

AccountAble

Mysteries of FCRA

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For the voluntary sector, FCRA remains the most mysterious piece of law. Partly this is due to the manner in which it has been interpreted at different times and partly it is due to the secrecy surrounding its implementation.

The work of many Indian NGO's is dependent on foreign funds. And they live under a constant fear of FCRA — for they do not know when their FCRA number may be snatched away.

In this 21st year of FCRA, we discuss 21 such mysteries. If you would like to add to our collection, do write in.

1. Prior permission

If you have applied for prior permission, then your application should be processed within 90 days [section 11(2)]. The period of 90 days starts from the date when the application is *received* at FCRA Department.

The Ministry may also write to you, asking you to wait for another 30 days. In such case, the total period will go up to 120 days [proviso to section 11].

In all cases, the Ministry sends a reply, whether yes or no. Please do not assume that if you haven't received a reply within 120 days then your application is approved. Your reply may have been lost in the post.

2. FCRA Number

Refusal FCRA Department sometimes refuses permanent registration to NGO's (section 10). If you wish, you can appeal against this in the High court within 60 days of the date of the order [section 21(2)].

Cancellation If your FCRA registration is canceled, don't panic. File an appeal in the High Court within 60 days of order date [section 21(2)]. If the cancellation is unjustified, the court will restore your registration.

3. Change of Bank Account

If you have moved your main office or for some other reason you want to shift your FCRA bank

account, you can do so:

Older NGO's First open the new bank account which you want to use as FCRA Account. Then apply (clause 3 of your original application in form FC-8) to FCRA Department in Form FC-8, explaining the reasons for shifting the bank account. The application should be supported by a resolution of the Governing Body.

New NGO's NGO's which apply for FCRA registration after 27.12.96, in the revised FC-8, can change bank accounts by applying on plain paper (undertaking in your original application in the revised form FC-8).

4. More than one bank account

You can receive and keep your FCRA funds only in one bank account [section 6; rule 8(1)(b)]. This bank account number is mentioned on your copy of the FCRA registration certificate.

However, once you have received the money, you can transfer funds to other locations / bank accounts for operational reasons (these other accounts should be used *exclusively* for FCRA funds). This includes field offices as also fixed deposits.

Wherever possible, the transfer of funds between these accounts should be made by cheque or draft.

Please note that as per the existing law, NGOs cannot open more than one bank account for FCRA funds

and that the Ministry of Home Affairs has not granted any official sanction permitting this widespread practice.

5. Interest on FCRA Funds

There is no bar on earning interest on FCRA funds. However, all such interest should be accounted for as FCRA funds and disclosed in FC-3 and FCRA Receipts and Payments Account.

While this is not clear from the FCRA Act itself, the FCRA Department has taken this view. It is advisable to follow this view.

6. Revolving Fund

If you are giving recoverable loans to beneficiaries out of FCRA funds, you should show these loans as assets in the FCRA Balance Sheet. However, these can be treated as utilization of FCRA funds in FC-3.

When these loans are recovered you should show the money received in FCRA Receipts and Payments and FC-3.

When loans are given out again (out of recovered funds), you should continue to show these in the same manner in the FCRA Balance Sheet and Receipts & Payments Account.

7. Income from FCRA IGP

According to the FCRA Department, income earned from an Income

Generation Project funded or set up out of FCRA funds should be shown as FCRA receipts in FC-3.

8. Sale of fixed assets

When fixed assets (or raw material, stocks, etc.) are purchased out of FCRA funds, these should be shown in the FCRA Balance Sheet. The funds spent on this can be shown as utilized in the FC-3.

If later on any of these assets are sold off, then the amount recovered should be again shown as receipt in FC-3. If you make a profit or gain in selling the asset, this also should be shown in FC-3.

If the asset (for example, land) was funded partially out of FCRA and partly out of Indian funds, the profit should be proportionately accounted in FCRA and Indian funds.

9. Separate Cash Book and Ledger

Some NGO's are not aware that it is absolutely essential for a separate Cash Book and Ledger to be maintained for FCRA transactions [rule 8(1)(b)].

10. Consolidated Balance Sheet

You should only file the FCRA Balance Sheet and Receipts & Payments Account with your FC-3. Please do not file the consolidated Balance Sheet.

11. Disclosing non-cash grants in FC-3

All FCRA grants in kind (blankets, shares, securities, vehicles, food, etc.) should also be disclosed in the FC-3. Both the receipt of such grants as also the utilization should be shown.

12. Don't File FC-6

Record of grants received in kind should be kept in FC-6 in your office [rule 8(1)(a)]. However, this form should not be filed with the FCRA

Department. Such contribution should be reported in FC-3.

13. Second or subsequent recipient

If you receive your FCRA funds from another organization which is already registered under FCRA (e.g., CRY), then such funds should be shown as 'Funds received as second or subsequent recipient.' For this purpose, it is irrelevant whether the funds are in Rupees or disbursed by the India office of a foreign funding agency.

14. Revising FC-3

If you have made a mistake in the FC-3 for any reason, you can revise it within a reasonable period, say two years. Along with the revised FC-3, file a letter explaining the reasons for revising the FC-3.

15. Fellows: file FC-5

Individuals receiving Fellowship (exceeding Rs.36,000 p.a.) out of FCRA funds should file form FC-5 within 30 days of receipt of the fellowship funds.

16. Shadow lending

Sometimes NGO's with FCRA registration lend their 'shadows' to other NGO's. The funds are received in the name of FCRA registered NGO (first NGO) but are spent by the other NGO (second NGO). The vouchers are in the name of first NGO and accounting is also done there. Sometimes this is done by calling the second NGO a program unit and calling the first NGO as legal project holder.

Whether the second NGO is an NGO registered under Societies Act or not, this type of arrangement is illegal and strictly prohibited. In case this comes to the notice of FCRA Department then they will go behind the accounts

and vouchers and will discover the real arrangement (section 28). The penalty for this is laid down in section 23 and includes imprisonment.

17. Funds to non-FCRA NGO's

It is clearly mentioned in the FCRA registration letter that you should not give FCRA funds to NGO's which do not have FCRA registration or prior-permission. If you do this, your registration may be canceled and you may be penalized [section 23].

18. Governing Body

If a society etc. commits an offense, then Governing Body members may also be punished. This may be done if it is found they had helped or they had been negligent (section 26).

19. Funding Agencies

If a funding agency or its officers 'assist' an NGO in getting foreign funds without FCRA permission or registration, then the funding agency and its officers can also be penalized [section 23(1)].

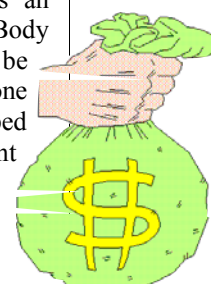
20. FC-3 in duplicate

Form FC-3 should be filed with FCRA in duplicate (FCRA Department's advertisement).

21. Elections

NGO's registering with FCRA now will need FCRA approval if 50% or more office bearers get changed in elections (see undertaking in revised FC-8).

Till the time they get the approval, they will not be able to accept funds without prior permission for each grant.



Your views, comments and questions on this circular are welcome. Please send these to:

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