

**BRLF**

*Welcome Participants to  
प्रबोधन Prabodhan  
(Alert, Advise, Awake)*

*Session 4*

*Understanding key FCRA concepts, Key Changes in FCRA Act  
and Rules, FC Forms and Recent Changes*

# Key Concepts/Definitions

"**foreign contribution**" means donation, delivery or transfer (directly or through another person) by any foreign source –

any article, not as gift for personal use (not FC upto Rs.1 lakh),

of any currency, whether Indian or foreign

of any security as defined in section 2 (h) of SCRA, 1956

Exception to S.2 – Any amount received by way of fee (including fees charged by 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**, or commerce within/outside India or any contribution received from an agent of foreign source towards such fee/cost shall not be FC

Income tax on FC from local sources (interests, rent, pass-on now prohibited) also FC

# Key Concepts/Definitions

▶ "person" includes –

- (i) an individual; (ii) a Hindu undivided family; (iii) an association; (iv) a company registered under section 25/8 of the Companies Act, 1956/2013

“Person” receive foreign contribution subject to following conditions:-

- a) must have a definite cultural, economic, educational, religious or social Programme (CEERS)
- b) must obtain FCRA registration/prior permission from Central Government
- c) must not be prohibited under Section 3 of FCRA, 2010.

Person does not include (a) statutory body wholly owned by Govt (Jan 2020) which must mandatorily get its accounts audited by CAG (b) Govt of India and foreign Govt transactions (Section 51)

Broadly 3 category of persons: Prohibited, Regulated and Not-regulated

# Key Concepts/Definitions

## ▶ Foreign source includes:-

(i) Government/agency of foreign Government; (ii) international agency (excluding UN, IBRD, IMF or agency Central Government may notify (list of 128 entities as per portal) ; (iii) a foreign company; (iv) a corporation, not being a foreign company, incorporated in a foreign country (v) a multi-national corporation (vi) an Indian company with >50% of share capital held by a. foreign Government; b. foreign citizens; c. corporations incorporated in a foreign country; d. trusts, societies or other associations of individuals (whether incorporated or not) in a foreign country; e. foreign company;

[provided that .....

..... such company shall not be a foreign source (FEMA compliant)-Finance Act 2016]

(vii) a trade union in a foreign country (viii) a foreign trust/foundation mainly financed by a foreign country; (ix) a society, club or other association or individuals formed or registered outside India; (x) a foreign citizen

Very important to know that FC is from foreign source, should have adequate documentation

# Key Concepts/Definitions

- ▶ **foreign company** means any company/association/body of individuals incorporated outside India and includes-
  - a) foreign company within meaning of Section 379 of Companies Act, 2013
  - b) a subsidiary of a foreign company
  - c) the registered office/principal place of business of a foreign company
  - d) a multi-national corporation

## Definition of **MNC**

A corporation incorporated in a foreign country which (a) has a subsidiary/branch/place of business in two or more countries or (b) carries on business/operates in two or more countries;

## ▶ Applicability of Act:

- i. Whole of India
- ii. Citizens of India outside India; and
- iii. Associate Branches or subsidiaries, outside India, of Indian companies/bodies corporate

# FCRA Architecture for regulated entities

- ▶ Registration: Registration, Prior Permission
- ▶ Regulation: bank accounts-3 tir to operate FC, separate books to account for receipt and utilisation, AR and Declaration, intimation of FC receipts, Intimation of various kinds of changes
- ▶ Restriction: ceiling on Admin cost, prohibition on speculative activity, prohibition on FC transfer to another person, use of FC only for defined purpose as per 5 limbs
- ▶ Consequences: suspension, cancellation, prosecution, penalty

# 9 key amendments to FCRA in 2020

- ▶ No sub granting
- ▶ Cap on Administrative Exp
- ▶ Public servant included under prohibited persons
- ▶ Suspension of registration for 360 days
- ▶ No utilisation during inquiry under PP
- ▶ FCRA Bank account with SBI
- ▶ Aadhaar/Passport mandatory
- ▶ Renewal after due inquiry
- ▶ Surrender of Registration

## COMPLIANCE WITH THE AMENDED FCRA 2010 AND FCRR 2011

All FCRA registered Associations/prospective applicants must meet various mandatory requirements arising out of the latest Amendments in FCRA 2010 and the FCRR 2011. These requirements include, among others, the following three key compliances:

Sl. No	Compliance Item	If renewal application already submitted	If application for FCRA Registration or Prior Permission (PP) already submitted	If application is yet to be submitted for renewal	If application is yet to be submitted for FCRA Registration/ PP.
1.	Get a <b>Darpan ID</b> from NITI Aayog portal.	Such Associations are being given access to their applications to seed (if not already seeded) the <b>Darpan ID</b> from NITI Aayog's Darpan Portal. They need to make entry of DARPAN ID in Form FC 3C at specified place in the portal, <b>fcaonline.nic.in</b> (The online system for this entry is already functional)	Such Associations are being given access to their applications to seed (if not already seeded) the <b>Darpan ID</b> from NITI Aayog's Darpan Portal. They need to make entry of DARPAN ID in Form FC 3A / FC 3B at specified place in the portal, <b>fcaonline.nic.in</b> (The online system for this entry is already functional)	Such Associations will be automatically prompted to first obtain <b>Darpan ID</b> from NITI Aayog's Darpan Portal, when they open their online form for renewal in the modified Form FC 3C.	The online registration/PP application will automatically prompt the applicant to first obtain <b>Darpan ID</b> from NITI Aayog's Darpan Portal.
2.	" <b>FCRA Account</b> " in <b>SBI Main Branch</b> at Parliament Street, New Delhi.	Such Associations are being given access to their applications to seed FCRA Account in the <b>SBI Main Branch</b> at Parliament Street, New Delhi. (The online system for this entry is already functional)	Such Associations are being given access to their applications to seed FCRA Account in the <b>SBI Main Branch</b> at Parliament Street, New Delhi. (The online system for this entry is already functional)	Such Association must open an <b>FCRA Account in the SBI Main Branch</b> at Parliament Street, New Delhi before they initiate online application for renewal. (The online system for this entry is already functional)	Such applicants must open an <b>FCRA Account in the SBI Main Branch</b> at Parliament Street, New Delhi, before they initiate their online application for registration. (The online system for this entry is already functional)
3.	<b>Aadhar Details</b> of all office bearers / key functionaries.	Such Associations need to enter <b>Aadhar Nos.</b> of all Office Bearers or Directors or Other Key Functionaries of Association in specified column in Form FC 3-C in the portal <b>fcaonline.nic.in</b>	Such Associations need to enter <b>Aadhar Nos.</b> of all Office Bearers or Directors or Other Key Functionaries of the Association in specified column in Form FC 3A / FC 3B in the portal <b>fcaonline.nic.in</b>	Such Associations need to enter <b>Aadhar Nos.</b> of all Office Bearers or Directors or Other Key Functionaries of the Association in the portal <b>fcaonline.nic.in</b> while filling online form for renewal.	Such applicants must enter <b>Aadhar Nos.</b> of all Office Bearers or Directors or Other Key Functionaries of the Association in the portal <b>fcaonline.nic.in</b> while filling online application for registration/PP.



# Credit of FC-which FC account

The following is an illustrative (but not exhaustive) list of such contributions which are Foreign Contribution as defined under The FCRA, 2010:

- (i) Donations given in Indian rupees (INR) by any foreigner/Foreign Source including foreigners of Indian origin like OCI or PIO cardholders (in SBI, New Delhi Main Branch).
- (ii) Donations received in Indian rupees (INR) from any 'foreign source' even if that source is located in India at the time of such donation (in SBI, New Delhi Main Branch).
- (iii) FC received in cash/local cheque/demand draft or through overseas bank transfers in any currency including Indian rupees from any "foreign source" (in SBI, New Delhi Main Branch).
- (iv) All interest that accrues on the FC received in any bank account including interest on FDs (in any Bank Branch).
- (v) Any income generated in India from assets created by spending the funds from FC. This includes proceeds from sales of such assets which have been credited even partly by spending the FC (in any Bank Branch).
- (vi) Proceeds from sale of FC received in kind or in the form of securities (in any Bank Branch).
- (vii) Re-depositing the unutilised FC which might have been drawn out as advance for any purpose by the NGO/association. Such a re-deposit, however, must be backed by matching withdrawal entries and relevant records to establish that it was unutilised/unspent FC amount. This would include any refund received on account of cancellation of any services/tickets etc. sought to be taken by utilising FC (in any Bank Branch).

# Key FCRR with changes in 2020 1/2

- ▶ Eligibility for Registration: 3 year track record and Rs. 15 lakhs expenditure (including fixed assets) from core activities
- ▶ Prior Permission: specific commitment letter, specific amount specific donor specific activities. No common membership. More than Rs. 1 cr FC to be approved in instalments.
- ▶ Renewal: if validity expires, fresh registration unless Dept agrees to consider within period of 1 year with additional fee of Rs.5000/-
- ▶ Cessation: if renewal not filed before expiry or requisite fee, it is deemed cessation. No receipt or utilization and assets with FC funds and FC in Bank vests with prescribed authority
- ▶ Cancellation: unutilized FC vests with prescribed authority. Fresh application after 3 years only.
- ▶ Fees: Registration Rs.10k, Renewal and PP: Rs.5k
- ▶ Proforma AA: Affidavit for change of members mentioned in initial registration application or making FC 3C and valid on approval

# Key FCRR with changes in 2020 2/2

- ▶ Organisation declared to be of political nature: not political unless there is evidence of party politics/active politics
- ▶ Fes for revision of order or compounding of offences: Rs.3000/- .  
Also next compounding after 3 yrs

## 4. Forms under FCRA

Form No	Particulars	Changes to be Kept in Mind
FORM FC-1	Intimation to the Central Government of receipt of foreign contribution by way of gift from relative by an individual / foreign contribution in the form of articles/ securities/ by a candidate for election [section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)]:	<p><b>Part A:</b> intimation of receipt of foreign contribution by way of gift from relative</p> <p><b>Part B:</b> Intimation about foreign contribution (articles) account/ foreign contribution (securities) account</p> <p><b>Part C:</b> Intimation to the Central Government of receipt of foreign contribution received by a candidate for election under section 21 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)</p>
FORM FC-2	Application for seeking prior permission of the Central Government to accept foreign hospitality 2 weeks before journey. Rule 7	

## Forms under FCRA

Form No	Particulars	Changes to be Kept in Mind
FORM FC - 3A	Application for 'registration' under sub-section (1) of section 11 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for the acceptance of foreign contribution by an Person/association having definite cultural, economic, educational, religious or social programme	<ul style="list-style-type: none"> <li>• Expenditure incurred in last three years towards activities for which registration applied for should be 15,00,000/- or more.</li> <li>• Open SBI Bank Account</li> <li>• Get Affidavit from Members</li> <li>• Pay Requisite Fee</li> </ul>
FORM FC-3B	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 a person/association having definite cultural, economic, educational, religious or social programme	<ul style="list-style-type: none"> <li>• Open SBI Bank Account</li> <li>• Get Affidavit from Members</li> <li>• Commitment Letter from Funder</li> <li>• Pay Requisite Fee</li> </ul>
FORM FC - 3C	Application for 'renewal' under section 16 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) for the acceptance of foreign contribution by an person/association having definite cultural, economic, educational, religious or social programme	<ul style="list-style-type: none"> <li>• Open SBI Bank Account</li> <li>• Get Affidavit from Members</li> <li>• Pay Requisite Fee</li> </ul>

## Forms under FCRA

Form No	Particulars	Changes to be Kept in Mind
FORM FC-6A	Intimation under rule 9 and rule 17 A of the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change of <b>name / address</b> in respect of the person/association granted registration/prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):	Self-certified copy of amendment approved by local/relevant authority to be enclosed
FORM FC-6B	Intimation under rule 9 and rule 17 A of the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change of <b>nature, aims and objects and registration with local/relevant authorities</b> in respect of the person/association granted registration/prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):	Amended Objectives/MOA to be attached.
FORM FC-6C	Intimation under rule 9 and rule 17A of the Foreign Contribution (Regulation) Rules, 2011 of the designated "FCRA Account" in the State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi and change of another "FCRA Account" of choice, if any, under section 17 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) in respect of the person/association granted registration/prior permission under the Act.	(i) Intimation of the designated "FCRA Account" in the State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi under section 17 of the Act; OR (ii) Change of another "FCRA Account" of choice, if any, under section 17 of the Act.

## Forms under FCRA

Form No	Particulars	Changes to be Kept in Mind
FORM FC-6D	Intimation under rule 9 and rule 17A of the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding opening of additional FC-utilization account in respect of the person/association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):	Opening of additional FC-utilisation Bank Account for the purpose of utilisation of foreign contribution
FORM FC-6E	Intimation under rule 9 and rule 17A of the Foreign Contribution (Regulation) Rules, 2011 to the Central Government regarding Change in key members in respect of the person/association granted registration/ prior permission under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010):	<ul style="list-style-type: none"> <li>Get Affidavit from Members</li> </ul>
FORM FC – 7	Application for surrender of certificate of registration.	

## Changes in FC 4 (Annual Return)

S. No.	Old FC 4	New FC 4
1	***Note:- Furnishing of Darpan ID shall be optional.	This has now been removed
2	Subject: Account of Foreign Contribution (FC) for the year ending on the 31st March, 2020	The year will now have to be filled, it will not come automatically
3	<b>Earlier it was not coming</b>	1. (a) Name and address of person/association <b>Added Now</b>
4	Foreign Contribution received during the financial year as transfer from a local source	This has now been removed
5	Association	Replaced by person/association
6	Total Purchase of fresh assets 1. Activity in the name of Association 2. Details 3. Purpose 4. Total (in Rs.)	Words Replaced by Total Purchase of fresh assets 1. Name of project/activity 2. Details of fresh assets 3. Objective of acquiring fresh assets 4. Cost of fresh assets (In Rs.)



## Changes in FC 4 Form

### New FC 4

#### **Newly Added**

8. \*Whether during the period under report:

- (i) any foreign contribution was transferred to any FCRA registered association?
- (ii) any foreign contribution was transferred to any Non FCRA registered association?
- (iii) any functionary of the Association has been prosecuted or convicted under the law of the land?
- (iv) any asset created out of foreign contribution is registered in names other than the Association?
- (v) any domestic contribution has been credited in any “FCRA Account”?
- (vi) the Association has received any foreign Contribution in an account other than the designated FCRA receipt Account?
- (vii) the Association has utilized foreign contribution for any purpose other than the defined purposes in the FCRA certificate of registration or prior permission?

## Changes in FC Forms

### New FC 4

(viii) the Association has invested any foreign contribution in any speculative activity as defined in rule 4 of the Foreign Contribution (Regulation) Rules, 2011?

**4. Speculative activities.** - (1) The following activities shall be treated as speculative activities:-

(a) any activity or investment that was 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.

## Changes in FC Forms

### New FC 4

- ix) the Association or any of its functionary/office bearer has violated any of the conditions as enumerated under sub-section (4) of section 12 of the Act?
  - (x) the Association has made expenditure on Administrative expenses exceeding 20 per cent. of the foreign contribution received?
  - (xi) any fixed asset acquired out of foreign contribution has been sold out?
  - (xii) sale proceed of above fixed asset has been diverted/ has not been deposited in “FCRA Account”?
  - (xiii) any FD proceeds has been credited in any account other than the “FCRA Account”?
  - (xiv) any organization/entity not belonging to the Association is being managed/financially supported by the Association?
  - (xv) the Association has utilized any foreign contribution outside India?
- \* Note: Wherever the answer of above question is in ‘yes’, brief details must be provided.**

## FCRA

GOOD TO  
KNOW



- ▶ Upload FCRA audited accounts within 9 months of close of FY on website
- ▶ Intimation of quarterly FC receipts within 15 days on website or FC website even for Nil receipts
- ▶ Avoid Project advance from FC funds, follow reimbursement
- ▶ Understand definition under FCRA to know what is FC, person, foreign source etc.
- ▶ Even for Nil FC receipt and utilisation, FC4 has to be filed annually, CA certificate not required
- ▶ Please read Charter for (a) organisations registered/applying for registration or PP (b) for Banks © for Chartered Accountants on FCRA portal [www.fcraonline.nic.in](http://www.fcraonline.nic.in)
- ▶ Please visit FCRA website for additional resources

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## Recent updates: (a) Public Notice for extension in validity of COR (b) FEMA declaration

- ▶ Public Notice dated 24.3.2022, Registration certificate expiring/expired between 29<sup>th</sup> Sep 2020 to 30<sup>th</sup> June 2022 will remain valid until 30<sup>th</sup> June 2022 unless rejected.
- ▶ Section 10(5) of FEMA 1999 requires authorised person for foreign exchange transaction to get undertaking from account holder that it is not in contravention of FMA or Rules thereto
- ▶ One time FEMA declaration cum undertaking for transactions in FCRA account with SBI
- ▶ NJ stamp paper with value applicable for agreement. Two parties, first organisation and second SBI NDMB
- ▶ Signed and stamped by authorised signatories in the FCRA Bank account
- ▶ Send to SBI NDMB by post.





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## Thank You!

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