

# FCRA RULES

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## ANALYSIS OF FOREIGN CONTRIBUTION REGULATION (AMENDMENT) RULES, 2020



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## INTRODUCTION & SOME CHANGES IN BRIEF

- 1.01** The Foreign Contribution (Regulation) Rules, 2020 has been notified and become effective from 10th November, 2020. The amended rules contain many procedural changes having far reaching impact. The summary of the important amendments is as under:
- 1.02** In exercise of the powers conferred by under section 48 of the Foreign Contribution (Regulation) Act, 2010, the Central Govt. has amended Foreign Contribution (Regulation) Rules, 2011 and this amended Rules is called Foreign Contribution (Regulation) (Amendment) Rules, 2020.
- 1.03** This amended Rules has been published in the Official Gazette on 10th November, 2020 and therefore, amended rules have become effective from 10th November, 2020.
- 1.04** There are comprehensive changes made in the process of application of registration, prior permission and, renewal. The process for surrendering the FCRA registration has been defined and, Rule 24 providing for approval of transfer of FC fund to an unregistered organisation has been deleted because of amendment in Sec. 7 of FCRA, 2010 thereby prohibiting inter charity donation. Simultaneously Form FC 5 for approval of transfer of FC fund to an unregistered organisation also has been deleted.
- 1.05** It is also provided that the intimation for any change shall be effective only when it is approved by the Central Govt.
- 1.06** All the filling fees for registration, prior permission, renewal, revision and, compounding has been substantially increased.

- 1.07** All the forms have been modified; a new Form FC 7 has been inserted for surrender of FCRA registration, Form FC 4 has been modified by including 15 self-declarations and one declaration towards use of FC fund for the same purpose for which FCRA registration is granted.

## ELECTRONIC FORM

- 2.01** In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as the said rules), in rule 2, in sub- rule (1), after clause (b), the following clause has been inserted, namely:—

*‘(ba) “electronic form” shall have the same meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);’;*

The Meaning of Electronic form as per section 2(1)(r) of Information Technology Act 2000 is as under:

*“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;”*

The term ‘electronic form’ replaces the term ‘electronically online’ at many places in the FCR Rules 2020. In other words any communication or submission shall be formally recognised if it fulfills the conditions as defined under the IT Act 2000.

## FCRA ACCOUNT

- 3.01** The term “FCRA Account” has been defined as under:

*“(f) “FCRA Account” means the FCRA Account referred to in section 17 of the Act.”*

**3.02** It may be noted that section 17 of the FCR Amendment Act 2020 refers the Bank Accounts as “FCRA Account”. Under section 17 there are three categories of bank accounts

- (i) the designated bank account with the SBI, New Delhi branch,
- (ii) the second designated bank account (the designated bank account prior to amendment) for keeping and utilising FC funds,
- (iii) utilisation bank accounts.

It may be noted that only the first two category of bank account are referred as “FCRA Account”.

**3.03** The text of Section 17 is as under:

“Section 17 - Foreign contribution through scheduled bank.

**17.** *(1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:*

**Provided** *that such person may also open another “FCRA Account” in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his “FCRA Account” in the specified branch of State Bank of India at New Delhi :*

**Provided further** *that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his “FCRA Account” in the specified branch of the State Bank of India at New Delhi or kept by him in another “FCRA Account” in a scheduled bank of his choice.*

**Provided also that no funds other than foreign contribution shall be received or deposited in any such account."**

- 3.04** It can be seen that Section 17 refers "the bank account with SBI" as FCRA Account and also mention about another FCRA Account in a bank of choice for keeping and utilisation purposes. The third type of bank account is mentioned as **utilisation bank account** and not FCRA account.

Therefore, for the purpose of the rules and filing of forms "FCRA Account" shall mean bank account with SBI, New Delhi and the second FCRA Account. This understanding gets reconfirmed when we review the form FC 3A , FC 3B, FC 3C which require the details of bank account with SBI and details of another FCRA account as FCRA account.

However, form FC 7 (application for Surrender of registration) also requires the detailed of utilization bank account as a part of FCRA account.

## **DECLARING AN ORGANISATION TO BE OF POLITICAL NATURE**

- 4.01** The Rule 3 has been amended by addition of a new sub rule (2) which provides that an organisation shall be considered to be a organisation of political in nature only if it participates in active politics or party politics. The newly inserted sub rule (2) is as under:

*"(2) The organisations specified under clauses (v) and (vi) of sub-rule (1) shall be considered to be of political nature, if they participate in active politics or party politics, as the case may be."*

The organisation specified in clause (v) and (vi) of Rule 3(1) are as under:

*“(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.”*

This amendment should come as a relief to many organisations, prior to the amendments organisations could be declared to be a political organisation for a non political activity, such as rally, dharna or any other form of protest. Now onwards an organisation cannot be declared to be a political organisation only because of any public in convenience or law and order issue for which other laws will apply.

## APPLICATION FOR OBTAINING REGISTRATION

**5.01** There has been considerable changes with regard to the application for registration under FCRA. The Rule 9 of FCRR 2011 in relation to registration is amended as follows :

*“(i) in sub-rule(1)–*

*(A) in clause (a), for the words “electronically online”, at both places where they occur, the words “in electronic form” shall be substituted;*

*(B) for clause (d), the following clause shall be substituted, namely:—“(d) Any person making an application for registration under clause (a) of sub-rule (1) shall have an FCRA Account.”;*

*(C) in clause (e), for the words “electronically online”, the words “in electronic form” shall be substituted;*

*(D) after clause (e), the following clause shall be inserted,namely:—*

*“(f) A person seeking registration under clause (b) of sub-section (4) of section 12 of the Act shall meet the following conditions, namely:—*

- (i) it shall be in existence for three years and have spent a minimum amount of rupees fifteen lakh on its core activities for the benefit of society during the last three financialyears:*

*Provided that the Central Government, in exceptional cases or in cases where a person is controlled by the Central Government or a State Government may waive the conditions;*

- (ii) if the person wants inclusion of its existing capital investment in assets like land, building, other permanent structures, vehicles, equipment in the computation of its spending during last three years, then the chief functionary shall give an undertaking that the assets shall be vested henceforth with the person till the validity of the certificate and they shall be utilised only for the activities covered under the Act and the rules made thereunder and shall not be diverted for any other purpose till the validity of its certificate of registration remainsvalid.”;*

*(ii) after sub-rule (1), the following sub-rule shall be inserted,namely:—*

*“(1A) Every application seeking registration under clause (a) of sub-rule (1), made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.”;*

The changes can be summarised as under:

- 5.02 Opening of FCRA Account :** The person making an application for registration should have a FCRA Account i.e. an bank account with State Bank of India, Main Branch, New Delhi and another FCRA account in any PFMS compliant scheduled bank of the choice of the applicant.



**5.03 *Information of Bank Account:*** As per form FC 3A (Application Form for registration), though the detail of FCRA account with SBI NDMB is mandatory, additionally the details of second FCRA bank account can be given if any. It is also provided that all applications already made before the commencement of this Rule will be disposed of and shall be considered only after furnishing details of FCRA Account.

**5.04 *Opening of second FCRA Account:*** Rule 9(1)(e) continues to remain and it provides for opening of one or more utilisation bank account & submitting the intimation within 15 days of opening of such bank account. However, there is no corresponding amendment regarding opening, change & intimation of 2<sup>nd</sup> FCRA Account as provided in under Section 17 of FCRA, 2010.

**5.05 *The eligibility for making application of Registration:*** The eligibility requirement of be in existence of **3 years** and minimum spending of **Rs.15 Lakh** during last 3 years on core activities has been provided in the rule as eligibility criteria. Further, expenditure on capital asset can also be included within the Rs.15 Lakh limit subject to the condition that such asset will remain registered for FC purposes. The amended provision is as under:

- i) The applicant person shall be in existence for three years and should have spent a minimum amount of rupees fifteen lakh on its core activities for the benefit of society during the last three financial years:  
Provided that the Central Government, in exceptional cases or in cases where a person is controlled by the Central Government or a State Government may waive the conditions;
- ii) If the person making an application wants to include the existing capital investments, like bank, building, vehicles, etc. in computation of its eligibility of minimum spending of Rs.15 Lakh then such person shall:

- (a) give an undertaking that the assets shall be vested henceforth with the person till the validity of the certificate.
- (b) they shall be utilised only for the activities covered under the Act.
- (c) the rules made thereunder and shall not be diverted for any other purpose till the validity of its certificate of registration remains valid.

**5.06 Fees:** The fees for submitting application has been increased to **Rs.10,000/-** from Rs.5000/-.

**5.07** The provision regarding including capital assets Rs. 15 lakh limit for eligibility criteria has the condition that such assets shall become a part of the FC assets. It is not cleared whether such assets (created out of local source) shall also be vested with the prescribed authority at the time of surrender/cancellation/non-renewal of FCRA registration. In our opinion since these assets are created out of local fund their use shall be restricted for FC purposes only till the time FCRA registration is valid, therefore it would not be treated as part of FC asset for the purposes of surrendering/vesting with the Government authorities. However, it is important to maintain the asset in the local books of account of the organization.

**5.08** With regard to prior permission applications there are conditions regarding control or presence of foreign donor representative on the board of the organisation however no such condition is seen with regard to an application for FC registration.

## APPLICATION FOR OBTAINING PRIOR PERMISSION

**6.01** There has been considerable changes with regard to the application for registration under FCRA. Rule 9 of FCRR 2011 in relation to Prior permission is amended as follows

*“(iii) in sub-rule (2), –*

*(A) for clause (d), the following clause shall be substituted, namely:—*

*“(d) Any person making an application for obtaining prior permission under clause (a) of sub-rule (1) shall have an FCRA Account.”;*

*(B) in clause (e), for the words “electronically online”, the words “in electronic form” shall be substituted;*

*(C) after clause (e), the following clause shall be inserted, namely:—*

*“(f) A person seeking prior permission for receipt of specific amount from a specific donor for carrying out specific activities or projects mentioned in clause (c) of sub-section (4) of section 12 of the Act shall meet the following criteria, namely:—*

*(i) 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;*

*(ii) for the Indian recipient persons and foreign donor organisations having common members, prior permission shall be granted to the person subject to it satisfying the following conditions, namely:—*

*(A) the chief functionary of the recipient person shall not be a part of the donor organisation;*

*(B) seventy-five per cent. of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;*

*(C) in case of foreign donor organisation being a single individual that individual shall not be the chief functionary or office bearer of the recipient person; and*

*(D) in case of a single foreign donor, seventy-five per cent. of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor.”;*

**6.02 *Opening of FCRA Account:*** The person making an application for prior permission should have a FCRA Account i.e. an bank account with State Bank of India, Main Branch, New Delhi and another FCRA account in any PFMS compliant scheduled bank of the choice of the applicant.

**6.03** As per form FC 3B (Application form for prior permission), though the detail of FCRA account with SBI NDMB is the must but the details of second FCRA bank account can be given if any.

**6.04** It is also provided that all applications already made before the commencement of this Rule will be disposed of and shall be considered only after furnishing details of FCRA Account.

**6.05 *Common Governance with donor:*** The amended Rule 9(1)(f)(ii) specifically provide that the prior permission shall be granted only if the following conditions are being satisfied:

- (A) the chief functionary of the recipient person shall not be a part of the donor organisation;*
- (B) seventy-five per cent. of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;*
- (C) in case of foreign donor organisation being a single individual that individual shall not be the chief functionary or office bearer of the recipient person; and*

(D) in case of a single foreign donor, seventy-five per cent. of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor.”;

It is to be noted that these conditions were part of FAQs and now these are being formalized by inserting the same in the Rules.

**6.06 Fees:** The fees has been increased to Rs. 5,000/-.

## APPLICATION FOR OBTAINING PRIOR PERMISSION OF OVER RS.1.00 CRORE

**7.01** It may be noted that a new **Rule 9A** has been inserted to regulate prior permission application in **excess of Rs. 1 crore**. The Rule 9A is as under:

*“9A. Permission for receipt of foreign contribution in application for obtaining prior permission.— If the value of foreign contribution on the date of final disposal of an application for obtaining prior permission under clause (a) of sub-rule (1) of rule 9 is over rupees one crore, the Central Government may permit receipt of foreign contribution in such instalments, as it may deem fit: Provided that the second and subsequent instalment shall be released after submission of proof of utilisation of seventy five per cent. of the foreign contribution received in the previous instalment and after field inquiry of the utilisation of foreign contribution.”.*

**7.02** Now onwards all applications for prior permission in excess of Rs. 1 crore shall be regulated through separate rules.

It is important to note that prior to the amendments also the application for prior permission of more than Rs.50 Lac was required to be accompanied with 3 years Financial Statements and Activity Reports and these requirements

were by way of a note in the application form for application for prior permission.

**7.03** The above condition has now been dropped & this is replaced by newly inserted Sec. 9A which provides that if the value of foreign contribution on the date of final disposal of an application for obtaining prior permission under clause of sub-rule (1) of rule 9 is over rupees one crore, then:

- (i) The Central Govt. may permit receipt of foreign contribution in such instalment, as it may deem fit
- (ii) Provided that the second and subsequent instalment shall be released after submission of proof of utilisation of seventy-five percent of the foreign contribution received in the previous instalment and
- (iii) after field inquiry of the utilisation of foreign contribution

**7.04** There is no prescribed format regarding the manner and form in which utilization of 75% of the FC contribution received shall be reported. In such circumstances such reporting should be made in soft copies to be sent through mail to support desk @FCRA dept. Further, organisations may seek clarity from the support desk.

**7.05** As per the amended rule the exchange rate on the date of final disposal of application to be considered to determine whether the permission for prior permission is over Rs. 1 Crore or not.

## EXPIRY OF CERTIFICATE ON SURRENDER

**8.01** TThe FCRA registration certificate remains valid for period of 5 years, however, a **new Rule 10(2)** has been added to provide that in case of surrender the certificate shall expire on the date of acceptance of the request by the

Central Government. The Rule 10(2) is as under:

*“(2) The validity of certificate surrendered under section 14A of the Act shall be deemed to have expired on the date of acceptance of the request by the Central Government.”.*

## RENEWAL OF REGISTRATION CERTIFICATE

**9.01** Rule 12 of FCRR 2011 regarding Renewal of registration has been amended as follows :

*“(i) **for sub-rule (2), the following shall be substituted,namely:—***

*“(2) An application for renewal of the certificate of registration shall be made to the Central Government in electronic form in **Form FC-3C** accompanied with an affidavit executed by each office bearer, key functionary and member in **Proforma ‘AA’** appended to these rules within **six months** from the date of expiry of the certificate of registration.”;*

*“(ii) **after sub-rule (2), the following shall be inserted,namely:—***

*“(2A) Every person seeking renewal of the certificate of registration under section 16 of the Act shall open an FCRA Account and mention details of the account in his application for renewal of registration.*

***(2B)** Every application for renewal of the certificate of registration made under sub-rule (2) before commencement of these rules, but not disposed of, shall be considered after furnishing the details of FCRA Account.”;*

*“(iii) **for sub-rule (4), the following sub-rule shall be substituted,namely:—***

*“(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of rupees five thousand only, which shall be paid through payment gateway specified by the Central Government.”;*

*“(iv) **for sub-rule (5), the following sub-rule shall be substituted,namely:—***

*“(5) No person whose certificate of registration has ceased to exist shall either receive or utilise the foreign contribution until the certificate is renewed.”;*

*(v) for sub-rule (6), the following sub-rule shall be substituted,namely:—*

*“(6) If no application for renewal of registration is received or the application is not accompanied by requisite fee before the expiry of the validity of the certificate of registration, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of certificate of registration.*

**Note 1:** *A certificate of registration granted on the 1<sup>st</sup> November,2016 shall be valid till the 31<sup>st</sup> October,2021 and a request for renewal of certificate of registration shall be submitted in electronic form accompanied by the requisite fee after the 1<sup>st</sup> May, 2021 and within 31<sup>st</sup> October, 2021.*

**Note 2 :** *If no application is received or is not accompanied by renewal fee, the validity of the certificate of registration issued on the 1<sup>st</sup> November 2016 shall be deemed to have ceased after the 31<sup>st</sup> October, 2021 and the applicant shall neither receive nor utilize the foreign contribution until the certificate of registration is renewed.”;*

*(vi) after sub-rule (6), the following sub-rule shall be inserted,namely:—*

*“(6A) The amount of foreign contribution lying unutilised in the FCRA Account and utilisation account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.”;*

**9.02 Existence of FCRA Account with SBI, Main Branch, New Delhi:** The person making an application for renewal should have a FCRA Account i.e. a bank



account with State Bank of India, Main Branch, New Delhi. It is also provided that all applications already made before the commencement of this Rule will be disposed of and shall be considered only after furnishing details of FCRA Account.

**9.03 *Timeline for submitting application:*** As per the pre-amended provisions the application for renewal had to be submitted six months before the date of expiry of registration certificate, but as per the amended provision, application for renewal has to be submitted within six months from the date of expiry of certificate for registration. For example, the organization whose certificate will expire on 31/10/2021 should apply between 1<sup>st</sup> May, 2021 but within 31<sup>st</sup> October, 2021.

**9.04 *Consequences if Certificate of Registration ceases to exist:*** As per the amended rules in case the certificate of registration has ceased to exist then neither the organisation can receive fresh foreign contribution nor can utilize foreign contribution in hand, until the certificate is renewed.

Therefore, in all cases where

- application for registration could not be filed or
- application of renewal is not accompanied with requisite fees or
- application for renewal is in process

as on date of expiry of certificate, then such organisation cannot receive fresh foreign contribution or can utilize foreign contribution in hand until the certificate is renewed.

**9.05 *Vesting of foreign contribution & assets:*** As per rule 6A, The amount of foreign contribution lying unutilized in the FCRA Account and utilization account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall

vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.”

Rule 6 covers the situation where application for renewal is not made before the expiry of certificate or application is made but not accompanied with requisite fees.

**9.06 Fees:** The fees have been increased to **Rs. 5,000** .

**9.07 Whether renewal application needs to be filed within 6 months of expiry of the certificate or before 6 months of the date of expiry?**

As explained earlier, as per amended rules, renewal application should be made within 6 months of the date of expiry. Therefore, for all registration that are valid till 31<sup>st</sup> October 2021, application should be made after 1<sup>st</sup> May 2021. However, there is a provision for delayed application for up to a period of one year after the date of expiry after providing adequate reason for delay in applying for renewal.

**9.08** After the lapse of registration validity, organization can neither receive nor utilize the existing funds irrespective of the reason for the delay.

**9.09** In the event of no application for renewal is made or the application is made without requisite fees, the registration will cease and expire after date of completion of the five-year tenure of the certificate and all FC funds and assets shall vest with the prescribed Government authority. In other words, FC funds and assets shall remain with the organization only till such time the FC registration is valid, unless the prescribed authority allows the assets to continue in the possession of the organisation.

Therefore, FC assets or funds shall be under the right & ownership of the organization, only till the time FC registration is valid.

## **CUSTODY OF FOREIGN CONTRIBUTION IN CASE OF CANCELLATION OF CERTIFICATE**

**10.01** Rule 15 of FCRR 2011 in relation to custody of foreign contribution in case of Cancellation of Certificate is amended as follows :

*“15. Custody of foreign contribution in respect of a person whose certificate has been cancelled. – If the certificate of registration of a person who has opened an FCRA Account under section 17 is cancelled, the amount of foreign contribution lying unutilised in that Account shall vest with the prescribed authority under the Act.”*

**10.02** This Rule has been slightly modified. Prior to the amendment the amount of foreign contribution of a person, whose certificate of registration has been cancelled, was vested with the bank. However, as per the amendment made, the amount of foreign contribution lying unutilized in the FCRA Account shall vest with the prescribed authority under the Act. The FCRA Account shall include all the bank accounts including utilization accounts. Further all the other assets shall also vest in the prescribed authority.

## **VOLUNTARY SURRENDER OF CERTIFICATE**

**11.01** A new rule regarding voluntary surrender of certificate has been inserted as under:

*“15A. Voluntary surrender of certificate. — Every person who has been granted certificate of registration under section 12 of the Act may make an application in electronic form in Form FC-7 for surrender of the certificate of registration in terms of section 14A of the Act.”*

**11.02** This is a newly inserted section providing for application for surrender of certificate of registration shall be made in Form No. FC 7.

## INTIMATION OF FC BY THE RECIPIENT

**12.01** Rule 17 of FCRR 2011 in relation to intimation of FC by the recipient is amended as follows :

*“In the said rules, in rule 17, in sub-rule (1), for the words “electronically online”, the words “in electronic form” shall be substituted”*

## INTIMATION OF CHANGES

**13.01** Rule 17A of FCRR 2011 in relation to intimation of changes is amended as follows :

*“(i) for the opening paragraph, the following paragraph shall be substituted,namely:—*

*“A person who has been granted a certificate of registration under section 12 or prior permission under section 11 of the Act shall intimate in electronic form within fifteen days, of any change in the following, namely:—”;*

*(ii) for clause (iv), the following shall be substituted, namely:—*

*“(iv) office bearers or key functionaries or members mentioned in the application for grant of registration or prior permission or renewal of registration, as the case may be, in FormFC-6E.”;*

*(iii) after clause (iv), the following proviso shall be inserted,namely:—*

*“Provided that the change shall be effective only after final **approval by the Central Government.**”.*

**13.02** Rule 17A provides for intimation within 15 days of the specified changes as mentioned in Rule 17A. As per the amended Rules all the specified changes though required to be intimated shall be effective only after **approval of Central Govt.**

**13.03** The amended Rules also provides that any change in the key functionary needs to be intimated in **Form No. FC 6E** it may be noted that prior to the amendment the requirement of change was only regarding more than 50% in the governing body members. Now onward every change has to be reported and the change shall also be subject to approval of FCRA Department.

**13.04** Rule 17 A states that intimation in electronic form shall be given for any change of Board member, however it is subject to **approval by the Central Government**. The question arises can FCRA Department override the appointments made under the provisions of other statutes such as Companies Act 2013 or the respective Societies Registration Act. Further some organisation receive only negligible amount of foreign contribution, therefore, can FCRA Department control the governance of such organisation. Further charitable/religious organisations are private entities for public purposes (unless substantially funded or controlled by the government) therefore, can FCRA Department interfere into the governance of a private organisation.

However, such matters can only be decided through litigation in the court of law. For all practical purposes, approval of the FCRA department is a legal requirement for all changes which are required to be intimated to the FCRA Department.

## REVISION OF AN ORDER

**14.01** The Rule 20 has been amended as follows :

*“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 and it shall be accompanied by a fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.”*

**14.02 Fees :** As per the amended Rules the fees for submitting the renewal application has been increased to Rs.3000/- from the present fees of Rs.1000/-.

## COMPOUNDING OF OFFENCE

**15.01** The rule 21 has been amended as follows :

*“21. Compounding of offence.— An application for compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi in electronic form and shall be accompanied by fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.”.*

**15.02 Fees :** As per the amended Rules the fees for submitting the renewal application has been increased to Rs.3000/- from the present fees of Rs.1000/-.

## FCRA NOTIFICATION

### MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 10th November, 2020

**G.S.R. 695(E).**—In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely: -

1. **Short title and commencement.** — (1) These rules may be called the Foreign Contribution (Regulation) (Amendment) Rules, 2020.  
  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as the said rules), in rule 2, in subrule (1), –  
  
(i) after clause (b), the following clause shall be inserted, namely:—  
  
‘(ba) “electronic form” shall have the same meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);’;  
  
(ii) after clause (e), the following clause shall be inserted, namely:—  
  
‘(f) “FCRA Account” means the FCRA Account referred to in section 17 of the Act.’
3. In the said rules, rule 3 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:—  
  
“(2) The organisations specified under clauses (v) and (vi) of sub-rule (1) shall be considered to be of political nature, if they participate in active politics or party politics, as the case may be.”.

4. In the said rules, in rule 6, for the words “by uploading details electronically online”, the words “regarding the details of the foreign contribution received by him in electronic form” shall be substituted.
5. In the said rules, in rule 7, in sub-rule (1), for the words “electronically online to the Central Government”, the words “to the Central Government in electronic form” shall be substituted.
6. In the said rules, in rule 9, –
  - (i) in sub-rule (1)–
    - (A) in clause (a), for the words “electronically online”, at both places where they occur, the words “in electronic form” shall be substituted;
    - (B) for clause (d), the following clause shall be substituted, namely:—
 

“(d) Any person making an application for registration under clause (a) of sub-rule (1) shall have an FCRA Account.”;
    - (C) in clause (e), for the words “electronically online”, the words “in electronic form” shall be substituted;
    - (D) after clause (e), the following clause shall be inserted, namely:—
 

“(f) A person seeking registration under clause (b) of sub-section (4) of section 12 of the Act shall meet the following conditions, namely:–

      - (i) it shall be in existence for three years and have spent a minimum amount of rupees fifteen lakh on its core activities for the benefit of society during the last three financial years:

Provided that the Central Government, in exceptional cases or in cases where a person is controlled by the Central Government or a State Government may waive the conditions;
    - (ii) if the person wants inclusion of its existing capital investment in assets like land, building, other permanent structures, vehicles, equipment in the computation of its spending during last three years, then the chief



functionary shall give an undertaking that the assets shall be vested henceforth with the person till the validity of the certificate and they shall be utilised only for the activities covered under the Act and the rules made thereunder and shall not be diverted for any other purpose till the validity of its certificate of registration remains valid.”;

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:—

“(1A) Every application seeking registration under clause (a) of sub-rule (1), made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.”;

(iii) in sub-rule (2),—

(A) for clause (d), the following clause shall be substituted, namely:—

“(d) Any person making an application for obtaining prior permission under clause (a) of sub-rule (1) shall have an FCRA Account.”;

(B) in clause (e), for the words “electronically online”, the words “in electronic form” shall be substituted;

(C) after clause (e), the following clause shall be inserted, namely:—

“(f) A person seeking prior permission for receipt of specific amount from a specific donor for carrying out specific activities or projects mentioned in clause (c) of sub-section (4) of section 12 of the Act shall meet the following criteria, namely:—

(i) 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;

(ii) for the Indian recipient persons and foreign donor organisations having common members, prior permission shall be granted to the person subject to it satisfying the following conditions, namely:—

(A) the chief functionary of the recipient person shall not be a part of the donor organisation;

(B) seventy-five per cent. of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;

(C) in case of foreign donor organisation being a single individual that individual shall not be the chief functionary or office bearer of the recipient person; and

(D) in case of a single foreign donor, seventy-five per cent. of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor.”;

(iv) after sub-rule (2), the following sub-rule shall be inserted, namely:—

“(2A) Every application for obtaining prior permission under clause (a) of sub-rule (1) made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.”;

(v) in sub-rule (4),—

(A) for clause (a), the following clause shall be substituted, namely:—

“(a) An application made for the grant of prior permission shall be accompanied by a fee of rupees five thousand only, which shall be paid through the payment gateway specified by the Central Government.”;

(B) for clause (b), the following clause shall be substituted, namely:—

“(b) An application made for the grant of registration shall be accompanied by a fee of rupees ten thousand only, which shall be paid through the payment gateway specified by the Central Government.”;

(C) clause (d) shall be omitted.

7. In the said rules, after rule 9, the following rule shall be inserted, namely:—

“9A. Permission for receipt of foreign contribution in application for obtaining prior permission.— If the value of foreign contribution on the date of final disposal of an application for obtaining prior permission under clause (a) of sub-rule (1) of rule 9 is over rupees one crore, the Central Government may permit receipt of foreign contribution in such instalments, as it may deem fit:

Provided that the second and subsequent instalment shall be released after submission of proof of utilisation of seventy five per cent. of the foreign contribution received in the previous instalment and after field inquiry of the utilisation of foreign contribution.”.

8. In the said rules, rule 10 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:—

“(2) The validity of certificate surrendered under section 14A of the Act shall be deemed to have expired on the date of acceptance of the request by the Central Government.”.

9. In the said rules, in rule 12,—

(i) for sub-rule (2), the following shall be substituted, namely:—

“(2) An application for renewal of the certificate of registration shall be made to the Central Government in electronic form in Form FC-3C accompanied with an affidavit executed by each office bearer, key functionary and member in Proforma ‘AA’ appended to these rules within six months from the date of expiry of the certificate of registration.”;

(ii) after sub-rule (2), the following shall be inserted, namely:—

“(2A) Every person seeking renewal of the certificate of registration under section 16 of the Act shall open an FCRA Account and mention details of the account in his application for renewal of registration.

(2B) Every application for renewal of the certificate of registration made under sub-rule (2) before commencement of these rules, but not disposed of, shall be considered after furnishing the details

of FCRA Account.”;

(iii) for sub-rule (4), the following sub-rule shall be substituted, namely:—

“(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of rupees five thousand only, which shall be paid through payment gateway specified by the Central Government.”;

(iv) for sub-rule (5), the following sub-rule shall be substituted, namely:—

“(5) No person whose certificate of registration has ceased to exist shall either receive or utilise the foreign contribution until the certificate is renewed.”;

(v) for sub-rule (6), the following sub-rule shall be substituted, namely:—

“(6) If no application for renewal of registration is received or the application is not accompanied by requisite fee before the expiry of the validity of the certificate of registration, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of certificate of registration.

**Note 1:** A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016 and a request for renewal of certificate of registration shall be submitted in electronic form accompanied by requisite fee after the 30th June, 2016 and within the 31st December, 2016.

**Note 2 :** If no application is received or is not accompanied by renewal fee, the validity of the certificate of registration issued on the 1st January 2012 shall be deemed to have ceased after the 31st December, 2016 and the applicant shall neither receive nor utilise the foreign contribution until the certificate of registration is renewed.”;

(vi) after sub-rule (6), the following sub-rule shall be inserted, namely:—

“(6A) The amount of foreign contribution lying unutilised in the FCRA Account and utilisation account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and

assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.”;

10. In the said rules, for rule 15, the following shall be substituted, namely:—
 

“15. Custody of foreign contribution in respect of a person whose certificate has been cancelled. – If the certificate of registration of a person who has opened an FCRA Account under section 17 is cancelled, the amount of foreign contribution lying unutilised in that Account shall vest with the prescribed authority under the Act.”.
11. In the said rules, after rule 15, the following rule shall be inserted, namely:—
 

“15A. Voluntary surrender of certificate.—Every person who has been granted certificate of registration under section 12 of the Act may make an application in electronic form in Form FC-7 for surrender of the certificate of registration in terms of section 14A of the Act.”.
12. In the said rules, in rule 17, in sub-rule (1), for the words “electronically online”, the words “in electronic form” shall be substituted.
13. In the said rules, in rule 17A,—
  - (i) for the opening paragraph, the following paragraph shall be substituted, namely:—
 

“A person who has been granted a certificate of registration under section 12 or prior permission under section 11 of the Act shall intimate in electronic form within fifteen days, of any change in the following, namely:—”;
  - (ii) for clause (iv), the following shall be substituted, namely:—
 

“(iv) office bearers or key functionaries or members mentioned in the application for grant of registration or prior permission or renewal of registration, as the case may be, in Form FC-6E.”;
  - (iii) after clause (iv), the following proviso shall be inserted, namely:—
 

“Provided that the change shall be effective only after final approval by the Central Government.”.
14. In the said rules, in rule 18, after the word, letters and figure “Form FC-1”,

the word “in electronic form” shall be inserted.

15. In the said rules, for rule 20, the following rule shall be substituted, namely:—  
 “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 and it shall be accompanied by a fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.”.
16. In the said rules, for rule 21, the following rule shall be substituted, namely:—  
 “21. Compounding of offence.—An application for compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi in electronic form and shall be accompanied by fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.”.
17. In the said rules, in rule 23, after the words “registered post”, the words “or in electronic form” shall be inserted.
18. In the said rules, rule 24 shall be omitted.
19. In the said rules, for the FORMS, the following FORMS shall be substituted, namely:—

