

## CHARTER FOR THE BANKS

Banks have been given a very crucial role in ensuring that the provisions of the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011) are scrupulously followed by the associations who have been granted prior permission/registration under FCRA, 2010 as also by all other person(s), as defined in the Act. No bank should credit any foreign contribution to the account of an association unless it produces documentary evidence of having obtained registration/prior permission from the Central Government for the same. In case any foreign contribution is credited to the account of an Association directly, the bank should not allow utilization of such fund and inform the Association concerned to obtain necessary permission/registration from the Central Government for the same. Simultaneously, the bank should inform the Director/ Deputy Secretary (FCRA), Ministry of Home Affairs, Govt. of India, New Delhi about such receipt. Non-compliance of the above by the bank will constitute a violation and will render the defaulting bank liable for appropriate action by the Reserve Bank of India. Attention of the Banks is drawn specifically to the following provisions of FCRA, 2010 and FCRR, 2011:

“Section 17: (1) Every person who has been granted a certificate or given prior permission under Section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate;

Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him.

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

(2) Every bank or authorised person in foreign exchange shall report to such authority as may be specified- (a) prescribed amount of foreign remittance; (b) the source and manner in which the foreign remittance was received; and (c) other particulars,

in such form and manner as may be prescribed.”

“Section 18: - (1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by 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 him.

(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation under sub-section(1).”

“Rule-16: - Reporting by banks of receipt of foreign contribution:-

The bank shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilization of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.”

#### Clarificatory Note for Guidance

Further, an illustrative but not exhaustive list of such legitimate foreign contributions, which are to be allowed to be credited in the designated FC bank accounts are given below:

- (i) Donations given in INR by foreigners of Indian origin, i.e., OCI or PIO Card holders;
- (ii) Donation from a foreign source in INR received as second recipient by an association;
- (iii) Foreign contribution received in cash/local cheque/DD or through local bank transfers, either in INR or in foreign currency;

- (iv) Interest (quarterly/biannual/annual) accrued on FDs in another bank (for availing higher rate of interest) made out of FC as also re-depositing the principal amount after maturity of the FD;
- (v) Income generated from assets created out of FC funds;
- (vi) Proceeds from sale of assets created wholly or partly out of FC;
- (vii) Proceeds from sale of FC received in kind or securities; and
- (viii) Re-depositing unutilised FC drawn as advance for some purpose in the normal course of running the organisation, such as, foreign/ local tour/ project advance/ advances to an employee etc.
- (ix) Refund on account of cancellation of tickets (air/rail) booked with FC from the designated FC account.

It is also clarified that the source, i.e., the donor, giving the contribution determines whether or not the contribution is FC. If the donor comes under the definition of 'foreign source', as defined under FCRA, his donation will be treated as FC. Therefore, all donations given by a 'foreign source' are to be treated as FC even if the donation is received in either INR or foreign currency and in the form of cash or local cheque/DD or cheque from a foreign bank as also through direct deposit in the designated FC bank account or remitted through bank transfer from within India or abroad etc.

Therefore, FC in INR from any foreign source, including foreigners of Indian origin having OCI/PIO card, are to be treated as FC under FCRA and should be allowed to be deposited in the designated FC A/c.

In terms of Explanation 1 under Section 2(1)(h) of FCRA, funds transferred by the first recipient of FC to other association(s), are also to be treated as FC and Banks should allow the funds to be deposited in the designated FC A/c of the subsequent recipient (s).

In terms of Explanation 2 under Section 2(1)(h) of FCRA, interest accrued from fixed deposits (FDs) made out of FC in any bank, even if that bank is other than where the designated FC A/c is maintained, is to be treated as FC. Therefore, the associations concerned should be allowed to deposit the interest (quarterly/biannual/annual) accrued on such FDs as also to re-deposit the principal amount of FDs in the designated FC A/c after maturity of the FDs.

Again, according to Explanation 2 under Section 2(1)(h) of FCRA, any income generated from assets created out of FC are to be treated as FC and banks should allow such income to be deposited in the designated FC A/c of the association(s).

It should be noted that till it is utilised, the character of FC does not change. In other words, any asset created with FC remains as FC asset and upon disposal of the asset, the sale proceeds should be allowed to be deposited in the designated FC A/c account.

Proceeds from sale of assets created wholly or partly out of FC as also sale of articles and securities received as FC should be treated as FC and Banks should allow the sale proceeds to be deposited in the designated FC A/c of the association(s) concerned.

Any unspent or unutilized amount of FC drawn as advance from the designated FC bank account remains FC and banks should have no objection in allowing the association(s) concerned to re-deposit the unspent/unutilised FC to their designated FC A/cs.

Similarly, any unspent or unutilised amount of FC drawn as advance from the bank account opened for utilisation of FC (Utilisation A/c) remains FC and banks should have no objection in allowing the association(s) concerned to re-deposit the unspent/unutilised amount of FC to that Utilisation A/c.

It is reiterated that all the above types of FC deposits/transactions are legitimate. It may please be noted that non-deposit of these types of FC in the designated FC A/c of an association constitutes violation of the Act making the association concerned liable for penal action. Therefore, banks are advised to allow deposit/credit of this kind of legitimate foreign contributions in the designated FC A/c of any association which has obtained registration or prior permission under FCRA.

It is also clarified that since the designated FC account through which foreign contribution is proposed to be received and utilized is to be mentioned by the applicant association in their applications seeking registration or prior permission, as the case may be, the Banks may allow the applicant associations seeking registration/ prior permission under FCRA, 2010 to open such FC account with a minimum possible deposit in INR. Under FCRA, 2010, there is no requirement of maintaining any minimum balance in the designated FC account. However, the Banks should not allow any foreign inward remittance in that account till such time the association is granted registration or prior permission, as the case may be. Deposit of minimum amount in INR for the purpose of opening the designated FC account should not be treated as mixing of FC with local funds after the association is granted registration/ prior permission under FCRA, 2010 and starts receiving/ utilizing FC from that account.

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