



Resource support on NGO Governance, Accounting and Regulations



Standards & NORMS

An initiative of FMSF & VANI

Legal Series Vol. IV, Issue 2, June 2011

For private circulation only

FCRA

DILEMMA FOR CSOs



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INTRODUCTION

- 1.01 The Foreign Contribution (Regulation) Act 2010 and the Foreign Contribution (Regulation) Rules 2011 have been enacted w.e.f. 01.05.2011. The old FCR Act and Rule, 1976 have been repealed. In this issue, we are discussing the major areas requiring clarity from the CSOs viewpoint.

WHETHER THE OLD FORM FC-3 OR THE NEW FORM FC-6 SHOULD BE FILED FOR THE YEAR ENDED 2010-11

- 2.01 To our understanding, for the year 2010-11 the old form FC-3 should be filed because the new law became effective only from 1st May 2011 which is 1 month after the end of the financial year 2010-11. Moreover the new form FC-6 requires location wise reporting and such records may not be available with some organisations as it was not legally required to be maintained as per the earlier act.

IN THE NEW FORM FC-6, IS IT NECESSARY TO PROVIDE COMPLETE ADDRESS OF EACH ACTIVITY

- 3.01 The new form FC-6 has a column which requires address of specific activity. For a large NGO, it may not be practically possible to provide the village wise address of all activities spread across various states of India. To our understanding, the requirement and the intent of the FCRA department is to have information on how the funds were geographically distributed. Therefore, a district wise details of fund utilisation should suffice.

WHETHER SALARIES OF SENIOR PROGRAMME STAFF ENGAGED IN IMPLEMENTATION OF PROGRAMMES SHALL BE TREATED AS ADMINISTRATIVE OR PROGRAMME EXPENDITURE

- 4.01 As per the proviso to Rule 5, all salaries of personnel directly engaged in implementation of programmes towards achievement of objectives shall be treated as programme expenditure. Therefore, such salaries and expenditures should be treated as programme expenditure.

WHETHER EXPENDITURE ON VEHICLE, CONVEYANCE, TRAVEL, RENT, TELEPHONE ETC. INCURRED DIRECTLY TOWARDS IMPLEMENTATION OF PROGRAMMES SHALL BE TREATED AS ADMINISTRATIVE OR PROGRAMME EXPENDITURE

- 5.01 As per the proviso to Rule 5 all expenditure on vehicle, conveyance, travel, rent, telephone etc. incurred directly towards implementation of programmes shall be

treated as programme expenditure. Therefore, such salaries and expenditures should be treated as programme expenditure

HOW WILL ADMINISTRATIVE EXPENDITURE BE COMPUTED WHEN THE PROGRAMME IS IMPLEMENTED THROUGH OTHER FC REGISTERED PARTNERS

- 6.01 The FC rules is silent about the computation of administrative expenditure in case where the programme is implemented through multiple partners. To our understanding, the administrative expenditure in case of a multi partner programme shall be computed on the basis of the programme as a whole.

HOW WILL ADMINISTRATIVE EXPENSES BE REPORTED

- 7.01 The FC rules are silent about the reporting of administrative expenses. There is no separate column in the form FC-6 with regard to administrative expenses. To our understanding, the administrative expenditure should be reported under a separate schedule to the Income and Expenditure Account duly certified by the Auditor. The organisation may use the same schedule of expenditure as an Annex to the Form FC-6.

WHETHER TRANSFER OF FUNDS DIRECTLY TO END BENEFICIARIES SUCH AS SHG AND CBOS AT THE VILLAGE LEVEL IS PERMISSIBLE ?

- 8.01 Transfer of funds directly to end beneficiaries such as SHG and CBOs at the village level is permissible only if it can be treated as end utilisation. Such groups are informal and the funds are transferred for the benefit/consumption of such groups only. It also noted that under FCRA 2010, transfer of funds to NGOs or any intermediary 'person' is not permissible. Any transfer of funds to NGOs or any intermediary 'person' should be done only with prior permission if such person is not registered under FCRA. Such prior permission can be obtained in Form 10 under Rule 24. It may further be noted that no prior permission is necessary for transfer of fund to FC registered organisations.

HOW WILL THE TRANSFER OF FIXED ASSETS TO ANOTHER FC REGISTERED NGO BE TREATED

- 9.01 The FCRA law is silent in this regard. It may be noted that the transfer of fixed assets to another FC registered organisation shall be treated as application of foreign funds in the books of the donor if the assets were purchased during the year.

However, the problem comes in case of old FC assets transfer where such assets have already been shown as utilised in earlier years and do not form a part of the FC balance. It may be noted that many organisations reinstate the assets in the FC balance sheet by creating asset funds but such assets are not a part of the FC closing balance. Therefore, they cannot be shown as utilised in the FC-6 statement, such assets should be shown as contribution given in kind both in the FC-6 and FC-7 statements. The Auditor should certify the approximate or written down value accordingly. For the recipient organisation, in both the cases it will be treated as contribution received in kind. The recipient organisation should file form FC-7 in both the cases.

HOW WILL THE TRANSFER OF FIXED ASSETS TO THE BENEFICIARIES BE TREATED

10.01 The FCRA law is silent in this regard. It may be noted that the transfer of fixed assets to the beneficiaries shall be treated as application of foreign funds in the books of the donor if the assets were purchased during the year. However if old FC assets are transferred where such assets have already been shown as utilised in earlier years and do not form a part of the FC balance, they cannot be shown as utilised in the FC-6 statement. Such assets should be shown as contribution given in kind both in the FC-6 and FC-7 statements.

CAN FC FUNDS AND ASSETS BE TRANSFERRED TO A PANCHAYAT

11.01 It may be noted that FCRA 2010 has included Panchayat under the definition of 'legislature' U/s. 2(1)(k). Therefore, no FC funds or Assets can be transferred to a Panchayat as anyone forming part of the legislature is debarred from receiving FC funds.

HOW TO REPORT MULTIPLE BANK ACCOUNT OPENED EARLIER

12.01 Under the old FCRA law as per the FCRA department, multiple bank accounts were legally not permissible. Therefore any multiple bank account opened prior to 1st May 2011 shall be considered as violation of FCRA. Organisation may open new multiple bank accounts for utilisation purposes and report to the FCRA department within 15 days.

WILL NON-RECEIPT OF FC CONTRIBUTION FOR 2 YEARS RESULT IN CANCELLATION

13.01 The FCRA law says that if the organisation is not having any reasonable activity for 2 years then it could be considered for cancellation. This provision does not imply

that there will be an automatic cancellation, since the department will provide an opportunity of being heard. To our understanding, if the NGO is having other activities from local income then it may not lose registration only because no foreign contribution was received for 2 years.

ARE BRANCH OFFICE AND LIAISON OFFICE OF FOREIGN AGENCIES COVERED UNDER FCRA

14.01 Under the FCRA law, all entities whether registered or not having a definite purpose in India shall be covered under the definition of the term "*Association*". Therefore, the branch office and liaison office of foreign entities will also be covered under the FCRA Laws if they receive foreign contribution in India. The clause No. 4(a) of form FC 3 also clarifies this aspect by including branch and liaison offices. All the branch and liaison offices working validly under the FEMA should also apply for FCRA registration if they receive foreign contribution in their Indian branch account. To our understanding FCRA registration would not be necessary in case of inward remittances from Head quarters (including the grant component). FCRA law becomes applicable only if there is a transfer, donation or delivery of foreign currency, article or security. In case of an inward remittance, there is no transfer as both the recipient and the transferor are the same person. Barring inward remittances, all other funds received shall be subject to FCRA laws.

WILL CONSULTANCY INCOME BE COVERED UNDER FCRA 2010

15.01 Under FCRA 2010, the term Foreign Contribution does not include commercial receipts. In other words, an NGO can receive consultancy or other commercial receipt from foreign sources even without having FC registration. FC registered NGOs should receive such contribution in their domestic account and such commercial receipt are not required to be reported to the FCRA department.

CAN AN NGO BE TREATED AS ORGANISATION OF POLITICAL NATURE IF IT WORKS WITH PANCHAYATS

16.01 Under FCRA 2010, Panchayats are debarred from receiving foreign contribution. However, any development work towards the objectives of the NGO should not be treated as political activity even if taken up at the Panchayat level. However, there should be no transfer of foreign contribution to a Panchayat. The circumstances under which an organisation can be declared to be an organisation of political nature are provided in Rule 3 and they do not include any genuine development activity at the grassroot level.

HOW A CHARTERED ACCOUNTANT WOULD CERTIFY CONTRIBUTIONS RECEIVED IN KIND

17.01 The new FCRA Rules under form FC-7 requires a certificate from a Chartered Accountant with regard to the foreign contribution received in kind. There was no such requirement in the earlier Act and Rules. A Chartered Accountant normally certifies only objective valuations. In case of contributions received in kind from foreign sources the authentic valuation in India is not normally available which may cause problems for the Chartered Accountant in certifying such valuations. In this regard, it is important that the FCRA department issues guidelines on the valuation of contributions received in kind and thereafter the Chartered Accountant can certify whether such processes were followed or not. Further, when FC assets are given by one FC registered organisation to another FC registered organisation. The written down value of the donor organisation may be considered as a basis for valuation.

DOES FCRA PROHIBIT INVESTMENT IN LAND AND MUTUAL FUNDS FROM PROJECT FUNDS

18.01 The new Act and Rule prohibit investment of speculative nature. Rule 4 specifies the circumstances under which an investment could be treated as speculative in nature.

18.02 Rule 4(1)(a) prohibits investment in shares & stocks even through mutual fund. This provision is in conflict with section 11(5) of the Income Tax Act, 1961 which provides investment in certain stock linked mutual funds.

18.03 Further Rule 4(1)(b) prohibits investment in high return schemes or in land if it is not directly linked to the declared aims and objectives of the organisation. To our understanding all investment in land in the normal course (which are not short term in nature) will not be affected by the new Rule.

CAN ASSETS BE DONATED TO PANCHAYAT ? OR HOW CAN ASSETS BE DONATED TO THE VILLAGE

19.01 The new Act has defined a Panchayat as a part of legislature, therefore no FC assets can be donated to a Panchayat. However, it does not seem to be the intent of the act to prevent any asset being gifted to the village or community. For instance donating black board and tables to the village school. Any such assets may be directly donated provided definite end beneficiaries are there.

WILL BROADCAST UNDER COMMUNITY RADIO BE TOTALLY PROHIBITED

20.01 The new Act has specifically prohibited “persons” engaged in Audio/Visual Broadcast, therefore, charitable organisation formally owning community radios or video channels should not do such activities otherwise they will fall under the debarred category and cannot receive foreign contribution for any purpose.

WILL UPLOADING OF AUDIO & VIDEO IN THE ORGANISATIONS WEBSITE BE CONSIDERED AS AUDIO/VISUAL BROADCAST

21.01 The new Act prohibits Audio/Visual broadcast to our understanding on website should not be considered as Audio/Visual broadcast. The organisation may also upload Audio or Video materials on their websites but such material should be confined to the permissible activities and objectives of the Society.

Standards & Norms aims to provide relevant informations and guidance on NGO governance, Financial Management and Legal Regulations. The informations provided are correct and relevant to the best of the knowledge of the author and contributor. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner.



Published by **Mr. Sanjay Patra** on behalf of
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