

## FINANCIAL SUPPORT TO POOR BENEFICIARIES

(IT IS PERMISSIBLE UNDER FCRA AND INCOME TAX LAW TO  
PROVIDE FINANCIAL SUPPORT TO DESERVING BENEFICIARIES)



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## INTRODUCTION

- 1.1.1** In the difficult times of Corona Covid-19 pandemic, many NGOs are helping poor beneficiaries with financial support for survival or basic necessities such as medicine or food. In this regard, doubts have been raised by the NGOs and experts on whether such financial support to beneficiaries is legally permissible or not, particularly, as per the provisions of Foreign Contribution Regulation Act 2010 (FCRA 2010).
- 1.1.2** In the light of the statutory provisions and the judicial precedence, it seems that it is permissible to provide financial support to poor beneficiaries for survival or basic necessities such as medicine or food. However, certain procedures and compliances have to be followed. In this issue we will discuss the law in this regard.

## DOES SUCH CASH TRANSFER TO THE BENEFICIARIES

### VIOLATE THE FCRA OR INCOME TAX LAW

- 1.2.1** In our opinion any financial support to poor indigent beneficiary will be treated as valid application under FCRA 2010 as well as the Income Tax Act 1961. Any reasonable amount provided to beneficiaries for self-consumption should be treated as valid application. On the other hand, the applicability of FCRA at the level of an NGO will become relevant if such beneficiary is not entitled to receive such support without FCRA permission.
- 1.2.2** The FCRA 2010 has been enacted to regulate only certain specified individuals. It applies to all Indian citizens but it regulates only specified individuals. The preamble of FCRA 2010 is reproduced as under:

*“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 herewith or incidental thereto.”*

From the preamble it is clear that this act intends to regulate certain institutions and individuals. In fact, the FCRA 2010 has carved out three categories of individuals,

- Firstly, prohibited persons under section 3, where 8 categories of individuals & institutions are prohibited from receiving foreign contribution. It may be noted that even individuals in the prohibited category can receive gifts and scholarships under section 4(d) and 4(f) respectively.
- Secondly, the regulated persons under section 11 various institutions and individuals are required to take prior permission or registration under FCRA 2010 only if they receive foreign contribution for a **definite** cultural, economic, educational, religious or social programme. In other words, such persons should receive FC funds as a trustee for the aforesaid definite programme. In other words, FCRA 2010 shall apply only if the recipient has a definite programme and it does not apply to personal support for self-consumption unless such individual is prohibited under section 3.
- The residual category are not covered in the above two and therefore are not regulated by FCRA 2010.

**1.2.3** Section 7 of FCRA 2010 provides that foreign contribution should not be transferred to any person unless provisions of section 11 are complied with. Both section 7 and section 11 apply to the regulated category of individuals in consonance with the preamble of FCRA 2010.

**1.2.4** It is important to note that section 7 uses the words “*shall transfer such foreign contribution to any other person unless such other person is also registered.....*” The use of the word **transfer** can only be in context of



transfer to a person referred to in section 11, otherwise any transfer such as transfer to a vendor or employee would also be prohibited. In other words section 7 does not apply to utilisation related transfers. Further, the use of phrase “**such foreign contribution**” also signifies that it applies that portion of foreign contribution which is transferred to any person subject to the provisions of section 11. In other words end utilisation towards charitable purposes are not barred.

- 1.2.5** However, for a FC registered NGO it would be necessary to establish that any financial support to beneficiaries would qualify as a valid charitable activity permissible both under FCRA 2010 and the Income Tax law. The FCRA 2010 allows all kinds of expenditure for social/charitable purposes except
- (i) on speculative business under section 8(1)(a),
  - (ii) administrative expenses in excess of 50% of total expenses under section 8(1)(b).

## DOES FCRA LAW ALLOW

### ALL KINDS OF GIFTS

- 1.3.1** Providing financial support to poor beneficiaries is not exactly in the nature of a gift. Such support is a redemption of the right of such poor beneficiaries and should not be equated with a gift, particularly because NGOs hold funds on behalf of public at large both in restricted and unrestricted form. Such expenditures are valid charitable activities.
- 1.3.2** Further, even gifts for self-consumption do not seem to be covered by FCRA 2010. Any gift received from a foreign source falls under the definition of foreign contribution, but only foreign contributions received **for a definite purpose** are regulated. In other words, when a person receives foreign contribution for any specific charitable purpose then only FCRA law will apply,

but, if a poor beneficiary receives foreign contribution for self-consumption then FCRA law will not apply.

- 1.3.3** It is emphasised that Section 11(1) of FCRA, 2010 requires that **only** if any person has a definite cultural, economic, educational, religious or social programme then prior permission or registration is required to receive such foreign contribution. When gift from foreign source is received it is for self consumption and no definite purpose is attached and therefore, such receipts are not regulated by FCRA, 2010. A detailed note in this regard is provided in **Annexure 1**.

## **WILL TRANSFER TO LARGE NUMBER OF BENEFICIARIES HAVE IMPLICATIONS UNDER INCOME TAX OR FCRA**

- 1.4.1** Providing financial support to deserving beneficiaries, particularly, in an unprecedented situation like the COVID-19 Pandemic, is a genuine charitable activity. The Supreme Court in the case of *Thiagarajar Charities v. ACIT* [1997] 92 Taxman 152, has held that the scope of “relief for poor” is very wide and it can even include businesses carried on for the benefit of the poor. In this case, the objects of the *Thiagarajar* trust were studied and debated whether they could be considered as “relief for poor”. Some of the objects of the trust which were held to be towards “relief for poor” are as under :

- “(d) To build, erect and construct **and to aid** and assist in the building erection and construction of houses, tenements and places of residence for the poor and needy **and to afford** them all comforts and conveniences.
- (e) To conduct poor feeding and generally to give food and clothing to the poor, needy and defectives **and to afford relief to people in distress**

*and affected by earthquake, flood, famine, pestilence and other accidents and conduct **or grant donations** for the support of the inmates of orphanages.*

- (f) *To **help, assist and give aid** to the fathers, or other natural guardians, or near relatives of indigent and unmarried girls for the marriages of such girls.”*

**1.4.2** Further, CBDT in its Circular No. 11/2008 [F. No. 134/34/2008-TPL] has defined the term ‘Relief of the poor’ as :

*“‘Relief of the poor’ encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C).”*

**1.4.3** In the light of the above there is no direct implication in the existing Income Tax cases or FCRA compliances. The text of the Circular is available in **Annexure 2.**

## **PRECAUTIONS TO BE TAKEN BY NGOs WHILE PROVIDING FINANCIAL SUPPORT**

**1.5.1** As the activity involves direct cash transfers, it is advisable that the identification of beneficiaries is made through the participation of people, panchayat and local authorities.

- 1.5.2** Further, the purpose of such transfers should be documented with the trail of information regarding the beneficiaries. Further, it is desirable to make the direct cash transfers to the bank account of the beneficiaries only. It should be ensured that the transfer is not made to any account other than the bank account of the beneficiaries. Cash payments should be avoided in the light of “Do’s and Dont’s” issued by the FCRA Department restricting cash expenditure to Rs. 2,000/- only. The “Do’s and Dont’s” are provided in **Annexure 3**.
- 1.5.3** It may be noted that the “Do’s and Dont’s” as provided in Annexure 3 are not formally notified by the FCRA Department therefore, they should be treated as a recommended practice. The FCRA Department has further issued a Charter for Registered Organisations where it provides a Rs. 20,000/- limit for cash expenditure. This document is also not formally notified. The Charter for Registered Organisations is provided in **Annexure 4**.

## FCRA LAW PERTAINING TO GIFT OR SUPPORT TO POOR BENEFICIARIES

### INTRODUCTION

- 1.1** FCRA 2010 is silent about gift received from foreign sources except in section 4 where it is provided that even prohibited category persons can also receive gift from relatives and from any other person as per any rules made by Central Government with regard to acceptance or retention of gift or presentation. For details section 4(1)(d) and (e) may be referred. In other words there is no prohibition for receiving gift from foreign sources. Further, since gifts are not for a definite purpose as defined in section 11, any person receiving gift is not required to apply for prior permission or registration.
- 1.2** Any gift received from a foreign source falls under the definition of foreign contribution, however only foreign contributions received **for a definite purpose** are regulated. In other words when a person receives foreign contribution for any specific charitable purpose then FCRA law will apply, however, if a poor beneficiaries receives foreign contribution for self consumption then FCRA law will not apply.
- 1.3** It is emphasised that Section 11(1) of FCRA, 2010 requires that **only** if any person has a definite cultural, economic, educational, religious or social programme then prior permission or registration is required to receive such foreign contribution. When gift from foreign source is received it is for self consumption and no definite purpose is attached and therefore, such receipts are not regulated by FCRA, 2010.

- 1.4** However, the FCRA rules create some confusion by insertion of specific compliances for gifts received from foreign sources. It may be noted that, a gift of any article for personal use upto ` 25,000/- (market value) from foreign source is exempted, through insertion of the following Rule 6A in FCRR, 2011 vide the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12<sup>th</sup> April, 2012]. It is not known how a gift of any article for personal use above ` 25,000/- (market value) from foreign source is not exempted in the absence of any specific provision in the act.
- 1.5** The Rule 6 of Foreign Contribution Regulation Rules (FCRR), 2011 provide that only gift received from relatives (who are foreigners) shall be exempted. An intimation in Form FC-1 has to be sent to the Home Ministry if the amount exceeds ` 1 lakh in a year. Such rule is causing undue hardship to people; for example old parents of receiving money from children staying abroad having foreign citizenship. Such parent have to file intimation to FCRA department if the amount exceeds ` 1 lakh. The issue is whether such rule is sustainable when the act does not debar any such receipts.
- 1.6** Similarly, the Rule 6A of Foreign Contribution Regulation Rules (FCRR), 2011 provides that individuals can receive articles from foreign source to the extent\* of ` 25,000.00 in a year. It may be noted that there is no provision for receiving cash or currency. The issue again is whether such rule is sustainable when the act does not debar any such receipts.
- 1.7** In this chapter we are technically analysing the applicability of FCRA on gifts/contribution received by individuals for personal consumption. It may be noted that receiving foreign contribution for a definite purpose and for personal consumption are two different things. It seems that despite the rules and the FAQs, FCRA laws does not apply to gifts/contribution received by individuals for personal consumption, unless the person is debarred from

receiving FC. It may also be noted that section 3 of FCRA debars only certain specific persons from receiving FCRA. The text of section 3 is provided hereunder.

### **PERSONS BARRED FROM RECEIVING FOREIGN CONTRIBUTION**

*As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by certain specified persons. The text of Sec. 3(1) is as under :*

**“3.(1) No foreign contribution shall be accepted by any—**

- (a) 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) organization 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.”*

**1.8** It may be noted that Persons other than the one mentioned in section 3 can receive foreign contribution subject to the provisions pertaining to prior permission and registration. Therefore, since prior permission and registration apply only to foreign contribution received for definite purpose, gifts are excluded.



## **LAW PERTAINING TO CONTRIBUTIONS (INCLUDING GIFTS) FOR PERSONAL PURPOSES**

- 2.1** The term ‘person’\*\* includes individuals. Therefore, all individuals except the prohibited category can receive foreign contribution subject to the compliance of FCRA 2010. The FCRA, 2010 has confusing provisions in this regard. However, the overall intent seems to be towards regulating all foreign contributions received by individuals from foreign source.
- 2.2** An individual may receive foreign contribution or gift for personal consumption or as a trustee to execute any specific programme, research, activity etc. Some foreign donors do send money in individual bank accounts for charitable project. The issue is whether both type of foreign contribution receipts shall be covered by the act or not.
- 2.3** Section 11(1) of the FCRA provides that any person receiving foreign contribution for a definite programme should apply for registration. In other words, it implies that any person receiving foreign contribution for personal use may not apply for registration. This provision creates confusion on whether individuals receiving gifts or contribution for personal purposes are exempted from the law. Further section 12(4)(a)(vi) provides that any person applying for registration or prior permission shall not use foreign contribution for personal gain or divert it for any undesirable purpose.
- 2.4** To sum up, the registration and procedural provisions of the act have been structured only to cover contribution received for a definite purpose, but the statutory definition of foreign contribution and inclusion of individuals in the definition of the term ‘person’ makes it applicable on all individuals who receive foreign contribution from a foreign source. But at the same time the act is not clear how such contribution received by individuals will be regulated when the registration and prior permission are required to be taken only when foreign contribution is received for definite purpose.

**2.5** In other words, the application of the act on an individual is very clear. Further gifts from foreign sources also seem to be covered under the definition of foreign contribution. But the act does not regulate personal gifts or contribution and therefore, individuals or even institution, technically can receive gifts from foreign sources without prior permission or registration. The regulation of personal receipts and gifts from foreign sources have not been properly articulated. Further, the act does not debar receiving gifts and contribution for personal purposes. The act provides for reporting of gifts received from relatives above ` 1 lakh, but it is silent about reporting of gifts received from foreign source. Further, the preamble of the act as provided in the beginning of the act, states that the act is to regulate the foreign contribution or foreign hospitality of only certain individuals, associations or companies. In other words, the act at the outset also makes it clear that it does not apply to all category of persons. The preamble is reproduced as under :

*“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.”*

Overall, it seems that the act applies to all persons for foreign contribution received **for a definite purpose**. In other words, the act would not apply to foreign contribution received for personal use or as gift. Only the specified individual under section 3 are debarred from receiving FC except gifts from relatives.

**Annexure 2****CIRCULAR ON 'CHARITABLE PURPOSE' UNDER SECTION 2(15)****CIRCULAR NO. 11/2008 [F. NO.134/34//2008-TPL]**

1. Section 2(15) of the Income-tax Act, 1961 ('Act') defines "charitable purpose" to include the following :—

- (i) Relief of the poor
- (ii) Education
- (iii) Medical relief, and
- (iv) The advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose'. Therefore, section 2(15) was amended *vide* Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of—

- (a) any activity in the nature of trade, commerce or business; or
- (b) any activity of rendering any service in relation to any trade, commerce or business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

2. The following implications arise from this amendment.

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education

or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

**2.2** 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that :—

- (i) the business should be incidental to the attainment of the objectives of the entity, and
  - (ii) separate books of account should be maintained in respect of such business.
- Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

**3.** The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e., the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

**3.1** There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this

respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, *where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality.* However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

**3.2** In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

**DO'S AND DONT'S ISSUED BY FCRA DEPARTMENT****Do Not Mix Foreign Contribution with Domestic Receipts**

- ✓ Bank accounts must be separate (obviously)
- ✓ Do not Transfer funds from FC Bank to Non FC (even Direct Bank Transfer)
- ✓ Books of Accounts must be separate.
- ✓ Keep Separate Cash Box (it shows good cash control system)

**Do Not approach Middlemen**

- ✓ Any Middlemen, government employees, CAs, other organization person, anybody who claim as consultant regarding getting FCRA work done must be avoided
- ✓ For any query, you can approach directly to FCRA department.

**Do Not Deviate from the Purpose of the Grant**

- ✓ Make sure while getting FC funds that the purpose is crystal clear for what purpose it is received.
- ✓ Make sure that you used these funds for the very specific purpose.
- ✓ And, care should be taken that, this specific purpose should even reflect in the books of accounts, FC Annual Returns and Annual Reports.

**Do Not use ATM or Debit Cards**

- ✓ Mostly, Bank is not providing any ATM or Debit Cards for FC Bank Account.
- ✓ However, If you have such card for FC Bank Account, do not use for cash withdrawals for online payments.

**Do Not encourage Cash Withdrawals**

- ✓ Yes, Cash is most suspicious area. Avoid Cash Payments.
- ✓ This requires extra efforts on the part of the organization to develop Financial Control System in such a way to encourage Bank Payments through "Account Payee" cheques only.
- ✓ Also note that Cash Expenses and withdrawals limit is Rs.2,000/-

**Do Not Invest FC funds in Mutual Funds or Speculative Investments**

- ✓ Be safe, invest only in Fixed Deposits.
- ✓ Mutual Funds, Shares, Speculative Investments must be avoided.

**Do not accept foreign hospitality while visiting aboard (Sec.6)**

- ✓ You cannot accept foreign hospitality without prior permission of the Central Government except for an emergent medical aid needed on account of sudden illness contracted during a visit outside India.



**Do Not Transfer FC funds to Unregistered Organizations (Sec.7)**

- ✓ You can transfer funds to unregistered organizations only with the prior approval of FCRA department in the prescribed format and manner.
- ✓ One can make payments from FC funds to other persons for services rendered by them.

**Do not utilize foreign contribution for administrative purpose (Sec.8)**

- ✓ Avoid as far as possible more than 50% of foreign contribution, received in a particular financial year to administrative expenses. Provided further that administrative expenses exceeding 50% of such contribution may be defrayed with prior permission of the Central Government.

**Do not accept foreign contribution without prior permission or having a certificate of FCRA Registration (Sec.11)**

- ✓ No association/NGO/Society having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless obtains prior permission or a certificate of registration under FCRA from the Central Government

**Do not accept foreign contribution during suspension of FCRA registration (Sec.13)**

- ✓ No association/NGO/Society, whose certificate of FCRA registration has been suspended, shall receive any foreign contribution during the period of suspension of certificate without prior permission of the Central Government.
- ✓ No association/NGO/Society, whose certificate of FCRA registration has been suspended, shall utilize in the prescribed manner, the foreign contribution in his custody without prior permission of the Central Government.

**Do not accept foreign contribution during cancellation of FCRA registration (Sec.14)**

- ✓ No association/NGO/Society, whose certificate of FCRA registration has been cancelled under Section 14, shall apply afresh for grant of FCRA registration or prior permission to receive foreign contribution before a period of three years from the date of cancellation of its certificate.

**Do not accept foreign contribution in undisclosed bank account(s) (Sec.17)**

- ✓ Do not receive foreign contribution in more than one foreign contribution designated account(s).
- ✓ Do not receive foreign contribution directly in the utilized account(s) of the association/NGO/Society.
- ✓ Do not mix foreign contribution with domestic funds.
- ✓ Do not hide amount, source and manner in which the foreign contribution/remittance was received.

**Do not avoid filing mandatory FC annual returns (Sec.18)**

- ✓ No association/NGO/Society, who has been granted prior permission or certificate of FCRA registration will avoid filing mandatory FC annual return.

**Do not indulge in making of false statement, declaration or delivering false accounts (Sec.33)**

- ✓ No association/NGO/Society, subject to this Act will knowingly gives false intimation under clause (c) of section 9 or section 18 or seeks prior permission or registration by means of fraud, false representation or concealment of material fact.

**Do not deliver any article or currency or security obtained in contravention of section 10 (Sec.34)**

- ✓ No association/NGO/Society, upon whom any prohibitory order has been served under section 10 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.

**Do not act in contravention of any provision of the FCRA, 2010 (Sec.35)**

- ✓ No association/NGO/Society, will accepts, or assists any person, political party or organization in accepting, any foreign contribution or any currency or security from a foreign source in contravention of any provision of this Act or any rule or order made thereunder.



**CHARTER FOR REGISTERED ORGANISATION****CHARTER FOR ASSOCIATIONS APPLYING FOR GRANT OF PRIOR  
PERMISSION/REGISTRATION UNDER THE FOREIGN CONTRIBUTION  
(REGULATION) ACT, 2010.**

- Any Association wishing to receive foreign contribution (FC) must have a definite cultural, economic, educational, religious or social programme.
- It shall neither receive nor utilise any FC without obtaining either prior permission or registration from the Central Government.
- Details of FC received prior to obtaining either prior permission or registration should be mentioned clearly at the time of applying for prior permission or registration, as the case may be.
- No foreign national other than one of Indian Origin can be an office bearer or a trustee including the Chief Functionary of an organization. Foreigners can, however, be, allowed to be associated with such associations in an ex-officio capacity if they are 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. Relaxation may be considered, on a case to case basis, if any of the following grounds is met:
  - a) the foreigner is married to an Indian Citizen;
  - b) the foreigner has been living and working in India for at least five years;
  - c) 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;
  - d) the foreigner is a part of the Board of Trustees / Executive Committee in terms of the provisions of an inter-governmental agreement.

- e) The foreigner is part of the Board of Trustees / Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.
- For Indian recipient organizations and foreign donor organizations having common members, FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:
    - a) The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
    - b) At least 51% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.
    - c) In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary of the recipient Indian organization.
    - d) In case of a single foreign donor, at least 51% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.
  - All associations seeking registration or prior permission under FCRA, 2010 shall be required to give undertaking for adherence to Good practice guidelines of Financial Action Task Force (FATF) as at Annexure.
  - Application for grant of registration/ prior permission is to be made online in Form FC – 3.
  - The application should be complete in all respects.
  - The request for prior permission should be sent for receiving a specific amount, for a specific purpose and from a specific donor.
  - Following documents are to be uploaded with the online application for grant of Registration:
    - a) Certified copy of registration certificate or Trust deed, as the case may be;
    - b) Details of activities during the last three years;

- c) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);

It may be noted that fee of Rs. 2000/- is required to be paid through online payment gateway.

- Following documents are required to be uploaded with the online application for grant of Prior Permission:
  - a) Certified copy of registration certificate or Trust deed, as the case may be;
  - b) Commitment letter from foreign donor specifying the amount of foreign contribution;
  - c) Copy of the project report for which foreign contribution is solicited/being offered;

It may be noted that fee of Rs. 1000/- is required to be paid through online payment gateway.

**Note:** FCRA, 2010, FCRR, 2011, FAQs thereon and all other related information and, the Form FC-3 as also link to FCRA Online Services are available at the website of the Ministry of Home Affairs at <http://fcraonline.nic.in>

**Annexure****Good practice Guidelines to the NPOs to ensure compliance with FATF requirements.**

1. Wherever necessary, NPO shall inform the MHA (FCRA Wing) about the suspicious activities of the customer, without waiting for annual returns.
2. The Board of Directors / Chief Functionary of NPO shall issue directions regarding duties of official who shall be required to enforce these guidelines and other rules of FCRA, 2010 read with FCRR, 2011.
3. The NPO shall put its goals, objectives and activities on its website.
4. The NPO shall upload the details of key persons associated with NPOs activities on its website.
5. The NPO shall take due diligence of its employees at the time recruitment.
6. The NPO shall collect the information of beneficiaries of funds and to upload on its website and monitor the activities of the beneficiaries. Wherever a beneficiary is a legal person, the details of beneficial owner shall also be uploaded.
7. The NPO shall ensure that the financial transactions involving more than Rs.20,000/- to be routed through Banking channels only.



8. The Board of Directors/Trustees of NPO's must ensure utilization of funds consistent with objectives as approved by MHA.
9. The Board of Directors/Trustee of NPO's shall conduct meeting once at least in six months to review the working of these instructions and shall record the minutes of these meetings.
10. The NPO shall train its staff on the FCRA and about the application of these guidelines.
11. When any transaction is under investigation by any authority, the MHA shall be informed by such NPO.

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