

REGISTRATION PROCEDURE UNDER FCRA

The statutory provision

Under Section 6 of FCRA, it is clearly provided that any organisation having a definite cultural/ social/ educational/ religious/ economic object shall only accept foreign contribution after satisfying two conditions :

- (i) It must registers itself with the Central Government.
- (ii) It must agrees to receive foreign contribution only through one specific bank account.

The statutory provision

Provisions under section 6(1) and 6(1-A) are as under :

“Certain associations and persons receiving foreign contribution to give intimation to the Central Government : (1) No association [other than an organisation referred to in sub-section (1) of section 5] having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such association—

(a) registers itself with the Central Government in accordance with the rules made under this Act ; and

(b) agrees to receive such foreign contributions only through such one of the branches of a bank as it may specify in its application for such registration,

and every association so registered shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government as to the amount of each 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 :

Provided that where such association obtains any foreign contribution through any branch other than the branch of the bank through which it has agreed to receive foreign contribution or fails to give such intimation within the prescribed time or in the prescribed manner, or gives any intimation which is false, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government. (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.”

As per the provisions of Section 6 no association is entitled to receive foreign contribution unless it has either registered itself or has obtained prior permission.

Organisation must already be registered - Only those organisations are eligible for registration under FCRA, which are registered under Society Registration Act, 1860, the companies Act, 1956, the Bombay Public Trust Act, 1950 or as a public trust under general law. Though FCRA does not distinguish between registered and unregistered organisations, but the implications of section 6(1) virtually ensures that only registered organisations would be able to get themselves registered as a legal entity under FCRA. Section 6(1) categorically specifies that organisation having a definite cultural, economic, educational, religious or social programme shall only accept foreign contribution. In the absence of registration and written documentation, it may not be possible for an organisation to prove definiteness of its aims and objectives.

Specification of bank branch - Sub-section (1)(b) of section 6 of FCRA further specifies that the foreign contribution should only be received from one of the branches of a bank as specified in the application. It is necessary to open a bank account designated for receipt of foreign contribution. The account can be opened with Indian funds before applying for registration. It may be noted that, subsequently, this account should exclusively remain for crediting foreign contribution only. Under no circumstance domestic contribution should be mixed in this account. This foreign contribution does not necessarily mean foreign currency or exchange, and therefore an organisation may receive foreign contribution in Indian currency as subsequently receivable or otherwise, within the scope of FCRA

Preventing acceptance of contributions - The proviso to section 6(1) states the circumstances under which the Central Government may prevent the organisation from accepting foreign contribution without prior permission. The circumstances are :

- (i) the organisation receives foreign funds from an account other than the branch of the bank through which it had agreed to receive at the time of registration.
- (ii) the organisation fails to give intimation within the prescribed time or in the prescribed manner.
- (iii) the organisation gives any intimation which is false.

If the organisation commits any of the above-mentioned violations, then the Central Government may by notification, direct such organisation to receive foreign funds only after taking prior permission. It may be noted that the proviso to section 6(1) uses the word "may" thereby implying it to be a discretionary power in the hands of the Central Government which it has to exercise in a just and fair manner, keeping in view the facts and circumstances of each case.

Form for registration - Organisations desirous of registering themselves with the FCRA department are required to apply in Form FC-8 along with various documents.

Checklist of documents to be filed

The following documents must be filed for obtaining registration :

- i) Form FC-8 duly filled up in triplicate.
- ii) Audited statement of accounts of past three years.
- iii) Annual Report specifying activities of past 5 years.
- iv) Detail of the beneficiaries and detail of the socio-economic factors of the region in which the NGO is working.
- v) List and geographical detail of the state, and districts proposed for work.
- vi) Certified copy of the Registration Certificate.

- 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 u/s. 80G and 12A.
- ix) Copy of any prior permission granted to the organisation.
- x) Copy of resolution of Governing Body of the organisation, authorising the registration under FCRA.
- xi) Copy of Power of Attorney or the resolution of Governing Body by which the Chief Functionary is authorised to submit FC-8.
- 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.
- xiv) If the association is having any parent or sister or subsidiary organisation, which is registered under the FCRA then the registration number along with Ministry of Home Affairs file number should be mentioned.
- xv) If the association has submitted any application earlier then its reference number should be mentioned.
- xvi) If the association has received any foreign contribution with or without the prior approval of the Central Government, then the detail should be given.

It may be noted that the onus of getting registered under FCRA lies on the association and therefore before accepting foreign contribution, it is the responsibility of association to ensure all the requisite formalities are complied with and registration is granted before accepting any foreign exchange.

Time limit for making application for registration

No specific time limit has been provided under FCRA for making an application, unlike Income Tax Act, which requires an organisation to apply within one year from its creation or registration under section 12A. Normally FCRA is granted after 3 years of active existence, therefore, the application should be made after three years though nothing in the Act prevents from making such application earlier.

Relevance of three years' audited statement : In the absence of any time limit provided in FCRA, reliance is normally made on clause 7 of Form FC-8, which provides for submission of past three years audited statement. On the basis of the requirement of form FC-8, it is normally understood that application for registration under FCRA can only be after 3 years of the creation of the organisation. But, in our opinion, under FCRA laws, there is no such restriction, which prohibits application before completion of three years.

The requirement of submission of 3 years audited statements under Form FC-8, is only directory in nature and there is no reason to make an implicit presumption of a 3years waiting period before applying for registration. Incidentally, Form FC- '1A', which is the application form for seeking, prior permission also requires submission of last 3 years audited statements. Therefore, if this submission of 3 years statements is assumed to be a mandatory pre-condition, then an organisation cannot even apply for prior permission before completion of three years.

Rule does not specify any time limit - Rule 3A of the Foreign Contribution (Regulation) 1976, provides that an application for registration of an association under section 6, shall be made in Form FC-8. Rule 3A, does not provides for any period of restriction only after which the application can be made. It is only the Form FC- '1A' and Form FC-8, which require as a part of enclosures, 3years audited statements and detail of activities. As far as Form FC- '1A' is concerned it is a foregone conclusion that if 3 years audited statements are not available, lesser

number of years audited statements could be enclosed. But, somehow a confusion in practice as well as understanding seemed to have crept in that application for registration can only be made after the completion of 3 years.

Supreme court's view - In this regard, it is pertinent to refer the Supreme Court decision in STO vs. K.I. Abraham [1967] 20 STC 367, where it was held that the rule making authority had no power to prescribe any time restriction. Infact, the FCRA rules also do not provide any restrictive time limit. It is only the requirement of Form FC- '1A' as well as Form FC-8, which requires 3 years audited statements and activity reports. Such requirements are directory and general in nature and therefore, should not be construed as a mandatory requirement of the FCRA.

Application can be filed at any time - Consequently, in our opinion, application for registration under FCRA can be filed any time after the registration of the organisation. But, the organisation with a considerable past history of activities have a greater chance of convincing the FCRA authorities with regard to the genuiness and the relevance of their purpose.

Field Enquiry

The FCRA department may ask the intelligence bureau for a report. Some authorities from the intelligence bureau may visit the office and the project area of the organisation and inspect the books of account and other records available. On the basis of the reports submitted by the intelligence bureau the FCRA department decides whether to accept or reject the application.

The FCRA department issues a registration certificate and provides a permanent registration number. This registration number is required to be quoted in all future correspondences and filling of returns and forms.

Time limit for granting registration

There is no time limit mentioned under the FCRA either for granting or rejecting the application. Normally, the application is expected to be processed within a period of six months but it is found that applications for registration are delayed for even two to three years. The FCRA guidelines available on the website of the Ministry of Home Affairs, provide that the certificates from recommending activities (District Collector, etc.) are very important and help in expending the process of registration. In the absence of a prescribed time limit, it is expected that the authority should dispose of the application within a reasonable time. The duration of such reasonable time will depend upon the prevailing facts and circumstances.

Undertaking by the Chief Functionary

The application form which is FC-8, was amended vide Foreign Contribution (Regulation) (Amendment) Rules, 1996[GSR 592(E), dt. 27.12.1996]. After the amendment an undertaking has to be given by the Chief Functionary, affirming that the informations are correct and the organisations would undertake to abide by the following :

- (i) Inform within 30days regarding change of name, address, objects, etc. with evidence.
- (ii) Not to accept any foreign contribution without prior permission, if more that 50% of the office bearers as were mentioned in the application for registration are changed or replaced.
- (iii) Not to change the bank account or branch of the bank without prior permission.
- (iv) Not to accept foreign contribution before the registration is granted or with prior permission

only.

Text of the undertaking : The text of the undertaking is as follows :

“ The Association named hereinabove affirms that the information furnished above is correct and undertakes :

- i) to inform the Central Government (Ministry of Home Affairs) within thirty days, if any, change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects with documentary evidence effecting the change ;
- ii) to obtain prior permission for change of office bearer(s), if at any point of time such change causes replacement of 50% or more of the office bearers as were mentioned in the application for registration under the Foreign Contribution (Regulation) Act, 1976 and undertakes further not to accept any foreign contribution except with prior permission till the permission to replace the office bearer(s) has been granted.
- iii) not to change the bank or branch of the bank without prior permission of the Central Government. The reasons for change of bank or branch of the bank shall have to be relevant and justifiable ; and
- iv) not to accept any foreign contribution unless it has obtained either the registration number, as applied for hereinabove, or prior permission of the Central Government under sub-section (1-A) of Sec. 6 of the Foreign Contribution (Regulation) Act, 1976.”

Nature and implication of the undertaking : It is important that the nature and implication of this undertaking is properly understood by the functionaries of the applicant organisation. The following analysis is made in brief :

- i) If there is any change in the name, address, the nature of registration, aims and objectives at any time after the submission of the application, then the FCRA authorities are required to be intimated within a period of 30 days.
- ii) The office bearers of the association are required to continue in the office and any change which causes more than 50% of the office bearers as were mentioned in the application for registration, automatically debars the organisation from accepting foreign contribution. So in case where more than 50% of the office bearers are changed then it is required that the FCRA authorities are informed and due approval is taken. During the period between the date of change and the approval from FCRA authorities, the FCRA registration will remain suspended and the association cannot receive any foreign contribution. If it wants to receive foreign contribution it can do with prior permission only. This provision has been introduced to prevent the misuse and sale of FCRA registered associations.
- iii) Under FCRA only one bank account is permissible for the purpose of receiving foreign contribution. Therefore, for the change in bank account, due information should be given to the FCRA authorities and the change should be effected only after receiving the permission for same.

50% Change in Board of Organisations who applied prior to 27.12.1996

As discussed above, that after 27.12.1996, all organisations applying or registration are required to give an undertaking which, among other conditions, specifies that foreign contributions, specifies that foreign contribution should not be accepted if more than 50% of office bearers, as were mentioned in the application for registration are changed or replaced. But the organisations who had applied before 27.12.1996 and were registered, are not bound by any such undertaking. The undertaking is a part of Form FC-8 and nothing in this regard has been mentioned in the

FCRA. Therefore, those organisations who are not signatory to such undertaking are legally not bound by the clauses of the undertaking. The undertaking in the earlier form did not have the clause of change in more than 50% of office bearers. In the absence of any specific provision in the FCRA, the undertaking given in Form FC-8, does not create any mandatory obligation on the older organisations. But, the intent of the statute is very clear that it does not appreciate comprehensive changes in the governing structure. Therefore, it is desirable that, even the organisations who applied and were registered prior to the coming into effect of new Form FC-8 should also inform the FCRA authorities regarding the changes in excess of 50% of the office bearers. But, the new organisations are bound under a legal obligation and therefore, should not under any circumstances accept foreign funds without prior permission. Whether form can provide for a limitation

It has been debated in several case laws whether direction by virtue of a Form can create legally mandatory obligation on the assessee. Many High Courts held that a limitation provided under a Form was beyond the scope of the Act and therefore not tenable. But, recently the Supreme Court in CIT v. Nagpur Hotel Owners Association (2001)247 ITR 201, discussed this issue in context of filing of Form 10, under Income Tax Rules for accumulation under section 11(2) of the IT Act. The Court reversed the order of the High Court holding that condition prescribed in a Form can also be of mandatory and binding in nature, if the purpose and the scheme of the pertaining Act is threatened to be defeated. Some observations of the Court are as under :

“Therefore, even assuming that there is no valid limitation prescribed under the Act and Rules even then, in our opinion, it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such re-opening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed.”

Whether registration under Income Tax Act necessary

The FCRA does not specify registration under Income Tax Act as a pre-condition for getting registration under the FCRA. There are instances where FCRA registration has been provided without section 12A registration under the Income Tax Act. But, since FCRA registration is normally provided after satisfying the existence of activities and genuineness of the objectives, which may take sometime and for Income Tax purposes, the organisation has to apply within one year of its creation. Therefore, it is expected of an NGO to have completed its Income Tax registrations prior to applying for registration under FCRA.

Foreigners on Board at the time of registration

The FCRA does not distinguish between registered and unregistered organisations, but the implications of section 6(1) virtually ensures that only already registered organisations would be able to get themselves registered under FCRA. Section 6(1), categorically specifies that organisations having a definite cultural, economic, educational, religious or social programme

shall only accept foreign contribution. In the absence of registration and written documentation, it may not be possible for an organisation to prove definiteness of its aims and objectives. Therefore only those organisations will be eligible for registration under FCRA, which are registered under Societies Registration Act, 1860, the Companies Act, 1956, the Bombay Public Trust Act, 1950 or as a public trust under general law.

In the light of the above discussion, under FCRA, an organisation registered in India, having a definite cultural, economic, educational, religious or social programme is entitled to apply for registration. In India legally valid charitable organisations can be registered as society or trust with foreigners as board members/trustees. Therefore, there is no legal bar on such organisation in making an application to the FCRA. FCRA authorities may exercise greater vigil and caution in processing such application. But as a matter of internal practice FCRA is not granting registration to organisation with foreigners on board. Such registration are given only in exceptional circumstances, very few instances are available.

NGOs bringing out newspapers/newsletters

NGOs engaged in publishing newspaper registered under the Press Registration of Books Act, 1867 are required to furnish details regarding such newspaper and also give a declaration in Form X (enclosed in Annex. 3.1). The Government Of India issued a notification in 1987 allowing NGOs which have publications other than newspaper as defined in section 1(1) of Press and Registration of Books Act, 1867. Further, a certificate is also required to be obtained from the Registrar of Newspapers of India, that the publication of the NGOs does not form in the category of newspaper as per section 1(1) and falls in the category B, which is permissible. The text of the notification is as under :

“S.O.760(E), Dated August 3, 1987 [F.No.II/21022/14(5)/87-FCRA-I], published in the Gazette of India.

In exercise of the powers conferred by Section 31 of the Foreign Contribution(Regulation) Act,1976(49 of 1976), the Central Government hereby exempts from the operation of the provisions of section 4(1)(b) any association(not being a political party), organisation or individual (not being a candidate for election) whose printed work is -

- (i) not a newspaper as defined in section 1(1) of the Press and Registration of Books Act, 1867 (25 of 1867); or
- (ii) not required to be registered under Part V-A of the said Act, though it may, in fact, be registered by the Registrar of Newspapers of India under the Part : subject to the condition that such Association (not being a political party), organisation or individual (not being a candidate for election) whose claim exemption under this order shall furnish a declaration in the Form annexed here to the Central Government and such declaration shall subsequently be furnished in each calendar year by 31st January.”

Certificate of Recommendation

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 Statement 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.

Refusal to grant registration

As far as the rejection or refusal of an application for registration is concerned, section 6 does not state anything clearly. Section 6(1) is completely silent about the grounds or the reasons on the basis of which an application can be rejected. In the case of *MARPU, Hyderabad v. Union of India*, Andhra Pradesh High Court, WP No. 756, dated 1987 it was held that the scope of section 6(1) was confined to registration of an organisation having a definite cultural, economic, educational, religious or social programme. There was no indication in section 6 regarding the grounds on which an application for registration could be declined. However some indications in this regard are available from section 10 which talks about the power of Central Government to prohibit receipt of foreign contribution if it believes that it may effect the sovereignty and integrity of India or the public interest.

Any authority possessing the power to register has an implicit power to reject or refuse to register, as well, but the power of refusal should not be arbitrary, ambiguous and unreasonable and should be in consonance with the purpose and intent of section 10 of the Act. If the application of an association is refused, then the authorities have to communicate the reasons for refusal to the applicant. It is necessary that the order of rejection must contain the reason on the basis of which the refusal has been made, so that in case of an appeal the court could study the tenability of such reasons. The principles of “audi alteram partem” are very much applicable during the rejection of an application as basic principle of natural justice.

Powers of Government to prohibit acceptance of contributions

In the light of the powers conferred on the Central Government under section 10, it is abundantly clear that any association applying for registration may not automatically get registration. Precaution and discretion can be exercised by the Central Government in order to ensure that the purposes of FCRA are safeguarded. The Central Government may prohibit acceptance of foreign contribution, if it is satisfied that such acceptance is likely to affect the following :

- (i) the sovereignty and integrity of India; or
- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relation with any foreign State; or
- (v) harmony between religious, racial, linguistic or regional groups, castes or communities.

Measures likely to be adopted - In the likelihood of the above mentioned eventualities the Central Government may resort to any of the following measures :

- (i) It may even prohibit persons and association not specifically prohibited under section 4. In other words, it may also prohibit persons and associations other than specified in section 4, from accepting foreign contribution. The persons prohibited under section 4 are the following :

- (a) candidate for election,
- (b) correspondent, columnist, editor, owner, printer or publisher of a registered newspaper
- (c) [Judge], Government servant or employee of any corporation,
- (d) member of any legislature,
- (e) political party or office-bearer thereof.

(ii) It may require association specified under section 6 to accept foreign contribution after obtaining prior permission only. In other words, even the associations which are registered under FCRA, can be asked to accept foreign contribution after taking prior permission.

(iii) It may require persons or associations specified under section 6 to furnish intimation/information regarding foreign contribution received and utilised by them within such time as may be prescribed by the Central Government.

(iv) It may require persons other than those specified under section 9 not to accept any foreign hospitality without obtaining prior permission. It may be noted that section 9 restricts acceptance of foreign hospitality except with prior permission by

- member of a Legislature
 - office, bearer of a political party
 - judge
 - Government servant or employee of any corporation
- while visiting any country or territory outside India, and accepting except with the prior permission of the Central Government, any foreign hospitality.

(v) Further, the Central Government may require any person or class of persons, not specified in section 9 to furnish intimation/information regarding receipt of any foreign hospitality, within such time as may be prescribed.

Text if satisfactory provision - The provisions of section 10 are as under :

“Power of Central Government to prohibit receipt of foreign contribution, etc. in certain cases. -
The Central Government may –

- (a) prohibit any association, not specified in section 4, or any person, from accepting any foreign contribution;
- (b) without prejudice to the provisions of sub-section (1) of section 6, require any association specified in that sub-section, to obtain prior permission of the Central Government before accepting any foreign contribution;
- (c) require any person or class of persons, or any association, not being an association specified in section 6, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons or association, as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) require any person or class of persons, not specified in section 9, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in section 9, to furnish intimation, within such time and in such manner as may prescribed, as to the receipt of any foreign hospitality, the

source from which and the manner in which such hospitality was received :

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such association or person or class of persons, as the case may be, the acceptance of foreign hospitality by such person, is likely to affect prejudicially-

- (i) the sovereignty and integrity of India ; or
- (ii) the public interest; or
- (iii) freedom or fairness of election to any Legislature ; or
- (iv) friendly relations with any foreign state ; or
- (v) harmony between religious, racial, linguistic or regional groups, castes or communities.

Appellate remedies

If an application is rejected and the applicant believes that an unjust order was passed against him, then he can appeal to High Court within a period of sixty days from the date of the order of rejection. The period of sixty days should be counted from the date of the order and not the date of receipt of the order.

The statutory provision - The provision for appeal is provided as per section 21(2) & (3) which is an under :

(2) Any organisation referred to in section 5, or any person or association referred to in section - 9 or section 10, aggrieved by an order made in pursuance of the Explanation to sub-section (1) of section 5 or by an order to the Central Government refusing to give permission, or by any order made by the Central Government, under section 5, or section 9 or section 10, as the case may be, may within sixty days from the date of such order prefer an appeal against such order to the High Court within the local limits of whose jurisdiction the appellant ordinarily resides or carries on business or personally works for gain, or, whether the appellant is an organisation or association, the principal office of such organisation or association is located.

(3) Every appeal preferred under this section shall be deemed to be an appeal from an original decree and the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply thereto as they apply to an appeal from an original decree.

Appeal against prohibition to receive contribution - It may be noted that by FCR(Amendment) Act, 1985, the scope of section 6 was enlarged and penalty for non-compliance of certain provisions of section 6 was provided vide the proviso to sub-section (1). It would have been proper if section 21(2) had also been suitably amended thus allowing the aggrieved organisation to appeal against an order passed under section 6 of FCRA. However the power to prohibit an organisation from receiving foreign contribution is rejected, therefore, can go for an appeal within 60 days from the date of the order to the High Court within the local limit of whose jurisdiction the appellant organisation's office is located. The appeal shall be made as per the provisions of Order XLI of the First Schedule to the Code of Civil Procedure, 1908.

Overall Summary

To sum up the discussions :

- (i) Under section 6 of FCRA, organisations having a definite cultural/social/educational religious/economic object shall accept foreign contribution only after registering itself with the Central Government as per the provision of FCRA.
- (ii) It should receive foreign contribution only through one designated Bank account.
- (iii) Although FCRA does not distinguish between registered and unregistered organisations, normally organisations registered under Society Registration Act, 1860, the Companies Act, 1956, the Bombay Public Trust Act, 1950 or as a public trust are only eligible for registration.
- (iv) It is necessary to open and designate one specific bank account for receipt of foreign contribution. This bank account should be only for foreign contribution, and domestic contribution should not be mixed into this account.
- (v) To apply for registration, Form FC-8 along with enclosures is required to be filed in duplicate to the Secretary, Government of India, Ministry of Home Affairs, Internal Security Wing-FCRA, 4th Floor, Lok Nayak Bhawan, Near Khan Market, New Delhi-110003.
- (vi) The time limit for making an application for registration has not been prescribed in the Act. Therefore, an application for registering under FCRA can be made any time after the legal constitution of an organisation.
- (vii) Form FC-8 and Form FC-‘1A’, requires three years audited statements to be enclosed with the application forms. This is a directory provision and the organisations can submit the audited statements for lesser number of years as are available.
- (viii) It may be difficult for an absolutely new organisation to get FCRA registration because certain past activities and records help the FCRA authorities to determine the genuineness and relevance of the organisation.
- (ix) Form FC- ‘1A’, also requires enclosures of three years audited statements, but, normally even a new organisation having a confirmed commitment from the donor is entitled to apply for prior permission. And the requirement of three years audited statements is waived accordingly.
- (x) After the application is made, the FCRA department may make field inquiry with the help of Intelligence Bureau. On the basis of the report submitted by the Intelligence Bureau, the application would be processed and accordingly accepted or rejected.
- (xi) There is no time limit provided under FCRA for processing of the application. Normally, six months should be taken to process an application for registration. At times, application are delayed. It is important to ensure that the recommendation certificate of the appropriate authority under clause 10A in Form FC-8 is enclosed. It will help in expediting the application.
- (xii) The Chief functionary is required to give an undertaking regarding the following :
 - (i) Inform within 30days regarding change of name, address, objects, etc., with evidence.
 - (ii) Not to accept any foreign contribution without prior permission, if more than 50% of the office bearers as are mentioned in the application for registration are changed or replaced.
 - (iii) Not to change the bank account or branch of the bank without prior permission.
 - (iv) Not to accept foreign contribution before the registration is granted or with prior permission only.
- (xiii) The undertaking given by the Chief functionaries was amended vide notification dt.27.12.1996. Therefore, it can be argued that all organisation registered prior to 27.12.96 are not bound by the undertaking which they have not given. In such circumstances, only those organisations who applied on or after 27.12.1996 are debarred from accepting foreign contribution, in case of a change of more that 50% of the Office bearers.
- (xiv) It is not necessary for an organisation to possess registration under section 12A of the Income Tax Act before applying for registration under FCRA. But, it is desirable that 12A registration is availed before applying for FCRA registration.
- (xv) Under Indian laws, a valid charitable organisation can be registered with a foreigner on its Board. Therefore, application for registration can be made by such society having foreigner as its member. The presence of a foreigner may make the FCRA authorities more vigilant and

circumspect while processing the application. FCRA authorities normally do not grant registration in such cases.

(xvi) Charitable organisations engaged in publishing newspaper are not eligible for registration unless the publication falls in category B of publication under Press Registration of Books Act, 1867.

(xvii) A certificate of recommendations from the following authorities is required to be enclosed :

(a) Collector of District

(b) Department of the State Government

(c) Ministry or Department of the Government of India

(xviii) If the application is rejected, an appeal within 60 days from the date of the order can be made to the High Court.

(xix) The reasons for refusal are not explicitly, provided in section 6, but the refusal for registration could be on the basis of any of the reason specified in section 10 :

(i) the sovereignty and integrity of India; or

(ii) the public interest; or

(iii) freedom or fairness of election to any Legislature; or

(iv) friendly relations with any foreign State; or

(v) harmony between religious, racial, linguistic or regional groups, castes or communities.

Annexure - 3.1

FORM X - Declaration

I, on behalf of the association named hereinafter declare that the printed work/publication of which the association is the owner/ editor/printer/publisher and whose details have been furnished hereafter, is not a 'Newspaper' as per definition of Section 1(1) of Press and Registration of Books Act, 1867 and/or is not required to be registered under part 6(a) of the said Act (a copy of certificate issued by Registrar of Newspapers for India to the effect that the said printed work falls within the category 'B' of publication as per classification made by Registrar of Newspaper for India to be attached).

(i) Name of the Association

(ii) Address of the Association

(iii) (a) Whether required to obtain prior permission, is so, Ministry of Home Affairs Order Number and date.

(b) Whether prohibited from acceptance of any Foreign Contribution, if so, Ministry of Home Affairs Order Number and date.

(iv) Title of publication.

(v) Periodicity of publication.

(vi) If registered under the Press and Registration of Books Act, 1867, Registration No.

(vii) Date of first publication.

I further undertake to abide by the following conditions in respect of the above printed work/publication :

(1) That it does not and shall not in future contain any political news, views or comments thereon and will be absolutely non-political.

(2) That it does not and shall not in future contain any article or reference criticising or commenting on any religion, faith, ritual, practice which may hurt the sentiments of the particular religious group or sect directly or indirectly.

(3) That it does not and shall not in future contain any objectionable material to affect prejudicially :-

(a) the sovereignty and integrity of India, or

(b) the public interest; or

(c) freedom or fairness of election to any Legislature; or

(d) friendly relations with any foreign State; or

(e) harmony between religious, racial, linguistic or regional groups, castes or communities.

(Chief Functionary)

Name :

Place : Seal of the Association

Date :