

# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

## REGISTRATION u/s 12A/10(23C)/80G & FCRA PROVISIONS AND PRACTICAL ISSUES



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# TOPICS

## A. REGISTRATION U/S 12A/10(23C)/80G

A1. NEW PROCEDURES & FORMS

A2. MANDATORY CLAUSES

A3. CANCELLATION OF REGISTRATION/REJECTION OF APPLICATION

A4. RENEWAL OF REGISTRATION

## B. FCRA PROVISIONS & PRACTICAL ISSUES

# A. REGISTRATION

## A1. NEW PROCEDURES & FORMS

There are 2 types of application:

1. Provisional registration ( 3 years) and
2. Permanent registration (5 years)

# Forms and Their Applicability

Form No.	Purpose	Filing Period
10A	Fresh registration / Transition	Existing entities: within 3 months from 1 April 2021 New entities: any time before commencement of activities
10AB	Renewal / Regular registration	At least 6 months prior to expiry of the existing approval, or within 6 months from commencement of activities

# Time Limits for Disposal – SECTION 12 AB(3)

- FORM 10 A - order must be passed before the expiry of **three months** from the end of the month in which the application was received.
- FORM 10 AB - order must be issued before the expiry of **six months** from the end of the quarter in which the application was filed.

# A2. MANDATORY CLAUSES

# MANDATORY CLAUSES

- Area of operation

The objects/activities of the Trust/Society/ institution/ Organization shall be carried out only in India.

- Dissolution

In the event of dissolution/winding of the Trust/Society/institution/Organization the assets remaining as on the date of dissolution shall, under no circumstances, be distributed among the trustees/members of the Managing Committee/Governing body but the same shall be transferred to another Charitable Trust/Society whose objects are similar to those of this Trust/Society and which is registered u/s Income Tax Act at the time of transfer or shall be vested with the Government.

- Investment

The funds of the Trust/Society/Association/institution will be invested strictly in accordance with provisions of section 11(5) r.w.s. 13 (l)(d) of the Income Tax Act.

- Audit clause

The accounts of the Trust/Society/institution/Organization shall be regularly maintained and every year, the accounts shall be closed by 31st March and the same shall be audited by a Qualified Chartered Accountant.

- Amendment

Any amendment to the Trust Deed/Memorandum of Association/Bye —laws will be carried out only With the prior approval of the Commissioner of income Tax having jurisdiction. If powers to effect amendment to the Trust Deed/Memorandum of Association/bye laws have been given the Trustees/Office bearers, it would not be extended to altering the basic character of the Trust/Society/institution/Organization and further, no such amendments which may prove to be repugnant to the provisions of section 2(15), 11,12,13 and 806 of the Income Tax Act, shall be made

- Beneficiary

The income and the funds of the Trust /Society /institution/ Organization will solely be utilized for the objects and no portion of it will be utilized for payment to the Trustees/Members/Office bearers by way of profit/dividend/interest etc.

- Business Clause

It will not function in the nature of conducting any business activity and not for the purpose of profits. In case the Trust/Society Institution/Organization intend to run any business, then it will satisfy the conditions stipulated in Section 11(4A) and proviso to Section 80G(5)(1) of the Income tax Act, 1961.

- Irrevocable

The Trust/Society/institution/Organisation formed/constituted shall be irrevocable.

- Benefit of public at large

The benefit of the Trust/Society/institution/Organization is open to all, irrespective of caste, religion, creed, gender etc.

- Object -10(23C) (vi)

educational institution solely for educational purposes and not for purposes of profit,

# **A3. CANCELLATION OF REGISTRATION/REJECTION OF APPLICATION**

# Cancellation/Rejection of Registration U/sec.12AB

1. “Specified violation” u/sec.12AB(4)(a)&(b)
2. Sec 143(3) reference by A.O. that violation is found
3. Risk management strategy selection
4. **Consequence of cancellation** w.e.f 01-04-2022
  - a) No sec.11 exemption
  - b) sec.56(2)(x) applicable –i) corpus Donation taxable.  
ii) Donee loses exemption
  - c) No 80G
  - d) Exit tax u/sec.115TD at MMR on FMV of assets over liabilities

# AMENDMENT – “Specified Violation”

- Cancellation of Registration of NPOs for **Minor Defaults**.

Old provision	Amendment w.e.f 01.04.2025
<p>The Explanation to Section 12AB(4) defines "specified violation" to include cases where the application referred to in Section 12A(1)(ac) <b><u>is incomplete or contains false or incorrect information</u></b></p>	<p>The proposed amendment suggests the <b><u>deletion</u></b> of the phrase "<b><u>is not complete or it</u></b>" from clause (g) of the Explanation to Section 12AB(4).</p>

## Consequences of cancellation

- *Gross Income of the Trust could possibly be taxed at Maximum Marginal Rate (30%)*
  - *No application will be allowed as we are not eligible u/s 11*
    - *Any expenditure (not being expenditure ... in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*
- *Tax on accreted income under chapter XIIEB*

# A4. RENEWAL OF REGISTRATION

Where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, the application for renewal must be made at least six months prior to expiry of the said period.

# AMENDMENT – “Section 12AB(1)”

- ' Provided that where an application is made under sub-clauses (i) to (v) of the said clause, and the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12, does not exceed rupees five crores during each of the two previous years, preceding the previous year in which such application is made, the provisions of this sub-section shall have effect as if for the words "five years", the words "ten years" had been substituted.'

# AMENDMENT - Section 13(3). (“Specified Persons”)

- a) Revised Contribution Limits
  - Exceeds Rs. 1 lakh in the relevant previous year OR
  - Exceeds Rs. 10 lakh in aggregate over all preceding years up to the relevant previous year.
- b) Exclusion of relatives from specified persons
- c) Exclusion of Concerns with Substantial Interest

## **B .PROVISIONS UNDER FCRA**

- B.1 Purpose
- B.2 Definition
- B.3 Violation
- B.4 Duties of Recipient
- B.5 Books of Accounts
- B.6 Administrative Expense
- B.7 Annual Return
- B.8 Disposal of FC assets of defunct trust
- B.9 Surrender of Registration
- B.10 Renewal of Registration
- B.11 Amendments and Practical issues

# 1. KEY PROVISION FOR FCRA

## **1.Registration or Prior Permission –**

Any NGO wishing to receive foreign funds must either obtain FCRA registration (valid for 5 years) or prior permission for a specific project and donor.

## **2.Designated SBI NDMB Account –**

All foreign contributions must first be received in a designated account at State Bank of India, New Delhi Main Branch. Utilization can be through linked accounts, but domestic and foreign funds cannot be mixed.

### **3.Utilization Restrictions –**

Not more than 20% of the foreign contribution can be spent on administrative expenses.

### **4. Annual Return Filing –**

Form FC-4 must be filed online every year, detailing receipts, utilization, and balance of funds.

### **5. Prohibitions –**

Foreign contributions cannot be received by certain categories of persons (e.g., candidates for elections, judges, government servants) or used for activities detrimental to national interest.

## 2. PRACTICAL ISSUES FACED BY NGOS

## **1. Delays in Registration & Renewal –**

Approval timelines are often long, causing uncertainty for ongoing projects.

## **2. Banking Bottlenecks –**

Routing all funds through SBI NDMB causes operational delays, especially for NGOs in remote areas.

## **3. Ambiguity in Administrative Expense Definition –**

Misinterpretation of what falls under the 20% cap can lead to compliance risks.

## **4.High Compliance Burden –**

Small NGOs with limited staff struggle with complex record-keeping and filing requirements.

## **5.Stringent Scrutiny –**

Even small clerical errors in forms or documents can result in notices, suspension, or penalties.

# **3. REASONS FOR CANCELLATION OF REGISTRATION**

The Ministry of Home Affairs may cancel FCRA registration under Section 14 of the Act for reasons such as:

**1. Violation of FCRA Provisions –**

Using funds for purposes not stated in the registration.

**2. Misutilization or Diversion of Funds –**

Spending on prohibited activities or unrelated expenses.

**3. Non-filing of Annual Returns –**

Failure to file FC-4 for consecutive years.

**4.False Information at the Time of Application –**  
Misrepresentation of facts or forged documents.

**5.Activities Prejudicial to Public Interest or National Security –**  
Any act deemed harmful to the sovereignty or integrity of India.

## **4. REASONS FOR REJECTION OF RENEWAL APPLICATIONS**

Renewal can be rejected if:

**1. Pending Investigations –**

By law enforcement or intelligence agencies.

**2. Adverse Inputs from Field Agencies –**

Negative reports on functioning, beneficiaries, or governance.

**3. Non-Compliance in Previous Years –**

Delays or inaccuracies in returns, or exceeding administrative expense limits.

#### **4. Failure to Meet Eligibility Criteria –**

Such as maintaining proper books of account, or having a clean record for 3 years before application.

#### **5. Change in Objectives or Activities –**

If they now conflict with the permitted purposes under FCRA.

# Foreign Contribution Regulation Act, 2010

## B.1 Purpose of this Act

*An Act to consolidate the law*

- 1. To regulate the acceptance and utilization of foreign contribution or foreign hospitality*
- 2. To prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities*

## B.2      Foreign Contribution [Sec. 2(h)]

*means the donation, delivery or transfer made by any foreign so*

- a) of any article,*
- b) of any currency, whether Indian or foreign;*
- c) of any security*
  - i. includes Shares, Scripts, Stocks, bonds, debenture stock or other marketable se nature in or of any incorporated company or body corporate*
  - ii. Units of a Mutual fund*

### *Explanations*

- received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution*
- income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution*

by way of fee or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce cost shall be excluded

### What is not Foreign Contribution?

- *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 actually an Indian citizen.*

## **Foreign Source (includes) (Sec. 2 (j))**

- 1) *the Government of any foreign country or territory and any agency of such Government*
- 2) *any international agency, not being the United Nations or any of its specialised agencies, the*
- 3) *World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf a foreign company*
- 4) *a corporation, not being a foreign company, incorporated in a foreign country or territory*
- 5) *a multi-national corporation referred to in sub-clause (iv) of clause (g)*
- 6) *a trade union in any foreign country or territory, whether or not registered in such foreign country or territory*
- 7) *a citizen of a foreign country*

- 8) *a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory*
- 9) *a society, club or other association of individuals formed or registered outside India*
- 10) *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;*
- 11) *Change in Foreign Source (money bill/Finance Act, 2016) - If the nominal value of Share Capital is within Foreign Investment limits prescribed under the relevant rules and regulations issued under Foreign Exchange Management Act, 1999, shall always deemed to have been not a foreign source*

## Registration with Central Government

*No person having a definite*

- a) cultural,*
- b) economic,*
- c) educational,*
- d) religious or*
- e) social program*

*shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government. (Sec. 11(1))*

- a) Regular Registration*
- b) Prior Permission*

**Person includes—**

- a) an **individual**;*
- b) a Hindu undivided family;*
- c) an association;*
- d) a company registered under section 25 of the Companies Act, 1956*

## Foreign Contribution – Practical Illustrations

- 1) *Foreign Tourist giving Rs.2,000 in cash to a beggar*
  - a) *Foreign Tourist gives another Rs.2,000 to the same beggar asking him to distribute to 10 other beggars*
  - b) Cookies
- 2) *Mr. Bill, Foreigner working in Cognizant, Chennai as Program Director gives donation of Rs.100,000 by cheque from his Salary Income in Cognizant, Chennai (State Bank of India, Annanagar Branch, Chennai)*
- 3) *Mr. Suresh, NRI holding Australian passport gives Rs.50,000 from his NRO account. (He deposits in the NRO account rent from his House property inherited from his father)*

## B.3    Violations by NGOs - FCRA

- 1) *Clubbing foreign contribution account with domestic accounts i.e. failure to maintain exclusive accounts as required by FCRA,*
- 2) *Failure to submit annual accounts within the stipulated period,*
- 3) *Transfer of foreign contribution to unregistered NGOs*
- 4) *Change of more than 50% of the office bearers without prior approval.*
- 5) *Utilization of foreign contribution amount for the purposes different from the grant or different from the objectives of the recipient NGO*

- 6) *Registration of assets from foreign contribution in the individual names of office bearers rather than in the name of NGO*
- 7) *Utilization of more than 50% of foreign contribution received in a financial year on administrative expenses*

## B.4      Duties of Recipients

- 1) *Maintain Separate set of books of account*
  - Cap Administrative Expenses
- 2) *Audit of Accounts by a Chartered Accountant*
- 3) *Annual Returns*
- 4) *Receive the foreign contribution through the designated bank account*
- 5) *Follow the conditions of multiple bank accounts*
- 6) *Preserve accounts for a period of 6 years*
- 7) *Register with the Central Government*
  - Renewal of Registration
- 8) *Not to transfer funds to another organization – Restrictions on transfer*

## **B.5** **Books of Accounts**

1) *Maintain separate set of accounts & records exclusively for foreign contribution received and utilized (Rule 11)*

- 1) *Accounting period 1st April to 31st March*
- 2) *Fixed Assets Register*
- 3) *Investment Register*
- 4) *Minutes Book*

•  
2) *Bifurcation between Program Expense and Admin Expense*

**3) Do Not Mix Local Funds And FC Funds**

## **B.6 Administrative expense (Sec. 8)**

*-Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—*

*(a) shall utilize such contribution for the purposes for which the contribution has been received:*

*[Sec.8.(1)]*

*(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 20% of such contribution may be defrayed with prior approval of the Central Government.***

*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.*

## **Constituents of Admin Expenses (Rule 5):**

- 1) *salaries, wages, travel expenses or any remuneration realized by the Members of the Executive Committee or Governing Council of the person;*
- 2) *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;*
- 3) *all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premises from where the organization or Association is functioning,*
- 4) *stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;*
- 5) *cost of accounting for and administering funds;*

- 6) expenses towards running and maintenance of vehicles;
- 7) cost of writing and filing reports;
- 8) legal and professional charges; and
- 9) 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 organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc*

## **B.7 Annual returns**

- 1. Audit of accounts (certification) by Chartered Accountant*
- 2. File Annual Return within 9 months from the end of the year for Foreign Contributions received.*
  - a) in Form FC-4 (Foreign Contributions received) with scan copies of the following*
  - b) File “NIL” return when not receiving Foreign Contributions*
  - c) No need of CA Certificate and Audited Statement*
- 3. in Form FC-4 (Foreign Contributions received) with scan copies of the following*
  - a) Income & Expenditure account*
  - b) Receipts & Payments account &*
  - c) Balance Sheet*
  - d) Chartered Accountant Certificate*
  - e) 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.*
  - f) Declaration by the Chief Functionary*
  - g) Scan copy of Chief Functionary Signature*
- 4. Scan copy of office seal*

## **B.8 Disposal of FC assets of defunct trust (Sec.22)**

- Assets shall be disposed off under any other law under which the person was registered or incorporated.*
- In the absence of any other law assets created out of foreign contribution shall be disposed off by such authority, as it may specify, in such manner and procedure as may be prescribed.*  
*[Sec. 22]*

### B.9 Surrender of FCRA Registration (Sec. 14A)

- 1) *On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act,*
- 2) *if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and*
- 3) *the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in sub-section (1) of section 15.*

## **B.10 Renewal of Registration (Rule 12):**

- 1) Every certificate of registration is valid for 5 years from the date of issue*
- 2) Application shall be made to the Central Government in FC- 3C, six months before the date of expiry of the certificate of registration, for its renewal. Fee payable for renewal is Rs.5,000/= payable online through payment gateway in fcra website*

Sl.No	Form No.	Intimation of Changes
1	FC-6A	Intimation – Change of name and/ or address within the State of the Association
2	FC-6B	Intimation – Change of nature, aims, and objects, and registration with local/relevant authorities in respect of the association
3	FC-6C	Intimation – Change of designated bank/ branch/ bank account number of designated FC receipt-cum-utilisation bank account
4	FC-6D	Intimation – Opening of additional FC-utilisation Bank Account for utilization of foreign contribution
5	FC-6E	Intimation – Change in original Key members of the association

# Penalties for Late Filing of Form FC-4

Delay Period	Penalty
Up to 3 months after 31 December	2 % of the foreign contribution received during the financial year or ₹ 10,000, whichever is less
3–6 months after 31 December	3 % of the foreign contribution received during the financial year or ₹ 50,000, whichever is less
6–12 months after 31 December	4 % of the foreign contribution received during the financial year or ₹ 2,00,000, whichever is less

# PUBLIC NOTICE DATED 31.12.2024

## Clarification regarding refund of TDS pertaining to Foreign Contribution (FC).

- “The matter has been examined and it has been decided with the approval of Competent Authority that in case the consolidated income tax refund is received in non-FCRA bank account, the proportionate income tax refund pertaining to FCRA account needs to be transferred back to FCRA bank account. Such transfer would not be treated as a violation of section 17 of the Foreign Contribution (Regulation) Act, 2010 (the Act) and are allowed as per spirit of the Act.”
- “Further, with respect to accounting treatment of TDS and its refund thereof, it is clarified that at the time of deduction, such TDS may be as utilization of FC and upon receipt of refund in FCRA account, it may be considered as "other income" and to be reported in clause 2(i)(b)(iii) in form FC-4.”



# THANK YOU

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