

Standards & NORMS

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MINI HANDBOOK OF FCRA ISSUES & CONTROVERSIES

ARE DONATIONS RECEIVED IN KIND A PART OF FOREIGN CONTRIBUTION

1.1 Definition of the term '*foreign contribution*' is wide enough to include donations received in kind. The definition of '*foreign contribution*' says that any donation, delivery or transfer made by any foreign source, of article, currency or foreign security.

CONSULTANCY INCOME OF AN NGO

1.2 The definition of '*foreign contribution*' includes all kinds of foreign receipts. It does not distinguish between a commercial receipt or a voluntary contribution; therefore, the consultancy income should also be considered as foreign contribution. The intent of FCRA is to regulate the foreign receipts of certain specified associations and individuals irrespective of the nature of receipt, unless it is specifically excluded in FCRA. The definition of '*foreign contribution*' it includes any donation, delivery or transfer made by any foreign source, of article, currency or foreign security. Therefore, it is apparent that

it does not confine only to donations or contributions. However, the proposed FCR Bill 2006 excludes consultancy income from the purview of the law.

DONATIONS RECEIVED IN INDIAN RUPEES IN INDIA FROM A FOREIGNER

1.3 Funds received from a foreign source, whether in India or outside India and whether in Indian currency or foreign currency is considered as foreign contribution. It is the source which determines the nature and not the currency.

FUNDS RECEIVED FROM AN NON RESIDENT INDIAN (NRI)

1.4 NRIs are not covered within the definition of '*foreign source*'. Therefore, any amount received from NRI will not be considered as foreign contribution, whether received in India or outside India, whether in Indian currency or any foreign currency.

WILL UNITED NATIONS OR WORLD BANK BE CONSIDERED AS FOREIGN SOURCE

1.5 No, Central Government has notified in the Official Gazette that agencies of United Nations and certain other international organisations shall not be treated as foreign source, for the purposes of the Act.

CAN POLITICAL PARTIES RECEIVE FOREIGN CONTRIBUTION

1.6 FCRA specifically debar political parties from receiving foreign funds. Political parties cannot receive foreign funds under any circumstances. Neither can they apply for registration nor can they apply for prior permission on case-to-case basis. However, organisations of political nature may receive foreign contribution with prior permission.

PERSONS SPECIFICALLY DEBARRED FROM RECEIVING FOREIGN CONTRIBUTION

1.7 Section 4 of FCRA specifies that the following persons cannot receive foreign contribution:

- (a) candidate for election.
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper.
- (c) Judge, Government servant or employee of any corporation.
- (d) member of any legislature
- (e) political party or office-bearer thereof.

1.7.1 The above mentioned persons cannot receive foreign contribution subject to certain exceptions specified in section 8 which are as under:

- “(a) If they receive foreign funds by way of salary, wages or remuneration for services rendered.
- (b) If they receive payment in ordinary course

of business transaction in India by such foreign organisation or source.

- (c) If the funds are received in the course of international trade or commerce or in the ordinary course of business transacted outside India.
- (d) Payment is received as an agent of a foreign source of organisation in relation to any transaction made by such foreign organisation with the governance.
- (e) If the payment is received by way of gift or presentation as a part of any Indian delegation within the norms of acceptance described by Central Government.
- (f) Payment is received from relative staying abroad. Such payments should be received with prior permission only if it exceeds Rs.8,000.
- (g) Payment is received through official channel, post office or any authorised dealer in the ordinary course of business”.

CAN AN ORGANISATION OF POLITICAL NATURE RECEIVE FOREIGN CONTRIBUTION

1.8 Organisations of political nature are not eligible for registration under FCRA. However such organisation can apply for prior permission on case-to-case basis. An organisation of political nature is an organisation which is associated or close to political parties. The Central Government has published a list of organisations which are considered as organisations of political nature. The FCRA Bill 2006 does not permit even organisations of political nature to receive foreign contribution.

DOES FCRA APPLY TO ORDINARY CITIZENS

1.9 Apart from the persons mentioned in section 4 (as discussed above) all individuals are entitled to receive foreign funds without any restrictions. In other words FCRA is not applicable to private individuals. The only exception in this regard is receipt of stipend or scholarship from foreign source in excess of Rs. 36,000 should be reported to Central Government by virtue of section 7.

DOES FCRA APPLY TO COMMERCIAL OR BUSINESS ORGANISATIONS

1.10 Movement of foreign funds in the normal course of commerce and business is outside the purview of FCRA. Therefore, business organisations are not covered by FCRA. However, the provision of Foreign Exchange Management Act, 1999, which is a financial legislation, would be applicable.

WHAT ARE THE STATUTORY CONDITIONS FOR RECEIVING FOREIGN CONTRIBUTION

1.11 Under section 6 of FCRA, it is clearly provided that any organisation having a definite cultural/social/educational/religious/economic object shall accept foreign contribution only after satisfying two conditions :

- (i) It must register itself with the Central Government.
- (ii) It must agree to receive foreign contribution only through one specific bank account.

WHAT ARE THE DOCUMENTS TO BE FILED WITH AN FCRA APPLICATION

1.12 The following documents must be filed for obtaining registration :

- (i) Form FC-8 duly filled up in triplicate.
- (ii) Audited statement of accounts of past three years.
- (iii) Annual Report specifying activities of past 5 years.
- (iv) Detail of the beneficiaries and the socio-economic factors of the region in which the NGO is working.
- (v) List and geographical detail of the State, and districts proposed for work.
- (vi) Certified copy of the Registration Certificate.

- (vii) Certified copy of the Bye-laws and Memorandum and Articles of Association whichever is applicable.
- (viii) Copy of certificates of exemption or registration issued by the Income Tax Department under sections 80G and 12A.
- (ix) Copy of any prior permission granted to the organisation.
- (x) Copy of resolution of Governing Body of the organisation, authorising the registration under FCRA.
- (xi) Copy of Power of Attorney or the resolution of Governing Body by which the Chief Functionary is authorised to submit FC-8.
- (xii) List of members of the Governing Body of the organisation and the office bearers.
- (xiii) Copy of any Journal or other publication of the organisation.
- (xiv) If the association is having any parent or sister or subsidiary organisation which is registered under the FCRA then the registration number along with Ministry of Home Affairs file number should be mentioned.
- (xv) If the association has submitted any application earlier then its reference number should be mentioned.
- (xvi) If the association has received any foreign contribution with or without the prior approval of the Central Government, then the detail should be given.

THE TIME LIMIT AND CONDITIONS WHILE MAKING AN APPLICATION FOR REGISTRATION

1.13 No specific time limit has been provided under FCRA for making an application, unlike Income-tax Act, which requires an organisation to apply within one year from its creation or registration under section 12A.

1.13.1 However as per FAQs issued by FCRA Department, application for registration under FCRA is made after 3 years of active existence. The NGOs should have also spent more than 6 lakh rupees during the 3 year period.

WHAT IS THE TIME LIMIT FOR PROCESSING THE APPLICATION FOR REGISTRATION

1.14 There is no time limit mentioned under the FCRA either for granting or rejecting the application. Normally, the application is expected to be processed within a period of six months but it is found that applications are delayed for long periods.

AN UNDERTAKING IS REQUIRED TO BE GIVEN BY CHIEF FUNCTIONARY, WHAT ARE ITS IMPLICATIONS

1.15 The application form which is FC-8, was amended *vide* Foreign Contribution (Regulation) (Amendment) Rules, 1996 [*GSR 592(E), dated 27-12-1996*]. After the amendment an undertaking has to be given by the Chief Functionary, affirming that the informations are correct and the organisation would undertake to abide by the following :

- (i) Inform within 30 days regarding change of name, address, objects, etc. with evidence.
- (ii) Not to accept any foreign contribution without prior permission, if more than 50 per cent of the office bearers as mentioned in the application for registration are changed or replaced.
- (iii) Not to change the bank account or branch of the bank without prior permission.
- (iv) Not to accept foreign contribution before the registration is granted or with prior permission only.

1.15.1 As discussed above, after 27-12-1996, all organisations applying for registration are required to give an undertaking which, among other conditions, specifies that foreign contributions, should not be accepted if more than 50 per cent of office bearers, as were mentioned in the application for registration are changed or replaced. However, the organisations who had applied before 27-12-1996 and were registered, are not bound by any such undertaking.

1.15.2 The undertaking is a part of *Form FC-8* and nothing in this regard has been mentioned in the Act. Therefore, those organisations who are not signatory to such undertaking are not legally bound by the clauses of the undertaking. The undertaking in the earlier form did not have the clause of change in more than 50 per cent of office bearers. In the absence of any specific provision in the FCRA, the undertaking given in *Form FC-8* does not create any mandatory obligation on the older organisations. But, it is advisable to inform such changes and get them officially regularised.

CAN AN NGO HAVE FOREIGNER ON BOARD AT THE TIME OF REGISTRATION

1.16 Foreign nationals are generally discouraged from being appointed as member of Executive Committee by an association. However, Foreign nationals, fulfilling the following conditions, may be appointed as Executive Committee members, after obtaining prior permission of the Central Government:

- (i) the foreigner is married to an Indian citizen;
- (ii) the foreigner has been living and working in India for at least five years;
- (iii) the foreigner has made available his/her specialised knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;
- (iv) the foreigner is part of the Board of Trustees/Executive Committee in terms of the provisions in an inter-governmental agreement;
- (v) the foreigner is part of the Board of Trustee/ Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

1.16.1 It may be noted that even the above exempted category of foreigners are required to be appointed with prior permission. The need for such an appointment should, therefore, be adequately justified.

IS RECOMMENDATION BY DISTRICT COLLECTOR MANDATORY

1.17 Foreign Contribution Amendment Rules, 2000, inserted clause 10A in Form FC-1A, requiring the insertion of a certificate from a competent authority. This certificate can be given by any one of the following :

- (1) Collector of District
- (2) Department of the State Government
- (3) Ministry or Department of the Government of India.

1.17.1 In this certificate the competent authority certifies the address and the field of activities in which the organisation is working. It also states that there are no adverse antecedents of the organisation, the proposed activities will be beneficial to the people living in that area and the detail of prior permission if taken earlier.

1.17.2 It may be noted that as per FAQ No. 15 issued by FCRA department clarifies that the submission of certificate by District Collector is not mandatory. However, such certificate assists in speedy clearance of the application.

WHAT IS THE REMEDY IF AN APPLICATION IS REJECTED

1.18 If an application is rejected and the applicant believes that an unjust order was passed against him/her, he/she can appeal to High Court within a period of sixty days from the date of the order of rejection. The period of sixty days should be counted from the date of the order and not the date of receipt of the order.

THE AUTHORITY TO WHOM THE APPLICATION IS TO BE MADE

1.19 To apply for registration, Form FC-8 alongwith enclosures is required to be filed in duplicate to *the Secretary, Government of India,*

Ministry of Home Affairs (Foreigners Division), Jaisalmer House, 26, Mansingh Road, New Delhi - 110 011, Ph. 01-23071157, 23381278, 23071170, E-mail : jsf@mha.nic.in, Website : <http://www.mha.nic.in>

IS IT POSSIBLE TO RECEIVE FOREIGN CONTRIBUTION PRIOR TO FCRA REGISTRATION

1.20 An association or an organisation can receive foreign contribution even without registration with prior permission from the FCRA department. Foreign funds and materials can only be received under two circumstances-

- (i) the organisation has obtained permanent registration from the FCRA department.
- (ii) the association or the organisation obtains prior permission from the FCRA department on case to case basis.

WHAT IS THE PROCEDURE FOR OBTAINING PRIOR PERMISSION

1.21 The Organisation is required to apply in Form FC-1A for prior approval to the FCRA department alongwith the required documents.

WHAT IS THE CHECKLIST OF DOCUMENTS TO BE SUBMITTED FOR GETTING PRIOR PERMISSION

1.22

- (i) Form FC 1A, duly filled up in triplicate.
- (ii) Audited statement of accounts of past three years.
- (iii) Annual Report specifying activities of past 3 years.
- (iv) Details of the beneficiaries and the project for which foreign contribution is expected. The detail should include narrative as well as financial details.

- (v) Letter of commitment of the foreign donor agreeing in principle to provide funds.
- (vi) Certified copy of the registration under the Societies Act/ Companies Act.
- (vii) Certified copy of the Bye-laws and Memorandum and Articles of Association whichever is applicable.
- (viii) Copy of certificates of exemption or registration issued by the Income Tax Department under section 80G or 12A.
- (ix) Copy of any prior permission granted to the organisation.
- (x) Copy of resolution of governing body of the organisation, authorising the prior permission.
- (xi) Copy of power of attorney or the resolution of governing body by which the Chief Functionary is authorised to submit FC-1A.
- (xii) List of members of the governing body of the organisation and the office bearers.
- (xiii) Copy of any journal or other publication of the organisation.

TIME LIMIT FOR APPLICATION FOR PRIOR PERMISSION

1.23 An application for prior permission in Form FC-1A can be made any time after the legal constitution of an organisation. However, it is important to have a written commitment from the donors.

WHAT IF FUNDS ARE RECEIVED PRIOR TO GETTING A PRIOR PERMISSION

1.24 If the funds are credited in the bank account prior to the receipt of approval from the FCRA authorities, then the funds should not be applied for the purposes for which they are received i.e. it should be kept intact and should be spent only after getting *prior permission*.

1.24.1 If the application is rejected, then the

funds may have to be refunded back to the respective donors. The refund of funds back to the foreign agencies may involve legal formalities under Foreign Exchange Management Act, depending on the quantum of contribution received. As such receipt of funds without prior permission is a violation of FCRA and the rejection order will determine the fate of the funds received.

WHAT IS A TIME LIMIT FOR GRANTING PRIOR PERMISSION

1.25 The FCRA department should dispose of an application of prior permission within a maximum period of 120 days.

WHAT IF THE APPLICATION IS NOT DISPOSED OF WITHIN A PERIOD OF 120 DAYS

1.26 The proviso to *section 11* provides that if the prior permission is not granted within the prescribed time limit, then the applicant can assume that the prior permission is deemed to have been granted. The deeming provision provides an automatic right for receiving foreign funds, to the applicant organisation even in the absence of any written communication from the FCRA department.

1.26.1 Before invoking the deeming provisions, the recipient organisation should wait for a reasonable period from the end of 120 days to ensure that the communication is not in postal transit.

WHAT IS THE LAW ABOUT OPENING OF BANK ACCOUNT

1.27 As per *section 6(1)(b)*, every organisation, which has either registered itself with the Central Government in accordance with the FCRA rules or has obtained prior permission, shall receive foreign contribution only through one such bank account as specified in its application for registration or prior permission.

1.27.1 *Form FC-8 and Form FC-1A* which

deal with the application for registration and prior permission respectively, require the mention of separate bank account number and the branch of the bank.

WHAT IS THE PROCEDURE FOR CHANGING BANK ACCOUNTS

1.28 When a change of bank account becomes a necessity by virtue of relevant and justifiable reasons the following procedure may be followed :

- (i) A new bank account which is proposed to be designated bank account should be opened by depositing the minimum amount required for opening of the account.
- (ii) The proposed account, since it is subject to approval, should not be opened with foreign funds.
- (iii) An application to the FCRA authorities should be made by citing the relevant and justifiable reasons for such change along with complete details of the old account as well as the new account.
- (iv) After receiving the permission from FCRA authorities, the entire balance from the old designated account should be transferred to the new account.
- (v) It is not necessary to close the old account. Therefore, the organisation may use the old account as a domestic account. But it is desirable to close the old account, to ensure that even by mistake the foreign funds are not credited to the old account.

IS CHANGE IN SIGNATORY OF BANK ACCOUNT REQUIRED TO BE REPORTED

1.29 Change in signatories of bank accounts is a routine procedural issue and therefore need not be informed to the FCRA authorities. The undertaking given by the Chief functionary in the Form FC-8 for informing the changes in the bank account is only about change of the bank or branch of the bank. Any procedural change in the same bank account does not require an approval of the FCRA authorities.

WHAT IF THERE IS A CHANGE IN ACCOUNT NUMBER DUE TO COMPUTERISATION

1.30 Many designated FC bank account numbers have been changed due to computerisation. In such cases, it is advisable to inform the FCRA authorities about such changes. The new account number should be used for all subsequent reporting and correspondence purposes.

DOES FCRA ALLOW MAINTENANCE OF SEPARATE BANK ACCOUNTS FOR SEPARATE DONORS

1.31 It has been seen that some donors insist of maintenance of separate bank account specifically for their grant and utilisation thereof. However, under FCRA, all foreign contribution should be received in one designated bank account only. Therefore, under no circumstances, separate bank account should be opened for receiving funds from various donors.

CAN AN NGO HAVE MORE THAN ONE ACCOUNT FOR PROJECT PURPOSES

1.32 The FAQ available at the website of Ministry of Home Affairs clearly prohibit opening of multiple bank accounts. Recently the FCRA department has also issued a circular No. II/21022/52(52)2006-07-FCRA (MU) dt. 22.07.08 specifically prohibiting additional bank accounts even for utilisation purposes.

1.32.1 However, the FCRA Bill 2006 permits opening of multiple bank accounts. Further, in the past it has been noticed that FCRA department has on several occasions allowed multiple bank accounts, which implies that at least in the past it interpreted that the Act was in favour of allowing multiple bank accounts. Therefore, the legal sustainability of the aforesaid circular remains debatable.

CAN AN INTER-PROJECT LOAN BE RECEIVED IN FCRA ACCOUNT

1.33 In our opinion, inter-project transaction does not entail receipt of any fresh foreign contribution. Therefore, such transaction does not violate any provision of FCRA. However, it should be ensured that such transactions are made within the FC projects of the organisation. In case, there is a loan or advance received from some other organisation, then if it is a FC receipt, it should be received in the designated bank account only.

WHAT IS THE TREATMENT IF FIXED ASSETS ARE CREATED FROM FC AS WELL AS DOMESTIC FUNDS

1.34 Any asset created out of foreign funds should be recorded in the FC books of account only and FC asset will continue to remain an FC asset irrespective of time factor or closure of the project. At times it may so happen that a portion of the asset is funded from domestic sources.

1.34.1 For instance, a building constructed on a land purchased from domestic sources. In such cases, the cost of the land should be reflected in the domestic books of account and the cost of the building should be shown in the FC books of account. Only the consolidated, statement will show the total cost of land and building together.

WHAT IS THE PROCEDURE TO BE FOLLOWED ON SALE OF JOINT FIXED ASSETS

1.35 If an asset purchased out of FCRA funds is sold, then the amount received on sales of such asset should be shown as foreign receipts. There might be circumstances where assets are created out of both FCRA as well as domestic funds. In such cases, apportionment of the sale receipts should be made on a suitable and reasonable basis out of the sale consideration and the amount, pertaining to foreign contribution

portion of the asset should be considered as foreign contribution receipt.

1.35.1 The funds generated from a FC asset being a FC receipt should be deposited in the designated bank account.

IS INTEREST EARNED A PART OF FOREIGN CONTRIBUTION

1.36 There is no mention made in the Act or the Rules regarding the treatment of interest earned from the designated bank account. The FAQ available at the website of Ministry of Home Affairs clearly instruct to consider interest earned on FCRA funds as foreign contribution only. Thus any interest earned should be disclosed in FC-3 and also the FCRA receipt and payment account. Further, amendment made *in FC-3 vide GSR 557 (E) dated 26th July, 2001* has also specifically included bank interest to be reported.

CAN FDRs BE CREATED OUT OF FC BANK BALANCE

1.37 As far as the creation of fixed deposits of FCRA funds is concerned, there does not seem to be any bar on it. All the funds are required to be received in the designated bank account but any temporary surplus funds may be placed in fixed deposits with the bank, pending utilisation for the objects for which they were received. Care should be taken that the investment are in compliance with section 11(5) of the Income-tax Act.

CAN AN ORGANISATION TAKE LOAN FROM DOMESTIC SOURCES FOR FC PROJECT

1.38 An organisation may use domestic funds for FC projects but it should not be reflected in FC-3 statement or Receipt and Payment Account

because it remains local fund even if it is used for FC projects in anticipation. If in subsequent year certain FC funds are received on account of the project expenditures incurred earlier, such funds can be reimbursed to the respective source and be shown as utilisation in FC-3 statement.

CAN FCRA FUND BE GIVEN TO ANOTHER NGO

1.39 FCRA funds can be given to another NGOs only if the other NGO also possesses FCRA registration.

CAN FCRA FUNDS BE TRANSFERRED TO GENERAL FUND

1.40 It has been seen that, many NGOs transfer the surplus of income over expenditure to the general fund in the domestic books of account. A general fund being an unrestricted fund at the discretion of the organisation is at times confused to be a domestic fund. But, all funds created from foreign contribution should be reflected in FC books of account only. As a result, an organisation can have two general funds, one, created from foreign funds and other from domestic funds. The same is true for the corpus and other funds also.

CAN FUNDS BE TRANSFERRED TO VILLAGE LEVEL SHGs AND CBOs

1.41 As already discussed, the second or subsequent recipient is also required to possess FCRA registration or prior permission. Therefore on strict interpretation of FCRA laws, it is not possible to give revolving funds as loans to community based organisations not possessing FCRA registration. The intent of statute does not seem to be in favour of preventing deserving

village based organisations from availing funds meant for them. The amendment made in FC-3 vide GSR 557 (E) dated 26th July, 2001 has specifically included *Micro Finance Projects* and *SHG* as heads of utilisation of foreign funds. In our opinion and in the light of the amended FC-3, funds disbursed for revolving funds and micro finance activities should be shown as utilisation in FC-3 and also as expenditure in the Income and Expenditure Account. When loans are recovered the money should be re-deposited in the FCRA bank account and should be considered as foreign contribution received and when the loans are given out again the same should be considered as utilisation and expenditure in the year of the disbursal. For control purposes, separate records of the disbursals or receipt of the revolving funds should be made.

1.41.1 For large organisation having project in various parts of India it may be difficult to redeposit in the designated bank account. But under the prevailing provisions of FCRA, it is advisable to receive all such recoveries in the designated bank account only.

CAN DOMESTIC CONTRIBUTION BE MINGLED WITH FC

1.42 The organisation should distinguish between domestic and foreign contribution. Only foreign contribution should be received in the designated bank account. Possibility of mingling of domestic donation with foreign contribution is there because even funds from overseas in foreign currency may be domestic donation. For example, donation received from an NRI in foreign currency is not a foreign contribution if the NRI holds a valid Indian passport. On the other hand donation received from foreigner in India in Indian rupees is a foreign contribution.

1.42.1 So an organisation should take great care and caution in segregating the foreign contributions and domestic contribution. Accordingly only foreign contribution should be received in the designated bank account and

reflected in the FC books of account. Mingling of domestic funds is not allowed.

WHAT IS THE TREATMENT OF ANONYMOUS DONATIONS

1.43 Many organisations, at times, receive funds through direct credit in their bank account from various overseas sources where the donor's identity may not be available. In such a case the organisation should ask its bank to trace the source of donation *i.e.* identity of donor and country of origin. The details if obtained from the bank should be reported in Form FC-3 else the organisation should report in Form FC-3 all such anonymous donations on the basis of bank advices.

DONATION RECEIVED FROM A BRANCH OF FOREIGN BANK IN INDIA

1.44 A foreign bank being an entity registered outside India, its branch in India will also be covered within the definition of foreign source. Therefore, any donations received from a branch or a foreign country should be considered as foreign contribution.

ACCOUNTING METHOD FOR FOREIGN CONTRIBUTION RECEIVED IN KIND

1.45 As per rule 8(1)(a), account has to be maintained for foreign contribution received in kind. Form FC-6 provides the format for recording the receipt as well as the utilisation of contributions received in kind. The entries made in FC-6 should correspond with entries made in Form FC-3.

1.45.1 It may be noted that FC-6 format is provided for maintaining the record of contribution received in kind, this form is not required to be submitted to MHA.

DOES FCRA IMPOSE 'CASH BASIS' METHOD OF ACCOUNTING

1.46 No, FCRA does not impose any particular method of accounting. However, it does have certain specific reporting requirements which are on cash basis. A Receipt and Payment Account and Balance Sheet are required to be submitted annually.

WHAT DOCUMENTS ARE REQUIRED TO BE FILED ANNUALLY

1.47 Every organisation which receives foreign contributions shall file an annual return in Form FC-3 under rule 8(2) within 120 days of the closure of the year. The following should be submitted in duplicate duly signed by the chief functionary and certified by the chartered accountant :

(i) Form FC-3,

(ii) Balance Sheet and statement of Receipt and Payment exclusively for foreign contribution received and utilised during the year.

AMENDMENT IN RETURN FILING DATES AND THE CONTROVERSY THEREOF

1.48 The Ministry of Home Affairs has changed rule 4(A) regarding filing of FC-3 return vide Notification G.S.R. 83 (E) dated 8th February 2008, F. No. II/21022/23(43)2007-FCRA-II. After the change in the rule, now onwards, the return filing can be done within a period of 9 months from the end of the year *i.e.* after 31st December. However, as per rule 8(2) also FC-3 statement along with balance sheet and receipt and payment account is required to be submitted within 4 months, *i.e.* 31st July. No amendment has been made to this rule, therefore, the applicable last date for filing of return remains unclear. A suitable amendment to rule 8(2) is also required to correct the anomaly.

1.48.1 It is advisable to file the FC-3 returns within 31st July unless rule 8(2) is amended.

IS IT COMPULSORY TO FILE RETURN THROUGH ONLINE ELECTRONIC MEDIUM ONLY

1.49 It is advisable to file online return at the MHA website followed by submission of hardcopies through post. However, the Act or the rule does not specifically make it mandatory to file returns online only. Further there are no circulars, notifications making online returns mandatory. Even the FAQs and *Charter for NGOs* issued by MHA are silent in this regard. Therefore, in our opinion online filing of return is not mandatory but is certainly advisable.

IS IT NECESSARY TO FILE NIL RETURN ANNUALLY

1.50 If an organisation having FCRA Registration does not receive any foreign contribution, even then it should file nil returns. It is mandatory to file form FC-3 every year as long as the organisation wants to validly retain its registration. The Ministry of Home Affairs (FCRA division) in its press note dated 09-01-1998 has specifically clarified that even if no foreign contribution is received, filing of nil return is mandatory. In the same press note it has been clarified that non-submission of return in time or furnishing of false submission would constitute violation of the provision of the Act and attract penal consequences.

WHO SHOULD MAKE SIGN THE ANNUAL RETURN

1.51 The FC-3 form is required to be signed by the *Chief Functionary* of the organisation and a certificate is also required to be given by a Chartered Accountant giving a brief summary of the FCRA funds movement and the opening and closing balances of FCRA Funds.

1.51.1 The term “Chief Functionary” has not been defined in the FCRA Act or Rules. Normally the head of the organisation should be construed

as the Chief Functionary. The organisation may also designate any office bearer as the Chief Functionary through a General Body/Governing Body resolution, for the purposes of filing the FCRA returns, Forms etc.

WHAT IS THE IMPLICATION FOR DELAY IN FILING OF ANNUAL RETURN

1.52 FCRA is silent about consequences for delay in filing FC-3. It can be construed that an NGO would stand the risk of losing the FCRA registration if it does not file returns properly but whenever an NGO is not able to file FC-3 by 31st of July, it should write a letter to the FCRA office explaining the circumstances causing the delay. Normally FCRA authorities condone such delay in filing of returns.

TRANSFER OF FCRA FUNDS TO BRANCHES OUTSIDE INDIA

1.53 Generally Indian NGOs are not permitted to have activities or branches outside india, unless they are registered under section 10(23C) of Income Tax Act. Therefore, having branches and transferring FCRA funds is not permissible in general.

TRANSFER OF FCRA FUNDS TO NGOs OUTSIDE INDIA

1.54 Regarding transfer of FCRA funds to NGOs in other countries, under the prevailing FCRA, it does not seem to be permissible. FCRA provides that no funds can be transferred to NGOs which are not registered under FCRA. An NGO registered in another country is certainly not subject to FCRA provisions and therefore, will not have FC registrations. The FCRA Act has not envisaged the possibility of transferring funds to NGOs in other countries

and therefore, without any exception it bars the transfer of FC funds to NGOs which are not registered under FCRA. No such transfers should be made without approval of the FCRA authorities.

TRANSFER OF FCRA FUNDS BACK TO THE DONORS OUTSIDE INDIA

1.55 Regarding transfer of unspent balance back to the donor, we think, such transfers should only be done with prior permission from FCRA.

1.55.1 The FCRA Act takes a very narrow view that all receipts should either be utilised in India or be given to another FC registered organisation. It has not envisaged the possibility of funds being returned back to the donor. Therefore, in our opinion, any such transfer should be made with prior permission only.

NGOs BRINGING OUT NEWSPAPERS/ NEWSLETTERS

1.56 NGOs engaged in publishing newspaper registered under the Press Registration of Books Act, 1867 are required to furnish details regarding

such newspaper and also give a declaration in Form X. The Government of India has issued a notification in 1987 allowing NGOs publications other than newspaper as defined in section 1(1) of Press and Registration of Books Act, 1867. Further, a certificate is required to be obtained from the Registrar of Newspapers of India, that the publication of the NGO does not fall in the category of newspaper as per section 1(1) and falls in the category B, which is permissible. NGOs should be careful as the definition of newspaper under Press Registration of Books Act is very wide to include even newsletters covering local public news distributed amongst the communities.

CHARTER ISSUED BY MHA FOR NGOs AND CHARTERED ACCOUNTANTS

1.57 The MHA has issued specific guidelines for NGOs and Chartered Accountants. These are called 'Charter for NGOs' and 'Charter for Chartered Accountants'. It is advisable to visit the website : www.mha.nic.in and download the above guidelines and follow accordingly. The MHA also provides FAQs which should be followed.

Reference Book : **Taxation of Trust and NGOs with FCRA & FEMA** by **Manoj Fogla**, published by TAXMANN Publications.
For details and latest updates visit : www.fcraforngos.org

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