

FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 – REQUIREMENT OF DESIGNATED FCRA ACCOUNT

The Foreign Contribution (Regulation) Act, 2010 ("FCRA") read with the Foreign Contribution (Regulation) Rules, 2011, as amended from time to time ("FCRR") is the cornerstone law that governs and regulates *inter-alia* the acceptance and utilization of foreign contribution by persons in India. FCRA has recently been amended through Foreign Contribution (Regulation) Amendment Act, 2020 ("FCR Amendment Act") (notified on September 29, 2020) with stated objective to streamline the compliance mechanism, by enhancing transparency and accountability in the receipt and utilisation of foreign contribution.

We have analyzed herein one of the key requirements under the FCR Amendment Act that mandates compulsory opening of a designated FCRA account and their implications. However, prior to delving on this, it is important to note that the FCRA *vide* its Section 11 requires a category of 'persons' to obtain a prior registration ("FCRA Registration") with or project-specific prior permission ("Prior Permission"), of the Central Government, in order to accept any 'foreign contribution' from a 'foreign source'.

One of the important requirements introduced by the FCR Amendment Act is that every person (which includes, an individual, a Hindu undivided family, an association and not for profit companies as defined under the FCRA) who has been granted FCRA Registration or obtained Prior Permission is required to compulsorily open a designated FCRA Account for the purpose of receiving foreign contribution. The Central Government has specified the New Delhi Main Branch of the State Bank of India (SBI) situated at 11, Sansad Marg, New Delhi for the purpose of opening of this designated FCRA account to receive remittance of foreign contribution. It may be noted that no funds except the foreign contribution is allowed to be remitted in the said designated FCRA Account.

Person seeking FCRA Registration/ Prior Permission: Every person making an application to obtain FCRA Registration or Prior Permission is henceforth required to first open the account and then make an application, wherein, the details of such account are required to be mentioned in the application to be submitted with the Central Government for grant of FCRA Registration or Prior Permission. So, that led to a rush from some 23,000 such Persons seeking to open the designated FCRA account with SBI; and then consequent delays since most waited for the last date to come to open the FCRA account.

Effect on the existing accounts: Further, the Central Government has permitted existing FCRA registered entities (which hereinafter also includes a person having Prior Permission), having existing accounts for receiving foreign contribution in any other scheduled commercial bank, to open this designated FCRA account with the SBI by March 31, 2021. Therefore, the existing FCRA registered entities can continue to receive foreign contribution in the existing bank account till they open the designated FCRA account with SBI or March 31, 2021, whichever is earlier. After March 31, 2021, FCRA registered entities are not eligible to receive foreign contribution in any account other than the designated FCRA account with SBI.

As of May 2021, only some 13,000 FCRA registered entities could open the designated FCRA account with SBI. The Central Government thereafter, *vide* the notification dated May 18, 2021, extended the deadline for opening of this designated FCRA account with the SBI for the existing FCRA registered entities upto June 30, 2021. The notification also said that after this date they shall be not eligible to receive foreign contribution in any account other than designated FCRA Account with SBI.

Opening of additional accounts for utilizing foreign contribution: It has been further clarified by the Central Government that there is no restriction for the FCRA registered entities to retain their existing account which were used to receive the remittance of foreign contribution or even open another account in any scheduled bank for keeping, transferring or utilizing the foreign contribution so received in the

designated FCRA account with SBI. The term 'FCRA Account' has been defined as "*the FCRA Account referred to in Section 17 of the FCRA*". Section 17 of the FCRA refers to following categories of bank accounts: (a) the designated bank account with the SBI for receiving foreign contributions only; (b) the second FCRA bank account (*i.e.*, the bank account used prior to the FCR Amendment Act) in any scheduled bank for the purpose of keeping and utilizing foreign contribution which has been received from the designated FCRA account with the SBI; and (c) bank account(s) in one or more scheduled banks to which he may transfer for utilizing any foreign contribution received in the designated FCRA account with the SBI or the second FCRA bank account. Further, as per Section 17 of the FCRA, only the first two category of bank account are referred to as 'FCRA Account' and the third type of bank account is mentioned as utilization bank account and not FCRA account. Further on the review of the Form FC-3A (*application form for FCRA Registration*), Form FC-3B (*application form for Prior Permission*) and Form FC-3C (*application for renewal*), it is apparent that for the purpose of FCRR and filing of forms, FCRA Account includes the mandatory designated FCRA account with SBI and the second FCRA account, if any. However, the Form FC-7 (*application for surrender of certificate of registration*) also requires the details of utilisation bank account as part of FCRA account. Further, no transfer charges/ fees will be levied by the SBI for transferring the foreign contribution from the designated FCRA Account with SBI to another account in a branch of any scheduled bank.

Reporting requirements: The New Delhi Main Branch of the SBI where the designated FCRA Account is maintained or any other branch of scheduled bank where the FCRA registered entities has opened his foreign contribution account is required to report to the Central Government within 48 hours, (a) the prescribed amount of foreign remittance; (b) the source and manner of receiving the foreign remittance; and (c) whether or not such person has FCRA Registration or Prior Permission. Further, while there is no requirement for intimating the opening of the designated FCRA account with SBI to the Central Government, however, in this regard, please note that *vide* Rule 9(1)(e) of the FCRR, an intimation is required to be submitted by FCRA registered entity to the Central Government, in the specified e-Form FC-6D, when any account(s) is opened by the FCRA registered entity for the purpose of utilizing the foreign contribution after it has been received, within 15 days of opening of such account. Further, under Rule 17A of the FCRR, a FCRA registered entity is required to file Form FC – 6C for any change in bank and, or branch of the bank and, or designated foreign contribution account number and Form FC-6D for any change in bank and, or branch of the bank for purpose of utilizing the foreign contribution after it has been received, both within 15 days of any such change. However, on perusal of Form FC-6C, it appears that an intimation of the designated FCRA Account with the SBI is required to be given by FCRA registered entity by filing this form with the Central Government.

Retrospective effect on the already submitted applications: It is pertinent to note that every application for FCRA Registration or Prior Permission made before November 10, 2020 and not disposed of has to be considered after furnishing the details of FCRA account.

Process of opening of new bank account at SBI: In this regard Standard Operating Procedure (SOP) to facilitate opening and operating the "FCRA Account" with the SBI has been worked out and released by the Central Government. As per the SOP, please note that (a) the applicant is not required to visit the New Delhi Main Branch of the SBI. They may approach either the nearest SBI Branch or any other SBI Branch of their choice for taking action with regard to opening of their designated FCRA Account; (b) the applicant are required to fill up the account opening form and submit the duly filled up form with mandatory KYC documents for verification with the nearest SBI Branch or any other SBI Branch of their choice; (c) the applicant will receive acknowledgement from the accepting branch of SBI within 1 working day of the receipt of form; (d) such branch of SBI which has accepted the account opening form would verify the form and documents submitted with it and thereafter email them to the New Delhi Main Branch of the SBI within 3 working days from the date of receipt of completed documents; (e) the New

Delhi Main Branch of the SBI is required to intimate the applicant the details of the designated FCRA account opened with them within 3 working days from the date of receipt of duly verified scanned copies of complete set of form and KYC documents; (f) after opening of the account, foreign contributions remitted should contain the specified details of the designated FCRA account number, the swift code of the SBI, name of beneficiary and name; account number; address and country of residence of donor; (g) an intimation will be sent by New Delhi Main Branch of the SBI thorough an email and SMS regarding receipt of foreign contribution; and (h) an undertaking detailing the purpose of receipt of funds is required to be submitted with the SBI branch where the applicant had submitted its account opening form.

Intervention of the Delhi High Court: The FCR Amendment Act has imposed upon the SBI a very crucial role and is expected to be well-versed with the provisions of the FCRA and FCRR. In light of this amendment, several NGOs had filed petitions before the Delhi High Court stating the difficulty in opening the FCRA account owing to certain processing delays attributable to the SBI, despite timely submission of the forms and required documents with the SBI, which prevented them from receiving foreign contributions. By way of the order dated May 20, 2021 passed by the Hon`ble Delhi High Court, the SBI was directed to ensure that all the applications are processed at the earliest and the relevant bank accounts sought to be set up for receiving foreign contributions to be made operational within ten days of receipt of the certificate from the concerned applicant.

Way Forward: Now, even the extended date of June 30, 2021 has also expired, and all of the existing FCRA registered entities have not yet complied with the requirements. There will certainly be some more litigation and, or, requests for another round of extensions.

Watch this space for more, as we continue to track this...
