FCRA: Foreign Contributions Regulations Act, 1976

FCRA was enacted in 1976 with the main purpose of curbing the use of foreign funds and hospitality for nefarious and anti-national purposes. FCRA is an internal security legislation and is not regulated by RBI. It is regulated by the Ministry of Home Affairs, Government of India. The provisions of FCRA extends to the whole of India including the State of Jammu and Kashmir

FCRA deals with contributions and transfers from foreign to Indian Entities. The entities should have a definite cultural, economic, educational, religious or social programme e.g NGO, Charitable Trusts etc. As per FCRA, contribution means: (i) article or gift in excess of rupees one thousand, (ii) currency both Indian or foreign and (iii) foreign security received from a foreign source. Any organisation which receives any contribution subsequently from any Indian receiver is also covered under FCRA. Contributions received from NRI's are not covered under FCRA and any amount received from any foreigner in INR is also covered under FCRA.

For receiving contributions under FCRA, an organisation need to be registered under FCRA permanently or it needs to seek permission on a case to case basis from the Ministry of Home Affairs.

Organisation seeking registration must already be registered registered under Society Registration Act, 1860 or the companies Act, 1956 or the Bombay Public Trust Act, 1950 or as a public trust under general law.

The application for registration is to be made in Form FC-8 and for seeking permission on case to case basis in form FC-1A. The Ministry of Home Affairs had introduced the procedure of e-filing application and tracking of the status recently. We can access the same via internet.

Persons restricted from receiving foreign contributions:

Foreign contribution cannot be accepted by a candidate for election , correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper ; judge, government servant or employee of any corporation ; member of any legislature ; political party or office bearer thereof.

Documents to be submitted while applying for registration:

i) Form FC-8 duly filled up in triplicate.
ii) Audited statement of accounts of past three years.
iii) Annual Report specifying activities of past 5 years.
iv) Detail of the beneficiaries and detail of the socio-economic factors of the region in which the

NGO is working.
v) List and geographical detail of the state, and districts proposed for work.
vi) Certified copy of the Registration Certificate.
vii) Certified copy of the Bye-laws and Memorandum and Article of Association whichever is applicable.
viii) Copy of certificates of exemption or registration issued by the Income Tax Department u/s. 80G and 12A.
ix) Copy of any prior permission granted to the organisation.
x) Copy of resolution of Governing Body of the organisation, authorising the registration under FCRA.
xi) Copy of Power of Attorney or the resolution of Governing Body by which the Chief Functionary is authorised to submit FC-8.
xii) List of present members of the Governing Body of the organisation and the office bearers.
xiii) Copy of any Journal or other publication of the organisation.
xiv) If the association is having any parent or sister or subsidiary organisation, which is registered under the FCRA then the registration number along with Ministry of Home Affairs file number should be mentioned.
xv) If the association has submitted any application earlier then its reference number should be mentioned.
xvi) If the association has received any foreign contribution with or without the prior approval of the Central Government, then the detail should be given.
It may be noted that the onus of getting registered under FCRA lies on the association and therefore before accepting foreign contribution, it is the responsibility of association to ensure all the requisite formalities are complied with and registration is granted before accepting any foreign exchange.

Once a FCRA registration is obtained, such organisation can receive foreign funds with obtaining any further approval subject to other formalities of FCRA.

<u>Prior Permission for receiving any fund in the bank account:</u>

Prior permission is required before accepting any foreign fund. Permission is to be sought from FCRA department. For permission we need to fill up the form FC-1A along with the required documents.

In case, we have received the grants in our bank account before receiving the permission, we cannot use such funds. In case the application for permission is rejected, we have to return the funds received. The permission is sought on project to project basis. The permission sought can be availed for only the specific project.

Scenario after filing of Application in FC-8 or FC-1A:

Someone from the intelligence bureau will visit the main office and may enquire about us and then forward a confidential report to the FCRA department at Delhi. Based on the report and other factors, the department will either permit us or reject the same within 90 days. We can file an appeal with the High Court for rejection of permission within 60 days.

In case, we don't receive any reply from the department about permission of receiving the grants, we cannot take it as automatic permission. We should check with the department about the status of our permission request.

Records of foreign contributions received and their utilisation (FC-3)

FC-3 form is required to be submitted at the end of each of the financial year (by 31st july). For registered NGO's, the return is to be filed each year irrespective of the fact that no funds were received during the year. In case of specific approval of the receipt of foreign funds, we need to file the return till the funds we have received are exhausted. The return can be filed online at the Ministry of Home Affairs website.

We need to submit Receipts and Payment Account and Balance Sheet for FCRA specific transactions detailing out all the transactions made with the contributions received from outside India.

We have to maintain separate bank account for FCRA transactions. We cannot mix the transactions belonging to FCRA with Indian currency transactions. Generally, a single bank account is to be maintained for all the FCRA transactions.

In case, we had made any mistake in the details submitted, we can revise the same.

Records of foreign contributions received in Kind (Form FC-6)

Details are to be filled up in this form regarding the contributions that we had received in kind (other than in money). We need not fill up the exact market value of those items, just an approximation is sufficient compliance. We have to maintain the records wrt items received and the utilisation of those items received.

We can use the market value of the contributions received in kind or ask the donor to also convey the expected market value of the items donated.

In case when article is sold and some revenue is generated in Indian currency, such amount should be shown as receipt in Form FC-3 as well as the FCRA cash book.

FC-6 is not to be submitted to the FCRA department. It is just to be kept with the organisation as a Stock record.

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 is in kind
(b) In the cashbook 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.

These accounts should be prepared on annual basis and should be audited by a Chartered accountant and be furnished in Form FC-3 along with a Balance Sheet and statement of Receipts and Payments.

Returns:

If an organisation having FCRA Registration does not receive any foreign contribution, even then it should file nil returns in FC-3.

<u>Penalities:</u>

Violation of FCRA can attract severe penalties which could be as under :

(a) seizure and confiscation of foreign contribution receipts.
(b) fine upto 5 times the value of the foreign contribution spent.
(c) inspection and seizure of accounts and records.
(d) compulsory prior permission requirement even if the NGO is registered under FCRA.
(e) imprisonment upto 5 years and/or fine.
(f) prohibition on accepting foreign contribution for 3 years for persons convicted twice.

For more information on FCRA and its related rules and issues, you may have a look at :

http://www.fcraforngos.org/def.htm or

www.mha.nic.in/fcra.htm

Comments, suggestions and complaints are always welcome. Thanks a lot in advance.

Compiled By: Vinay Bansal, Delhi
Vinaybansal1987@gmail.com