

PRIOR PERMISSION UNDER FCRA

Understanding 'prior permission' under FCRA

An association or an organisation can receive foreign contribution even without registration with prior permission from the FCRA department. Foreign funds and materials can only be received under two circumstances-

- i) the organisation has obtained permanent registration from the FCRA department.
- ii) the association or the organisation obtains prior permission from the FCRA department on case to case basis.

The relevant circumstance - Reference to the term prior permission is made in Section 5 and 6 of the FCRA. Prior permission is given on case-to-case basis and separate permission would be necessary for any subsequent receipt and separate transactions. Generally prior permission will be required under the following circumstances :

- i) the organisation does not have permanent FCRA registration number.
- ii) the FCRA registration number has been cancelled by the Government .
- iii) the association is instructed by the Central Government to take prior permission under the provisions of Section 10 where power have been provided to prohibit any organisation from receiving foreign funds.
- iv) the FCRA number is suspended due to violation of the provisions and conditions specified under the FCRA.
- v) the organisation is of political nature, not being a political party.
- vi) any person resident in India or any citizen of India resident outside India, receiving foreign funds on behalf of an organisation of political nature.

The relevant statutory provisions - The expression of prior permission appears in Section 5(2)(a)(b)(c) and Section 6(1-A). The relevant extract of Section 5 and 6 is reproduced as under :

“ Section 5(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).

Section 6(1-A) : Every association referred to in sub-section (1) may, if it is not registered with the Central Government under that sub section, accept any foreign contribution only after obtaining the prior permission of the Central Government and shall also give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it.

Scope of the term "Prior permission" - The mention of the term "prior permission" time and again in various provisions of the FCRA reflect the delicate balance of ensuring that the foreign funds are vigilantly monitored and at the same time the country does not lose the valuable inflow of genuine foreign exchange. The Act has not closed the doors for even organisations of political nature by virtue of the term "prior permission". The word "prior" implies that there can be no ex post facto approval permissible. The concerned organisation or the entity has to possess prior permission before receiving any foreign funds, which effectively provides an opportunity to the Central Government to judge and consider the merit and genuinity of a transaction on case-to-case basis before it takes place.

Procedure for obtaining 'prior permission'

The Organisation is required to apply in Form FC-1A for prior approval to the FCRA department along with the required documents.

The statutory provision - Section 11 which governs the provision of prior permission is as under :

Application to be made in prescribed form for obtaining prior permission to accept foreign contribution or hospitality - (1) Every individual, association, organisation or other person, who is required by or under this Act to obtain the prior permission of the Central Government to accept any foreign contribution or foreign hospitality, shall, before the acceptance of any such contribution or hospitality, make an application for such permission to the Central Government in such form and in such manner as may be prescribed.

(2) If an application referred to in sub-section (1) is not disposed of within ninety days from the date of receipt of such application, the permission prayed for in such application shall, on the expiry of the said period of ninety days, be deemed to have been granted by the Central Government :

Provided that, where, in relation to an application, the Central Government has informed the applicant the special difficulties by reason of which his application cannot be disposed of within the said period of ninety days, such application shall not, until the expiry of the further period of thirty days, be deemed to have been granted by the Central Government."

Form of application - Rule 3 of the Foreign Contribution (Regulation) Rules 1976, which specifies the various forms as are required for obtaining prior permission under various provisions of the

Act, reads as follows :

“ Application for obtaining prior permission to receive foreign contribution or foreign hospitality : (3) An application for obtaining prior permission of the Central Government to –

(a) receive foreign contribution under sub-section (1) of Section 5, or clause. (a) of sub-section (2) of that section, shall be made in Form FC-1 ;

(aa) receive foreign contribution under provision to sub-section (1) of Section 6, or under sub-section (1-A) of that section or clause (b) of section 10, shall be made in Form FC-1A ;

(b) accept foreign hospitality under Sec. 9 or Cl. (d) of Sec. 10, shall be made in Form FC -2.”

As is evident from the aforesaid, prior permission is required to be taken under various provisions of FCRA and the concerned organisation has to apply in the prescribed form. The organisation which are desirous of getting prior permission under section 6(1) should apply in Form FC-1A along with the requisite documents to the Secretary, Government of India, Ministry of Home Affairs, New Delhi. Such application can be sent by registered post. Submission of proper documents and information's would ensure quick processing of the application.

Documents to be furnished - The organisation should take care in providing important documents/information such as (i) details of the designated bank account through which foreign contribution is to be received (ii) A copy of the letter of commitment received from the donor (iii) extensive details of the proposed project (iv) In certain cases, clearance from other Government departments and ministries may also be required, such clearances should be obtained before applying for prior permission. A complete checklist of the documents required to be submitted is provided in Para 4.3.

The application organisation should carefully retain the evidence of submission of Form FC-1A i.e. the receipt of registered post and the acknowledgement of the FCRA department.

Checklist of Documents to be submitted

- i) Form FC 1A, duly filled up in triplicate.
- ii) Audited statement of accounts of past three years.
- iii) Annual Report specifying activities of past 3 years.
- iv) Details of the beneficiaries and details of the project for which foreign contribution is expected. The detail should include narrative as well as financial details.
- v) Letter of commitment from the foreign donor agreeing in principle to provide funds.
- vi) Certified copy of the registration certificate under the Societies Act/ Companies Act.
- vii) Certified copy of the Bye-laws and Memorandum and Article of Association whichever is applicable.
- viii) Copy of certificates of exemption or registration issued by the Income Tax Department under sections 80G or 12A.

- ix) Copy of any prior permission granted to the organisation.
- x) Copy of resolution of governing body of the organisation, authorising the prior permission.
- xi) Copy of power of attorney or the resolution of governing body by which the Chief Functionary is authorised to submit FC-1A.
- xii) List of present members of the governing body of the organisation and the office bearers.
- xiii) Copy of any journal or other publication of the organisation.

Time Limit for making application

An application for prior permission under Form FC-1A can be made any time after the legal constitution of an organisation. Though clause 7 of Form FC-1A requires submission of three years audited statements and details of activities of past three years. Where the organisation is less than three years old, it can submit the documents for lesser number of years as may be available.

Receipt of Funds before getting prior permission

If the funds are credited in the bank account prior to the receipt of approval from the FCRA authorities, then the funds should not be applied for the purposes for which they are received i.e. it should be kept intact and should be spent only after getting prior permission.

If the application is rejected then the funds have to be refunded back to the respective donors. The refund of fund back to the foreign agencies may involve legal formalities under Foreign Exchange Management Act, depending on the quantum of contribution received.

Prior Permission by Organisation of Political nature

The organisations which are of political nature under section 5 can also apply for prior permission to receive foreign funds. Such organisation should apply in Form FC-1. It may be noted that such prior permission can be obtained by organisation of political nature but not political parties. The application has to provide the reference number of the order published by the Central Government in the Official Gazette specifying the object as an "Organisation of Political nature, not being Political Party", section 5 and rule 3(a) are relevant in this regard.

Prior Permission for receiving Foreign Hospitality

Under FCRA, the following are prohibited from accepting foreign hospitality except with prior permission :

- member of a legislature
- office; bearer of a political party
- Judge
- Government servant or employee of any corporation

The above-mentioned persons are required to apply in Form FC-2 for availing any foreign hospitality. In this Form, details regarding the nature of hospitality, the approximate amount of

expenses, the specific dates and countries is required to be provided.

4.7-1 The exceptional situation - Further, it has been provided that no such prior permission would be necessary in case of an emergency medical aid on account of a sudden illness. In such cases, the person receiving such hospitality can give, within one month from the date of receipt of such hospitality, an intimation to the Central Government, regarding the receipt of such hospitality and the source and the manner in which such hospitality was received. Section 9 and rule 3(b) are relevant in this regard.

Certificate of Recommendation

4.8 Foreign Contribution Amendment Rules, 2000, inserted clause 10A in Form FC-1A, requiring the insertion of a certificate from a competent authority. This certificate can be given by any one of the following :

- (1) Collector of District
- (2) Department of the State Government
- (3) Ministry or Department of the Government of India

In this certificate the competent authority certifies the address and the field of activities in which the organisation is working. It also states that, there are no adverse antecedents of the organisation, the proposed activities will be beneficial to the people living in that area and the detail of prior permission if taken earlier.

Field Enquiry

4.9 After receipt of the application, the FCRA department writes to the Intelligence Bureau of the Government of India, to assess the background and the credibility of the applicant organisation. The Intelligence Bureau may also assess the objective and activities ; whether the activities are sensitive to any particular religion, community, people of backward class such as SC and ST and whether the activities are anti-national in nature.

The Intelligence Bureau may visit the office of the organisation and verify the books of accounts and other records available. Enquiries may also be made through the local Police Station and neighborhood people and organisations.

Time limit for granting 'prior permission'

4.10 Sub-section (2) of Section 11 provides the time limit of 90 days for disposal of application for prior permission. By virtue of the proviso to Section 11(2) the FCRA department may avail a further period of 30 days to dispose of the application for prior permission. Normally the department should inform the applicant about the delay in processing of the application. In total a prior permission application is required to be processed within 120 days. The period of 120 days will be counted from the date of receipt of the application by the FCRA department. The FCRA department does not have the obligation to inform the applicant within these 120 days which implies that any unforeseen postal delay in communication has to be added to these 120 days. Once the FCRA department has taken a decision within the said 120 days and has

dispatched the communication to the association, its obligation is over.

Deemed permission

4.11 The proviso to Section 11 provides that if the prior permission is not granted within the prescribed time limit, then the applicant can assume that the prior permission is deemed to have been granted. The deeming provision provides an automatic right for receiving foreign funds to the applicant organisation even in the absence of any written communication from the FCRA department.

Before invoking the deeming provisions, the recipient organisation should wait for a reasonable period from the end of 120 days to ensure that the communication is not in postal transit.

By virtue of the deeming provision the applicant organisation can receive foreign funds through a bank account which was intimated in Form FC-1A. The organisation should also keep documentary proof of having submitted an application for prior permission to the FCRA department.

Refusal and appeal

4.12 While processing an application for prior permission, the FCRA department acts as a quasi-judicial authority, therefore it is its statutory duty to provide reasonable grounds for refusal of the application. If the refusal order is not properly substantiated with authentic reasons and if the applicant organisation believes that an unjust decision was taken against it, then it can go in for an appeal to the High Court against such order within sixty days from the date of such letter of refusal. The procedure for appeal is similar as has already been discussed in para 3.13

Overall Summary

4.13 To sum up the discussions :

(i) Under FCRA, prior permission is required to be taken when the organisation is not registered or has been directed by the Central Government to do so.

(ii) Prior permission may be required under the following circumstances :

(a) the organisation does not have permanent FCRA registration number

(b) the FCRA registration number has been cancelled by the Government

(c) the association is instructed by the Central Government to take prior permission under the provisions of section 10 where power have been provided to prohibit any organisation from receiving foreign funds.

(d) the FCRA number is suspended due to violation of the provisions and conditions specified under the FCRA.

(e) the organisation is of political nature not being a political party

(f) any person resident in India or any citizen of India resident outside India, receiving foreign funds on behalf of an organisation of political nature.

(iii) To obtain prior permission an application in Form FC-1A, is required to be made along with

the requisite enclosures.

(iv) A certificate of recommendation is also required to be enclosed. This certificate has to be obtained from any of the following :

- (a) Collector of District
- (b) Department of the State Government
- (c) Ministry or Department of the Government of India

(v) After receipt of application the FCRA department may make a field inquiry through Intelligence Bureau. The purpose of such inquiry is to assess the background, credibility and the activities of the applicant organisation.

(vi) Under section 11 of the FCRA, time limit for processing an application for prior permission is 90 days. If the application is not disposed off within 90 days, then the department may take another 30 days. In total 120 days period is prescribed for processing application for prior permission.

(vii) Section 11 further provides that if the application is not processed within 120 days, then the applicant organisation can assume that the prior permission is deemed to have been granted.

(viii) The applicant organisation should wait for some days even after the completion of 120 days in order to provide for postal delay.

(ix) Prior permission to receive foreign funds can also be obtained for organisation of political nature. Some organisations have to apply in Form FC-1A along with requisites enclosures.

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(x) Prior permission has to be taken by certain restricted persons in order to receive foreign hospitality. Such persons are required to apply in Form FC-2, along with requisites enclosures.

(xi) The following persons are required to obtain prior permission in order to receive foreign hospitality :

- (a) member of a Legislature
- (b) office, bearer of a political party
- (c) Judge
- (d) Government servant or employee of any corporation

(xii) No prior permission would be necessary in case of an emergency medical aid on account of a sudden illness. In such cases, the person receiving such hospitality can give within one month from the date of receipt of such hospitality, an intimation to the Central Government, regarding the receipt of such hospitality and the source and the manner in which such hospitality was received. Section 9 and rule 3(b) are relevant in this regard.

(xiii) The FCRA authority may also refuse/reject the application within 120 days. In such circumstances, the applicant, if aggrieved, may appeal to the High Court within 60 days from the date of the order of such rejection.