

CNK & Associates LLP

Foreign Contribution Regulation (Amendment) Rules, 2020

We refer to our earlier communication about the amendments made to the Foreign Contribution Regulation Act, 2010 (FCRA Act). In continuation to the same, it may be noted that the Ministry of Home Affairs (MHA) has notified the Foreign Contribution Regulation (Amendment) Rules, 2020 (the Rules) on 10th November 2020. The key highlights arising from the Rules are as under:

1. **Organizations of “political nature”:** The FCRA Act prohibits receipt of Foreign Contribution (FC) by political organisations and organisations of political nature. Presently, there are Rules provided for notifying an organisation as that of “political nature”. Amongst others, the extant provisions include organisations which are directly aligned with any political party, but its activities are towards advance of political interests or political action in support of public causes.

The amended Rules clarify that such organisations will be considered as of being political in nature if they participate in active politics or party politics, as the case maybe.

2. **Conditions for making application for registration:** Amongst others, the FCRA Act requires the organisation making application for registration under FCRA Act to have undertaken reasonable activity in its chosen field, for the benefit of the society for which the FC is proposed to be utilised.

The amended Rules provide that such organisation shall be in existence for 3 years and should have spent a minimum amount of INR 15 lakhs on its core activities for the benefit of society during the last 3 financial years. This condition may be waived by the Central Government in exceptional cases or in cases where the organisation is controlled by the Central or State Government.

The amended Rules also clarify that if the organisation wants to include its existing capital investment in assets like land, building, other permanent structures, vehicles, equipment as part of its spending during last 3 years, then the chief functionary shall give an undertaking that these assets shall be vested with the organisation till the validity of the registration under FCRA Act. Further, the assets shall be utilized only for the activities covered under the FCRA Act and shall not be diverted for any other purpose till validity of the registration under FCRA Act.

3. **Receipt of FC from specific donor for carrying out specific activities or projects:** The FCRA Act permits an organisation to make an application for prior permission if it has prepared a reasonable project for the benefit of the society for which FC is proposed to be utilized.

The amended Rules require that a specific commitment letter should be obtained from the donor indicating the amount of FC and the purpose for which it is proposed to be given.

Further, where the Indian recipient persons and the foreign donor organisations have common members, prior permission shall be granted to the recipient organisation on satisfying the following conditions:

- i. The chief functionary of the recipient organisation shall not be a part of the donor organisation.
- ii. 75% of the office bearers or members of the governing body of the recipient organisation shall not be members or employees of the foreign donor organisations.

- iii. In case of foreign donor organisation being single individual, that individual shall not be chief functionary or office bearer of the of the recipient organisation; and
 - iv. In case of a single foreign donor, 75% of the office bearers or members of the governing body of the recipient organisation shall not be the family members or close relatives of the donor.
4. **Receipt of FC in instalments:** The amended Rules provided that if the amount of FC to be received is over INR 1 crore, the Central Government may permit receipt of such FC in instalments as deemed fit. The second and subsequent instalments shall be released after submission of proof of utilization of 75% of FC received in previous instalment and after field inquiry of utilization of foreign contribution.
 5. **Renewal application:** Presently, the application for renewal of registration certificate should be made to the Central Government in Form FC-5 six months before the date of expiry of the certificate of registration. As per the amended Rules, the application for renewal of FCRA registration should be made in Form FC-3C accompanied with an affidavit executed by each office bearer, key functionary and key member in Proforma 'AA' within 6 months from the date of expiry of the certificate of registration.
 6. **Fee for registration / renewal:** The fees for grant of prior permission and renewal of registration will be INR 5,000, whereas for new registration will be INR 10,000.
 7. **Non-receipt of requisite renewal application / fee:** Where the FCRA registration of an organisation has not been renewed due to non-receipt of renewal application or renewal fee by prescribed time, the amended Rules provide that any unutilised FC , including assets created out of FC, shall vest with the prescribed authority till the issuance of renewal certificate or grant of fresh registration.
 8. **Vesting of FC on cancellation of FCRA registration:** The amended Rules provide that in cases wherein the registration certificate of an organisation has been cancelled, the amount of FC remaining unutilised shall vest with the prescribed authority.
 9. **Others:** Other than the above, there are procedural changes in forms and for their filing in electronic mode. Also, it has been clarified that any applications seeking registration which was made before the commencement of amended Rules but not disposed of, shall be considered after furnishing the details of designated FCRA Account with New Delhi Main Branch of State Bank of India.

CNK Comments:

1. *The recent amendments to FCRA, and subsequently to the Rules have brought about radical changes to the law, furthering the restrictions and conditions for receipt and utilization of FC by organisations governed by the FCRA. The amended Rules lay out the procedural changes to facilitate the earlier amendments to the FCRA and bring in some stringent conditions for utilization of FC by recipient organisations.*
2. *As covered in point 5 above, it may be noted that as stated in the amendment to Rules, the renewal application is now required to be made within 6 months from the expiry of the certificate of registration.*

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Our Offices in India

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No:91 22 6457 7600/01/02

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel. No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600 031
Tel No. +91 44 4384 9695

New Delhi

Suite 1101,
KLJ Towers, NSP
New Delhi 110 034
Tel No.+91 11 2735 7350

Vadodara

C-201/202, Shree Siddhi Vinayak
Complex,
Faramji Road, Alkapuri,
Vadodara 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite#17.06 Dubai World Trade Centre
Shaikh Zayed Road, Dubai, P.O.
Box.454442
Tel. No. +971 04 355 9533