

AccountAble™

96: Introduction to FCRA 2010

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This issue of AccountAble is designed for people who want to get an overview of FCRA 2010, without getting into its intricacies

BACKGROUND

FCRA means Foreign Contribution (Regulation) Act. It was first passed in 1976, nine years after an uproar over foreign funding of 1967 elections.

The Act was originally intended to prevent foreign funds reaching political parties. Subsequently in 1984, it was tightened for NGOs also, based on the findings of the Kudal Commission.

The 1976 Act has been replaced by a new law titled Foreign Contribution (Regulation) Act, 2010 (FCRA 2010). This became effective from 1st May 2011, after the rules were notified.

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Currently¹, some 38,436 organizations are registered under the Act and can receive foreign funds. These include NGOs, religious organizations, charitable organizations and other non-profit organizations. Additionally, the Government gives out some ~600 prior-permissions each year.

In 2009-10, a total of 21,508 organizations received Rs. 10,338 crores from foreign sources. These funds came from 161 countries, with USA heading the list, having contributed 30%. Foreign funds have been growing at about 11.7% annually since 1992-93.

¹ 31st March 2010

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PROCEDURES AND RECORDS

Registration

Any organization in India, which has a definite program needs FCRA registration before receiving foreign contribution (money, material or securities). It does not matter that this has come directly from the foreign source, or has passed through several Indian organizations. For getting FCRA registration, you have to apply in form FC-3. This should be done online.

Renewal

This registration must be renewed every five years. Organisations registered under the old Act do not need to register again. However, their registration will expire on 30-April-2016. They must apply 6-12 months in advance for renewal. This is done using form FC-5.

Prior-permission

In some cases, the Government is unwilling to give FCRA registration immediately. In such cases, you can get prior-permission to receive funds by applying in form FC-4.² This is given on a case-by-case basis. The application must be made online.

Political parties cannot access foreign funds at all. Organizations of a political nature also cannot receive foreign contribution.

Banking

All FCRA funds must be received in the designated bank account. This is the account number mentioned in the FCRA permission letter or registration certificate. No other funds must ever be deposited in this account.

You can now open multiple secondary accounts for utilising FCRA funds. These accounts should be kept exclusively for foreign contribution. Intimation of opening such an



Change of FCRA bank account is allowed. For this you must apply using a separate form. This form is available at FCRA website. Do not use the new account till FCRA Department sends you a revised letter of registration

account must be sent to FCRA Department within 15 days.

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Accounts

You need to keep a separate cash book and ledgers for FCRA funds.³ The ledgers can be kept separately for each project or donor. However, opening of separate cash books for each donor is not required. You should not enter local contribution in these books.

For non-cash contribution received from foreign sources, you should keep a stock register.

Similarly, if you receive shares or securities as a donation from a foreign source, then you should keep an investment register. This is also needed if you invest foreign contribution in fixed deposits, bonds etc.

² See AccountAble 21, 19 and 33: Prior Permission for more on this.

³ See AccountAble 3: Cash Books for more on this.

Reports

Each year you should file a report with FCRA Department in form FC-6. This shows how much funds you have received and used during the year from 1st April till 31st March. The report should be filed by 31st December each year. No extension is available. This return can be filed online. A printed and signed copy must then be sent by registered post. Alternatively, you can simply file a printed FC-6 by registered post. Along with the form, you also have to give a Receipts & Payments Account, Income & Expenditure Account and a Balance Sheet. All three should be related to FCRA funds only.

Beginning with 2011-12, you have file form FC-7 annually for contribution in kind. Similarly, form FC-8 must now be filed annually for contribution of shares or securities.

All organizations registered with FCRA have to file forms FC-6, FC-7, and FC-8, even if they did not receive or use any foreign contribution during the year. In practice, nearly half the organizations do not file the returns. This eventually leads to cancellation of FCRA registration.

Forms FC-6, 7, 8 should be audited by a practicing Chartered Accountant.

Changes

If you change the name or address of the organization, then you should inform the FCRA Department within 30 days of the change. This also applies to any change in nature, aims or objects of the organization.

If the cumulative change⁴ in your office bearers is more than 50%, you must get prior-approval for the change.

FCRA FOR INDIVIDUALS

FCRA now applies to individuals in the same manner as NGOs etc. This happens if an individual takes up a definite cultural, religious, economic, education or social program. In such case, the individual needs FCRA prior-permission or registration to accept foreign contribution. This restriction will also apply to most program fellowships.⁵

GIFT FROM FOREIGNERS

Large gifts⁶ from foreign relatives⁷ are now reportable under FCRA. You have to file form FC-1 for this within 30 days.

Restricted categories

Certain categories of people are not allowed to accept foreign contribution. These are mainly people in sensitive positions. The list includes:

- politicians (such as election candidates, MPs, MLAs, councillors, *panchayat* members, office-bearers of political parties);



- people in public positions (judges, Government servants, employees of a corporation); and,
- journalists (correspondents, columnists, cartoonists, editors, owners, printers, publishers of newspapers or magazines).

However, this restriction does not apply to normal busi-

⁴ As compared with the office bearers at time of application for FCRA registration or prior-permission

⁵ See AccountAble 35: FCRA Fellowships for more on this.

⁶ Total value exceeding Rs. 1 lakh per annum - includes money, material and securities.

⁷ A relative who holds a foreign passport - does not include a non-resident Indian.

ness payments such as royalties, salaries, etc.

FCRA FOR FOREIGN DONORS Registration

In most cases, donors do not themselves have to register under FCRA. This is the case with all corporate donors and individuals, who do not undertake direct program activities.

If the donor is a not-for-profit organisation, and has only a liaison office in India, it does not need FCRA registration. However, the office must have RBI's permission. FCRA registration is required if the donor wants to take up program activities directly. In such a case, it must get branch-office permission from RBI and FCRA registration from FCRA.

Responsibilities

FCRA law does not apply to foreigners residing outside India. Therefore, the responsibility of compliance



is really with receivers. Still, foreign donors should try to see that they give funds or materials only to organisations / individuals with a valid FCRA registration.⁸ If the

NGO is not registered under FCRA, the donor should ask them to show prior-permission.

If a foreign donor deliberately ignores the law, they can be blacklisted under FCRA. This means that no one will be allowed to accept funds from them.

For donors with offices in India, it is a different matter. They should take steps to ensure that the organisation and its officers are not circumventing the law. They should also ensure that their grantees have a valid FCRA registration or prior-permission before disbursing funds.

⁸ This restriction does not apply to some donor organisations.

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