

# Standards & NORMS

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## FCRA 2010

MULTIPLE BANK ACCOUNT  
ALLOWED

RENEWAL OF REGISTRATION  
EVERY 5 YEARS

BUSINESS / CONSULTANCY  
INCOME NOT PART OF  
FOREIGN CONTRIBUTION

GOVERNMENT MAY BLOCK  
SPECIFIC SOURCES/DONORS

'NO REASONABLE ACTIVITY' WILL RESULT  
IN CANCELLATION

QUESTIONABLE POWERS GIVEN TO DEPARTMENT  
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SUSPENSION OF CERTIFICATE

DISPOSAL OF FIXED ASSETS ON DISSOLUTION

Editorial Team : **Sanjay Patra**, Executive Director, FMSF,  
**S.P. Selvi**, Head, Capacity Building, FMSF

Author : **Manoj Fogla\***

# FCRA 2010

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## INTRODUCTION

**1.1** The Foreign Contribution (Regulation) Bill 2010 has been passed by both houses of the Parliament recently. Now it awaits the assent from the President to be enacted. In this issue the main amendments and the implications thereof are discussed.

## FOREIGN COMPANY & FOREIGN SOURCE

**1.2** The existing FCRA 1976 considers Indian companies, where more than 50% of equity is held by foreigners, as foreign source. For example : companies like ICICI Bank, Infosys etc. are foreign source and donations can not be accepted from them without FCRA registration. Unfortunately

this provision has been retained in the proposed FCRA 2010, though the stated intent of the Government was to exclude such companies. This provision could be a drafting error and needs to be corrected.

**1.3** The FCRA 2010 has defined a foreign company under clause (g) of Section 2, which does not include Indian Companies. This clause is apparently inserted to exclude Indian companies having more than 50% of Foreign equity holding. However section 2(j) which defines the term ‘foreign source’ includes an Indian company under the category of foreign source if more than 50% of its equity is held by foreigners.

**1.4 Concern :** Section 2(j)(vi) of the FCRA 2010 should have been amended to exclude Indian companies.

## **BUSINESS / CONSULTANCY INCOME OF AN NGO**

1.5 The definition of 'foreign contribution' includes all kinds of foreign receipts. It does not distinguish between a commercial receipt or a voluntary contribution.

1.6 This definition has largely been retained as per the existing FCRA 1976. However explanation 3 to section 2(h) excludes income from business, trade or commerce. This amendment was very necessary but it comes with a lot of potent controversies and trouble for the NGOs. This section states that any fee or cost against business, trade or commerce shall not be considered as foreign contribution. In other words, such receipts can be treated as local income. However the problem is that this provision is in contradiction with the amended section 2(15) of the Income Tax Act which prohibits trade or business related receipts beyond Rs.10 lakh. Therefore, NGOs should be careful in treating consultancy income and other receipts as local income even though it is now permissible under the proposed Act.

## **PERSONS SPECIFICALLY DEBARRED FROM RECEIVING FOREIGN CONTRIBUTION**

1.7 Section 3 of FCRA 2010 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.
- (f) **Organisation of a political nature.**
- (g) **Association or company engaged in broadcast of audio or visual news.**
- (h) **Correspondent, columnist etc. related with the company referred in clause (g)**

*However the problem is that this provision is in contradiction with the amended section 2(15) of the Income Tax Act which prohibits trade or business related receipts beyond Rs.10 lakh.*

1.8 it may be noted that the category of persons debarred from receiving foreign funds have been increased. The clause (f), (g) and (h) have been added by the FCRA 2010.

1.9 The above mentioned persons cannot receive foreign contribution subject to certain exceptions specified in section 4 which are as under:

- “(a) If they receive foreign funds by way of salary, wages or remuneration for services rendered. Or if they receive payment in ordinary course of business transaction in India by such foreign organisation or source.
- (b) If the funds are received in the course of international trade or commerce or in the ordinary course of business transacted outside India.
- (c) Payment is received as an agent of a foreign source of organisation in relation to any transaction made by such foreign organisation with the central or state government.
- (d) 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.
- (e) From his / her relative.
- (f) By remittance under normal course under FEMA 1999.
- (g) By way of Scholarship, stipend etc.”

1.10 This section is more or less the same except the fact that remittance from specified person has not been restricted to Rs.8000/- as was under FCRA 1976.

#### **CAN AN ORGANISATION OF POLITICAL NATURE RECEIVE FOREIGN CONTRIBUTION**

1.11 Under FCRA 2010 organisations of political nature are not eligible for registration under FCRA. Such organisations can not apply for prior permission and are prohibited from receiving foreign contribution. The Central Government has published a list of organisations which are considered as organisations of political nature.

#### **DOES FCRA APPLY TO COMMERCIAL OR BUSINESS ORGANISATIONS**

1.12 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 2010 also. However, the provision of Foreign Exchange Management Act, 1999, which is a financial legislation, would be applicable.

#### **RESTRICTION ON UTILISATION AND ADMINISTRATIVE EXPENSES**

1.13 Section 8 of FCRA 2010 provides that FC funds cannot be used for speculative business. The government will notify the meaning of speculative business through rules which are yet to be framed.

1.14 Further section 8 also states that the administrative expenses shall not exceed 50% and any expenditure of

*There is an urgent need to exempt CBOs and other village level organisations upto a certain limit, say, 5 lakhs per annum without any requirement of prior approval.*

administrative nature in excess of 50% shall be defrayed with prior approval of the central government.

#### **SUBSEQUENT RECIPIENT AND CBOs**

1.15 Section 7 of FCRA 2010 provides that foreign contribution can be transferred only to those organisations which also possess FC registration or prior permission. In other words, it is not possible to transfer FC funds to non FC organisation. However the FCRA 2010 provides a clause wherein transfer to non FC organisation can be made with prior approval. The rules in this regard are to be framed.

1.16 **Concern** : This provision is self defeating in nature. The original idea was to exempt small CBOs and village level organisations from the vagaries of FCRA, as one can not expect small village level organisations to have FC registration. However, instead of providing any relief to such organisations the FCRA 2010 has added yet another complication by proposing prior approval for transfer of FC funds to such organisations. **There is an urgent need to exempt CBOs and other village level organisations upto a certain limit, say, 5 lakhs per annum without any requirement of prior approval.**

## RENEWAL OF REGISTRATION EVERY 5 YEARS

1.17 The FCRA 2010 provides for renewal of registration of NGOs every 5 years. However, the Act has provided relief to all the existing NGOs for the first 5 years from the date of enactment. In other words, all existing NGOs have to renew their registration at the end of the period of 5 years from the date of enactment of FCRA 2010.

1.18 As per Section 16 of the proposed Act, all NGOs should apply for renewal of the certificate within 6 months prior to the expiry of the five year period.

1.19 **Concern** : This provision will create undue hardship to genuine NGOs and will perpetuate *Inspector Raj*, where every 5 years one has to manage the renewal. The Government probably should have kept only the defaulting NGOs under this category. The organisations which are already under scrutiny and assessment of the department on yearly basis and duly comply with the law, should not be subjected to yet another five yearly ritual.

## TIME LIMIT FOR PROCESSING THE APPLICATION FOR REGISTRATION

1.20 There was no time limit mentioned under the FCRA 1976 either for granting or rejecting the application. However, FCRA 2010 provides that both regular registration and prior permission shall be granted or rejected within a period of 90 days from the date of receipt of application.

1.21 **Concern** : *The 90 days time limit is a very positive change. However, the Act is silent about the way forward if an order is not passed within 90 days. It is necessary that either a deemed permission or an redressal/appeal mechanism should be there within the FCRA Department if the application is not processed within 90 days.*

*This provision will create undue hardship to genuine NGOs and will perpetuate Inspector Raj, where every 5 years one has to manage the renewal.*

## NO "DEEMED" PRIOR PERMISSION

1.22 FCRA 2010 provides that application for 'prior permission' shall be granted or rejected within a period of 90 days from the date of receipt of application. It may be noted that under the FCRA 1976 there is a provision for deemed prior permission if the application is not processed within 120 days. The new FCRA 2010 does not have any provision of deemed prior permission. In other words, now onwards organisations can not receive foreign funds in case of delay in processing of a 'prior permission' application.

## QUESTIONABLE POWERS FOR REJECTING AN APPLICATION

1.23 The FCRA 2010 has provided sweeping powers to the authorities for rejecting an application for prior permission or registration. Under Section 12 various strict conditions have been provided which include that the applicant should not have been **prosecuted** or convicted for indulging in activities aimed at conversion or creating communal tension. It may be noted that the word 'prosecuted' has been used which implies that even if there is a false Court proceeding is pending, then also FCRA registration could be denied. The power to deny FC registration or prior approval merely because some prosecution for any offence is pending seems very harsh, arbitrary and unconstitutional.

Further FCRA 2010 also provides that in case of rejection the Central Government shall provide reasons in writing to the applicant. The reasons to be provided by the Central Government shall be restricted to the obligations as provided under Right to Information Act, 2005.

**1.24 Concern :** The powers to refuse registration or prior permission merely because some prosecution is pending is very harsh and unfair.

#### **POWER TO PROHIBIT SOURCES FROM WHICH FC CAN BE ACCEPTED**

**1.25** The Act provides power to the Central Government under section 11(3)(iv) to notify such source(s) from which foreign contribution shall be accepted with prior permission only. It implies that the Central Govt. may notify specific donors or countries from which foreign funds could not be received or shall be received with prior permission only.

#### **POWER TO CANCEL REGISTRATION & NIL RETURNS**

**1.26** The FCRA Department may cancel the certificate under Section 14 under various circumstances including lack of activity for a period of 2 years. In other words, now onwards NGOs cannot retain their FC registration just by filing NIL returns, because the registration certificate can be cancelled if there are no reasonable activities for a period of 2 years. The reasons for cancelling the certificate are :

- (i) Providing false information
- (ii) Violating the terms and conditions like filing of return, etc.
- (iii) Violating the Act or the Rules

*In other words FC assets created since the inception of the organisation can be implicated if the registration certificate is cancelled.*

- (iv) Acting against public interest
- (v) No reasonable activity for 2 years.

Any person whose certificate has been cancelled shall not be eligible for registration or prior permission for a period of 3 years from the date of cancellation.

**1.27 Concern :** *The term “reasonable activity” has not been defined. It may so happen that an NGO may have activity from local sources. Therefore, it should be provided that reasonable activity whether from FC or local sources should be there for retaining FC registration.*

#### **POWER TO MANAGE FC AFTER CANCELLATION OF CERTIFICATE**

**1.28** FCRA 2010 provides that after cancellation of registration certificate all the foreign contribution and assets thereof shall vest with such authority as may be prescribed. The government authorities shall take charge of the foreign contribution and the FC assets till the registration is restored. This seems to be a very harsh provision because it is open ended. In other words FC assets created since the inception of the organisation can be implicated if the registration certificate is cancelled.

**1.29 Concern :** *The section 15 of the FCRA 2010 should be supported by appropriate rules so that FC assets would not come under the purview of the Govt. authorities as it will create needless complications and controversies. The Government managing fixed assets created since inception will be practically not possible and would create hardship.*

***Section 17 of FCRA 2010 provides that multiple bank accounts can be opened for the purposes of utilisation provided only one bank account is maintained for receiving foreign contribution.***

### **SUSPENSION OF CERTIFICATE**

**1.30** The Central Govt. may suspend the registration certificate for a period of not more than 180 days under section 13. The suspension of certificate may be done while the cancellation proceedings are pending. During the suspension period the Govt. (on application) may allow receipt of foreign contribution from specific sources on specific terms and conditions.

only one bank account is maintained for receiving foreign contribution. This amendment provides a great relief to all the NGOs which were struggling under the arbitrary disallowance of multiple bank accounts under current FCRA.

### **MULTIPLE BANK ACCOUNT**

**1.31** Section 17 of FCRA 2010 provides that multiple bank accounts can be opened for the purposes of utilisation provided

### **DISPOSAL OF FIXED ASSETS ON DISSOLUTION**

**1.32** Section 22 of the FCRA 2010 provides that, in case of dissolution, the Central Govt. shall have the power to determine the process of disposal of FC assets. The Central Govt. may specify the manner and procedure in which such asset shall be disposed off.

Reference Book : **Taxation of Trust and NGOs with FCRA and FEMA, 5th Edition 2010** by **Manoj Fogla**, published by TAXMANN Publications, New Delhi

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website : [fmsfindia.org](http://fmsfindia.org), e-mail : [fmsf@fmsfindia.org](mailto:fmsf@fmsfindia.org)