

IMPORTANT CONCEPTS AND DEFINITIONS IN FCRA

Meaning of 'Association'

Section 2(1)(a) of FCRA defines the term association as :

“association” means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860 (21 of 1860), or not, and any other organisation, by whatever name called ;

All types are covered- The term 'association' covers all types of associations in the widest possible sense. The Act does not specify registration as a condition precedent for the purposes of this Act. It is not necessary for an association to be a registered one but there must be some documentary evidence to establish the existence and activities of the association. All types of conceivable associations of two or more individuals are covered under the definition of the Act. All charitable organisations, educational, social, cultural, religious, political etc. organisations, societies, trusts, companies etc. are covered under the Act. Organisations established for the promotion of science, research, literature, fine arts, libraries, museums, hospitals, trade unions come within the purview of this Act. It also includes co-operative societies, companies registered under the Partnership Act, 1932 and chit fund societies created under the Chit Fund Act, 1982 etc.

Association need not be charitable - Further it must be noted, it is not necessary that the objects of the association should be charitable in nature. The organisations as aforesaid are covered under the Act irrespective of whether they are charitable in nature or not.

Meaning of 'Foreign Contribution'

The term 'foreign contribution' (hereinafter referred as 'FC') has been given a specified definition in FCRA.

The statutory definition-Section 2(1)(c) of FCRA defines 'Foreign Contribution' as follows

“ 'foreign contribution' means the donation, delivery or transfer made by any foreign source ; -

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value in India, of such article, on the date of such gift, does not exceed one thousand rupees,

ii) of any currency, whether Indian or foreign,

iii) of any foreign security as defined in clause (i) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973)

Explanation - A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause;”

Being a specific definition, no item other than those mentioned in the definition can be brought under 'foreign contribution'.

The three broad divisions - As is evident from the definition, the scope of foreign contribution has been broadly divided into three parts i.e. (i) article or gift in excess of rupees one thousand, (ii)

currency both Indian or foreign and (iii) foreign security received from a foreign source.

Mode of receipt is wide - Again, the mode of receipt has been kept extensively wide so as to cover donation, delivery or transfer made by any foreign source. In this regard it is important to understand the implication of the explanation to this section which was inserted vide FCR (Amendment) Act 1985. The effect of this explanation has brought the subsequent receivers of foreign funds within the scope of foreign contribution. Thus, organisations have been debarred from making contribution to organisation not registered under the FCRA.

Contributions by Indian citizen - It may be noted that contribution made by a citizen of India living in another country, from his personal savings, through the normal banking channels, is not treated as Foreign Contribution. It is advisable to obtain the passport details of the concerned citizen of India before accepting such contributions.

Meaning of 'foreign security' - The term 'foreign security' has been defined under Section 2(o) of the Foreign Exchange Management Act 1999 as-
" Foreign Security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any other form of return such as interest or dividends is payable in Indian Currency ;

Meaning of 'Foreign Source'

Unlike the term 'foreign contribution' which has been defined specifically, the term 'foreign source' is given only an inclusive definition in FCRA.

As statutory definition - As per Section 2(1)(e) of FCRA, 'foreign source' is defined as follows :

" foreign source" includes-

- i) the government of any foreign country or territory and any agency of such Government,
- ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf,
- iii) a foreign company within the meaning of Section 591 of the Companies Act, 1956 (1 of 1956), and also includes-
 - (a) a company which is a subsidiary of a foreign company, and
 - (b) a multi-national corporation within the meaning of this Act,
- iv) a corporation, not being a foreign company, incorporated in a foreign country or territory,
- v) a multi-national corporation within the meaning of this Act,
- vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if 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) government of a foreign country or territory,
 - (b) 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,

vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory,

viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory,

ix) a society, club or other association of individuals formed or registered outside India,

x) a citizen of a foreign country,

but does not include any foreign institution which has been permitted by the Central Government, by notification in the Official Gazette, to carry on its activities in India ;

As it is evident, the term “foreign source” has not been defined precisely or exhaustively. The act has given an inclusive definition of the term ‘foreign source’ and that includes the sources mentioned in clauses (i) to (x).

Agencies of foreign government - Agencies of Foreign Government includes their embassies and consulates in India. They are included within the purview of foreign source.

The Central Government has notified in the official gazette, the agencies of United Nations and other International Organisations which shall not be treated as ‘foreign source’ for the purposes of this Act. The list of the organisations which shall not be treated as foreign source vide Notification Number S.O. 1014(E), dated 13th November, 2000 is given as Annex. 02.1

Determination of company as foreign company - To determine whether a company is a foreign company or not, the provisions of Section 591 of the Companies Act, 1956 are relevant. Basically the provisions consider any company as foreign company, which has been incorporated outside India has a place of business within India. Provisions of Section 591 are reproduced as under :

“ (1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely -

- a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India ; and
- b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporate in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.”

Subsidiaries are also included -The subsidiary of foreign company even if it is an Indian company is also considered as foreign source under FCRA. Again to determine whether a company is a subsidiary of a foreign company or not, the provisions of Section 4 of Companies Act 1956 are

relevant which are reproduced as under :

“ Meaning of “subsidiary company”

(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,-

- (a) that other controls the composition of its Board of directors ; or
- (b) that other -

i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company ;

ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital ; or

(c) the first-mentioned company is a subsidiary of any company which is that other’s subsidiary.

Illustration : Company B is subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause(c) above. If

Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above, and so on.”

Meaning of ‘multinational corporation’ - Multinational corporation has also been defined under FCRA by virtue of Explanation in Section 2(1)(k). A corporation could be considered as multinational if it has a subsidiary or a branch in two or more countries or carries on business in two or more countries. The provisions under FCRA are reproduced are as under :

“ Explanation : For the purposes of this Act, a corporation incorporated in a foreign country or territory shall be deemed to be a multinational corporation if such corporation—

- a) has a subsidiary or a branch or a place of business in two or more countries or territories ; or
- b) carries on business, or otherwise operates, in two or more countries of territories. Over and above all, it may be noted that, the Central Government may permit foreign institutions by notification in the official gazette and consequently they will not be considered as foreign source. Such institutions can give contributions into India without violating the provisions of the FCRA”.

Eligible / Ineligible recipients

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

The organisation which can receive Foreign Contribution should have a definite cultural, economic, educational, religious or social programme. Further it has to obtain the prior permission of the Central Government or get itself, registered with the Central Government, to receive foreign contribution.

Organisation of a Political Nature

Organisations of political nature, not being a political party, cannot accept foreign contribution without the prior approval of the Central Government.

The statutory provision - Section 5 which specifies the provisions is as under :

“Organisation of a political nature not to accept foreign contribution except with the prior permission of the Central Government .

5. (1) No organisation of a political nature, not being a political party, shall, accept any foreign contribution except with the prior permission of the Central Government.

Explanation — For the purposes of this section, “organisation of a political nature, not being a political party” means such organisation as the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisation with the activities of any political party, by an order published in the Official Gazette, specify in this behalf.

(2) (a) Except with the prior permission of the Central Government, 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 foreign currency, on behalf of an organisation referred to in sub-section (1).

(b) Except with the prior permission of the Central Government, no person, resident in India, shall deliver any foreign currency 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 an organisation referred to in sub-section (1).

(c) Except with the prior approval of the Central Government 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 organisation referred to in sub-section (1),

(ii) any person, if he knows or has reasonable cause to believe that such person intends, or is likely, to deliver such currency to an organisation referred to in sub-section (1).”

The main purpose of this section is to ensure that the provisions of this Act are not misused by the political parties through their sister concerns or front organisation.

Political parties are not covered - From the language of the section, it is very clear that political parties are not included within the purview of this section. A political party has been defined by section 2(g) of the Act as -
“ political party” means —

(i) an association or body of the individual citizens of India —

1. which is, or is deemed to be, registered with the Election Commission of India as a political party under the Election Symbols (Reservation and Allotment) Order, 1968, as in force time being; or

2. which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

(ii) a political party mentioned in Column 1 of table 1 to the notification of the Election Commission of India No. 56/J&K/84, dated the 27th September, 1984, as in force for the time being ;]

An organisation of political nature, on the other hand, is an organisation having links with other political parties or is associated with the activities of such parties. The Central Government may declare by an official gazette notification, any organisation to be an organisation of political nature and consequently it would be debarred from accepting foreign contribution without the

permission of Central Government. The implication of such regulatory measure is to give the Central Government an effective control over the receipt and utilisation of foreign contribution by such organisations.

Relevant criteria to be applied - The criteria for judging whether an organisation is of political nature or not are as follows :-

- i) The nature of the programmes of the organisation, whether the programmes are such so as to directly or indirectly relate or are in consonance with the programs or activities of political parties.
- ii) The ideology propagated by the organisation, whether it is of political nature or not. The vision and mission of the organisations are carefully studied in order to judge whether it has camouflaged its political agenda under the garb of other acceptable forms of objectives and missions.
- iii) Its link with the activities and programs of any political party.

Powers of Central Government - The Central Government has the power to notify any such organisation as an organisation of political nature, consequently the organisation will be restricted from receiving foreign funds. The provisions of the act are not very clear whether opportunity of being heard could be provided or not to the concerned organisation because by virtue of notification the organisation will face financial hardship and adverse impact on its activities and existence. An organisation which enjoyed the status of a social organisation suddenly should not be notified as an organisation of political nature without getting an opportunity of being heard. It was so held by Andhra Pradesh High Court in *Kul-Hind (All India) Majlis-e-Tamir-e-Millat, Hyderabad vs. Union of India (W.P. No. 7657 on 19.9.1986)*.

Meaning of 'Legislature'

As per section 2(1)(f) of FCRA 'legislature' is defined as follows :

“ Legislature” means -

- i) either House of Parliament,
- ii) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State,
- iii) Legislative assembly of a Union territory constituted under the Government of Union Territories Act, 1963 (20 of 1963),
- iv) the Metropolitan Council of Delhi constituted under Section 3 of the Delhi Administration Act, 1966 (19 of 1966).
- v) Municipal Corporations in metropolitan areas as defined in the Code of Criminal Procedure 1973 (2 of 1974).
- vi) District Councils and Regional Councils in the States of Assam and Meghalaya and in the Union Territory of Mizoram as provided in the VIth Schedule to the Constitution, or
- vii) Any other elective body as may be notified by the Central Government, as the case may be ;

Controlling Office

The implementation of FCRA is looked into in a centralised manner by the Ministry of Home Affairs, though, as and when required, interaction with State Intelligence Bureau is made by the Ministry of Home Affairs. The address of the concerned authority is The Secretary, Government of India, Ministry of Home Affairs, Internal Security Wing-FCRA, 4th Floor, Lok Nayak Bhawan, Near Khan Market, New Delhi - 110003.

Annexure - 2.1

The list of Organisation not considered as Foreign Source

I. Secretariat

1. Office of Internal Oversight Services, New York.
2. Office of Legal Affairs, New York.
3. Department for Political Affairs, New York.
4. Department for Disarmament Affairs, New York.
5. Department of Peacekeeping Operations, New York.
6. Office for the Coordination of Humanitarian Affairs, New York.
7. Department of Economic and Social Affairs, New York.
8. Department for General Assembly Affairs and Conference Services, New York.
9. Department of Public Information, New York.
10. Department of Management, New York.
11. United Nations Office at Geneva.
12. United Nations Office at Vienna.
13. United Nations Office at Nairobi.

II. Bodies of the United Nations

14. International Research and Training Institute for the Advancement of Women (INSTRAW), Santo Domingo, Dominican Republic.
15. Joint United Nations Programme on HIV/AIDS (UNAIDS) Geneva.
16. Office of the UN High Commissioner for Human Rights (OHCHR), Geneva.
17. Office of the UN High Commissioner for Refugees (UNHCR), Geneva.
18. United Nations Capital Developmental Fund (UNCDF), New York.
19. United Nations Conference on Trade and Development (UNCTAD), Geneva.
20. United Nations Development Fund for Women (UNIFEM), New York.
21. United Nations Institute for Disarmament Research (UNIDIR) Geneva.
22. United Nations Institute for Training and Research (UNITAR), Geneva.
23. United Nations Interregional Crime and Justice Research Institute (UNICRI), Rome.
24. United Nations Office for Project Services (UNOPS) New York.
25. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Gaza and Aman.
26. United Nations Research Institute for Social Development (UNRISD), Geneva.
27. United Nations University (UNU), Tokyo.
28. United Nations Volunteers (UNV), Bonn.

III. Funds and Programmes

29. United Nations Children' Fund (UNICEF), New York
30. United Nations Development Programme (UNDP), New York.
31. United Nations Environment Programme (UNEP), Nairobi.
32. United Nations International Drug Control Programme (UNDCP), Vienna.

33. United Nations Population Fund (UNFPA), New York.
34. World Food Programme (WFP), Rome.

IV. Regional Commissions

35. Economic Commission for Africa (ECA), Addis Ababa, Ethiopia.
36. Economic Commission for Asia and the Pacific (ESCAP), Bangkok, Thailand.
37. Economic Commission for Europe (ECE), Geneva.
38. Economic Commission for Latin America and the Caribbean (ECLAC), Santiago, Chile.
39. Economic Commission for Western Asia (ESCWA), Beirut, Lebanon.

V. Law of the Sea Treaty Bodies

40. International Seabed Authority, Kingston.
41. International Tribunal for the Law of the Sea, Hamburg.
42. Commission on the Limits of the Continental Shelf, United Nations Divisions for Ocean Affairs and the Law of the Sea, New York.

VI. Environmental Bodies

43. Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), Bonn.
44. Inter governmental Panel on Climate Change (IPCC), Geneva.
45. Ozone Secretariat to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substance that Deplete the Ozone Layer, Nairobi
46. Secretariat of the Convention on Biological Diversity (CBD), Montreal.
47. Secretariat of the Convention on International Trade in Engangered Species of Wild Fauna and Flora (CITES), Geneva.
48. UNEP/CMS Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention), Bonn.
49. Secretariat of the Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, Geneva.
50. Secretariat of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought/or Desertification, Especially in Africa (CCD), Bonn.
51. Global Environment Facility, Washington D.C.
52. Bureau (Secretariat) of the Convention on Wetlands (Ramsar), Gland, Switzerland.

VII. Specialised Agencies

53. International Labour Organisation (ILO), Geneva.
54. Food and Agriculture Organisation (FAO), Rome.
55. United Nations Educational, Scientific and Cultural Organisation (UNESCO), Paris.
56. International Civil Aviation Organisation (ICAO), Montreal.
57. World Health Organisation (WHO), Geneva.
58. Universal Postal Union (UPO), Berne, Switzerland.
59. International Telecommunication Union (ITU), Geneva.
60. World Meteorological Organization (WMO), Geneva.
61. International Maritime Organization (IMO), London.
62. World Intellectual Property Organization (WIPO), Geneva.
63. International Fund for Agricultural Development (IFAD), Rome.
64. United Nations Industrial Development Organization (UNIDO), Vienna.

VIII. The World Bank Group

65. International Bank for Reconstruction and Development (IBRD), Washington D.C.

- 66. International Development Association (IDA), Washington D.C.
- 67. International Monetary Fund (IMF), Washington D.C.
- 68. International Finance Corporation (IFC), Washington D.C.
- 69. Associated Organisations of World Bank Group :
 - A. International Centre for the settlement of Investment Disputes (ICSID), Washington D.C.
 - B. Multilateral Investment Guarantee Agency (MIGA), Washington D.C.
 - C. Consultative Group on International Agricultural Research (CGIAR), Washington D.C. (It has 16 Research Centres).
 - i) International Plant Genetic Resource Institute, (IPGRI), Rome.
 - ii) International Wheat and Maize Improvement Centre, (CIMMYT), Mexico.
 - iii) International Centre for Living Aquatic Resource Management (ICLARM), Phillipines.
 - iv) International Irrigation Management Institute, (IIMI), Colombo.
 - v) International Food Policy Research Institute (IFPRI), Washington, D.C.
 - vi) International Centre of Research in Agroforestry (ICRAF), Nairobi.
 - vii) International Centre for Agricultural Research in Dry Areas (ICARDA), Syria.
 - viii) International Centre for Tropical Agriculture (CIAT), Columbia.
 - ix) International Livestock Research Institute (ILRI), Nairobi.
 - x) West Africa Development Association (WARDA), Abidjan.
 - xi) International Service of National Agricultural Research, (ISNAR), The Netherlands.
 - xii) International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), Hyderabad.
 - xiii) International Rice Research Institute, Manila, Phillipines.
 - xiv) International Potato Centre, Peru.
 - xv) Centre for International Forestry Research (CIFOR), Indonesia.
 - xvi) International Institute of Tropical Agriculture (IITA),Nigeria.

IX. Regional Development Banks

- 70. African Development Bank (ADB), Abidjan.
- 71. Inter-American Development Bank (IDB), Washington D.C.
- 72. Asian Development Bank (ADB), Manila.
- 73. Caribbean Development Bank (CDB), ST Michael, Barbados.

X. Other Bodies Related to United Nations

- 74. International Atomic Energy Agency (IAEA), Vienna.
- 75. Organisation for the Prohibition of Chemical Weapons (OPCW), The Hague.
- 76. Provisional Technical Secretariat (PTS) for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO), Vienna.
- 77. International Consultative Group on Food Irradiation (ICGFI), Vienna.
- 78. International Narcotics Control Board (INCB), Vienna.
- 79. International Trade Centre UNCTAD/WTO (ITC), Geneva.
- 80. International Union for the Protection of New Varieties of Plants (UPOV), Geneva.
- 81. World Tourism Organisation (WTO/OMT), Madrid.
- 82. World Food Council (WFC).
- 83. United Nations Social Defence Research Institute (UNSDRI).
- 84. United Nations Statistical Office (UNSCO).

Other International Organisation

- 85. United Nations Outer Space Committee.
- 86. International Sugar Organisation, London.
- 87. Asian Productivity Organisation, Tokyo.
- 88. Asian and Pacific Development Administration, Kualalumpur.
- 89. Asian African Legal Consultative Committee, New Delhi.
- 90. European Community (EC).

91. Asia/Pacific Cultural Centre for UNESCO (ACCU)/Japan.
92. Commonwealth Secretariat, London.
93. Afro-Asian Rural Reconstruction Organisation (AARRO), New Delhi.
94. Centre on Integrated Rural Development for Asia and the Pacific, (CIRDAP), Dhaka.
95. International Centre for Genetic Engineering and Bio-technology (ICGEB), New Delhi.
96. Asia and Pacific Centre of Transfer of Technology (APCTT), New Delhi.
97. Centre for Science and Technology of the Non-Aligned and Other Developing Countries (NAMS & T Centre), New Delhi.
98. Commonwealth Agricultural Bureaux International (CABI), UK.
99. The Asia Pacific Association of Agricultural Research Institution (APAARI), Bangkok.
100. The Regional Co-ordination centre for Research and Development of coarse Grains, Pulses, Roots and Tubercrops in the Humid Tropics of Asia and the Pacific (CGPRT Centre), Indonesia.
101. The Regional Network for Agriculture Machinery, (RNAM), Bangkok.
102. Commission on Genetic Resources for Food and Agriculture (CGRFA), Rome.
103. The International Seeds Testing Association (ISTA), Zurich.
104. International Water Management Institute (IMI), Srilanka.