:
   (a) Name: ....................................
   (b) Address: ................................
       Town/City: ......................
       District: ............................
       State: ..........................
       Pin Code: ...................

   (c) Telephone No. of the Association (with STD code): ....................
   (d) Telephone no. (with STD code) / Mobile no. - of the Chief Functionary: ..............
   (e) e-mail address: ...................
   FCRA Registration No./ Prior Permission letter No...................... dated....................

(Copy of the registration/prior permission letter to be enclosed)

3. Brief description of the changes:

4. Details of the changes:

   DECLARATION

   I hereby declare that the above particulars furnished by me are true and correct.
   Place: ............................
   Date: ............................

Signature of the applicant
   (Name, in block letters)

Encl.: Evidence of change being ....

Intimation of Emergency Medical Aid

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Intimation of Emergency Medical Aid
Ref: Rule 7(4) of Foreign Contribution Regulation rules 2011

1. Name in full (block letters): _________________________
2. Date of Birth: _________________________
3. Name of father/husband: _________________________
4. Present address: _________________________
5. Permanent address: _________________________
6. Passport particulars: _________________________
7. Status:-
a) Member of Legislature: ______________________
b) Office bearer of a political party.
c) Judge of Supreme Court/High Court: ________
d) Government servant: ______________________
e) Employee of a Company/Corporation: ________
f) Any other person or class of persons not specified in section 6.

8. Name of countries/places visited with duration of stay: ________________________________

9. Duration and purpose of visit to the country(s)/place(s) mentioned in Column 8 with specific dates: __________

10. The countries and places where emergent medical aid was provided: ________________

II. Particulars of host(s) who provided the emergent medical aid:
   a) If an individual, his personal particulars including name, present address, permanent address, nationality, profession: __________
      i. Full name and complete address: __________
      ii. Address of Head office/Principal office: __________
      iii. Aims and Objects: ________________
      iv. Particulars of important office bearers: __________

12. Nature and duration of emergency medical aid accepted with specific dates and with specific details: ________________

13. Nature of connection/dealing with the host and/or foreign source extending the emergency medical aid: __________

14. Approximate expenditure incurred on emergency medical aid: __________

15. Any other information of significance which the applicant may like to furnish: ________________

DECLARATION

I hereby declare that the above particulars furnished by me are true and correct.
Place ______
Date ______
Signature of the applicant
(Name, in block letters)

Bank Report - Receipt without Permission

[On Bank stationery]

CONFIDENTIAL
The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
NDCC-II Building, Jai Singh Road,
Opp. Jantar Mantar,
New Delhi-110 001

Subject: Report to the Central Government of receipt of foreign contribution without permission
Dear Sir,

As required under rule 16(1) of the FCR Rules 2011, I __________ (name and designation), on behalf of the __________ (name of bank), am intimating the fact of receipt of a foreign remittance, apparently without FCRA registration or permission under section 11 of the FCRA 2010.

1. Name and address of the donor / remitter:
   (a)Name:..................................................  
   (b)Address:..............................................  
      Town/City:...........  
      District:................  
      State:.................  
      Country: ............  Pin / Zip Code:..................

2. Name and address of the Recipient:
   (a)Name:.............................................  
   (b)Address:.........................................  
      Town/City:............  
      District:...............  
      State:.................  
      Pin Code:.............

3. A/c No.: ..................................................

4. Name of the Bank and Branch
   Bank: ____________________________  
   Branch: _________________________  
   Address: _________________________

5. Amount of foreign contribution:
   In foreign currency: ...............  
   In Indian Rupees: .............

6. Date of receipt: ..........

7. Manner of receipt:
   Cash/ cheque / electronic transfer / other (specify) ..............  
   Remittance Reference: .........................  

Place:..................................  
Date:..............................  

Signature of the Bank Officer  
(Name and designation)

Bank Report - Large Receipts

[On Bank stationery]

CONFIDENTIAL
The Secretary to the Government of India,  
Ministry of Home Affairs,  
FCRA Wing/Foreigners Division,  
NDCC-II Building, Jai Singh Road,  
Opp. Jantar Mantar,  
New Delhi-110 001
Subject: Report to the Central Government of large receipt of foreign contribution

Dear Sir,

As required under rule 16(3) of the FCR Rules 2011, I ________ (name and designation), on behalf of the ________ (name of bank), am intimating the fact of receipt of foreign contribution in excess of Rs. one crore rupees during a calendar month.

1. Name and address of the donor:
   (a) Name: ...................................
   (b) Address: ................................
       Town/City: ..................................
       District: ..................................
       State: .................................
       Country: ……………………… Pin / Zip Code: ..........................

2. Name and address of the Recipient:
   (a) Name: ..................................
   (b) Address: ................................
       Town/City: ..................................
       District: ..................................
       State: .................................
       Pin Code: ..........................

3. A/c No.: ................................................................

4. Name of the Bank and Branch
   Bank: .............................
   Branch: ..........................
   Address: ...........................

5. Period of receipt: from .......... to ..........

6. Amount of foreign contribution received during above period:
   In foreign currency: ..........................
   In Indian Rupees: ..........................

7. Manner of receipt:
   Cash/ cheque / electronic transfer / other (specify) ...........
   Remittance/s reference: ..........................
   Place: ........................
   Date: ........................

Signature of the Bank Officer
(Name and designation)

Application for Change of Office-bearers

[Application form for seeking change in the Office Bearers of the association granted registration/prior permission under FCRA].

No. ............... Date ............... 

The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
Subject: Application for change in the Office Bearers of association registered/granted prior permission under Foreign Contribution (Regulation) Act, 1976/2010

Sir,

I _______ on behalf of the Association, whose details are given below, apply for change in Office Bearers of association registered/granted prior permission under the Foreign Contribution (Regulation) Act, 1976/Foreign Contribution (Regulation) Act, 2010.

1. Name of the association and its complete postal address:
   Name: __________________________
   Address: _________________________
   Town/City: ________________________
   District: _________________________
   State: ______________ PIN Code: _______
   Phone/Fax No.: ______________
e mail: _______________________

2. FCRA Registration No./Prior Permission letter No.......................... dated.................. (Copy of the registration/prior permission letter to be enclosed)

3. Nature of Association:
   (a) religious (b) cultural (c) economic (d) educational (e) social

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name</th>
<th>Name of Father/Husband</th>
<th>Nationality</th>
<th>Occupation</th>
<th>Office held in the association</th>
<th>Relationship with office bearers, if any</th>
<th>Address</th>
<th>Proposed Change (Appointment / Cessation)</th>
<th>Reason for proposed change</th>
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</tbody>
</table>
**Note:** If religious association, state whether -(a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.

4. Name and addresses of all the existing / proposed members of the Executive Committee / Governing Council etc. of the association, including the Chief functionary, showing proposed changes in the following manner:

5. Please indicate date of submission of last three Annual FC3 / FC-6 returns.

<table>
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<tr>
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6. Please indicate whether the Association is functioning as editor, owner, printer or publisher of a Publication required to be registered as ‘newspaper’ under the Press and Registration of Book Act, 1867. If so, the details thereof.

7. Please indicate whether the association has close links with another association, or its unit or branch which has been
   (a) refused registration under the Act;
   (b) Prohibited from accepting foreign contribution.

Yours faithfully,

Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

**Declaration and Undertaking**

I hereby affirm that the information furnished above is correct.

Place:
Date:

Signature of the Applicant
(Name of the Chief Functionary or authorised office Bearer)
(with the seal of the association)

**Instructions:**
1. Fill in all the details carefully and correctly.
2. Strike off columns which are not applicable.
3. Following documents are to be attached with the application:
   (i) Resolution of Governing Body / General Body for proposed change of office bearers.
   (ii) Copy of letter granting Registration Number / prior permission;
**Donor’s Commitment Letter**
[To be printed on Donor’s Letterhead]

[Date]

To

---------

**Sub: Commitment Letter**

Dear Sir / Ma’am:

This has reference to your proposal dated _____ for the [state name of project / purpose of support] which you are planning to implement over the period from [dd-mmm-yyyy] to [dd-mmm-yyyy] in the [name of area, town, district, state], India.

In this regard, I am / we are agreeable to provide a donation / grant / contribution of [Currency]______ over a period of [_____] years, from the charitable funds available with me /us. This commitment is subject to your agreeing to my/ our terms and conditions, as well as obtaining the required prior-permission from Government of India, as provided in Foreign Contribution (Regulation) Act, 2010. The funds must be spent in compliance with laws of India as well as laws of [donor country].

We will disburse the funds only after you provide us a copy of the above prior-permission or FCRA registration letter, along with FCRA bank account number and other details.

Place: [Name and Signatures etc.]

Date:

---

**Donor Questionnaire**

[See Company under Foreign Control on page 52]

[Date]

To

---------

**Sub: Foreign Source under FCRA 2010**

Dear Sir / Ma’am:

In order to comply with requirements of Foreign Contribution (Regulation) Act, 2010, we need to determine whether a donor / supporter is classified as a foreign source or Indian source. As the FCRA provisions are rather complex, we would request for the following information about your organisation [____________] 1056which will help our legal advisers decide on this issue:

1. Whether your organisation is a foreign company or corporation i.e. registered or incorporated outside India [Yes/No/Can’t say]

2. Whether your organization is a branch of a foreign company or corporation [Yes/No/Can’t say]

3. Whether it is part of a multi-national corporation (MNC) [Yes/No/Can’t say]

4. Whether it is a subsidiary of a foreign company or of a foreign multi-national corporation [Yes/No/Can’t say]

5. Whether more than 50% of its nominal capital is held by foreigners (including foreign citizens, foreign governments, foreign corporations, foreign companies, foreign MNCs or their subsidiaries or foreign trusts / firms etc.) [Yes/No/Can’t say]

Place: [Name and Signatures etc.]

Date:
REFERENCES & CASE LAW

NOTES
REFERENCES & CASE LAW


National Projects Construction Corporation Ltd. _vs_ CWT (Delhi 1969).

Sole Trustee, Lok Shikshana Trust _vs_ CIT (Supreme Court August 28, 1975).

Cambay Electric Supply Industrial Co. Ltd. _vs_ CIT (Supreme Court April 11, 1978).

All India Reporter Karamchari Sangh _vs_ All India Reporter Limited and Ors (Supreme Court May 2, 1988).

Association of Voluntary Agencies for Rural Development _vs_ Union of India (Delhi High Court Sep 21, 1990).


Usmania Trust (Registered) Represented by its Chief Functionary-Cum-Managing Trustee _vs_ Union of India (UoI) Represented by Deputy Secretary to Government, Ministry of Home Affairs (Madras High Court Jul 19, 1991).

Govt. of India, Ministry of Home Affairs, Rep. by its Deputy Secretary _vs_ Indian Church of Christ Evangelistic Assn., by its Chief Functionary and Anr. (Andhra High Court Sep 17, 1997).


Asian Aid Organisation Welfare Trust _vs_ Union of India (UoI) (Karnataka High Court Oct 24, 2000).


State Rep. by CBI and Another _vs_ M. Kurian, Chief Functionary of The CROSS, Criminal Appeals Nos. 377-79 of 2001 (From the Judgment and Order Dated 27-9-1999 of the Delhi High Court In Crl. M. (M) No. 1125 and Crl. M. No. 198 (Supreme Court of India March 26, 2001).

Watch Tower Bible & Tract Society of India, Lonavala _vs_ Union of India (UoI) and Ors. (Bombay High Court Dec 6, 2001).


Nazir Khan and Ors. _vs_ State of Delhi (Supreme Court of India August 22, 2003).
Dr. Pratap Chandra Reddy vs Central Bureau of Investigation (CBI) (Delhi High Court October 4, 2006).
Nemi Chand Jain @ Chandraswami and Ors. vs Central Bureau of Investigation (CBI) (Delhi High Court October 4, 2006).


Raj Pal & Ors vs The State of Haryana, Appeal (crl.) 466 of 2006 (Supreme Court of India April 19, 2006).
Anewshi Women's Counselling Centre vs. District Collector and State of Kerala, W.P.(C) NO. 1223 OF 2009 (U) (Kerala High Court April 3, 2009).


Indian Social Action Forum (INSAF) vs. Union of India, WP(C) No.5793/2011 (Delhi High Court Sep 16, 2011).


Mr. Amar Singh Pasrich vs Prime Minister’s Office, CIC/SM/A/2011/000262/SG/12316 (Central Information Commission May 9, 2011).


Reach in the Nilgiris vs. Joint Secretary to The Govt. of India, W.P.No.2031 of 2005; M.P.Nos.2282 of 2005 and 199 of 2006 (Madras High Court Jan 31, 2011).


Sarvajan Unnati Bodhini vs. Secretary to the Government of India and Anr, W. P. (C) 566/2011 (Delhi High Court June 1, 2011).


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Ministry of Home Affairs: http://www.mha.nic.in/fcra.htm


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Weigui, F. (2001). Yi, Yang, Xi, Wai and Other Terms: The Transition from 'Barbarian' to 'Foreigner' in Late Imperial China. In M. Lackner, I. Amelung, & J. Kurtz (Eds.), Western Knowledge and Lexical Change in Late Imperial China (p. 460). Leiden, Netherlands: Brill Academic Publishers.
NOTES

1 (Sundar, 2010)
2 There are about 40,000 NGOs with FCRA registration. Of these at least 20,000 are active.
3 John le Carré's Reptile Fund was not as fictional as is commonly believed. See, for instance, the following excerpt from an ACE Electoral Knowledge Network report:

"Secret Money Provided By Foreign Governments

Governments have traditionally used secret service funds to bribe (or, putting it differently, to assist) prominent foreign politicians and their election campaigns. Other political uses of secret service funds have included payments to foreign trade unions and to foreign newspapers.

Such payments have a long history. In modern times, the 'Reptile Fund' used by the German Chancellor, Otto von Bismarck, provided a precedent followed by subsequent German regimes. ... In the era of the Cold War, political parties in Africa and elsewhere reportedly received financial support from the Soviet Union and from China as well as from the United States. ...


4 Niyogi Committee had recommended financial restrictions on missionaries in 1956 (Niyogi, 1956, pp. Vol.I, Ch. III, Para 100(I)). Similarly, Mahatma Gandhi had made numerous statements decrying proselytization by missionaries (The Collected Works of Mahatma Gandhi (Electronic Book), New Delhi, Publications Division Government of India, 1999, 98 volumes: vol. 15, p. 159; vol. 33, p. 64; vol. 51 p. 178, 414; vol. 67, pp.48-9; vol. 69, p.160).

However, the genesis of FCRA 1976 is properly traced back to 1967, as the final law was mainly focused on restricting funding of elections, etc.

5 Sh. Jawaharlal Nehru (1947-64) and Sh. Lal Bahadur Shastri (1964-66)
6 From 69% seats in 1962 to 54% seats
7 Reports in the New York Times and Newsweek. Diversion of PL-480 funds towards unknown purposes was also alleged. (Lok Sabha debates of March 20 and 23, 1967). The KGB also appears to have been equally active in providing funds to parties of its choice. (Andrew & Mitrokhin, 2005, pp. 313, 322-324, 330, 563n62-64)

8 IB report on use of foreign money in the 1967 general election and other purposes. (Lok Sabha minutes of May 14, 1969)
9 Consisting of 60 MPs from Rajya Sabha and Lok Sabha, representing most of the political parties with members in the Parliament
10 (Guha, 2007, pp. 478-87)
11 Except that they were not to use it for political activities, etc.
12 Vasectomy
13 There was palpable fear in the streets. But in a widely appreciated improvement, trains in India started running on time, perhaps for the first and the only time!

14 The All India Sarva Seva Sangh, The Gandhi Peace Foundation, The Gandhi Smarak Nidhi and AVARD - The Association of Voluntary Agencies for Rural Development
15 Initial tenure was for six months till 31-Jul-82. The final report was submitted more than four years later, on 30-Jan-87.
16 October 1984 - Jan 1987
17 Compulsory registration or prior-permission for NGOs was introduced due to non-filing of required
Intimations by a large number of organisations. (CBI v CROSS, 2001)

18 Subsequently ratified by Foreign Contribution (Regulation) Amendment Act (Act 1 of 1985)

19 Honourable Minister of State for Home Affairs, Sh. Ajay Maken, on the floor of the Lok Sabha, 27-Aug-10, while moving FCR Bill. See page 277 for the full text.

20 Foreign Contribution (Management and Control) Bill 2005.


22 Ten members participated in the Rajya Sabha debate. Only Sh. Pyarimohan Mohapatra (Orissa), from BJD was critical of the Bill. In the Lok Sabha, fifteen members spoke - only Sh. Raghuvansh Prasad Singh (Vaishali - RJD) spoke against the Bill. See VIII. Parliamentary Debate - Extracts on page 273 for key speeches by the Ministers.

23 Though the Act became law on 26-Sep-10, it did not come into force till 1-May-11, the date notified by the Central Government under sec. 1(3) of FCRA 2010. (Notification No. S.O. 909(E), dated 29-4-2011). This aspect was not brought to the notice of the Honourable Court in a recent case, which was erroneously argued on the presumption that FCRA 2010 came into force on 26-Sep-10, and that FCRA 1976 had been repealed. (Sarvajan Unnati Bodhini vs. Govt. of India, 2011)


26 The USA PATRIOT Act - acronym for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism


29 India became an observer in Nov-06 and a full member in Jun-10.

30 This is largely due to the FATF advocacy. The latest FATF report (Feb-12) recommends the following with regard to ‘Non-profit organisations’:

‘Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

(a) by terrorist organisations posing as legitimate entities;
(b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
(c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.’

Source: International Standards on Combating Money Laundering and the Financing of Terrorism
NOTES

& Proliferation: The FATF Recommendations (Feb-12); http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20(approved%20February%202012)%20reprint%20May%202012%20web%20version.pdf; last accessed II-Nov-12

31 "The GOI should press for presidential approval to implement the Foreign Contribution (Regulation) Act 1976 [sic], which would extend foreign contribution reporting requirements to any non-profit organization that has a political, cultural, economic, educational or social focus and automate notification of suspicious transactions to the FIU."


32 Published on 29th April-2011 in the Gazette of India, part ii, section 3, sub-section (i), F. No. II/21022/10(1)/2010-FC-III

33 (Austin & Tjernström, 2003)
34 (Venice Commission, 2006)
35 The Foreign Contribution (Regulation) Ordinance, 1982 (No. XXXI of 1982) (Khair & Khan, 2004)
36 Law on Non-Governmental Societies and Organizations (No. 84 of 2002) (Egypt, 2011)
37 FCRA 2010
38 The Law of Societies (No. (51) of 2008); and the Law Amending the Law on Societies (No. (22) of 2009) (Jordan, 2011)

39 On Introducing Amendments into Certain Legislative Acts of the Russian Federation, Federal Law #18-FZ. Effective 15-Apr-2006 (Kamhi, 2006). Also Decree# 485 (June 2008) and # 252 (March 2009) - tax exempt foreign donations can be made only to pre-approved NCOs or individuals. (Russia, 2011)

40 Peruvian Law No. 27692 Creating the Peruvian Agency for International Cooperation, as modified by Law No. 28925 in 2006 (Peru, 2011)

41 ‘Programs supported by foreign funding must be registered with the Ministry of Justice.’ (Turkmenistan, 2011)

42 Law “On guarantees of activity of nongovernmental nonprofit organizations” of the Republic of Uzbekistan No. ZRU-76 03.01.2007 (Uzbekistan, 2011)


44 Political Donations Act, effective 15-Feb-2001
45 Associations and Foundations are required to notify the Government about foreign funding.
46 Sec. 54 (Political Parties, Elections and Referendums Act (c.41), 2000)

48 ‘Foreign donations must be pre-approved by the Ministry of the Interior.’ (Algeria, 2011)

49 (Moore & Rutzen, 2011)
50 (Moore & Rutzen, 2011)
51 (China, 2011)
52 (Moore & Rutzen, 2011)
53 Proclamation to Provide for the Registration and Regulation of Charities and Societies, February 2009 (Moore & Rutzen, 2011)
54 Regulation no. 38 of 2008 issued by Minister of Home Affairs (Moore & Rutzen, 2011)
As at 11-Aug-12, after cancellation of 4,138 FCRA registrations, mostly in Jul-Aug-12. Source: www.mha.nic.in/fcra.htm

Presumably, these organisations are actively using FCRA funds. In reality, a number of these prior-permissions may have been exhausted before Aug-12.

An organization can pick multiple objectives, and many do so. Therefore, the numbers do not add up to the total organisations with registration or permission.

Religious organisations do not always categorise themselves categorised as such. Also, organisations classified as religious may actually be engaged in other development work. There are also some clerical errors in the database. Therefore, the figures could be off by as much as 15-20%.

Total of registered organisations and those with prior-permissions received during 2010-12. Figures as at 11-Aug-12

Before cancelling the registration, FCRA Department issues postal notices. However, these obviously go to the address on FCRA Department records. If the records are not updated, or if the NGO has not reported change of address, the notices come back undelivered. The FCRA Department then proceeds to cancel the registration.

Various notifications over Jun’06 - Dec’11

This data has been taken from MHA reports. However, it should be treated as indicative only. Only selected years have been shown here.

From about Rs.23 per USD in 1991 to Rs.48 per USD in 2009. Source: http://fx.sauder.ubc.ca/etc/USDpages.pdf

With 91-92 as a base. The Cost Inflation Index notified by the Central Government under Income Tax Act has been used as a proxy for inflation.

Based on Total Foreign Contribution reported by each NGO against item 2(i) of FC-3 / FC-6. This does not include interest earned on the foreign contribution during the year (item 2(ii) of FC-3 / FC-6).

If a donor agency with FCRA registration receives 10 crores, it gets counted as a large recipient. If this agency disburses 2 crores each to four implementing NGOs, these will also get counted as large recipients.

These figures do not include interest earned on foreign contribution, though legally, such interest is also a part of foreign contribution. This can be significant for organisations with a large corpus. See note 66 for more on this.

Preamble to the FCRA 2010: ‘A Bill 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 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.’

Preamble to the FCRA 1976: ‘An act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of sovereign democratic republic, and for matters connected therewith or incidental thereto.’

There were 43,033 NPOs registered under FCRA as on 31-Dec-11. (p.288 of MHA Annual Report 2011-12 at http://mha.nic.in/pdfs/AR(E)II12.pdf; last accessed 5-Aug-12). The number of applications that the
NOTES

Department would have processed (numerous applications are rejected) would have been much more, running into lakhs.

72 Sh. P. Chidambaram, Hon. Minister for Home Affairs, Rajya Sabha, 19-Aug-10. See page 274 for full text.

73 This theory has been put forward by Mr. Gavin Menzies, a former submarine Commander in Britain's Royal Navy. It has not been validated by any historian and should not be treated as a fact (Menzies, 2003). Zheng He is credited by historians with making seven long voyages (c.1405-1433), going all the way to East Africa.

74 “It is agreed that, henceforward, the character « I » 异 [barbarian], shall not be applied to the Government or subject of Her Britannic Majesty in any Chinese official document issued by the Chinese Authorities either in the Capital or in the Provinces.” Article 51 of Tianjin Treaty (1858) between Britain and Chinese Emperor (Hanes & Sanello, 2004, p. 218) (Weigui, 2001, p. 112). China was never colonized formally- it was mostly ruled through adverse treaties.

75 See also (Watch Tower vs Union of India, 2001), where the MHA took the view that ‘receipt of donations on a very large scale by the applicants and the absence of any tangible welfare project on the ground’ may indicate use of money for religious conversion.

76 The intent of the law appears to regulate and restrict the availability of foreign contribution, rather than to promote it. This has been kept in mind while interpreting the clauses in this book.

77 Extradition law is complex, and is mostly governed by bilateral treaties, with differing provisions. An extradition request must clear several hurdles, including an appeal by the subject in the country of residence.

78 Limited Liability Partnership Act, 2008

80 Mutually Aided Cooperatives Societies

81 (Black, 1999, pp. 341-5)

82 Sec. 54 of FCRA 2010. Notification No. S.O. 909(E), dated 29.4.2011. Also see (Sarvajan Unnati Bodhini vs. Govt. of India, 2011) for a discussion on effects of repeal, as well as note 23.

83 Sec. 54(2) of FCRA 2010

84 Sec. 54(3) of FCRA 2010

85 Sec. 6. Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- Revive anything not in force or existing at the time at which the repeal takes effect, or
- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
- Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or
- Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
- Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.
86 Sec. 2(1)(h) of FCRA 2010

87 If this definition is interpreted literally, money received by business organisations during trade would also be foreign contribution. However, the Act uses the phrase ‘donation, delivery or transfer’, instead of a simpler word ‘receipt’. The words ‘delivery or transfer’ follow after ‘donation and need to be seen as subservient to the word ‘donation’.

Further, as we will see later, business transactions are not covered by the definition of foreign contribution. This lends further weight to the argument that only donative transactions are covered.

What are donative transactions? These would be gratuitous payments, without consideration, or where the consideration is so nominal as to serve merely as a camouflage. The normal rule of construction of contracts (that adequacy of consideration is to be ignored by courts) will not apply here, considering the intent of the law.

88 Shorter Oxford English Dictionary tells us that contribution can be imposed or voluntary. A cess or a levy is also a contribution. (Oxford University Press, 2007, p. 510)

89 Q.2 Whether earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it is treated as foreign contribution?

Ans. No. As clarified at Explanation 3 above, foreign contribution excludes earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it as this is a transaction of commercial nature.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD- ForeigD-FCRAFAQs.pdf; Last accessed 30-Sep-12

90 Business receipts of most NPOs are now restricted to Rs.25 lakh per year, unless they are engaged in specific activities (relief of poor, education, medical relief, heritage, environment). Exceeding this limit will mean loss of tax exemption. (Sec. 2(15) of the Income Tax Act, 1961)

91 Q.12 Can the fee paid by the foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?

Ans. “Delegate/participation Fees” paid in foreign currency by foreign delegates/participants for participation in a conference/seminar and which is utilized for the purpose of meeting the expenditure of hosting the conference/seminar is not treated as foreign contribution and as such no permission under FCRA is required.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD- ForeigD-FCRAFAQs.pdf; Last accessed 30-Sep-12

However, you need Government permission to organize a conference / seminar where foreigners are invited as delegates / participants.

92 A doubt arises here. Would cost of goods or services also include an element of profit? Or do we have to sell the good or services at actual cost? Considering the context of this phrase, it appears that recoveries against sale price or at standard rates would be exempt, even if these include an element of profit. This also appears to be the normal meaning of the word ‘cost’. (Aiyar, 2010, p. 1559)

93 For instance, weather or market information provided to farmers against fees paid by the donor, training workshops for donor’s grantees, education to students sponsored by the donor agency, etc.

94 NGOs, etc.

95 The explanation to section 2(1)h should be compared with section 4(b) to understand this more clearly. The explanation to 2(1)h covers payment received in the ordinary course of receiver’s business. On the other hand, sec. 4(b) emphasises payment in the ordinary course of the foreign organisation’s
business.

96 i.e. agreement between client agency and the service provider

97 One method to distinguish grants from business payments is to assess the reporting requirements. If a utilization report for the amount given or a narrative report is required under the contract, it might be construed as a grant. On the other hand, if the financial report is only a summary of bills / invoices raised against the contract budget, then it is likely to be construed as a business contract.

Another factor would be to see whether tax has been deducted under section 194C or 194J of the Income Tax Act. This would ordinarily point to a business relationship.

A third feature of business contracts is existence of a profit element. If the payment is calculated as a fee, against specified output, and results in a definite profit (or loss), then this would imply a business relationship. However, if the payment is a reimbursement of costs, then it could imply a donative relationship.

98 Q.36 Can a private limited company or a partnership firm get registration or prior permission under FCRA, 2010?

Ans. As per the definition of the “person” in the FC(R)Act, 2010 which includes an “association” which in turn is defined as 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, or not, and any other organisation, by whatever name called, a private limited company too may seek prior permission/registration for receiving foreign funds in case they wish to do some charitable work at some point of time.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

99 NGOs, etc.

100 There are other areas which are not clear. For instance, a property-owner is paid rent by the foreign donor, but the property is occupied by an NGO. Will this be treated as foreign contribution?

101 Explanation 1, Sec. 2(1)(h) of FCRA 2010

102 As defined in section 2(1)(h) of FCRA 2010

103 FCRA 2010

104 Remember that if a business claims to be doing a social service by selling solar lanterns, it might end up needing FCRA registration!

105 Cultural, religious, economic, educational or social

106 Based on explanation 3 to sec. 2(1)(h) and sec. 4 of FCRA 2010

107 This depends on the actual facts of the case.

108 Generally, a particular item or thing (Black, 1999, p. 106); A particular material thing (of a specified class); a commodity; a piece of goods or property (Oxford University Press, 2007, p. 125)

109 Rule 6A of FCRR 2011

110 From the language of sub-section 2(h)(i), it is clear that the exemption is only for items received as gift for personal use, and not for articles in general: ‘...of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;’ [emphasis added]

111 A non-fictional literary composition forming part of a newspaper, magazine, or other publication, but independent of others in the same publication (Oxford University Press, 2007, p. 125)
112 called legal tender

113 What about a unique note called ‘Raam NL}? It would probably be treated as currency. See AccountAid Capsule 145: Global Development Currency (12-Feb-04) at www.Accountaid.net for more on this.

114 Q.14 Can foreign contribution be received in rupees?

Ans. Yes. Any amount received from ‘foreign source’ in rupees or foreign currency is construed as ‘foreign contribution’ under law. Such transactions even in rupees term are considered foreign contribution.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/Foreign-D-Foreign-D-FCRA_FAQs.pdf; Last accessed 30-Sep-12

115 What about milk tokens issued by the Mother Dairy? And the plastic coins given by chaat wallas? The question is probably not in good taste, and best left unanswered.

116 (h) “securities” include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) derivative;

(iii) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(iv) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(v) units or any other such instrument issued to the investors under any mutual fund scheme;

(vi) Government securities;

(viia) such other instruments as may be declared by the Central Government to be securities; and

(viib) rights or interest in securities;

117 Sec. 2(o) “foreign security” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

118 Sec. 2(l)(m) read with sec. 11 of FCRA 2010

119 Q.38 Whether infusion of foreign share capital in a company registered under section 25 of the Companies Act, 1956 attracts the provisions of FCRA, 2010?

Ans. Yes, infusion of foreign share capital in a company registered under section 25 of the Companies Act, 1956 is treated as foreign contribution.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/Foreign-D-Foreign-D-FCRA_FAQs.pdf; Last accessed 30-Sep-12

120 In such cases, no money is transferred by the members to the company initially. They are required to contribute the guarantee amount only in case of liquidation or winding up.

121 However, these are still restricted under visa rules. See note 855 for more on this.

122 Sec. 4 of FCRA 2010


124 (Oxford University Press, 2007, p. 2694)

125 (Merriam-Webster Inc., 1993, p. 911)
NOTES

126 (Oxford University Press, 2007, p. 3031)
127 A fixed sum of money paid periodically for services or to defray expenses (Merriam-Webster Inc., 1993, p. 1015)
128 (Black, 1999, p. 1426)
129 (Aiyar, 2010, p. 6472)
130 Regulation 48, The Chartered Accountants Regulations, 1988
131 (Aiyar, 2010, p. 2626)
132 “The status or emoluments of a fellow in a college, learned society, etc.; a post as a fellow in a college etc.’ (Oxford University Press, 2007, p. 945)
133 “The position of a fellow (as of a university); the funds granted a fellow’ (Merriam-Webster Inc., 1993, p. 369)
134 (Ministry of Law, Justice and Corporate Affairs, 1992, p. 132)
135 Such as Ramanujan Fellowship, JC Bose National Fellowship, Ramanna Fellowships, Swarnajayanti Fellowships (Department of Science & Technology)
136 Examples include: spreading awareness, educating or motivating people or delivering some kind of services to a community, etc.
137 Sec. 2(1)(m)
138 Explanation 3 to sec. 2(1)(h) of FCRA 2010
139 Sec. 4(a) of FCRA 2010
141 Deutschland schafft sich ab (“Germany Does Away With Itself” or “Germany Abolishes Itself”), Deutsche Verlags-Anstalt, 2010
142 (Economist, 2010)
143 (Economist, 2010)
144 It uses the word ‘includes’, instead of the word ‘means’.
145 The definition tree in FCRA 2010 is as shown below (Sec. 2(1)(j), read with sec. 2(1)(g)):
146 Sec. 2(1)(j)(x)
Apart from some people who formally renounce their citizenship, such as Mr. Garry Davis (http://en.wikipedia.org/wiki/Garry_Davis), there are many other communities who do not have citizenship of any country. These include gypsies of Europe, Bidoon of Kuwait, Chakmaa and Hajongs of Chittagong, and people whose former countries have dissolved (International Observatory on Statelessness- India). A number of refugees may fall in this category. See the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness at www.UNHCR.org for more regarding this issue. As of Oct '12 India had not acceded to either of these.

Q.8 Whether donation given by Non-Resident Indians (NRIs) is treated as ‘foreign contribution’?

Ans. Contributions made by a citizen of India living in another country (i.e., Non-Resident Indian), from his personal savings, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-
NOTES

FCRA FAQs.pdf; Last accessed 30-Sep-12

150 An Indian citizen who is ordinarily residing outside India and holds an Indian Passport (Ministry of Home Affairs)

151 A person who or any of whose ancestors was an Indian national and who is presently holding another country’s citizenship/ nationality i.e. he/she is holding foreign passport (Ministry of Home Affairs)

152 Following persons are eligible to apply: Any person who at any time held an Indian Passport; or he or either of his parents or grand parents was born in or was permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka; or who is a spouse of a citizen of India or a person of Indian origin as mentioned above. PIOs of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka are eligible for this card. MHA Notification No. 26011/4/98-F.I dated 19.08.2002. (Ministry of Home Affairs)

153 (i) Shall not require a separate visa to visit India.

(ii) Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days.

(iii) In the event of continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/FRO.

(iv) Parity with NRIs in respect of all facilities available to the latter in the economic, financial and educational fields except in matters relating to the acquisition of agricultural/ plantation properties. No parity shall be allowed in the sphere of political rights.

All activities are permitted except mountaineering, missionary and research work and existing PAP/RAP which require specific permit. (Ministry of Home Affairs)

154 ‘Q.9 Whether donation given by an individual of Indian origin and having foreign nationality is treated as ‘foreign contribution’?

Ans. Yes. Donation from an Indian who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO card holders and to Overseas Citizens of India. However, this will not apply to ‘Non-resident Indians’, who still hold Indian citizenship.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

155 Sec. 7A of the Citizenship Act, 1955, inserted w.e.f. 3-Dec-2004, as amended w.e.f. 28-Jun-2005.

Registration of overseas citizens of India: The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India-

(a) any person of full age and capacity;

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that become part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child of such a citizen; or
(b) a person, who is a minor child of a person mentioned in clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.

156 (i) A multiple entry multi-purpose life-long visa for visiting India.
(ii) Exemption from registration with local police authority for any length of stay in India.
(iii) Parity with Non-resident Indians (NRIs) in respect of economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties. No parity shall be allowed in the sphere of political rights.

All activities are permitted except mountaineering, missionary and research work and existing PAP/RAP which require specific permit. (Ministry of Home Affairs)

157 Territory refers to jurisdiction. Thus, European Union is a territory.

158 Sec. 2(1)(j)(i) of FCRA 2010

159 Holy See (also sometimes referred as the Vatican) is recognised as a sovereign state (Treaty between The Holy See and Italy, 1929), (Fundamental Law of Vatican City State, 2000).

160 Being answerable to Her Majesty’s Government (Black, 1999, p. 529), (Structure).

161 Sec. 2(1)(j)(ii) of FCRA 2010


163 Last para of section 2(1)(e), FCRA 1976

164 A “trust” is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. Sec. 3, Indian Trust Act, 1882

165 Inferred from sec. 2(1)(j)(vi)(D) of FCRA 2010

166 Sec. 2(1)(j)(viii) of FCRA 2010

167 Trust includes endowments for religious and charitable purposes. (Aiyar, 2010, p. 6927). An endowment is a permanent provision for any institution or person; all property belonging to or given or endowed for a religious and charitable purpose [S. 92(2), C.P.C.] (Aiyar, 2010, p. 2327)

168 A fund established for charitable, educational, religious, research or other benevolent purposes; an endowment (Black, 1999, p. 666); An endowment for development, maintenance, propagation, etc., of religion or for charity (Aiyar, 2010, p. 5834)

169 The term ‘Trust’ is more common in regions influenced by English law. ‘Foundation’ is more common in regions under the influence of US law.

170 Sec. 2(1)(j)(viii) of FCRA 2010

171 The definition given in FCRA 1976 has been modified by dropping the phrase ‘in the nature of trust’. This has helped close a tiny loophole. Earlier the status of a foreign foundation, which was not in the nature of a trust (and not supported by a foreign country) was not clear.

172 Sec. 2(1)(j)(ix)

173 40 Am Dec. 540, as quoted (Aiyar, 2010, p. 1211)

174 The clause covers clubs as well as association of individuals.
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175 See Associations on page 66.
176 Based on (Black, 1999, p.341)
177 (Black, 1999, p. 343) (Aiyar, 2010, p. 2236)
178 (Black, 1999, p. 342)
179 (Black, 1999, p. 342)
180 Dictionary of American & English Law (1883), as quoted (Black, 1999, p. 343)
181 For instance, corporation by estoppel or corporation de facto (Black, 1999, p. 342)
182 Sec. 2(l)(j)(iv)
183 Sec. 2(l)(j)(vii) of FCRA 2010
184 Trade Union is defined in sec. 2(l)(u) of the FCRA 2010. This definition refers to unions registered under Trade Unions Act, 1926. Registration in India cannot be made a pre-requisite for sec. 2(l)(j)(vii).
185 (Black, 1999, p. 1532)
186 See note 268
187 This takes care of a quirk in the definition of a foreign company in FCRA 1976, which was simply linked to sec. 591 of the Companies Act. However, according to section 591, the company should have an office in India. A literal interpretation would have meant that a company registered in Belgium would not be a foreign company, if it did not set up an office in India! This loophole has now been plugged.
188 591. Application of sections 592 to 602 to foreign companies.
   (i) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:-
   (a) Companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and
   (b) Companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

   (2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.
189 Sec. 2(l)(g)(ii) of FCRA 2010
190 Sec. 2(l)(i) of FCRA 2010
191 4. Meaning of “holding company” and “subsidiary”
   (i) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, but only if,-
   (a) that other controls the composition of its Board of directors; or
   (b) that other-
      (i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;
(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c) the first-mentioned company is a subsidiary of any company which is that other’s subsidiary.

Illustration: Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above; and so on.

(2) For the purposes of sub-section (1), the composition of a company’s Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say:-

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;

(b) that a person’s appointment thereto follows necessarily from his appointment as director or manager of, or to any other office or employment in, that other company; or

(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.

(3) In determining whether one company is a subsidiary of another,-

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable-

(i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held, or exercisable by that other, if the ordinary business of that other or its subsidiary as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression “company” includes any body corporate, and the expression “equity share capital” has the same meaning as in sub-section (2) of section 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.
(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.

192 This sounds like stating the obvious, but is probably an attempt to plug a legal loophole which we are not fully aware of.

193 ‘...where the governing power of the corporation is exercised, where those meet in council who have a right to control the affairs and prescribe what policy of the corporation shall be pursued, and not where the labour is performed in executing the requirements of the corporation in transacting its business.’ (Aiyar, 2010, p. 5326)

‘The ‘principal place of business’ would be the place where the governing power of the corporation is exercised or the place of a corporation's chief executive offices, which is typically viewed as the nerve centre or the place designated as the principal place of business of the corporation in its incorporation under the various statutes.’ [Mayar (H.K.) Ltd. Vs. Owner & Parties, Vessel M. V. Fortune Express, (2006) 3 SCC 100, 136, para 323] (Aiyar, 2010, p. 5326)

194 The term ‘corporation’ normally covers all corporate bodies, including companies.

195 Explanation to section 2(1)(g) of FCRA 2010

196 What does presence mean here? A subsidiary, branch, office, business activities or other operations in a country would imply a presence there.

197 If 50% shares of an Indian company are held by Indians and the balance 50% by foreigners, the company will be treated as an Indian source.

198 Shares can be held singly, or by a combination of foreigners.

199 Both the Direct Tax Code, 2010 and the Companies Bill 2009 use more updated concepts regarding control of one company by another.

200 Also see Group Companies on page 53.

201 See Subsidiary on page 51.

202 Explanation 1, Sec. 2(1)(h) of FCRA 2010

203 Explanation 2, Sec. 2(1)(h) of FCRA 2010

204 On the other hand, interest earned on non-FCRA funds will always remain Indian. It does not matter that the interest is being paid by a foreign source, such as a foreign bank.

205 Thereon means ‘on that’. There are three components in the explanation:

1. Interest earned in FC bank accounts
2. Income derived from FC
3. Interest earned on FC

The third item could arguably be taken to mean that it refers only to interest earned on second income. However, in such a case, the draftsperson would have said ‘...and interest thereon’. The use of ‘or’ as a conjunction between the first, second and third item imply that these should be construed as independent items.

The third item can additionally be taken to mean ‘interest earned on the interest on foreign contribution’.

Thus, while the explanation is drafted with some ambiguity, there can be no doubt about the legislative intention. At the planning and structuring stage, it would be advisable to take a wider interpreta-
tion than a narrower one.

206 Explanation 2, Sec. 2(1)(h) of FCRA 2010

207 The phrase ‘derived from’ implies a direct and proximate nexus between the property and the income. It should be distinguished from ‘attributable to’, which is a wider term (Cambay Electric Supply Industrial Co. Ltd. v. CIT, 1978). This phrase has been frequently contested in the courts, particularly under the Income Tax Act. For other case law under Income Tax Act, refer Major Law Lexicon. (Aiyar, 2010, pp. 1941-43)

208 If Indians settled abroad give their own money as individuals, it would be treated as non-FCRA. However, if the same Indians banded together to form a club, say ‘Friends of ….’, and gave their funds through the club, the money would become foreign contribution.

209 See also Commercial Receipts on page 38.

210 The transaction will be covered by explanation 1 to sec. 2(1)(h).

211 Fine and imprisonment up to five years for contravention of FCRA 2010

212 See note 162.

213 ‘Q7 Are there any banned organisations from whom foreign contribution should not be accepted?’

Ans. Yes. FCRA is meant to ensure that foreign contribution is received from legitimate sources and utilised for legitimate purposes by any person. A list of banned organisations is available in MHA’s website http://mha.nic.in/uniquepage.asp?Id_Pk=292. In particular, the list of foreign entities/individuals can be seen in http://www.un.org/sc/committees/1267/AQList.htm.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

This is also repeated in the Advisory to NGOs on Foreign Funding, issued by Director (FC), Ministry of Home Affairs; http://www.mha.nic.in/fbra/intro/FCRA-Advisory-030912.pdf. Last accessed: 25-Sep-12

214 Sec. II(3)(iv) of FCRA 2010

215 Apparently, the organisations listed in Banned Sources on page 194 have not been notified in the Gazette under sec. II(3).

216 Source: Advisory to NGOs on Foreign Funding, issued by Director (FC), Ministry of Home Affairs; http://www.mha.nic.in/fbra/intro/FCRA-Advisory-030912.pdf. Last accessed: 25-Sep-12

217 See The Globalisation of FCRA on page 24 for more.

218 There is a large amount of polemical literature on the ill-effects of foreign aid, much of it emanating from donor nations. However, the more balanced view is that foreign aid is a mixed blessing – it does a lot of good, but it may go quite wrong sometimes (Sundar, 2010).

219 Hall of Private Audience. By custom of Moghul Court, only selected ministers and courtiers had access to this.

220 Sec. 4 of FCRA 2010

221 Please see Remittances from Relatives on page 74. For guidance on form FC-1, please see Gift from Relative: FC-1 on page 100.

222 Please see Scholarships & Stipend on page 42 and Fellowships on page 44.

223 There were conflicting interpretations regarding this under FCRA 1976. Some were of the view that section 4 read with section 8, barred journalists from accepting fellowships. Others took a more liberal view by interpreting section 7 as allowing receipt of scholarships by journalists, just like any other citizen.

224 Sec. 2(1)(q), FCRA 2010
NOTES

225 In an important judgment, a journal publishing law reports was held to be a newspaper. (All India Reporter Karamchari Sangh vs All India Reporter Limited and Ors, 1988)

226 “Newspaper” means any printed periodical work containing public news or comments on public news. [Sec. 1, The Press and Registration of Books Act, 1867.]

Public news is not defined in PRBA or any other legislation. However, a useful description is available in an old judgment:

“The expression “public news” means something such as “current happenings or alleged current happenings of interest or likely to be of interest to the public or to the portion of the public”. Anything new or unknown when communicated to another is news, and news which is intended for [or] is communicated to the general public, no matter what its nature, is public news.

An item of news irrespective of its nature when reported in a paper published for the general public, would be a public news but if published only in a periodical intended for a small circle of readers interested in a particular subject would not be a public news. All news appearing in a periodical which is published for the general public is public news and the paper is a “newspaper”. If the proprietors of a paper choose to make week by week “news” of the activities or alleged activities of persons of sufficient importance to interest members of the public for whom the paper is published and to whom it is sold or given away, they cannot fairly complain that it is given away, they cannot fairly complain that it is not a newspaper, and that it does not contain public news. They must be taken to have themselves made what would otherwise be a matter of private interest, if of interest at all, “public news”. AIR 1942 Sind 65(SB) as quoted in (Aiyar, 2010, p. 5514)

227 The prohibition applies only to staff of registered newspapers. It does not apply to those newspapers which should be registered under PRBA 1867 but have not actually registered themselves.

228 Licensing guidelines for community radio prohibit broadcast of any news programs.

229 “Electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device; Sec. 2(1)(r) of Information Technology Act, 2000

230 Could the restriction cover non-profit groups maintaining web-sites containing public news or current affairs programming? If you interpret the definition literally, it could.

231 (NPCCL v. CWT, 1969)

232 Sections 2(1)(a) and (f) of FCRA 2010

233 Or other similar mode of mass communication

234 See note 226 for more on public news.

235 (Oxford University Press, 2007, p. 1919)

236 (Oxford University Press, 2007, p. 585)

237 Subject to exceptions contained in sec. 4

238 “Q.44 Whether Government servants, Judges and employees of a Government owned/controlled company/body can be on the executive committees/boards of an association?

Ans. Yes. The legal entity of a ‘person’ under FCRA, 2010 is distinct from an individual person. Therefore, individuals who cannot receive foreign contribution may happen to be on the executive committees/boards of such an association.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

239 Sec. 6 of FCRA 2010
240 Someone currently holding the post of a judge. The prohibition does not operate after the person retires or relinquishes the post.
241 It is not clear whether the restriction also applies to judges of Consumer Courts, Lok Adalats, etc.
242 Sec. 6 of FCRA 2010. See Foreign Hospitality on page 78 for more on this.
243 It appears that this restriction does not apply to office bearers of quasi-political organisations (organisations of a political nature as notified under section 5(I) of FCRA 2010).
244 The section does not refer to Autonomous Councils formed for particular areas. It is not clear whether the restriction extends to these as well.
245 Article 243P(e). “Municipality” means an institution of self-government constituted under article 243Q;

Article 243Q (1) There shall be constituted in every State,—
(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,
in accordance with the provisions of this Part....
246 As defined in Article 243(d) of the Constitution: “Panchayat” means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas.

Article 243B (1). There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
247 Sec. 2(1)(d) of FCRA 2010
248 In some elections as many as 100 candidates may be nominated for a seat. The record is held by Modakurachi in Tamil Nadu where 1033 candidates contested for an Assembly seat!
249 Sec. 2(1)(n) of FCRA 2010; Sec. 29A of Representation of the People Act, 1951.
250 Notifications No. 56/2011(i)/PPS-II dated 26-Mar-11; No. 56/2011/PPS-II dated 8-Mar-11.
251 Sec. 4 of FCRA 2010
252 The section is silent about contributions to Central Government from private players. However, private foreign contribution to the Prime Minister’s Relief Fund etc. is apparently not restricted in practice.
253 What about a private foreign donor? Donations to Chief Minister’s Fund etc. are fairly common. Therefore, there seems to be no restriction on private foreign contribution to Governments of various states or Union Territories.
254 It is not clear whether Panchayats are covered under sec. 11 of FCRA 2010. Panchayats are elective bodies, not association of persons. Same reasoning would apply to Municipalities as well. If we follow a literal interpretation approach, then FCRA prohibits foreign contribution for members of a legislature - not to the legislature itself. And now that Panchayats have been defined as legislature, it would seem that Panchayats can accept foreign contribution for improvement or infrastructure work in their areas.

However, this interpretation appears to be counterintuitive to the scheme of the Act, and might not hold up in a court.
255 This provision was challenged in Delhi High Court on grounds of unreasonable restriction on freedom of speech (guaranteed under Article 14 of the constitution), rules being vague, and likely misuse of
the provision by the executive. The petition was dismissed as being without substance. (INSAF vs. Union of India, 2011)

257 Sec. 5 of FCRA 1976. The Government was authorised to determine and notify such organisations, based on their activities, ideology, programs, or connection with political parties. By 1998, about 129 organisations had been notified in the Gazette as ‘organisations of a political nature’. These consisted mostly of trade unions, religious organisations, and other organisations vocal on political issues. However, no clear criteria were available for public reference. An updated list of such organisations is also not available on the Ministry’s web-site.

258 Sec. 5(1) of FCRA 2010
259 Rule 3, FCRR 2011
260 Memorandum of Association
261 Bandh, hartal, rasta roko, rail roko, jail bharo
262 Sec. 2(2)
263 (Black, 1999, pp. 1178, 1179)
264 (Oxford University Press, 2007, p. 2270). The Dictionary offers another meaning, used for sub-national issues:

- Activities concerned with the acquisition or exercise of authority or status; management or control of private affairs and interests within an organization, family, etc.
- The ideas, principles, or commitments of an individual, organization, etc., in political life; the organizational process or principle according to which decisions are made affecting authority, status, etc.

265 (Ministry of Law, Justice and Corporate Affairs, 1992, p. 250)
266 In a recent case, prior-permission was denied to Institute for Policy Research Studies (IPRS) for providing legislative research assistants to MPs. ‘Home Ministry won’t give FCRA oil for LAMP scheme’, Express News Service, 12-Aug-12
267 Rule 3(vi). In response to a direct question from the audience, as to whether ‘the rule is targeted at rights based approach’, the Joint Secretary (Foreigners), MHA explained that the rule merely formalized what was an internal practice in the past. If the activity is lawful, it can be taken up with Indian funds. (SRRF-Plan Round Table, Gulmohur Hall, IHC, Delhi, 16-Jun-11).

268 Defined as one registered under the Trade Unions Act, 1926. Sec. 2(1)(u) of FCRA 2010.

Sec. 2(h) of the Trade Unions Act defines a Trade Union as a ‘combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more “Trade Unions”.

269 Hall of General Audience

270 It is useful to compare this definition with that of FEMA 1999:
<table>
<thead>
<tr>
<th>FCRA 2010</th>
<th>FEMA 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Individual</td>
</tr>
<tr>
<td>HUF</td>
<td>HUF</td>
</tr>
<tr>
<td>Sec. 25 Company</td>
<td>Company</td>
</tr>
<tr>
<td>Firm</td>
<td></td>
</tr>
<tr>
<td>Association of Individuals</td>
<td>Association of Persons</td>
</tr>
<tr>
<td>Body of Individuals</td>
<td></td>
</tr>
<tr>
<td>Organisation</td>
<td>Artificial Juridical Person</td>
</tr>
<tr>
<td></td>
<td>Agency, office or branch owned or controlled by above</td>
</tr>
</tbody>
</table>

Thus while FEMA tries to cover all kinds of entities, FCRA focuses more on those which are organized in some way. The definition in FCRA 2010 is narrower than that in FEMA 1999. The applicability of FCRA 2010 is further narrowed by the requirement that the person should have a definite program.

271 Sec. 11 of FCRA 2010

272 More information on this is available in *AccountAble 48: Non-profit Company* at www.AccountAid.net

273 Sec. 25 companies were not specifically listed under FCRA 1976, though they were covered by inference.

274 Sec. 2(I)(a) of FCRA 2010

275 Or other corporate bodies, such as companies

276 See note 270

277 See note 270

278 (Black, 1999, p. 119); (Ministry of Law, Justice and Corporate Affairs, 1992, p. 32)

279 (Oxford University Press, 2007, p. 137)

280 See, however, (Dr. Pratap Chandra Reddy vs CBI, 2006), where the Hon’ble Judge held that ‘Vishwa Dharmayatan Trust is neither a person nor a political party and nor an organization.’ Also compare this with (Chandraswami vs CBI, 2006), where the same court held that charges u/s 23/25 against Vishwa Dharmayatan Trust were correctly framed, following the Supreme Court’s judgment in (CBI v CROSS, 2001).

281 See note 270

282 Section II of FCRA 2010

283 (Oxford University Press, 2007, p. 629)

284 (Oxford University Press, 2007, p. 2362)

285 (Oxford University Press, 2007, p. 379)

286 (Ministry of Home Affairs & ICAI, 2005, pp. 19-20)

287 (Oxford University Press, 2007, p. 2522)

288 (Oxford University Press, 2007, p. 2522)

289 (Goldberg, 2010, p. 22)

290 (Ministry of Home Affairs & ICAI, 2005, pp. 19-20)
NOTES

291 (Oxford University Press, 2007, p. 794). The Oxford Dictionary also offers another meaning: ‘Maintained for profit, on a business footing; paying (at least) the expenses of its operation or use.’ However, this is more of a utilitarian sense, and apparently irrelevant here. Secondly, business transactions are specifically excluded from FCRA 2010, even for sensitive categories (Sec. 3, 4). Therefore, interpreting economic to cover business activity appears to be inappropriate.

292 Attributed to Thomas Carlyle (1795-1881)

293 (Oxford University Press, 2007, p. 794). The Dictionary also adds one more sense: ‘the financial considerations attaching to a particular activity, commodity, etc.’ This has been left out as it appears connected more with business transactions.

294 (Ministry of Home Affairs & ICAI, 2005, pp. 19-20)

295 (Oxford University Press, 2007, p. 798)

296 This interpretation should be contrasted with that taken for sec. 2(15) of the Income Tax Act, where a narrow meaning of formal or non-formal schooling is usually ascribed. (Lok Shikshana Trust v. CIT, 1975)

297 Research is listed as an activity permitted for educational organisations (Ministry of Home Affairs & ICAI, 2005, pp. 19-20). This does not mean that research (as a standalone activity) is part of the definition of education. For instance, construction of schools is listed as an activity that can be taken up by educational organisations. This does not mean that a contractor constructing schools would be treated as running an educational program.

298 Explanation 3 to sec. 2(1)(h) of FCRA 2010

299 (Ministry of Home Affairs & ICAI, 2005, pp. 19-20)

300 (Oxford University Press, 2007, pp. 2903-04)

301 (Ministry of Home Affairs & ICAI, 2005, pp. 19-20)

302 Hospitals with mixed objectives, going beyond medical care into social or religious issues, would still be covered.

303 Political, Cultural, Religious, Economic, Educational, Social

304 Controlled by Indians

305 Please see CSR on page 75 for more on this.

306 Sec. 2(1)(m) of FCRA 2010

307 Strictly speaking, a research program is not a specified program (CREES). In practice, however, most social research grants may involve elements of practical social work and are likely to be restricted.

308 Q. 37 Whether an individual or a Hindu Undivided Family (HUF) can be given registration or prior permission to accept foreign contribution in terms of section II of FCRA, 2010?

Ans. The definition of the ‘person’ in the Foreign Contribution (Regulation) Act, 2010 includes any individual and ‘Hindu Undivided Family’ among others. As such an Individual or an HUF is also eligible to apply for prior permission to accept foreign contribution....

Footnote: For applicants who are individuals, the criteria of registration under Societies/Trust Act will not be applicable.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

309 See note 308.

310 See note 98.
311 Sec. 11 of FCRA 2010 covers only those individuals who have a specified program. Therefore, people receiving aid for their personal benefit would not be covered by the prohibition.

312 Rule 6, read with sec. 2(1)(h), 2(1)(m) and 2(1)(r) of FCRA 2010. Procedural details are discussed under the heading *Gift from Relative: FC-1* on page 100.

313 Rule 6 of FCR Rules 2011

314 Sec. 2(1)(r) of FCRA 2010

315 Sec. 2(41) read with sec. 6 and Sch. IA of the Companies Act, 1956:
1. Husband and wife
2. Members of an HUF
3. Father.
4. Mother (including step-mother).
5. Son (including step-son).
6. Son’s wife.
7. Daughter (including step-daughter).
8. Father’s father.
9. Father’s mother.
10. Mother’s mother.
11. Mother’s father.
12. Son’s son.
13. Son’s Son’s wife.
14. Son’s daughter.
15. Son’s daughter’s husband.
17. Daughter’s son.
18. Daughter’s son’s wife.
19. Daughter’s daughter.
20. Daughter’s daughter’s husband.
22. Brother’s wife.
24. Sister’s husband

316 This is a much pruned list - the original list contained in schedule IA consisted of 49 categories, which by some estimates would require directors to list as many as 81 relatives, and their businesses! It also included the phrase ‘whether by legitimate or illegitimate descent or by adoption and whether by half blood or full blood’. The amendment was made by the Companies (Amendment) Act, 1965, and perhaps reflected the shrinking Indian family. (Ramaiya, 2010, p. 200-201)

317 Members of an HUF include all female members. *Departmental clarification* F. No. 8/16(I)(62-PR (Ramaiya, 2010, p. 202)

318 It can be argued that the definition of association is wide enough to cover all kinds of organisations. However, this argument was sustainable under FCRA 1976, as there was no mention of sec. 25 companies.
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By mentioning sec. 25 companies specifically, the Act is clearly leaving others out.

319 Explanation 3 to sec. 2(t)(h) of FCRA 2010

320 Corporate Social Responsibility

321 Q.36 Can a private limited company or a partnership firm get registration or prior permission under FCRA, 2010?

Ans. As per the definition of the “person” in the FC(R)Act, 2010 which includes an “association” which in turn is defined as 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, or not, and any other organisation, by whatever name called, a private limited company too may seek prior permission/registration for receiving foreign funds in case they wish to do some charitable work at some point of time.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/Foreign-D-ForeignD-FGRA_FAQs.pdf; Last accessed 30-Sep-12

322 sec. 2(15) of the Income Tax Act, 1961

323 Cooperative societies are a little difficult to classify purely as business or as philanthropy. Most cooperative societies are formed to take up some kind of economic activity, be it selling of produce or of building houses for its members. Their activities are not primarily philanthropic in nature. However, they are designed to spread economic benefits more widely than companies. It is for this reason that they often enjoy various kinds of tax benefits and other privileges.

324 Sec. 2(t)(a) of FCRA 2010. This was also clarified by the Hon. Minister of State for Home Affairs, Shri Ajay Maken in the Lok Sabha on 27-Aug-10.

325 They should be carrying out a definite cultural, religious, economic, educational, or social program.

326 Sec. 4, 7 and 8 of The Cooperative Societies Act, 1912. Cooperative societies are on the State list, and the provisions might vary from one State to another.

327 CREES (cultural, religious, economic, educational, or social)

328 There are a number of examples where cooperative societies have obtained FCRA registration. These include:

1. Indian Farm Forestry Development Cooperative Limited, Delhi
2. National Federation of Fishermen’s Cooperatives Ltd., Delhi
3. Dharampur Tal Carpet & Handicraft Cooperative Society, Valsad
4. St. Joseph’s Cooperative Farming Society Ltd., Rampur
5. Tibetan Multipurpose Cooperative Society, Distt. Lohit
6. Sikkim Co-Operative Milk Producers’ Union Ltd., Gangtok
7. Malabar Region Co-Op Milk Producers Union Ltd., Kozhikode
8. Sri Gopal Milk Producers Sahakari Mandal Ltd., Bhavnagar

329 Sec. 581B of the Companies Act, 1956:

‘Objects of Producer Company.

(i) The objects of the Producer Company shall relate to all or any of the following matters, namely:-

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit :
Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution:

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

(d) providing education on the mutual assistance principles to its Members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facilities for the benefit of Members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.

(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.’

330 Explanation 3 to sec. 2(1)(h) of FCRA 2010. Please also refer to note 89 for restrictions under Income Tax Act.

331 Sec. 4 of FCRA 2010

332 Read with Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000. See RBI’s Master Circular No. 7/2012-13 dated July 02, 2012, available at www.rbi.org.in

333 Where you intend to open your bank account

334 Schedule II of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000.

RBI’s Master Circular adds: ‘A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by an AD Category I bank.’

335 This is not clear, but apparently such functions are reserved for Branch Offices, for which a separate permission is required. In practice, however, some liaison offices take up financial and program monitoring as well. See note 336 for more on this.

336 According to schedule I, following activities are permitted for the branch office:

i) Export/Import of goods

ii) Rendering professional or consultancy services.
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iii) Carrying out research work, in which the parent company is engaged.

iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.

v) Representing the parent company in India and acting as buying/selling agent in India.

vi) Rendering services in Information Technology and development of software in India.

vii) Rendering technical support to the products supplied by parent/group companies.

viii) Foreign airline/shipping company.

Q.45 Whether organisations under Central/State Governments are required to obtain registration or prior permission under FCRA, 2010 for accepting foreign contribution?

Ans. In terms of Gazette Notification S.O. 1492(E) dated 01.07.2011, http://mha.nic.in/pdfs/ExempStatBodi-010711.pdf all statutory bodies constituted or established by or under a Central Act or State Act requiring to have their accounts compulsorily audited by the Comptroller & Auditor General of India are exempted from all the provisions of FCRA, 2010.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12


Q.339 Comptroller and Auditor General of India. This condition is usually specified in the constituting Act or imposed through a Government order.

Q.340 For instance, Ambedkar University, Delhi; Jamia Milia Islamia, Delhi

Q.341 How would a donor know whether a Government organisation is exempt from FCRA under the above notification? Many such organisations obtain a letter from FCRA Department saying they are exempt. Alternatively, you can check whether they fulfil the two conditions.

Q.342 This should be on the organisation's letterhead, and say that their ‘organisation is exempt from provisions of Foreign Contribution (Regulation) Act 2010 by virtue of MHA order S.O. 1492(E) dated 1-Jul-11 issued under section 50 of said Act.’

Sec. 2(1)(i) of FCRA 2010

Sec. 2(1)(i) of FCRA 2010

Sec. 2(1)(i) of FCRA 2010

Sec. 2(1)(i) of FCRA 2010

Q.67 Whether approval of the Ministry of Home Affairs is required in cases where the proposed foreign visit is being undertaken by a person in his/her personal capacity and the entire expenditure thereon is being met by the person concerned?

Ans. No. Any person belonging to any of the categories specified in Section 6 of FCRA, 2010 would require such approval only if the person concerned is seeking foreign hospitality from a foreign source.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Legislature on page 61 for more on this.

Please also see note 622.

Sec. 6 of FCRA 2010

Rule 7(4) lays down a limit of 60 days for this intimation. However, sec. 6 specifies one month. Please see Emergency Hospitalisation on page 100 for more on this.
350 See *Prohibited* on page 58 for more regarding prohibited categories.

351 Sec. 11 of FCRA 2010, read with declaration in form FC-6.

352 See *Quasi-political Organisations* on page 63 for more on this.

353 See *Media* on page 58 for more on this.

354 Rule 4 of FCR rules 2011

355 There is no restriction on using non-FCRA funds for investments in mutual funds. However, check with your tax advisers, in case you are registered under Bombay Public Trusts Act, 1950.

356 Can you invest in a debt-based secured mutual fund? Rule 4(2) apparently allows this. The restriction on mutual funds mentioned in rule 4(1)(a) appears to be primarily for equity-based mutual funds. However, the FCRA Department has taken a different view:

‘Q17 Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?’

Ans. No. Speculative activities have been defined in Rule 4 of FCRR - 2011 as under:-

1. (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to marked forces, including investment in mutual funds or in shares; (b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association. (2) A debt-based secure investment shall not be treated as speculative investment. (3) Every association shall maintain a separate register of investments. (4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

In view of the above, secure investments and fixed deposits in any bank or Government approved financial institution which ensures a fixed return will not be treated as speculative investment.’

Source: *Frequently Asked Questions (FAQs) on FCRA*; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

357 See *Investment Register* on page 125 for more on this.

358 This issue was debated at great length by the Parliamentary Committee. Some luminaries such as Dr. Bimal Jalan stated that ‘in respect of service organizations, most of the expenditure could be in the form of salaries allowances for field-work, and it is not possible to differentiate between administrative expenses and other expenses, like salaries’.

Others, such as some political parties felt that the limit should be brought down to 25%! Ultimately, Committee recommended that it be retained at 50%. See *Administrative Expenditure* on page 263 for more on this.

359 Sec. 8(i)(b) of FCRA 2010.

360 Proviso to Sec. 8(i)(b) of FCRA 2010

361 Rule 5 of FCR Rules 2011, read with sec. 8(2) of FCRA 2010

362 See note 367.

363 This has been done in recognition of higher administrative expenses of ‘associations engaged in educational and research activities’. See para 7.6.2 of *Parliamentary Report* on page 264

364 Persons engaged in training

365 Persons engaged in collection or analysis of field data

366 As defined in rule 5. The rule uses the word ‘constitute’. Therefore, the definition of administrative expenses should be treated as exhaustive, not inclusive.

367 It is not clear from rule 5(iii) that purchase of office equipment is part of administrative expendi-
ture. The rule could be referring to maintenance of office equipment.

368 'Q.23 Whether expenses like ‘interest paid to bank’, ‘bank charges’, ‘hospitality’ etc. can be included in ‘administrative expenses’?

Ans. No. The definition of as ‘administrative expenses’, as given in Rule 5 of FCRR, 2011 is explicit in this regard.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

369 This was indicated by the Home Ministry during the Parliamentary Committee hearings. See note 363 for more on this.

370 Salary budgets of advocacy organisations in particular often touch 60-80% of the total.

371 Grant budgets of prior-permission organisations are approved in advance by FCRA Department.

372 Accountants and auditors are used to classifying expenses using a natural classification such as travel, salaries, rent, etc. FCRA now asks for functional classification. This requires more effort during accounting and auditing, and may not provide reliable results.

373 Provision to sec. 8(b) of FCRA 2010

374 Or the increased limit

375 There is no separate penalty for this violation. Therefore, the catch-all penalty under Sec. 37 of FCRA 2010 becomes applicable. This section allows fine or imprisonment upto one year. However, the Department is unlikely to impose such strict penalties for ordinary cases.

376 In the past, FCRA Department has generally not sought harsh penalties under the law. This approach has now been formalised by allowing compounding of selected offences. See Compounding on page 93 for more on this.

377 Sec. 40 of FCRA 2010

378 Sec. 35 of FCRA 2010. Also, see Prohibited on page 58 for more on this. This is subject to exceptions contained in sec. 4. Please see Exceptions on page 58 for more on this.

379 Other than ordinary business payments, gift from relative, scholarship etc., exempt under sec. 4 of FCRA 2010. Please see Exceptions on page 58 for more on this.

380 Sec. 3(1) of FCRA 2010

381 Sec. 39 of FCRA 2010. See, however, (Dr. Pratap Chandra Reddy vs CBI, 2006), where the Hon’ble Judge held that charges under section 23 and 25 of FCRA 1976 do not apply to office bearers, though sec. 26 expressly extends culpability to all office bearers. See also (Chandraswami vs CBI, 2006) where the court held that contributions received as donations do not result in entrustment. Therefore, section 406 and 120-B of IPC are not attracted.

382 Sec. 25, 26, 28 of FCRA 2010

383 Sec. 36 of FCRA 2010

384 Sec. 35 of FCRA 2010

385 Sec. 38 of FCRA 2010

386 Including a foreigner resident in India. “Person resident in India” is defined in sec. 2(v) of FEMA 1999 as:

“(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include–

(A) a person who has gone out of India or who stays outside India, in either case–
(a) for or on taking up employment outside India, or
(b) for carrying on outside India a business or vocation outside India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than—
(a) for or on taking up employment in India, or
(b) for carrying on in India a business or vocation in India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,
(iii) an office, branch or agency in India owned or controlled by a person resident outside India,
(iv) an office, branch or agency outside India owned or controlled by a person resident in India;”

387 Sec. 3(2)(a) of FCRA 2010. Penalty for prohibited person is dealt separately.
388 See note 381.
389 Sec. 25, 26, 28 of FCRA 2010
390 Sec. 36 of FCRA 2010
391 Sec. 35 of FCRA 2010
392 Sec. 38 of FCRA 2010
393 See note 386.
394 Sec. 3(2)(b), (c) of FCRA 2010. Delivery of foreign contribution to A, so they can pass on to B (who is prohibited from receiving foreign contribution), is also an offence. Penalty for prohibited person is discussed separately.
395 See note 381.
396 Sec. 25, 26, 28 of FCRA 2010
397 Sec. 36 of FCRA 2010
398 Sec. 37 of FCRA 2010
399 Sec. 38 of FCRA 2010
400 Here C means a person who is specifically prohibited or restricted under section 9 of FCRA 2010.
401 Sec. 3(3)(a) of FCRA 2010.
402 See note 381
403 Sec. 25, 26, 28 of FCRA 2010
404 Sec. 36 of FCRA 2010
405 Sec. 35 of FCRA 2010
406 Sec. 38 of FCRA 2010
407 i.e. a person who has been specifically prohibited or restricted under sec.9 of FCRA 2010.
408 Sec. 3(3)(b) of FCRA 2010
409 See note 381
410 Sec. 25, 26, 28 of FCRA 2010
411 Sec. 36 of FCRA 2010
412 Sec. 35 of FCRA 2010
413 Sec. 38 of FCRA 2010
414 Sec. 4(d) of FCRA 2010
415 Sec. 37 of FCRA 2010
416 Sec. 38 of FCRA 2010
417 Sec. 11(1), (2) of FCRA 2010
418 See note 381
419 Sec. 10 of FCRA 2010
420 See Compounding on page 93 for more on this.
421 Sec. 25, 26, 28 of FCRA 2010
422 Sec. 36 of FCRA 2010
423 Sec. 35 of FCRA 2010. Penalty for prohibited person is dealt separately.
424 Sec. 38 of FCRA 2010
425 See Bureaucrats on page 60 for more on this.
426 Sec. 6 of FCRA 2010
427 Sec. 37 of FCRA 2010
428 Sec. 38 of FCRA 2010
429 Sec. 7 of FCRA 2010
430 See note 381
431 Sec. 37 of FCRA 2010
432 Sec. 38 of FCRA 2010
433 See note 381
434 Sec. 34 of FCRA 2010
435 Despite prohibition under sec. 10 of FCRA 2010
436 Sec. 13 of FCRA 2010
437 See note 381
438 Sec. 35 of FCRA 2010
439 Sec. 38 of FCRA 2010
440 Sec. 14(1)(e) of FCRA 2010
441 Sec. 22 of FCRA 2010
442 Sec. 14(1) of FCRA 2010
443 Sec. 14(3) of FCRA 2010
444 Sec. 15(1) of FCRA 2010
445 Sec. 15(2) of FCRA 2010
446 Sec. 22 of FCRA 2010. This applies to all the assets if the relevant registration law (Societies Registration Act etc.) provides for disposal. If not, then the assets created with FCRA contribution can be disposed by the Government.
447 Sec. 12(4) of FCRA 2010
448 Sec. 14(1)(c) of FCRA 2010
449 Sec. 14(1) of FCRA 2010
450 Sec. 14(3) of FCRA 2010
451 Sec. 15(1) of FCRA 2010
452 Sec. 15(2) of FCRA 2010
453 Sec. 22 of FCRA 2010. This applies to all the assets if the relevant registration law (Societies
Registration Act, etc.) provides for disposal. If not, then the assets created with FCRA contribution can be disposed by the Government.

Sec. 8(1) of FCRA 2010, rule 4 of FCR Rules 2011. The restriction also applies to any income arising out of foreign contribution.

Sec. 37 of FCRA 2010
Sec. 38 of FCRA 2010

Other than what it was received for. Sec. 8(1), sec. 11 of FCRA 2010. See also the Honorable Court's observation in (NOVIB vs. Union of India, 1998), stating that in cases of alleged misuse ‘a duty is cast on the authorities under FCRA to ensure that the violators are punished according to law though not permitting witch hunting by donor or anyone else.’

Sec. 37 of FCRA 2010
Sec. 38 of FCRA 2010
Sec. 14(1) of FCRA 2010
Sec. 14(1)(a) of FCRA 2010
Sec. 14(3) of FCRA 2010
Sec. 15(1) of FCRA 2010
Sec. 15(2) of FCRA 2010
Sec. 22 of FCRA 2010. This applies to all the assets if the relevant registration law (Societies Registration Act, etc.) provides for disposal. If not, then the assets created with FCRA contribution can be disposed by the Government.

Sec. 33(b) of FCRA 2010
Sec. 33 of FCRA 2010
Sec. 37 of FCRA 2010
Sec. 38 of FCRA 2010
Sec. 18, 20, of FCRA 2010. Rule 17 of FCR Rules 2011
Sec. 20 of FCRA 2010
Sec. 14(1)(d) of FCRA 2010
Sec. 11 of FCRA 2010, rule 12 of FCR Rules 2011
Sec. 19 of FCRA 2010
See note 381
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488 Sec. 14(1)(d) of FCRA 2010
489 Sec. 37 of FCRA 2010. See (Peer Khushal Shah vs. CBI, 2010), where the defendant was charged under section 23 for not maintaining accounts required under FCRA 1976.
490 Sec. 38 of FCRA 2010
491 Sec. 17(1) of FCRA 2010. Also see (CBI v CROSS, 2001), where two cheques of foreign contribution received from HEKS, Switzerland, were deposited in non-designated bank account. This was held to be an offence under sec. 6(1), punishable under sec. 23 of FCRA 1976, though CROSS was registered under FCRA. Thus, sec. 23 (FCRA 1976) is not limited to instances where a person receives foreign contribution without FCRA registration / permission. It can be invoked where the organization is registered but contravenes a provision while accepting foreign contribution. Also see note 498.
492 Second proviso to Sec. 17(1) of FCRA 2010
493 See note 381
494 Sec. 37 of FCRA 2010
495 Sec. 14(1)(d) of FCRA 2010
496 Sec. 38 of FCRA 2010
497 Proviso to Sec. 11(2) of FCRA 2010. Also see note 498.
498 Proviso to Sec. 11(2) of FCRA 2010. According to the rationale laid down in (CBI v CROSS, 2001) by the Supreme Court, a violation of the FCR rules can also be punished under section 35 of FCRA 2010.
499 Sec. 14(1)(d) of FCRA 2010
500 Sec. 14(1)(b) of FCRA 2010
501 Sec. 14(1) of FCRA 2010
502 sec. 14(3) of FCRA 2010
503 Sec. 15(1) of FCRA 2010
504 Sec. 15(2) of FCRA 2010
505 Sec. 22 of FCRA 2010. This applies to all the assets if the relevant registration law (Societies Registration Act, etc.) provides for disposal. If not, then the assets created with FCRA contribution can be disposed by the Government.
506 Sec.23 of FCRA 2010. Also see note 498.
507 Sec.23 of FCRA 2010
508 Sec.24, 25 of FCRA 2010
509 Sec.24 of FCRA 2010
510 Sec.25, 26, 28 of FCRA 2010
511 Second proviso to sec. 16(3) of FCRA 2010
512 Sec.16(3) of FCRA 2010
513 Q.56 Which are the investigating agencies for investigating and prosecuting a person for violation of FCRA?

Ans. In terms of Gazette Notification S.O. 2446 (E) dated 27.10.2011, The Central Bureau of Investigation or the investigating agencies (Crime Branch) of the State Governments, cause of action which arises in their respective States, are the designated agencies for investigating and prosecuting a person for violation of FCRA.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed: 11-Nov-12
The court can condone delay in filing of appeal by an additional one month. Proviso to Sec. 31(1) of FCRA 2010

The grounds for suspension

The NGO should not receive any foreign contribution at all. This would apply to fresh contribution as well as secondary receipt. Strictly speaking, this would also apply to FC interest etc.

Proviso to Sec. 13(2)(a) of FCRA 2010

The NGO should not receive any foreign contribution at all. This would apply to fresh contribution as well as secondary receipt. Strictly speaking, this would also apply to FC interest etc.

Rule 14(a) of FCRR 2011

Sec. 14(1) of FCRA 2010

Sec. 14(2) of FCRA 2010

Usually 14 days to one month

The notice will be sent to the address on record. The NPO must therefore ensure its address is updated in FCRA records. Visit FCRA web-site (http://www.mha.nic.in/fcraweb/fc8_statewise.aspx) and check your address under ‘List of Registered Associations’ to make sure. Last accessed: 11-Nov-12.

Sec. 15 of FCRA 2010

Listed in sec. 14(1) of FCRA 2010

A statement knowingly false, or made recklessly without honest belief in its truth, and with purpose to mislead or deceive (Aiyar, 2010, p. 2583)

E.g. during the field inquiry etc.

The expression “public interest” is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state for society and its needs. Thus what is ‘Public interest’ today may not be so considered a decade later.” State of Bihar v. Kameshwar Singh, AIR 1952 SC 252

The clause provides that the NPO should remain ‘engaged in any reasonable activity in its chosen field for the benefit of the society’. Thus there are three conditions: 1. The activity should be reasonable, 2. The activity should be in the NPO’s chosen field, 3. The activity should be for benefit of the society.

What if there is no receipt / expenditure of FCRA funds? Will activities with local funds be relevant for this section? Apparently, yes. The section does not say that reasonable activities must be with FCRA funds only.

Sec. 15(1) of FCRA 2010. The Central Government will nominate some Department or Authority who will take possession and manage these.

Under law, the Government has power to take over all the foreign contribution and assets created out of it. It does not have power to take over assets created out of non-FCRA funds. Confusion might also arise if an asset is created partly out of FCRA funds (e.g. building) and partly out of non-FC funds (e.g. the
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land for the building).

540 Sec. 15(2) of FCRA 2010. Assets can not be sold unless funds are needed for running the activities of the organisation.

541 Sec. 15(3) of FCRA 2010
542 Sec. 22 of FCRA 2010
543 Sec. 22 of FCRA 2010
544 Rule 15 of FCRR 2011. The rule uses the phrase ‘exclusive foreign contribution bank account’. Does this mean the designated FCRA account only? Apparently yes. Though the rule extends the Bank’s control to a secondary receiver (sub-rule 2), it is silent about bank’s responsibility for money lying in secondary FCRA bank accounts.

545 Opened under rules 9(1)(e) and 9(2)(e) of FCRR 2011
546 Rule 15(2) of FCRR 2011
547 See Administrative Expenses on page 80 for more on this.
548 See Revision on page 94 for more on this.
549 See Compounding on page 93 for more on this.
550 Rule 12(8) of FCRR 2011. See Delayed Application on page III for more on this.
551 If you are caught jumping a red light at a traffic signal, you might get a challan. This would mean that you have to appear before a magistrate and explain your misconduct. However, you can enter into a compromise by paying a fine instead. This means you will not have to go to court (or to jail). This process is known as compounding of an offence.

FCRA 1976 did not have a provision for compounding. Offences had to be prosecuted in a Court, before a fine or jail term could be imposed. This meant delays, costs, and frequent appearances in court. Therefore, in many cases, the Government officers chose to ignore minor offences or simply warned the person.

552 Sec. 41(1) of FCRA 2010
553 Offences punishable with ‘imprisonment only’ cannot be compounded (Sec.41). However, there are no such offences under FCRA 2010.

554 Section 41 of the Foreign Contribution (Regulation) Act, 2010 - Composition of Certain Offences - Specified Offences & Authority - Notification no. S.O. 1976(E), dated 26-8-2011, F.No. II/21022/10(1)/2010-FCRA-III

555 Without having even deposited the cheque or draft
556 Without having used a single rupee of the foreign contribution
557 Without any misuse or lapse in record-keeping etc.
558 Without any misuse or adverse report
559 Sec. 41(2) of FCRA 2010
560 Date of presentation of the complaint in a court marks the commencement of prosecution. (Dau Dayal vs The State of Uttar Pradesh, 1958)

561 For instance, an NGO raising funds from Indians only on the internet, might receive a donation from a foreigner into its bank account.

562 Q.53 How to apply for compounding of an offence under FCRA, 2010?

Ans: An application for the compounding of an offence under section 41 is to be made to the Secretary, Ministry of Home Affairs, New Delhi on a plain paper along with a fee of Rs.1000/- (One
Thousand only) in the form of a demand draft or a banker’s cheque in favour of the “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigDFCRA_FAQs.pdf; Last accessed 30-Sep-12

564 In charge of the FCRA Wing of the Foreigners Division in the Ministry of Home Affairs. Notification no. S.O. 1976(E), dated 26-8-2011, F.No. II/21022/10(I)/2010-FCRA-III
565 Draft or banker’s cheque payable at New Delhi and favouring ‘Pay & Accounts Officer, Ministry of Home Affairs’. This fee is in addition to the compounding fee.
566 ‘Q.54 What happens after an offence is compounded?
Ans: After payment of the penalty imposed and compounding of the offence, the person may be granted registration or prior permission, as the case may be, subject to its fulfilling all parameters.
Q.55 What if the person is unwilling or unable to pay the penalty imposed?
Ans: In the event of failure to pay the penalty, for whatever reason, necessary action for prosecution of the person shall be initiated.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigDFCRA_FAQs.pdf; Last accessed 30-Sep-12
567 Sec. 32(1) and (2) of FCRA 2010
568 Only a person registered under FCRA can apply for revision of an order. Sec. 32(1) of FCRA 2010
569 Or the date when the person came to know of the order, whichever is earlier. Sec. 32(3) of FCRA 2010
570 Favouring “Pay and Accounts Officer, Ministry of Home Affairs”, payable at New Delhi. Rule 20 of FCR Rules 2011
571 Sec. 32(4) of FCRA 2010. This is designed to prevent iterative litigation. However, what happens if the revision is declined by the Government? The person will no longer be able to appeal.
572 Which High Court should be approached for this? This depends on the state where the concerned person or NGO has its main activities or registered office.
573 Sec. 31(2) of FCRA 2010
574 Under sec.5 of FCRA 2010
575 Under section 12(2) or (4) of FCRA 2010
576 Under Sec. 14(1) of FCRA 2010
577 Order XLI of the First Schedule
578 Rule 3A, Order XLI of the First Schedule to Code of Civil Procedure, 1908
579 Section 6 of FCRA 2010
580 This facility is available only for transfer of foreign contribution, not for fresh receipts. The transferor would already be registered under FCRA or would have received funds under prior-permission.
581 Whether holding an office or just plain member of Executive Committee / Governing Council.
582 Rule 17(8) of FCRR 2011
583 Other Departments, such as Income Tax and Company Affairs no longer ask for paper copies where a document is signed digitally and filed electronically. The attachments are also filed digitally as scanned copies. This has reduced use of paper, and improved efficiency.
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585 Financial Year, April through March
587 See Contacting FCRA on page 195 for postal address.
588 Rule 7(4) specifies 60 days’ time. However, proviso to Sec. 6 lays down only 30 days.
589 See note 587.
590 Rule 18 of FCRR 2011
591 Formerly Class I Gazetted Officer
592 Rule 18 of FCRR 2011.
593 See note 587.
594 Sec. 17(1) of FCRA 2010; Rule 9(1)(e), 9(2)(e) of FCRR 2011;
‘Q.20 Can foreign contribution be received in and utilised from multiple Bank Accounts?
Ans. No fund other than foreign contribution can be deposited in the exclusive single FC account of a Bank, as mentioned in the order for registration or prior permission granted by MHA, to be separately maintained by the associations. However, one or more accounts in one or more banks may be opened for utilising the foreign contribution after it has been received provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation on plain paper shall have to be furnished to MHA within 15 days of the opening of the account.’
Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 11-Nov-12
595 ‘Foreign contribution can not be mixed with local funds being handled by the organisation.’ Charter for Associations Who have been Granted Prior Permission or Registration under FCRA. http://www.mha.nic.in/fcra/intro/FCRA-Charter-II.pdf; last accessed 30-Sep-12
596 Charter for Associations Who have been Granted Prior Permission or Registration under FCRA. http://www.mha.nic.in/fcra/intro/FCRA-Charter-II.pdf; last accessed 30-Sep-12
If you have withdrawn excess cash from an FCRA account, and want to deposit it again? There is no bar on this, though some banks might ask for a written confirmation. The same applies to refund etc. of advances given from FCRA funds.
597 Sec. 17(1) of FCRA 2010
598 In one case, the organization was put on prior-permission list as funds were deposited in a non-designated bank account. Later the Chief Functionary faced prosecution and arrest. (CBI v CROSS, 2001)
599 ‘Q.21 Whether inter-account funds transfer shall be allowed within the multiple accounts that an Association is now permitted to open for the purpose of utilizing the foreign contributions and the level of diligence required on the part of the Banks in this regard?
Ans. Transfer of funds is allowed from the designated FC account of an Association to the multiple account or accounts opened for its utilization. However, no funds other than the amount received in the designated FC account shall be received or deposited in such multiple account or accounts. Inter-account transfer of funds between the multiple accounts is not permissible. As such, the banks should apply full diligence to keep track of the transfers.’
Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12
This can be done by adding the following para to the normal resolution for opening the secondary bank account: “RESOLVED FURTHER that ___bank be instructed not to credit any remittance, cheque or transfer, unless it originates from the main FCRA bank account of the society/Trust/Company”, being ___ (Savings / Current*) account number ____ in the name and style of ‘____________’ maintained with ___bank, __ (Branch). [*Strike out whichever is not applicable]

However, it would be wise not to open too many accounts to ensure internal control is not weakened.

See note 587.

Proof of posting should be kept in the office, along with a copy of the letter and enclosures, if any.

In July 2012, a very large number of organizations lost their FCRA registration. In many cases, the show-cause notices sent to address on record had gone back undelivered.

You can also visit http://www.mha.nic.in/fcra.htm and check your address under ‘List of Registered Associations’ to make sure that it is correct.

For example, from a society or a trust to a section 25 company

Please refer to the declaration given in form FC-6, which is to be signed by the functionary: ‘...I also affirm that the foreign contribution has been utilised for the purpose(s) for which the Association has been granted registration or prior permission by the Central Government...’.

In some cases, the change becomes effective on the resolutions, etc. having been passed. In other cases, it may become effective only when the Registrar approves it.

‘Banks have given a very crucial role in ensuring that the provisions of the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011) are scrupulously followed by the associations who have been granted prior permission/registration under FCRA, 2010 as also by all other person(s), as defined in the Act. No bank should credit any foreign contribution to the account of an association/NGO unless it produces documentary evidence of having obtained registration/prior permission from the Central Government for the same.

In case any foreign contribution is credited to the account of an NGO/ Association/ Trust directly, the bank should not allow utilization of such fund and inform the NGO/Association/Trust concerned to obtain necessary permission/ registration from the Central Government for the same. Simultaneously, the bank should inform the Deputy Secretary (FCRA), Ministry of Home Affairs, Govt. of India, New Delhi about such receipt. Non-compliance of the above by the bank will constitute a violation and will render the defaulting bank liable for appropriate action by the Reserve Bank of India.’

Source: http://www.mha.nic.in/fcra/intro/FCRA-Charter-IV.pdf; Last accessed: 30-Sep-12

In practice, the banks will not allow this credit, unless you produce FCRA registration or prior permission within 10-15 days. The money will then be returned to the sender.

Rule 16 of FCR Rules 2011

‘Q.32 Should the Banks report transactions pertaining to foreign contributions which are returned back to the remitter by the beneficiary Association for want of registration/prior permission from MHA?

Ans. It is not necessary for the bank to report such foreign contribution that is returned to the donor without crediting in the account of the recipient.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA-FAQs.pdf; Last accessed 30-Sep-12

It does not apply for people who are prohibited from receiving foreign contribution (see Prohibited...
on page 58 for more). It obviously does not apply for ordinary persons or businesses (see Permitted on page 74 for more on this).

Q.33 Whether reporting by Banks is also applicable for transfer of funds between FCRA accounts of two or more associations?

Ans. Yes. Reporting by Banks is also applicable to transfer of funds from one FCRA registered Association to another.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

To comply with FCRA directive, the receiving banks will need to know that the incoming remittance is from an FCRA account.

Q.34 Whether the reference period prescribed in Rule 16(3) of FCRR, 2011 for reporting by Banks in respect of transactions during 30-days period should mean calendar month?

Ans. For the purpose of reporting to MHA, 30 days period may be construed as a calendar month.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

NPO receipts above Rupees 10 lakh are already covered for reporting under Prevention of Money Laundering Act, 2002 (Rule 3(BA) of Prevention of Money-laundering (Maintenance of Records …) Rules, 2005). This report is sent by the bank to Financial Intelligence Unit - India (http://fiuindia.gov.in).

Rule 7 of FCR Rules 2011

If the visit is sponsored by a Ministry / Department of the Government of India

Instructions for filling the application online are available at http://www.mha.nic.in/fcra.htm.

Section 6 covers all judges. Presumably, this includes Sessions Judges as well. However, form FC-2 talks about judges of Supreme Court and High Court only. The reason for this is not clear.

Section 9(b) of FCRA 2010

Your contact in the host organization should be advised to obtain this information in advance, as it can take some time to collect this.

You will need to ask the host / sponsor as to how much they expect to spend on you.

In some cases, another NPO/ agency can obtain prior-permission on their behalf. See Proxy Permission: FC-10 on page 108 for more on this.

Sec. 11(2) of FCRA 2010

Sec. 11(2) of FCRA 2010; ‘Each Prior permission application should be sent for receiving a specific amount, for a specific purpose and from a specific donor.’ Charter for Associations Applying for Grant of Prior Permission/Registration under The Foreign Contribution (Regulation) Act, 2010; http://www.mha.nic.in/fcra/intro/FCRA-Charter-I.pdf; Last accessed 30-Sep-12

Q.28 Whether the amount of foreign contribution for which prior permission has been granted can be received by an association in installments?

Ans. There is no bar on receiving such foreign contribution in installments. However, the aggregate amount should not exceed the specified amount for which prior permission has been granted. The association shall have to submit the mandatory return in FC-6 form for receipt and utilisation of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilised. Even if no transaction takes place during a year, a NIL return should be submitted.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-
Q.27 What are the eligibility criteria for grant of prior permission?

Ans. An organisation in formative stage is not eligible for registration. Such organisation may apply for grant of prior permission under FCRA, 2010. Prior permission is granted for receipt of a specific amount from a specific donor for carrying out specific activities/projects. For this purpose, the association should: (i) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 etc; (ii) submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given; and (iii) submit copy of a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Benami: where a person is in reality a nominee for another, but this fact is not disclosed.

Through inducement or fraud, whether direct or indirect.

The prohibition is activated, the moment a case is filed on any of these grounds. (Aiyar, 2010, p. 5464) The prohibition will continue to be in force till the case is decided. However, if the case is withdrawn or the person is found not guilty, the prohibition will no longer apply. If a person is actually convicted, then the prohibition will become a lifelong prohibition.

See note 633.

If this was interpreted literally, a pending traffic violation could lead to denial of FCRA permission! However, in practice, neither the administration is likely to pursue such an approach nor are the courts likely to countenance it.

This should be compared with the controversial law in some US states, which denies voting rights to former felons. However, the provision applies only to serious crimes, punishable by imprisonment for more than one year or death. (Black, 1999, p. 633)

According to Sec. 2(iii) of the Industrial Disputes Act, “office bearer”, in relation to a trade union, includes any member of the executive thereof, but does not include an auditor’. MP Panchayati Raj Adhiniyam, 1993 treats a member of a Panchayat as an office bearer [Sec. 2(xiii)]. (Aiyar, 2010, p. 4721)

The undertaking in forms FC-3 and FC-4, uses the terms ‘office-bearer’ and ‘member of Executive Committee / Governing Council’ interchangeably.

“...likely to engage in...” implies the Government will make an assessment based on material gathered by the intelligence agencies. This implies a preventive approach, but has been used in a number of statutes. (Aiyar, 2010, pp. 3951-52) However, the material should indicate a reasonable probability, rather than a mere possibility. (Raj Pal & Ors vs The State of Haryana, 2006)

Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. “Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to cre-
ate public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.” (Nazir Khan and Ors. vs State of Delhi, 2003)

642 At first glance, this might appear to violate the principle of double jeopardy, as contemplated in Article 20(2) of the Constitution. However, the principle applies only for proceeding in a court of law or tribunal. (Aiyar, 2010, pp. 2158-59)

643 State refers to the Government of the country, as distinct from the nation or the country itself.

644 Section 8(1)(a) in The Right To Information Act, 2005, based on a similar section in the Freedom of Information Act, 2002 (repealed).

This phrase must be contrasted with the more usual ‘public interest’ or ‘national interest’. It marks a clear distinction between the public interest and the interests of the State, and implies that the two may not always be aligned. Its introduction in law books is perhaps an unfortunate formalisation of the emerging adversarial relationship between democratically elected Governments and the very people they represent.

645 Denial of prior permission / registration or its cancellation has been successfully challenged in courts in some cases. (AVARD vs. Union of India, 1990), (Asian Aid Organisation Welfare Trust vs Union of India, 2000).

On the other hand, where the activities of the organization could not ‘be described as purely charitable and philanthropic but tend[ed] to create class consciousness and foment social unrest’, the refusal to grant registration was held to be justified. Further, the Government was not bound to disclose grounds for refusal in all cases (Little Brothers of The Oppressed vs Govt. of India, 1991).

Similarly, the Government was entitled to prohibit receipt of foreign contribution, where it found that ‘the receipt of foreign donations on a very large scale by the [organization] and the absence of any tangible welfare project on the ground [was] indicative of the same being used for influencing the poor, illiterate and tribals to change their religion’ and that it was entitled to claim privilege of not disclosing official reports under se. 124 of the Indian Evidence Act, 1971 (Watch Tower vs Union of India, 2001).

646 The original draft of the FCRA Bill (2006) contained the term ‘meaningful’ with regard to the project or activities. This has been replaced by the more sound ‘reasonable’. Though ‘reasonable’ is a relative term, and its interpretation would depend on the facts and circumstances of each case, it is nevertheless more objective than meaningful and is often used in the legislation, finding the pride of place in Article 19(6) of The Constitution itself. (Aiyar, 2010, pp. 5702-04)

Government officers responsible for judging the reasonableness of NPO activities are likely to find it a challenge. In the long run, the weight of such bureaucratic oversight might also stifle NPO creativity and innovation to some extent.

647 Sec. 12(4)(B) & (c) of FCRA 2010

648 Sec. 12(5) of FCRA 2010

649 A denial by the Government calls for following principles of natural justice (Reach in the Nilgiris Vs. Govt. of India, 2011). In general, reasons for denial of permission or refusal to register must be disclosed (Asian Aid Organisation Welfare Trust vs Union of India, 2000). Further, the affected party must be heard before an adverse order is passed (Govt. of India vs. Indian Church of Christ Evangelistic Assn., 1997). A cryptic or laconic order denying permission without stating reasons is liable to be struck down. (Usmania Trust vs Union of India, 1991) Application of mind by the Government is also essential in passing an adverse order (AVARD vs. Union of India, 1990).
The Government faces a difficult task. It is charged with implementing the Act satisfactorily, and would obviously want to avoid disclosing its methods and sources when dealing with national security. On the other hand, it is required to ensure that justice is done, and that applicants are not denied permission out of fickleness or personal prejudice.

The section has therefore been synchronised with the Right to Information Act, 2005. This allows the Government to restrict the information to what an applicant could have obtained through an RTI application.

The Government can also claim privilege of not disclosing the information under section 124 of the Indian Evidence Act, 1872. (Watch Tower vs Union of India, 2001). However, the aggrieved party can press for disclosure of secret communications relating to him under RTI Act. (Mr. Amar Singh Pasrich vs PMO, 2011)

The FCRA Department’s work requires a mix of policing, financial understanding and social awareness. It is not easy to find officers who have exposure to all three. As a result, for most of the last 35 years, the FCRA Department has remained under-staffed and, to some extent, under-skilled. As the Department does not generate any revenue, it is probably under-financed as well. This can also be seen when you compare the FCRA web-site with those of MCA or Income Tax Department.

The processing of applications is delayed further as the Department is dependent on the State Units of Intelligence Bureau for a field report. This report can get stuck in the bureaucracy. In such cases, the FCRA Department writes a letter saying that a decision will take more time. Under FCRA 1976, this was not really valid in law, as a decision had to be taken within 90/120 days. FCRA 2010 rectifies this.

FCRA 1976 had a curious provision where permission was deemed to be granted if an application was not disposed within 90 or 120 days. The word ‘disposed’ was commonly misunderstood as ‘communicated’. As a result, a number of people would simply accept the remittance if they did not hear from the Government within 90/120 days. Actually the provision merely meant that a decision had to be taken within 90/120 days. Information would then be sent to the applicant in due course. While the 90 day limit has been retained, the deeming provision has been dropped completely.

Q. 42 How to find the status of pending application for registration/prior permission.

Ans. Status of pending applications for grant of registration or prior permission may be checked on-line from the Ministry of Home Affairs web-site - http://mha.nic.in/fcraweb/fc_online.htm. One needs to fill in the numbers on acknowledgement letter or any correspondence from MHA (Foreigners Division) in the blank format which pops up on the screen after selection of status enquiry icon (registration/prior permission, as the case may be).

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Sec. 12(1) states that application must be made along with prescribed fees. Therefore, the actual filing process would not be completed till the time the printed and signed application reaches the Ministry by post along with the fees.

Q. 62 Whether prior permission granted under FCRA, 1976 would also remain valid for next 5 years from the 1st May, 2011, i.e., the date when FCRA, 2010 came into force?

Ans. Prior permission granted under FCRA, 1976 as also under FCRA 2010 remains valid till receipt and full utilisation of the amount of FC for which the permission was/is granted.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-
Or has prior-permission. See revised rule 24(1). This facility is based on section 7, which clearly applies only to donor agencies who have FCRA registration or prior-permission. This facility is not available for others, such as a donor agency based outside India. It is also not available to foreign donors with liaison offices in India, unless they have taken FCRA registration/prior-permission.

Sec. 7 has two parts. The first imposes a duty on the transferor that foreign contribution must be transferred only to a person who has prior-permission or FCRA registration. The related rules are 24(1) and 24(2).

The second part offers a facility. If the transferee does not have registration or permission, the transferor can get this on their behalf. The related Rule 24(4) imposes a limit of 10% on 'the total value of the foreign contribution received'.

Rule 24(3) of FCR Rules 2011

Q.25 How would an organisation that is registered or has obtained prior permission under FCRA and intends to transfer a part of the foreign contribution received by it to another organisation would know whether the recipient organisation has been proceeded against under FCRA?

Ans. Where any organisation is proceeded against under FCRA, it is done with due intimation to the organisation concerned. Therefore, the donor organisation is advised to insist on a written undertaking from the intending recipient organisation.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

More details on this are given in AccountAble 12: Using cheques safely at www.AccountAid.net.

http://www.mha.nic.in/fcraweb/fc8_statewise.aspx

Disclose the name, address, FCRA number of each transferee, along with date and amount of each transfer.

See Prior-Permission: FC-4 on page 105 for more on this.

This practice is not a formal part of the rules, but derives its authority from sec. 12(4)(b) of FCRA 2010.

Q.26 What are the eligibility criteria for grant of registration?

Ans. For grant of registration under FCRA, 2010, the association should:

(i) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 etc;

(ii) normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. For this purpose, the association should have spent at least Rs.10,00,000/- over the last three years on its activities, excluding administrative expenditure. Statements of Income & Expenditure, duly audited by Chartered Accountant, for last three years are to be submitted to substantiate that it meets the financial parameter.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Benami: where a person is in reality a nominee for another, but this fact is not disclosed.

Through inducement or fraud, whether direct or indirect

See note 633.

See note 633.
671 See note 231 for more on this.
672 See note 636 for more on this.
673 It appears that for FCRA 2010, all members of the Executive Committee (or Governing Council) are covered by the term. In the case of Trusts, all trustees would be covered.
674 Unlike religious conversion or communal disharmony, in this case, the person should actually have been convicted. Mere filing of a case or compliant will not disqualify the applicant.
675 The phrase ‘undesirable purposes’ is not defined legislatively. Considering the context, it would probably mean use for socially deplorable activities such as gambling, drinking, immoral activities, etc.
676 See note 639 for more on this.
677 See note 641 for the Supreme Court’s definition of sedition.
678 If there has been a violation in the past, which has been condoned, the person is eligible to apply for prior-permission only initially. Later, they can apply for FCRA registration also. See note 879 for more on this.
679 See note 643.
680 This appears to have been inspired by a similar provision in the RTI Act (Sec. 8(1)(a)), where prejudicial effect on ‘the security, strategic, scientific or economic interests of the State’ can be a ground for denial of information sought. See note 644 for more on this.
681 See note 646 for more on this.
682 Sec. 12(4)(b) & (c) of FCRA 2010
683 The current threshold is at least Rs.10 lakh (in total) over past three years. Income received from unconfirmed sources, such as sewing machine centres, local contribution, donations etc. is mostly ignored for this purpose. Usually only grants from donor agencies, government departments, etc. are considered.
684 Subsidiary Intelligence Bureau – the State level intelligence unit of the Intelligence Bureau
685 See note 654 for information on checking status of application.
686 Rule 9(3) of FCR Rules 2011
687 Rule 9(3) of FCR Rules 2011 is not drafted very clearly. It may also be read to mean that once you have applied for registration, you cannot make an application for prior-permission for six months.
688 Sec.16 of FCRA 2010; Rule 12 of FCR Rules 2011. The date on your registration letter should be taken as your date of registration.
689 See note 570.
690 Joint Secretary (Foreigners), MHA (SRRF-Plan Round Table, Gulmohur Hall, IHC, Delhi, 16-Jun-11).
691 The Department has always stated that the renewal is meant to weed out defunct NPOs. This is also reflected in a statement by the Joint Secretary (Foreigners), MHA at a workshop where it was suggested that NGOs who are not receiving and foreign contribution may not have their registration renewed. (SRRF-Plan Round Table, Gulmohur Hall, IHC, Delhi, 16-Jun-11).
692 Sec 16(3) and proviso. This will not mean that the registration is automatically renewed.
693 If the application for renewal is not filed in time, then the registration can lapse [Rule 12(6)].
NOTES

However, this also means that if the application is filed properly in time, and the delay is on part of the Government, then the registration will remain valid for the time being. This position is not affected by rule 10, which otherwise limits validity to five years only.

694 The letter of rejection may have been lost in transit, or returned to the sender due to problems with your address on FCRA records.

695 Rule 12(8) of FCR Rules 2011

696 ‘Q.61 Whether the registration certificate or prior permission granted under the repealed FCRA, 1976 shall remain valid when FCRA, 2010 has come into force?

Ans. Yes. An association granted prior permission or registration under the repealed FCRA, 1976 shall be deemed to have been registered or granted prior permission, as the case may be, under FCRA, 2010. Registration granted under FCRA, 1976 shall remain valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

697 ‘Q.64 When should an Association which has been granted registration under FCRA, 1976 apply for renewal of registration?

Ans. In terms of Rule 12 (2) of FCRR, 2011, an Association registered under FCRA should apply in Form FC-5 for renewal of its registration six months before the date of expiry of the certificate of registration. Since registration granted to Associations under the repealed FCRA, 1976 shall be valid up to 30th April, 2016, such Associations should apply for renewal of their registration on or before 1st November, 2015. An Association granted registration under FCRA, 2010, i.e., after 1st May, 2011, shall have to apply for renewal of registration six months before the date of expiry of the validity of its certificate of registration. Associations implementing an ongoing multi-year project should apply for renewal twelve months before the date of expiry of the certificate of registration.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

698 At the time of applying for FCRA registration

699 ‘Q.48 Whether intimation regarding the change of Members of the Executive Committee/Governing Council of the association is to be given to the Government?

Ans. Yes. If at any point of time, such change causes replacement of 50% or more of such Members of the Executive Committee/Governing Council of the association, intimation is to be given to MHA within thirty days of such change in accordance with the undertaking & declaration given by the association in its application for registration or prior permission, as the case may be. Further, as per the undertaking & declaration, the association should not accept any foreign contribution except with prior permission till the permission to replace the office bearer(s) has been granted by MHA.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

700 Such as President, Treasurer, etc.

701 A Governing Council consisting of 4 office bearers, and 6 plain members, will now have a cut-off limit of 5 persons. The NGO needs to approach FCRA only if at least five persons are dropped. Under the old provision, this limit would have been just 2 office bearers.

702 Enclose a copy of the bank’s letter informing you of the change.

703 This is allowed both for FCRA registered organisations, as well as organisations under prior-permission.
Q.47 What is the procedure for change of designated FC Bank Account?

Ans. For change of the bank account, an application in prescribed form mentioning the details of the old bank account and the proposed new bank account along with justification for change of designated bank, name/address of the society, copy of registration under FCRA, copy of fresh resolution of the executive committee (in English or Hindi) for change of designated bank account, certificate from the proposed bank (copy of Bank Pass Book is not acceptable) that the account is being opened exclusively for FCRA, may be submitted to MHA. This form is available on website http://mha.nic.in/fcra/forms/chng_bank_acnt.pdf

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Why would you want to change your bank account? There could be one or more reasons: Your office may have moved to another district. The bank may not be giving good service. Or the bank may be unfamiliar with foreign exchange transactions. Or you may want to use a savings account (instead of a current account) to earn some interest on idle funds.

In any case, the reasons should be ‘valid and convincing’ or the Ministry may refuse permission. Charter for Associations Who have been Granted Prior Permission or Registration under FCRA. http://www.mha.nic.in/fcra/intro/FCRA-Charter-II.pdf; last accessed 30-Sep-12

Make sure that the bank has a good reputation for service, is financially sound and has experience/network for handling foreign exchange transactions.

See note 705.

See Contacting FCRA on page 195 for postal address.

In case of suspension of FCRA, the returns should be filed as usual. If your registration has lapsed, you still need to continue filing these, till the time you use up all the foreign contribution.

If your FCRA has been cancelled, continue filing the returns till the foreign contribution is used up, or it is taken over by a Government Authority.

Rule 17(8) of FCRR 2011. The term ‘foreign contribution’ in this sub-rule covers articles as well as securities. However, FAQs on FCRA web-site do not mention FC-7 and FC-8 at all. It is therefore not clear whether forms FC-7 and FC-8 should be filed every year or not.

Q.50 For how many years an association which has been granted prior permission to receive foreign contribution should file the mandatory annual return?

Ans. ‘Prior permission’ is granted to an association to receive a specific amount of foreign contribution from a specific donor for a specific purpose. After receipt of approval from the Government, the association should submit the mandatory return in FC-6 form for receipt and utilisation of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilised. Even if no transaction takes place during a year, a NIL return should be submitted.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Even if no contribution has been received during the year

Sec. 18(1) read with rule 17. These call for FC-6 etc. to be filed by every person who has FCRA registration or prior-permission.

Rule 17(8), FCR Rules 2011

The FCRA Department encourages organisations to file the form online. You can do this, if it is feasible for you file it online. However, the FCR Rules 2011 (Rule 17) do not make it mandatory for you file the return online. You can therefore submit it simply by registered post.
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716 Form FC-6 contains additional details about locations of program activities. Further, rule 17(1) now calls for FCRA Income & Expenditure Account as well.

717 See Contacting FCRA on page 195 for postal address.

718 Rule 17(1), FCR Rules 2011

719 This form is similar to old Form FC-6. However, old FC-6 was neither certified nor filed. It was only a record maintained with the NGO. Information from this was extracted and taken to old FC-3.

Also see note 966 for more regarding the overlap between FC-6 and FC-7.

720 Some NGOs do not report material received and distributed by them under various ‘food-for-work’ type schemes. This is sometimes due to lack of clarity on part of the various agencies involved. Sometimes these are reported at the regional level - further distribution is reflected as having been done by the regional agency. However, in reality the distribution is done by village or block level NGOs.

If you are distributing food/ material received in your custody, then report these to FCRA. The primary responsibility of fulfilling FCRA formalities will always remain with the receiver. You cannot avoid this liability by entering into an agreement with the Donor Agency.

721 This is slightly tricky. So let's look at an example:

- The Donor gives you ₹300,000 as a grant. Out of this you buy a motor-cycle. This cost you ₹40,000. Will you enter this in FC-7? No. You will enter it in your FCRA cash book / bank book.

- Now suppose the Donor gives you only ₹260,000 as grant. In addition, they purchase a motor-cycle for you and send it to you. Will you enter this in FC-7? Yes. Will you also enter it in your FCRA cash book? No.

722 See Stock Register on page 127 for more on this.

723 What happens if you receive a lot of assorted material? For example, these may be used toys, shoes, shirts, etc. The answer depends on how you are going to actually distribute the material. If you are going to sort these before distribution, then open one sheet for each category. If not, then you can open an account for ‘assorted clothes’.

724 Sec. 2(1)(h)(i) of FCRA 2010. The cut-off limit is ₹25,000.

725 Records should be either maintained manually or using a secure software. Maintaining a stock register in Excel or Word is not a good practice, as figures can be altered easily without any trace. Therefore, keep the register manually, and punch the data in Excel or Word only for filing a copy with FCRA Department.

726 Required under point V of CA certificate in form FC-7

727 NPOs exempt from income tax under section 12A are not allowed to hold certain kinds of shares and investments. If they receive such shares as a gift, then these must be sold-off.

728 This form is similar to old Form FC-7. However, old FC-7 was neither certified nor filed. It was only a record maintained with the NGO. Information from this was extracted and taken to old FC-3.

729 There is no clarity on how this should be reported. Adding this in the columns for ‘in Kind’ could be one solution.

730 This is slightly tricky. So let's look at an example:

- The Donor gives you Rs.300,000 as a grant. Out of this you buy some permitted investments. These cost you Rs.100,000. Will you enter this in FC-8? No. You will enter it in your FCRA cash book / bank book. You will then also record it in a separate register for investments (Rule 4 of FCR Rules 2011). See Investment Register on page 125 for more on this.

- Now suppose the Donor gives you only Rs.200,000 as grant. In addition, they transfer some
investments to you. Will you enter these in FC-8? Yes. Will you also enter these in your FCRA cash book? No.

731 See Investment Register on page 125 for more on this.

732 Is form FC-8 the investment register required under rule 4 or is it the securities register mentioned under rule 17(4)? The title refers to rule 17(4). However, the CA certificate asks the auditor to confirm how much investment was made by the NPO during the year (rule 4). It does not ask for the figure of investments received during the year as foreign contribution. This may be due to a drafting error.

733 Records should be either maintained manually or using a secure software. Maintaining an investment register in Excel or Word is not a good practice, as figures can be altered easily without any trace. Therefore, keep the register manually, and punch the data in Excel or Word only for filing a copy with FCRA Department.

734 See Contacting FCRA on page 195 for postal address.

735 Required under point V of CA certificate in form FC-8

736 Rule 9 of FCR Rules, 2011. See Bank Details on page 158 and page 163 for more on this.

‘Q.29 Whether an association should open an exclusive FC A/c before submission of an application for registration or prior permission?

Ans. Yes. Since the FC A/c through which foreign contribution is proposed to be received and utilised is to be mentioned in the application seeking registration or prior permission, as the case may be, the association should open such an exclusive FC A/c with a Bank. This A/c number would be mentioned in the letter granting registration or prior permission to the association.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

737 See Change of Designated FCRA Bank Account on page 113 for more on this.

738 In a case where the foreign contribution was deposited into a non-FCRA bank account, the FCRA registration was cancelled. The cancellation was upheld by the Supreme Court (CBI v CROSS, 2001). In another case, the Government was asked to issue a proper notice before cancelling the FCRA registration for a similar offence (Reach in the Nilgiris Vs. Govt. of India, 2011).

739 Rules 9(I)(e) and 9(2)(e) of FCR Rules 2011. FCRA rules are not very clear about dealing with such recoveries.

740 Earlier, FCRA Department used to give specific permission for each secondary bank account, if an NGO applied for approval. However, as this was not provided in the rules, many people were not aware of this facility. This process has now been greatly simplified.

741 Source: Advisory to NGOs on Foreign Funding, issued by Director (FC), Ministry of Home Affairs; http://www.mha.nic.in/fcra/intro/FCRA-Advisory-030912.pdf. Last accessed: 25-Sep-12

742 If you have income from sale of products, or fees etc. then separate set of accounts are required under sec. 11(4A) of Income Tax Act.

743 This is highly recommended if your accounts are computerized or you have multiple formal cash books.

744 This system is satisfactory where the donor has only asked for ‘separate accounts’ or ‘separate set of accounts’. However, if a donor insists on ‘a separate set of books’ or ‘a separate cash book and ledger’, then you will need to maintain a separate cash book for that donor.

745 If you are using Tally, you can define a separate cash in hand for each type of cash book (FCRA, Indian, IGP). You can also group your ledger accounts for each donor’s project separately.
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Alternatively, you can create a separate ‘company’ for each stream of funds (FCRA, Indian, IGP). In more recent versions of Tally, you can use the consolidation feature to get an overview of all the companies. This is less efficient, but equally effective.

746 Rule 11 of FCR Rules 2011 now calls for records to be kept exclusively for foreign contribution. Therefore, it would be advisable to keep all records separately for FC and non-FC funds.

747 Should this person be paid with two separate cheques / transfers from FCRA and non-FCRA bank accounts? This would be advisable. If the person is paid with a single cheque / transfer from FCRA, you would have to pass a journal entry to account for the other part in non-FCRA books. This can also be viewed as mixing of FCRA with non FCRA funds. See also note 595.

748 See Speculative Activities on page 80 for more on this.
749 See Securities Register: FC-8 on page 118 for more on this.
750 Information, Education and Communication material - such as posters, booklets, books, etc.
751 See Column 14: Activity Locations on page 175.
752 Rule 11 of FCR Rules, 2011.

753 Due to a possible drafting error, rule 17(7) covers only the records ‘referred to above in the preceding sub-rule’. This would imply that only the return in form FC-6, its annexures and the FCRA bank statement need to be preserved for six years.

754 This means that records for FY 2011-12 should be kept till 31-Mar-2018. The same time limit applies under Income Tax Act also.
756 Rule 13 just calls for display of ‘summary data on receipts and utilization of foreign contribution’.
757 This is not required under FCR Rules, 2011.

758 Any information or publication that is not subject to copyright is treated as public domain. (Aiyar, 2010, p. 5502) (Black, 1999, p. 1243)

759 If you publish this on a web-site, ensure that there are no access restrictions on viewing the information. For instance, the web-site should not call for creation of a login, password, user profile, etc. Further, the material should not be copyrighted or placed on a page which is subject to copyright notice.

760 This bank account can be changed only with prior FCRA approval.

761 Cultural, Religious, Economic, Educational or Social, under which they have registered under FCRA

762 ‘Any fixed asset acquired out of the foreign contribution and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.’ Charter for Associations Who have been Granted Prior Permission or Registration under FCRA. http://www.mha.nic.in/fcra/intro/FCRA-Charter-II.pdf; last accessed 30-Sep-12

Q.18 Can capital assets purchased with the help of foreign contributions be acquired in the name of the office bearers of the association?

Ans. No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since an association has a separate legal entity distinct from its members.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignDFCRA-FAQs.pdf; Last accessed 30-Sep-12

763 This restriction applies on the entire organization and not just on use of foreign funds.
764 Non-FCRA funds should not be included.
765 At the time of applying for prior-permission or registration. This could have been in old forms FC-
8 or FC-1A. If you applied after 1-May-11, this would have been in new forms FC-3 or FC-4.

766 Granted from 1st May 2011 onwards

767 Q.31 Whether Banks should credit any foreign contribution received by an association to its account even if the association does not have registration/prior permission from MHA and subsequent reporting can be made by Banks to MHA?

Ans. Rule 16 (1) of FCRR, 2011 states that every bank shall send a report to the Central Govt. within 30 days of receipt of foreign contribution by any person who is required to obtain a certificate a registration or prior permission under the Act, but who was not granted such certificate or prior permission on the date of receipt of such remittance. Further, Rule 16(3) prescribes that the banks shall send a report to the Central Govt. within 30 days from the date of such last transaction in respect of receipt of any foreign contribution in excess of Rs.1 Crore or equivalent thereto in a single transaction or in transactions within a duration of 30 days, by any person whether registered or not under the Act.

In view of the above, it follows that bank may credit any foreign contribution received by an Association without registration or prior permission. However, while the banks can prevent such a situation in cases where a cheque is presented by the recipient of foreign contribution for deposit in its savings/current account, it may not always be possible when the foreign remittance is through wire transfer. Therefore, in all such cases, besides sending a report to MHA as per Rule, the bank should not allow any withdrawal or transfer or utilisation of the FC amount till such time the Association produces documentary evidence from MHA permitting it to do so.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

768 Q.30 Whether Banks should allow an association which is applying for registration or prior permission under FCRA, 2010 to open an exclusive FC A/c with INR?

Ans. Yes. However, the Banks should not allow any foreign inward remittance in that A/c till such time the association is granted registration or prior permission, as the case may be.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12


770 Individual with a CREES program.

771 In practice, some Registrars frown on appointment of foreigners on Board of Indian NPOs.

772 What could be the reason for this? This appears to be related to question of jurisdiction. India has no jurisdiction over foreigners. It will be very difficult to get extradition orders if a foreigner violates FCRA and goes back home!

773 Q.43 Whether foreigners can be appointed as Executive Committee members of an association seeking registration or prior permission?

Ans. Organisations having foreign nationals, other than of Indian origin, as members of their executive committees or governing bodies are generally not permitted to receive foreign contribution. Foreigners may, however, be allowed to be associated with such associations in an ex-officio capacity, representing multilateral bodies, foreign contribution from whom is exempted from the purview of the Foreign Contribution (Regulation) Act, 2010, or in a purely honorary capacity depending upon the person’s stature in his/her field of activity. Subject to relaxation given on a case to case basis, foreign nationals fulfilling the following conditions may be appointed as Executive Committee members, after obtaining prior approval of the Central Government: (i) the foreigner is married to an Indian citizen; (ii) the
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foreigner has been living and working in India for at least five years; (iii) the foreigner has made available his/her specialized knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past; (iv) the foreigner is part of the Board of Trustees/Executive Committee in terms of the provisions in an inter-governmental agreement; (v) the foreigner is part of the Board of Trustee/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source. The need for such an appointment should, however, be adequately justified.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

774 The Advisory Board should not have any executive powers.
775 CEO and Chief Functionary are not synonymous.
776 This is not specifically prohibited (See note 773, which talks about the Board only). However, the Chief Functionary is specifically listed in forms FC-3, FC-4, etc. as a key person whose antecedents have to be reviewed. Therefore, a foreigner should not be designated as Chief Functionary.
777 In old form FC-8 or the new form FC-3
778 The Board that was named in the application for FCRA registration
779 This could occur during one election, or gradually over a period of time.
780 Introduced 27-Dec-1996
781 Introduced 1-May-2011
782 Introduced 1-May-2011
783 Section 2(1)(a) of FCRA 2010
784 Section II of FCRA 2010
785 Sec. 11 read with sec. 2(1)(m)(i) of FCRA 2010
786 Some FCRA-holders appoint the Chief Functionary of the unregistered organization on their Board or staff. They pass on the money as advance for program implementation. Unregistered organization here means an organization without FCRA registration / permission.
787 Sometimes an unhappy employee writes a letter to the Department. In other cases, neighbouring organizations might do it.
788 Sec. 2(1)(h) of FCRA 2010
789 This restriction would not apply if you were giving the advance for a consultancy contract or towards fees.
790 See Advances on page 139.
791 Those without detailing and supports
792 ‘Q.60 What is the status of the applications submitted under the repealed FCRA, 1976 but have not been disposed of?
Ans. In terms of Rule 9(5) of FCRR, 2011, every application made for registration or prior permission under FCRA, 1976 but not disposed of before the date of commencement of these rules, i.e., 01.05.2011, shall be deemed to be an application for registration or prior permission, as the case may be, under FCRR, 2011 subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

793 ‘Q.14 Can foreign contribution be received in rupees?
Ans. Yes. Any amount received from ‘foreign source’ in rupees or foreign currency is construed as ‘foreign contribution’ under law. Such transactions even in rupees term are considered foreign contribution.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-foreignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Explanation 3 to section 2(1)(h) of FCRA 2010. Foreign agencies with liaison office permission only under FEMA should exercise caution in use of consultancy contracts. Taking up such work may not be allowed under RBI rules.

Q.15 Will interest or any other income earned from foreign contribution be considered foreign contribution?
Ans. Yes.

Q.16 Whether interest or any other income earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?
Ans. Yes. The interest or any other income earned out of such deposit should be shown as second / subsequent foreign contribution receipt in the annual return during the year in which it is earned.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-foreignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

NGOs raising funds on the internet should request the donors to share their name and address to avoid being taxed under sec. 115BBC.

Income Tax Department levies a tax of 30% on anonymous donations, if these are more than 5% of total donations or 1,00,000 (whichever is higher). Sec. 115BBC of the Income Tax Act, 1961

This will apply to other foreign sources as well.

Explanation 3 to sec. 2(1)(h) of FCRA 2010

Government sub-divides them into NRIs, PIOs and OCI. See Individuals on page 47 for more on this.

Are these events exempted under explanation 3 to section 2(1)(h) of FCRA 2010? It is very unlikely. The explanation is meant for people who are regularly organizing such shows, and charge normal prices. For example, admission fee collected by museums, theatres, etc. would be exempt. However, a charity show organized by an NGO for raising funds is not part of its normal business activity. Therefore, the exemption would probably not be available.

The definitions of business receipts under section 2(1)(h) of FCRA 2010 and under sec. 2(15) of Income Tax Act, 1961 are different. Therefore, charity events where the plates, seats, etc. are overpriced get the worst of both the Acts.

The limit of 25 lakh applies only to NGOs which are working on objects on general public utility. It does not apply to NGOs providing only relief to the poor, structured education, medical relief, or protecting the environment, heritage or culture. Sec. 2(15) of Income Tax Act, 1961. See AccountAble 141: Charitable Purpose and Income Tax for more on this (www.AccountAid.net).

Remember that the charity event or art sale should be connected (incidental) to the NGO’s objectives. This may be on account of the theme of the event. Secondly, a separate set of books should be kept. Thirdly, a Profit & Loss Account should be prepared for this. (sec. 11(4A) of Income Tax Act, 1961).

In some cases, entertainment tax may be levied, unless exemption is taken in advance.

See note 804 for more on this.

See note 804 for more on this.
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807 Explanation 3 to sec. 2(l)(h) of FCRA 2010
808 Would gross receipts be treated as business income, or only the share of proceeds? This depends on who prime-moves the venture. If the NGO is projected as the primary organizer of the event, the gross sale value may be treated as business income in the hands of the NGO.
809 See note 804 for more on this.
810 Section 17 of FCRA 2010. You can open multiple secondary accounts. See Opening a Secondary Bank Account on page 101 for more on this.
811 Explanation 3 to sec. 2(l)(h) of FCRA 2010
812 See note 804 for more on this.
813 Discussed under Commercial Receipts on page 38.
814 Q.19 Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?
   Ans. No. The association should utilize such funds for the welfare purpose or activities for which it is received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilized for self-sustaining activities, not meant for commercial purposes.'
   Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12
815 Q.15 Will interest or any other income earned from foreign contribution be considered foreign contribution?
   Ans. Yes.’
   Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12
816 Foreigners staying beyond a few days are often required to register with the FRRO / a local police station.
817 Foreign contribution in kind
818 Explanation 1 to sec. 2(l)(h) of FCRA 2010
819 Sec. 8(1)(a) of FCRA 2010
820 This applies to specific project funds. It does not apply to general purpose donations.
821 Sec. 8(1)(a) of FCRA 2010
822 ‘Do not deviate from the purpose of the grant.’ Source: Advisory to NGOs on Foreign Funding, issued by Director (FC), Ministry of Home Affairs; http://www.mha.nic.in/fcra/intro/FCRA-Advisory-030912.pdf. Last accessed: 25-Sep-12
823 Strictly speaking, where funds are received under prior-permission, FCRA approval is also needed for re-purposing the funds.
824 Please see AccountAble 67: Corpus (www.AccountAid.net) for more on this.
825 See Speculative Activities on page 80 for more on this.
826 Sec. 51 of FCRA 2010
827 Also check your categorization under FCRA (cultural, religious, economic, etc).
828 FC-6 is based on Receipts & Payments Account - not on Income & Expenditure Account, where depreciation appears.
829 Sec. 2(l)(h)(i) of FCRA 2010; Rule 6AA of FCRR 2011
830 Also see note 110.
This does not apply to micro-credit programs run by NBFCs.

Create a Micro-Credit Fund Account on the liabilities side of the Balance Sheet for the total loan fund.

If these are outstanding and recoverable at the end of the year

Either in the main FCRA designated account or a secondary FCRA bank account

Many cooperatives are not covered under FCRA, as they are only taking up commercial activities. However, some cooperative doing social work are covered under FCRA. See Cooperative Societies on page 75 for more on this. Also refer to Producer Companies on page 76.

Explanation 1 to sec. 2(l)(h) of FCRA 2010

This does not mean that you have changed your bank account. Using the form will help FCRA Department process your application quickly, normally within 30 days.

‘Q.22 Can foreign contribution be mixed with local receipts?
Ans. No. Foreign contribution cannot be deposited or utilised from the bank account being used for domestic funds.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

What is the reason for keeping the two funds separate? The primary reason is to make it easy to monitor transactions with FC funds. It would also be operationally helpful if the Government wanted to freeze the bank account or seize the foreign contribution.

Second proviso to section 17(1) of FCRA 2010

Some people believe that you should get FCRA permission for this.

Charter for Associations Who have been Granted Prior Permission or Registration under FCRA.
http://www.mha.nic.in/fcra/intro/FCRA-Charter-II.pdf; last accessed 30-Sep-12

Please refer to AuditAble 12: Taxing NGO Programs Outside India, available at www.AccountAid.net for more on this.

See note 762.

Rule 11 of FCRR 2011

This is valid only if the Indian branch or office of the foreign donor has FCRA registration in India. Also, you should have received funds through their FCRA bank account. If they are not registered under FCRA, (or transmit funds directly from home country) then their grants should be reported as first receipt.

There is no provision in FCRA 2010 or FCRR 2011 for this. However, in practice, the FCRA Department normally accepts the revised return.

A cereal food made from white wheat


See AuditAble 12: Taxing NGO Programs Outside India for more on this. Available at www.AccountAid.net

You need to comply with RBI regulations. See regulations 2, 7 and 8 of Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulation, 2000. Also see AP (DIR Series) Circular No. 18, dated 4-Dec-2006.

See Secondary Bank Accounts on page 121 for more on this.

Foreign Exchange Management Act, 1999. RBI maintains an informative web-site (www.rbi.org.in)
Q.9: What is the type of visa granted to foreigners wishing to work with NGOs registered in India?

Ans.: A foreigner who wishes to come to India for honorary work (without salary) with NGOs registered in India may be granted Employment Visa with special endorsement on his/her E Visa “TO WORK WITH NGO— (Name of the NGO and place of work) subject to usual checks and formalities on the following conditions:

(i) The foreigner must submit proof of his/her employment with the NGO registered in India.

(ii) The foreigner may be granted a multi-entry employment visa for one year initially. The visa may be extended by the State Governments / UTs / FRROs / FROs beyond the initial visa validity period up to a total period of 5 years from the date of issue of the initial Employment Visa, on an year to year basis, subject to good conduct, production of necessary documents in support of continued employment and no adverse security inputs about the foreigner. The period of extension shall not exceed five years from the date of issue of the initial Employment visa.

(iii) All registration formalities as per rules, after his/her arrival in India, shall be strictly complied with and the registration must be done with the FRRO/FRO within 14 days from the date of his/her arrival.

He/she can work as a salaried employee also. However, they should have an Employment visa (‘E’ visa). There is now a floor limit of US$25,000 per annum as salary for employing a foreigner.

Source: http://mha.nic.in/pdfs/work_visa_faq.pdf
Permanent Account Number. If you do not have one, you can apply and get it. It usually takes about a week. Check with your auditors - they will be able to guide you on this.

Items 1(v) and 3 of paper FC-3. Item 3 of online form appears on screen IV and is automatically filled with the information you provide here in screen II.

For more on this, please see notes 637 and 638, as well as the related discussion under *Grounds for Denial* on page 106. People who are only members of the General Body need not be listed here.

This applies both to official duties as well as to private conduct. It might be argued that no specific order has been passed prohibiting him/her from accepting foreign contribution, as implied by the language of the form FC-3. However, considering the general scheme of the Act, and past practice of the FCRA Department, Yes would be the right answer.

Actually, the prohibition applies to the individual as a person, and not to the organization. However, in practice, the organization itself may be denied registration.

Hiding a relationship will be treated as giving of false information and can lead to prosecution under section 33, and imprisonment up to six months. Keep in mind that the IB undertakes a field inquiry. It establishes such relationships easily.

Choosing the relationship can be tricky if several members are related to each other as the form offers only a linear choice for each person. In such a case, you can add the information by hand in the printed application.

Item 7(iv) of the paper FC-3

The present version of form FC-4 appears to have a number of printing mistakes. Item 5(c) of paper form refers to the non-existent clause (a) of section II(3). Item 5(e) of paper form is numbered as item 5(d). The online form merges questions related to sections 10 and II(3) into one.

Applies only if you received foreign contribution in violation of the Act. The Government would then issue an order under section 10 of FCRA 2010. Details of the order should be mentioned here.

Sec. II(3) allows the Government to notify four kinds of cases for prior-permission:

i. People (individuals, organisations, entities)
ii. Geographical areas
iii. Purpose of utilisation
iv. Source of foreign contribution

In such cases, anyone who falls into one of these four categories needs to obtain prior-permission. This also applies to people who are registered under FCRA. For instance, an organization registered under FCRA may need to apply for prior-permission if the proposed source of foreign contribution is notified under section II(3).

The notified form gives this as ‘sub-section 3 of section II clause (a)’, which appears to be an incorrect reference. The online form gives this as ‘sub-section 3 of section II’, which makes more sense.

Sec. 9(d) allows the Government to expand the scope of FCRA by adding more persons to the prior-permission category.

The notified form FC-4 gives this as ‘clause (a) of section 9(a)’ which appears to be an erroneous reference. The online form uses the phrase ‘clause (b) of section 9’, which makes more sense.

Sections 5(1), 10(a), 10(b), or 12 of FCRA 1976. Also organizations which had their FCRA registration suspended due to non-filing of FC-3.

Or FC-3 under FCRA 1976
Q.59 Can an organization, whose violation under FCRA, 1976 has been condoned, apply for registration/prior permission?

Ans. After the violation committed by an association has been condoned, the association can apply for prior permission (PP) only by submitting an application in form FC-4 http://mha.nic.in/fcra/forms/fc-4.pdf. Once the PP has been granted and foreign contribution received for specific purpose has been fully/partially utilized and organisation has submitted annual FC-6 http://mha.nic.in/fcra/forms/fc-6.pdf returns and accounts in prescribed format pertaining to the PP, it becomes eligible for consideration of registration under FCRA. Registration would be granted under FCRA, if other parameters are fulfilled by the association.

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Considering the powers available to the Government under FCRA 1976, it appears to have been enforced with a fair degree of restraint and maturity, especially in cases where there has been no substantive violation. This is somewhat similar to the ‘strategic restraint’ that has been emphasized as a characteristic of India’s armed forces! (Cohen & Dasgupta, 2010)

In some cases, this disclosure by the recipient NGO can lead to unexpected consequences for the donor agency or the NGO which passed on the money in the first place.

Also see note 227.

See Print Media on page 58 for more on this.

Remember that it is mandatory to register any periodical under PRBA if it contains ‘public news or comment on public news’. Therefore, NGOs getting foreign contribution should avoid including this kind of material in their newsletters.

PRBA registration is sometimes sought only for availing concessional postal rates.

S.O.230(E), Gazette of India-Extraordinary, Part II dated 10-Mar-2000

What does section 1 (I) of PRBA say? According to this, ‘a “newspaper” means any printed periodical work containing public news or comments on public news’. Such a ‘newspaper’ must be registered under chapter VA of the PRBA.

However, if your newsletter or periodical does not contain public news or comment on public news, then it is not necessary for you to register under PRBA.

In such case, even if you have registered, the Registrar would be able to issue you this kind of a certificate (‘the printed work is not a newspaper ....’).

Please refer to Electronic Media on page 59 for more regarding this.

See Internet or FM? on page 157.

You need to make sure that the information given under this is accurate. Any mistakes can easily be identified by the Ministry by checking their database.

Only 200 characters are allowed.

Where should you open the bank account? Choose only a scheduled bank. If possible, pick a branch which handles foreign exchange and remittances regularly. Choosing a rural cooperative bank might mean delays in credits etc.

Also, before opening the account, check whether your bank is listed in the drop-down list in form FC-4/ FC-3.

Curiously, the FCRA Act or rules do not actually say that ‘you can receive funds only through a scheduled bank’. However, this can be inferred from the heading of sec.17 ‘Foreign contribution through
scheduled bank.

892 If you can’t find your bank’s name at first, look carefully. Some banks are listed twice—for example, State Bank of Bikaner & Jaipur appears as SBBJ also. State Bank of Mysore shows up as SBM Bhath Nagar as well. Many banks show up with ‘The’ appended in front of their name.

893 To put a person’s name on a blacklist without lawful cause might be actionable, and the further publication of such a list can be restrained by injunction. (Aiyar, 2010, p. 790)

894 These function as extensions of their respective Ministries.

895 See notes 936 and 937.

896 This is not generated by the present online form FC-3. It should be prepared separately and enclosed while sending the form by post. See Add: Declaration and Undertaking on page 159 for more on this.

897 See note 570.

898 Charter for Associations Applying for Grant of Prior Permission/Registration under The Foreign Contribution (Regulation) Act, 2010; http://www.mha.nic.in/fcra/intro/FCRA-Charter-I.pdf; Last accessed 30-Sep-12,

Also see FAQ 41: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

899 See Contacting FCRA on page 195 for postal address.

900 Rule 9(1)(c) of FCR Rules 2011

901 Q.40 If an application for registration or prior permission is submitted online by an association, does it need to submit that application in physical form also?

Ans. Yes. When an application is filed online, a printout of the same is to be taken after submission and thereafter, it should be submitted, duly signed by the Chief Functionary of the Association, along with the requisite documents to the Ministry of Home Affairs. The prescribed forms for submission of application for grant of Registration and Prior Permission are FC-3 and FC-4 respectively. The forms are available at MHA website http://mha.nic.in/fcra/forms/fc-3.pdf and http://mha.nic.in/fcra/forms/fc-4.pdf respectively.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

902 Sec. 12(2) of FCRA 2010. In the past, the FCRA Department used to write back to the applicant, asking them to complete the shortcomings. It is not known whether this would continue.

903 If some of the fields are not visible, try changing or upgrading your browser. Most Government websites are designed for and work well with Internet Explorer.

904 http://mha.nic.in/fcraweb/fc_online.htm

905 See note 859.

906 Fields in FC-4 are either white or yellow, with an arrow on the right side. The white fields can be filled in as you like. Special requirements are mentioned alongside.

The yellow fields are drop-boxes. Clicking on the arrow opens a list of choices. You must choose one of these only. In some cases, it might happen that the list does not show the item you want. For instance, if a new district has been created recently, it may not show up on the list. In such a case, choose the old district name or the closest choice. You can later add an explanation in the covering letter.

907 Do not click the button marked ‘Final Submit to the Ministry’ till you are ready with all the required documents.
908 Under The Registration Act, 1908
909 Permanent Account Number. If you do not have one, you will have to apply and get it. It usually takes about a week. Check with your auditors - they will be able to guide you on this.
910 For more on this, please see notes 637 and 638, as well as the related discussion under *Grounds for Denial* on page 106. People who are only members of the General Body need not be listed here.
911 Listed as question 3 in the paper form. Asks for information about past conviction, prosecution etc.
912 See note 869.
913 See note 870.
914 See note 871.
915 You need to make sure that the information given under this is accurate. Any mistakes can easily be identified by the Ministry by checking their database.
916 Or FC-3 under FCRA 1976
917 See note 880.
918 Apparently, disclosure is not required for unregistered newsletters, journals etc. See note 227.
919 FCRA 1976 asked you to ‘indicate’. FCRA 2010 asks you to ‘affirm’. An *affirmation* is a solemn declaration, and much stronger than *indication*, which is relatively vague (Aiyar, 2010, p. 234).
920 Remember that it is mandatory to register any periodical under PRBA if it contains ‘public news or comment on public news’. Therefore, NGOs getting foreign contribution should avoid including this kind of material in their newsletters.
921 This registration is sometimes sought to avail concessional postal rates.
922 S.O.230(E), Gazette of India-Extraordinary, Part II dated 10-Mar-2000
923 See note 886.
924 Please refer to *Electronic Media* on page 59 for more regarding this.
925 See note 893.
926 These function as extensions of their respective Ministries.
927 See note 891.
928 If you are getting material or securities as contribution, then give estimated value. This could be in Indian currency or donor’s home currency.
929 There are about 182 *de facto* currencies in the world. Out of these, III are listed in the drop-down box.
930 However, the total remittances should not exceed the total value given in the MHA approval.
931 Same as the FC-6
932 As this data can later be correlated with your actual spending in form FC-6, make sure you choose the states correctly.
933 This will help the Department understand how the money is going to be spent. The breakup should not be very brief or laconic, and should be reasonably detailed. In some cases, this breakup is not included in the final donor approval, but is prepared as a backup sheet. Include this, if available.
934 Meaning someone who already has FCRA registration in India. This could be a donor agency or another NGO.
935 For instance, you might be dealing with the Indian office of the donor agency. In such case, give the address of the Indian office, as well as the Head Office.
936 In one reported case, the concerned NGO had to approach the High Court to force the District Collector to pass an order. (Anewshi Women’s Counselling Centre vs. District Collector, 2009)

937 ‘Q.39 Is recommendation of District Collector or Deputy Commissioner or District Magistrate mandatory for submission of an application for registration or prior permission?

Ans. No. Submission of verification certificate from the District Collector or Deputy Commissioner or District Magistrate is not mandatory. However, in certain cases, if the amount of foreign contribution for which prior permission is being sought is less than Rs.50 lakh, submission of such a certificate assists in speedy clearance of the application.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

938 Demand draft or banker’s cheque favouring ‘Pay and Accounts Officer, Ministry of Home Affairs’, payable at New Delhi. Organisation’s own cheque is not accepted.

939 Charter for Associations Applying for Grant of Prior Permission/Registration under The Foreign Contribution (Regulation) Act, 2010; http://www.mha.nic.in/fcra/intro/FCRA-Charter-I.pdf; Last accessed 30-Sep-12

Also see FAQ 41: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeigD-ForeigD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

940 See Contacting FCRA on page 195 for postal address.

941 See note 901.

942 Rule 9(1)(c) of FCR Rules 2011

943 Sec. 12(2) of FCRA 2010. In the past, the FCRA Department would write back to the applicant, asking them to complete the shortcomings. It is not known whether this would continue.

944 You do not have to wait for the money to finish before applying for prior permission for project A for second year’s grant. You can apply for the second year’s permission any time after 31-Dec-11.

945 Rule 9(3) of FCR Rules 2011 is not drafted very clearly. It may also be read to mean that once you have applied for prior-permission, you cannot make an application for registration for six months.

946 It is not clear whether the Department is seeking FCRA registration information here or basic registration information.

947 For how many years should this information be given? For instance, if an association first registered in 1980s or 1990s, would it need to give 20-30 years’ information? It is not clear. Probably, information for last five-six years should be sufficient.

948 What if you have not received any foreign contribution in the last 4-5 years? In such a case, your renewal might be declined.

949 In most cases, you should give the address of your registered office in FC-3. This should be done even if the registered office is merely an address of convenience and the main office is elsewhere in the city/state.

However, in some cases, the FCRA bank account is transferred to another state. For example, your registered office may be in Delhi and your FCRA account may have been shifted to Orissa. In such a case, give the new address, provided at the time of change. See Change of Designated FCRA Bank Account on page 113 for more on this.

Similarly, if you have shifted your office within the city or state, you would have sent a letter to FCRA department regarding the new address. When filling up FC-3, use this new address only. See Change in Name / Address of the Organisation on page 102 for more on this.
In some cases, an NGO's FCRA registration may be suspended or cancelled. Such NGOs cannot accept any more funds without prior permission. However, in many cases, they are allowed to use up the existing FC balance with them. Such NGO should also file FC-6 etc. till the time any balance of FC contribution remains with them.

This might also be required, if you are registered under FCRA, but placed under prior-permission temporarily. This could happen while change of office bearers is being approved. Or it could happen due to a notification of compulsory prior-permission for your area, program or source (sec.II(3) of FCRA 2010).

If you don’t have a copy of the application, go to FCRA web-site (http://www.mha.nic.in/fcra/intro/fcmenu.html) and check your categorization from the FCRA list of registered association or prior-permissions.

What if the nature of your work has changed since then? You need to write to the FCRA Department regarding this. See Change in Nature on page 103 for more on this.

Under this head, all interest earned through the FCRA Balance Sheet should be shown. This interest income should be taken into FCRA Receipts and Payments Account. Interest earned on endowments, corpus, micro-credit loans, fixed deposits, savings bank account, etc. can also be shown here.

Remember, that this is merely a summary of the interest earned. The receipt and utilization of interest should also be shown in Utilisation Table and again in Donor-wise Table.

You need to consider all investments made with FCRA funds. This figure would match the interest received as given in the FCRA Receipts & Payments Account.

Physical items or material

Any items of receipt or expenditure, which do not fit any of the specific items, should be given here. You may have to attach an annexure giving summary listing of the items of expenditure. Expenditure out of FCRA interest, small donations, etc. can be shown here.

Please also refer to the discussion under FCRA Categories on page 68 for more on this.

FC-3 till the year 2010-11

This typically means that the donor does not have FCRA registration in India. If the donor is registered under FCRA, then the receipt should be classified as ‘second or subsequent receipt.’ See note 960 for more on this.

How do you find this out? You can go the FCRA web-site and check the database (http://www.mha.nic.in/fcra/intro/fcmenu.html). If your source is listed there, the receipt should be classified as second receipt. A number of foreign agencies are now registered under FCRA in India. Receipts from these should be reported as second or subsequent receipt.

Q.16 Whether interest or any other income earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?

Ans. Yes. The interest or any other income earned out of such deposit should be shown as second / subsequent foreign contribution receipt in the annual return during the year in which it is earned.’

Source: Frequently Asked Questions (FAQs) on FCRA; http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf; Last accessed 30-Sep-12

Such donations are often not earmarked by the donor for any particular activity. These should be shown under ‘miscellaneous’ category (item ‘56: Other Activities’).

Please see Currency on page 41 for more on this.

See note 96I.
Interest that has not been allocated to a particular grant making agency.

Under the old rules, receipts in cash, kind and securities, were all to be reported in FC-3 [Rule 8(2)]. Under the new rules, FC-6 should include only contribution in the FCRA bank account [Rule 17(2)]. Receipts in kind or as shares are to be reported in form FC-7 and FC-8 [Rule 17(3), (4)].

However, Form FC-6 has retained the columns for cash and kind. This creates some confusion - should contribution in kind be reported twice, in FC-6 as well as FC-7? Also how should receipt of shares be reported in FC-6? Probably, the Department will issue a clarification or realign the forms with the rules.

Receipts in kind’ are different from assets purchased by your organisation out of foreign funds. These are items (goods, materials, etc.) donated or given at a nominal price by a foreign source. Please see Articles on page 40 for more on this.

How should these be valued? The valuation does not have to be very accurate. You can give estimated values, which are reasonably fair. You can also talk to the donor and find out approximate landed price in India. Or you can find out the value from insurance documents. In some cases, you may have received a proforma invoice also. This can be used as a basis for the valuation.

Rule 17(8) of FCRA 2010. This may be lead to non-renewal of FCRA registration. See note 691 for more on this.

You also have to file form FC-7 for these.

Rule 17(2) of FCR Rules 2011

Rule 24(3) of FCR Rules 2011. The FCR Rules are silent on how these transfers should be classified, but merely lay down that these should be reported. In our view, as the funds become the responsibility of recipient NGOs, it would be best for them to report how these have been used.

Some banks now offer zero-balance accounts also.

‘Places with addresses of specific activities’: Location address is required for each activity.

This may not be difficult for smaller NGOs. However for large NGOs with programs across several states, this can be quite challenging. This might also create difficulties where NGOs are not breaking down the utilisation, and reporting everything under one head, such as ‘rural development’.

Form FC-6 contains a declaration by the Chief Functionary that all the particulars are correct and no fact has been concealed. Therefore, if wrong information is given in form FC-6 knowingly, the Chief Functionary can be fined (or imprisoned!) under section 33, read with sec. 18 and rule 17.

You are now allowed to open additional accounts for utilizing the FCRA funds. See Opening a Secondary Bank Account on page 101 for more on this. Details of these bank accounts are not required here.

This can be cross-checked with grant letter or project proposal. Also correlate this with the classification used in Utilisation Table (Heading 3).

These installments would normally match the credits appearing in your designated FCRA bank statement. It is better to cross-check this before finalizing FC-6. Wherever possible, avoid accepting donations / grants in cash, especially if these are large.

See note 979.

See note 978. If the donor has not specified any purpose, you can say ‘non-earmarked’ or ‘general’.

These donors may be sending you money by cheque or in cash (when they visit you). Note down
NOTES

their names and addresses while issuing a receipt. If possible (and without offending the donor), also take down the passport number, country of issue and expiry date.

983 If you are keeping donation boxes at airports, shopping centres, etc. you may receive foreign donations also. Such donations may be in Rupees or in foreign currencies. There is no way of making out how much of the collection is from foreign donors and how much from Indian. Indians settled abroad might drop dollar notes into the box; foreign tourists may drop surplus Rupee notes in the box.

In such a situation, the only practical solution is to treat all foreign exchange collection as foreign contribution. This should be deposited into the FCRA bank.

In case of Rupee collections, you can think of treating 50% as foreign contribution and balance 50% as Indian. While there is no circular or guideline on this, this appears to be the only logical option.

All such foreign collections should be lumped together. These can be shown as one entry (Donation Box Collections) in the table under ‘individual donors below 1 lakh’. In such case, the purpose shown (in column 4) can be your organisation’s main purpose (e.g. ‘18. Help for poor, aged or destitute’ or ‘24. Welfare of women and children’).

984 In one case, the Police found foreign currency worth Rs. 6 crores in a monastery. This was apparently donated by devotees, but no record was kept. The Monastery was also not registered under FCRA. (‘Ministry of home affairs asks for details on foreign donations to Gyuto Tantric monastery’; Times of India, online edition, 10-May-2012)

985 See note 979.

986 See note 978. If the donor has not specified any purpose, you can say ‘non-earmarked’ or ‘general’.

988 You may find a small difference in these two figures. This may be because some inflows cannot be classified under any of the three donor categories.

989 Preferably an Indian

990 See Penalties on page 82 for more on this.

991 Under ICAI regulations, auditors are now required to mention both their membership number, as well as firm registration number, if they are registered as a firm.

992 Trusts receive a registration number in some states, such as Maharashtra and Gujarat.

993 Or FC-3, in case you are filing the return for FY 10-11 or 11-12.

994 This is not necessarily equal to the balance in FCRA bank accounts. It would also include outstanding program or staff advances.

995 Erroneous reference to rule 16 should be read as being to rule 11. Under rule 11, NPOs are required to maintain a separate set of exclusive accounts and records for foreign contribution. The auditors need to make sure that:

- The accounts for foreign contribution are separate.
- Records for foreign contribution are separate.

996 The audit statement in form FC-6 does not refer to Income & Expenditure Account, though rule 17 calls for this also to be submitted. This appears to be an oversight.

997 ‘As per our report in form FC-6 of even date’

998 Para 7- Clarification regarding Authority attached to Documents Issued by the Institute (page 4), read with Para 6 of Framework for Assurance Engagements (Page 120) - Handbook of Auditing Pronouncements Vol. I.A (Compendium of Standards), as on Jul 1, 2010 (ICAI, New Delhi)

Some of the relevant Standards, Statements and Guidance Notes are:
<table>
<thead>
<tr>
<th>Category</th>
<th>Title</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guidance Note</td>
<td>Guidance Note on Audit Reports and Certificates for Special Purposes</td>
<td>Mar 1984</td>
</tr>
<tr>
<td>Guidance Note</td>
<td>Guidance Note on Audit of Fixed Assets</td>
<td>April 1985</td>
</tr>
<tr>
<td>Guidance Note</td>
<td>Guidance Note on Audit of Cash and Bank Balances</td>
<td>Nov 1995</td>
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<td>Guidance Note</td>
<td>Guidance Note on Audit of Expenses</td>
<td>Nov 2001</td>
</tr>
<tr>
<td>Guidance Note</td>
<td>Guidance Note on Special Consideration in the Audit of Small Entities</td>
<td>Sep 2003</td>
</tr>
<tr>
<td>Guidance Note</td>
<td>Guidance Note on Audit of Miscellaneous Expenditure (Revised)</td>
<td>Sep 2003</td>
</tr>
<tr>
<td>Guidance Note</td>
<td>Technical Guide on Accounting and Auditing in Not-for-Profit Organisations (NPOs)/ Non-Governmental Organisations (NGOs)</td>
<td>Dec 2006</td>
</tr>
<tr>
<td>SA 230</td>
<td>Audit Documentation</td>
<td>April 2009</td>
</tr>
<tr>
<td>SA 300 (Rev.)</td>
<td>Planning an Audit of Financial Statements</td>
<td>April 2008</td>
</tr>
<tr>
<td>SA 320 (Rev.)</td>
<td>Materiality in Planning and Performing an Audit</td>
<td>April 2010</td>
</tr>
<tr>
<td>SA 330</td>
<td>The Auditor’s Response to Assessed Risks</td>
<td>April 2008</td>
</tr>
<tr>
<td>SA 510 (Rev.)</td>
<td>Initial Audit Engagements - Opening Balances</td>
<td>April 2010</td>
</tr>
<tr>
<td>SA 530 (Rev.)</td>
<td>Audit Sampling</td>
<td>April 2009</td>
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<tr>
<td>SA 570 (Rev.)</td>
<td>Going Concern</td>
<td>April 2009</td>
</tr>
<tr>
<td>SA 505 (Rev.)</td>
<td>External Confirmations</td>
<td>April 2010</td>
</tr>
<tr>
<td>SA 580 (Rev.)</td>
<td>Written Representations</td>
<td>April 2009</td>
</tr>
<tr>
<td>SA 700 (Rev.)</td>
<td>Forming an Opinion and Reporting on Financial Statements</td>
<td>April 2011</td>
</tr>
<tr>
<td>SRE 2400 (Rev.)</td>
<td>Engagements to Review Financial Statements</td>
<td>April 2010</td>
</tr>
</tbody>
</table>

999 Refer ICAI clarification titled ‘Accounting Standards for NGOs’; The Chartered Accountant, Sep-95, Page 79. Following mandatory Standards may be relevant:
<table>
<thead>
<tr>
<th>AS</th>
<th>Title</th>
<th>Effective Date</th>
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</thead>
<tbody>
<tr>
<td>AS-1</td>
<td>Disclosure of Accounting Policies</td>
<td>1-Apr-93</td>
</tr>
<tr>
<td>AS-2</td>
<td>Valuation of Inventories</td>
<td>1-Apr-99</td>
</tr>
<tr>
<td>AS-3</td>
<td>Cash Flow Statements</td>
<td>1-Apr-01</td>
</tr>
<tr>
<td>AS-4</td>
<td>Contingencies and events occurring after the Balance Sheet Date</td>
<td>1-Nov-82</td>
</tr>
<tr>
<td>AS-5</td>
<td>Net Profit or Loss for the period, Prior Period Items and changes in Accounting Policies</td>
<td>1-Apr-96</td>
</tr>
<tr>
<td>AS-6</td>
<td>Depreciation Accounting</td>
<td>1-Apr-95</td>
</tr>
<tr>
<td>AS-7</td>
<td>Accounting for Construction Contracts</td>
<td>1-Apr-93</td>
</tr>
<tr>
<td>AS-8</td>
<td>Accounting for Research and Development</td>
<td>1-Apr-93</td>
</tr>
<tr>
<td>AS-9</td>
<td>Revenue Recognition</td>
<td>1-Apr-93</td>
</tr>
<tr>
<td>AS-10</td>
<td>Accounting for Fixed Assets</td>
<td>1-Apr-93</td>
</tr>
<tr>
<td>AS-11</td>
<td>The Effects of Changes in Foreign Exchange Rates</td>
<td>1-Apr-01</td>
</tr>
<tr>
<td>AS-12</td>
<td>Accounting for Government Grants</td>
<td>1991</td>
</tr>
<tr>
<td>AS-13</td>
<td>Accounting for Investments</td>
<td>1-Apr-95</td>
</tr>
<tr>
<td>AS-15</td>
<td>Accounting for retirement benefits in the Financial Statements of Employers</td>
<td>1-Apr-95</td>
</tr>
<tr>
<td>AS-18</td>
<td>Related Party Disclosures</td>
<td>1-Apr-01</td>
</tr>
<tr>
<td>AS-21</td>
<td>Consolidated Financial Statements</td>
<td>1-Apr-01</td>
</tr>
<tr>
<td>AS-23</td>
<td>Accounting for Investments in Associates in Consolidated Financial Statements</td>
<td>1-Apr-02</td>
</tr>
<tr>
<td>AS-26</td>
<td>Intangible Assets</td>
<td>1-Apr-02</td>
</tr>
<tr>
<td>AS-28</td>
<td>Impairment of Assets</td>
<td>1-Apr-02</td>
</tr>
<tr>
<td>AS-29</td>
<td>Provisions, Contingent Assets and Contingent Liabilities</td>
<td>1-Apr-04</td>
</tr>
</tbody>
</table>

For interpretation and application of these standards to NPOs, please refer to *Technical Guide on Accounting and Auditing in Not-for-Profit Organisations (NPOS) / Non-governmental Organisations (NGOs)* (Research Committee - The Institute of Chartered Accountants of India, 2006).

1000 Some organizations prepare a columnar presentation, showing FC funds and non-FC funds in separate columns. This saves the trouble of preparing two different sets of audited accounts - one for FCRA and another consolidated set for Income Tax.

1001 The Statement of Receipts and Payments should reflect all receipts of foreign grants / FCRA receipts (cash/ cheque). The payments side should reflect all payments made out of FCRA funds (including purchase of assets, creation of revolving funds, loans, advances, etc.).

1002 This should be certified by an officer of the concerned bank.

1003 Rule 17(2) of FCR 2011

1004 Keep the proof of posting (Post Office receipt) carefully on file. This comes in useful if you
receive a letter from FCRA for non-filing of return.

1005 Some donor agencies call for a copy of the FC-6, along with annexures to be sent to them as a reporting requirement.

1006 This can be tricky. For example, you have received 4 truck-loads of wheat. Each truck had 1 tonne of wheat. That means 4,000 Kgs of wheat. You are going to give each family 1 kilogram (kg). What should you do?

In this case, keep the unit as KGs. Say this on top, where you write description of the item. Then write 4,000 in the quantity column (column # 5).

1007 You can get this from the documents (Bill of lading, shipping declaration, insurance papers, etc.). Or you could ask the donor to give you a rough figure. If this item is available in the local market, you can also use the market price as the basis.

1008 If you distributed items to a large number of beneficiaries, then you can refer to a list, as shown in the illustration.

1009 See note 1006.

1010 The reference to section 13 read with rule 8(i) should be treated as reference to section 19 read with rule II.

1011 See Contacting FCRA on page 195 for postal address.

1012 Should all the securities in hand be shown here or only those which are received during the year? It appears that all securities in hand, or those received / sold during the year, should be detailed in form FC-8.

1013 A person resident outside India can transfer any security to a person resident in India by way of gift. Para 8.B.i.c. (Reserve Bank of India, 2011)

1014 Also see note 727 for restrictions under Income Tax Act.

1015 Should this be gross or net of TDS? Ideally, TDS on FCRA interest or dividend should be accounted in FCRA accounts. Therefore, if feasible, consider recording the TDS on FCRA income as a credit to TDS recoverable in the FCRA accounts.

When the TDS is refunded by the Government, it will be received as a single payment. It should be deposited in the non-FC bank account. Part of TDS related to FCRA income should later be transferred to the FCRA bank.

1016 You need to file form FC-TRS for this with your bank. Para 2 (Reserve Bank of India, 2011).

1017 Para 8.B.ii. (Reserve Bank of India, 2011)

1018 Clauses (i) and (iii) ask for opening and closing balance of securities in hand. Do you report all the securities on the FCRA Balance Sheet or only those received as a donation? It appears that only those received as a donation (and included in Form FC-8) should be considered.

Clause (ii) of the certificate asks for the figure of investments made during the year, rather than securities received during the year. Auditors may consider adding a suitable clarification if they are certifying securities received as a gift during the year.

The reference to section 13 read with rule 8(i) should be treated as reference to section 19 read with rule II.

1019 See Contacting FCRA on page 195 for postal address.

1020 This form is for giving funds to other NPOs. If you want to receive funds, you have to apply in form FC-3 or FC-4.

1021 This question was intended to cover cases falling under the original rule 24(i). The rule has now
NOTES

been modified. See note 1025.

1022 Societies normally get a registration certificate no matter which Act they are registered under. In Maharashtra and Gujarat, Public Trusts also get a registration number. In some states, trusts are registered only by filing of Trust Deed with a registrar. In such case, the registrar writes a registration number on the reverse of the first page. Give this as the registration number.

Sec. 25 companies should also give their registration details, available in the certificate of incorporation.

1023 While this is not mandatory for form FC-10, it is better to persuade the transferee to apply for PAN. This makes your tax assessment easier. See note 909 for more on this.

1024 Give the complete address of the branch where the account has been opened. This should be cross-checked with the pass-book or bank letter. Most banks show the address of the main office as well as the local branch office. Make sure the branch address is correct.

1025 This was required under rule 24(4) of FCR Rules 2011. The rule has now been modified (notification no. GSR 292(E), dated 12-4-2012).


1027 w.e.f. 4th April 2012. The FCRA office was at Jaisalmer House, 26, Mansingh Road, New Delhi from 2005 onwards. Prior to that the office was in Loknayak Bhawan, Khan Market, New Delhi.

1028 Inserted vide Foreign Contribution (Regulation) Amendment Rules, 2012. [Notification no. GSR 292(E), dated 12-4-2012]

1029 Substituted for ‘banking authority’ vide Foreign Contribution (Regulation) Amendment Rules, 2012. [Notification no. GSR 292(E), dated 12-4-2012]

1030 Substituted vide Foreign Contribution (Regulation) Amendment Rules, 2012. [Notification no. GSR 292(E), dated 12-4-2012]

24. Procedure for transferring foreign contribution to other registered or unregistered persons.

(1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10.

(2) The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior permission under section II of the Act, in case the recipient person has not been proceeded against under any provision of the Act.

(3) Any transfer of foreign contribution shall be reflected in the returns in Form FC-6 as well as in Form FC-10 by the transferor and the recipient.

(4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

1031 August 5, 1976 vide GSR 775 (E), Dt. 5 - 8 - 1976
1032 Ins. by Act 1 of 1985, S. 2 (w.e.f. 20 - 10 - 1984).
1033 Substituted by Act 1 of 1985, S. 2 w.e.f. 20 - 10 - 1984
Subs. by Act 1 of 1985 of S. 3 w.e.f. 20 - 10 - 1984
Subs. for sub-section (1) by Act 1 of 1985, S. 4 w.e.f. 1 - 1 - 1985
Subs. by Act 1 of 1985, S. 5 w.e.f. 20 - 10 - 1984
Subs. by Act 1 of 1985, S. 6 w.e.f. 1 - 1 - 1985
Subs. by Act 1 of 1985, S. 7 w.e.f. 20 - 10 - 1984
Ins. by Act 1 of 1985, S. 8 w.e.f. 20 - 10 - 1984
Ins. by Act 1 of 1985, S. 9 w.e.f. 20 - 10 - 1984
Ins. by GSR 179 (E) dt. 25-3-1991 w.e.f. 1-4-1991
Ins. by GSR 755 (E) dt. 5-11-1984 w.e.f. 5-11-1984
Ins. by S. O. 860 (E), w.e.f. 29-12-1977
Subs. by GSR 179 (E) 25-3-1991 w.e.f. 1-4-1991
Subs. for ‘sixty days’ vide GSR 592 (E), dt. 27-12-1996
Ins. by GSR 755-E dt. 5-11-1984 w.e.f. 5-11-1984
Subs. by S. O. 860 (E) w.e.f. 29-12-1977
For “January” vide GSR 179 (E) dt. 25-3-1991 w.e.f. 1-4-1991
Subs. vide GSR 179 (E) dt. 25-3-1991 w.e.f. 1-4-1991
Subs. for “sixty days” vide GSR 592 (E) dt. 27-12-1996
Not included
Not included
Not included
Moved with the Recommendation of the President
Insert the name of the organization which will issue the cheque
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Foreign Contribution Regulation Act 2010 is the third generation of a unique Indian law that regulates flow of foreign charity. This version is more powerful than ever before. It’s critical that donor agencies, Corporate Foundations and NGOs understand this law properly in order to continue their work unimpeded.

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