

Social Sector Hotline

December 17, 2024

SOCIAL SECTOR BULLETIN: MONTHLY UPDATE

- In response to concerns raised by various NGOs regarding the ambiguity in the reasons provided for the denial or refusal of the FCRA application, the Ministry of Home Affairs by its recent notification dated November 8, 2024, has undertaken measures to consolidate and clarify the common grounds for such denials, ensuring greater transparency in the process.
- Amendments to Rule 17(A) of the FCRR, 2011, now allow associations to resubmit applications notifying changes in office bearers, even if a previous application is still pending, streamlining the process and reducing delays.

The Ministry of Home Affairs ("MHA") has recently introduced key amendments to enhance the clarity and efficiency of the FCRA registration and renewal process. These include clarifications on common grounds for denial and revisions to Rule 17(A) of the Foreign Contribution (Regulation) Rules, 2011 ("FCRR, 2011"), aimed at addressing transparency concerns and reducing administrative delays.

A. CLARIFICATION OF DENIAL REASONS FOR FCRA REGISTRATION/RENEWAL BY MHA

The MHA has recently responded to concerns raised by various NGOs regarding the ambiguity surrounding the reasons provided for the denial of Foreign Contribution (Regulation) Act, 2010 ("FCRA") registration or renewal applications. To provide clarity and transparency, the MHA through its notification dated 8th November 2024, ¹has taken proactive steps to consolidate and clarify the common reasons for denial or refusal of FCRA applications.

The key reasons for denial of FCRA registration or renewal application include non-compliance with statutory provisions, failure to meet eligibility criteria, submission of incomplete or inaccurate documentation under Section 12(4) of the FCRA.

- Common Reasons for denial :
 - The denial of renewal or registration for associations receiving foreign contributions can occur for several key reasons, primarily to ensure that such entities uphold their obligations and maintain integrity in their operations. A significant reason for denial is the failure of an association to engage in activities that promote societal welfare or if such activities cannot be verified through investigation. If an association no longer exists or has ceased its operations, it may also be denied renewal or registration. Denial can also arise when any office bearer or key functionary of the association is facing prosecution or has been convicted under relevant laws.
 - Another common reason for rejection is when an association fails to provide the necessary information, documents, or clarifications after being given an opportunity to do so. Denial can also be based on incomplete or concealed information in the application form. Additionally, if an association's office bearers, members, or key functionaries cannot be located at the provided address, or if they are found to be acting nominally or as proxies, the application may be rejected.
 - If an association's registration has already been revoked, it is prohibited from accepting foreign contributions for a specified period, usually three years. Denial can also result from an association's involvement in activities that are deemed harmful to societal development, such as inciting protests or engaging in anti-development work. Any link to terrorist organizations, anti-national activities, or other harmful practices can also lead to denial, especially if the association or its office bearers are found to be promoting or supporting such causes.
 - Finally, associations that are reported to be harming social or religious harmony, or those whose activities pose a threat to national security, may face denial. This includes situations where office bearers or key functionaries are connected to radical or extremist groups. In all cases, the denial serves to ensure that foreign contributions are not misused and that the activities of associations align with the public interest, promoting peace, development, and the well-being of society.
- Exclusive To Renewal: An association may face denial of renewal if it fails to utilize foreign contributions for its intended purposes over the past five years. Additionally, failure to submit annual returns for any of the previous six financial years can lead to rejection, as this non-compliance undermines transparency and accountability. Denial may also result from the association's violation of any provision of the applicable regulations, indicating disregard for legal and operational standards. These actions reflect a failure to adhere to the requirements for maintaining good standing and effective governance.

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- Exclusive To Registration: An association may be denied renewal if it has failed to allocate a minimum of 15 lakhs for its core activities aimed at societal welfare during the past three financial years, reflecting inadequate engagement in its intended objectives. Additionally, denial may occur if the association has not been operational for the past three years.

The MHA has clarified that the reasons for denial are illustrative rather than exhaustive, leaving room for further interpretation and application depending on specific circumstances.

In *Dr. R.N. Gupta Technical Educational Society vs Union of India*², the petitioner's application under Section 12 of the FCRA was rejected on grounds of operating on a "commercial basis for personal gain." The petitioner, receiving no adequate response, filed an RTI application and later a writ petition in the Delhi High Court. The Court set aside the rejection order, holding that the petitioner's valid certification under Sections 12A and 80G of the Income Tax Act, 1961, could not be disregarded by the respondent without due cause.

Similarly, in another case³, the Court quashed an MHA order rejecting an FCRA renewal application on the sole ground that the renewal was not in the "public interest." The Court reiterated that the MHA, as a quasi-judicial authority, must provide applicants the opportunity to be heard.

The recent clarification by the MHA on FCRA denials aims to bring more transparency to the process. However, cases like *Dr. R.N. Gupta Technical Educational Society v. Union of India* highlight the need for clear, reasoned orders that respect principles of natural justice. Courts have emphasized that decisions on FCRA matters must be well-founded and applicants should be given an opportunity to respond. Ensuring fair procedures while maintaining regulatory oversight is essential to balancing compliance and accountability.

B. AMENDMENT IN THE PROTOCOL GOVERNING THE FILING OF THE APPLICATION UNDER RULE 17(A) OF FCRR, 2011

The MHA recently amended the procedure for filing applications under Rule 17(A) of the FCRR, 2011, in response to representations received from various NGOs regarding the difficulties in notifying changes to office bearers, key functionaries, or members while a prior application for the same matter is pending with MHA.

Rule 17 of the FCRR, 2011 stipulates that an association must inform MHA regarding any changes in its office bearers, key functionaries, or members within 45 days of such modifications. This notification is to be made by submitting Form FC-6E, which is required for the grant or renewal of the FCRA application. Under the amended procedure, associations can now submit a fresh application in Form FC-6E to notify such changes, even when a prior application is pending. The details from the pending application will be automatically updated in the new form, and the previous application will be closed.

This amendment is designed to streamline the process and ensure that associations remain compliant with regulatory requirements under the FCRA while reducing administrative burdens and delays.

CONCLUSION

The MHA has made significant strides toward improving the transparency and efficiency of the FCRA registration and renewal process. By issuing a clarification on the common reasons for denial and introducing amendments to streamline applications under Rule 17(A) of the FCRR, 2011, the MHA has addressed key concerns raised by NGOs. These proactive measures aim to reduce ambiguity, ensure compliance with regulatory requirements, and foster greater procedural efficiency for associations seeking to engage in activities funded by foreign contributions.

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You can direct your queries or comments to the relevant member.

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¹Notification No. II/ 21022/ 23(04)/ 2024/ FCRA-II dated 8th November 2024.

²Dr. R.N. Gupta Technical Educational Society vs Union of India, 2017 SCC OnLine Del 11087.

³Institute of Public Health vs Union of India, 2019 SCC OnLine Kar 3602.

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