

# AccountAble™

Fund-raising & FCRA

Issue # 54; Nov '99

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FCRA was passed during the Emergency days (5<sup>th</sup> August 1976). Initially, it only asked NGOs to report how much foreign contribution they receive and spend. The purpose of the Act was to gather information. You did not need FCRA registration or even prior-permission to receive foreign contribution.

This 'genial' regime lasted for a little over eight years. In 1985, compulsory FCRA registration was introduced. You could not receive foreign funds if you did not have FCRA registration or prior-permission. However, registration was very easy in those days. People who were already getting foreign funds were sent registration certificates automatically. These days things are a little different.

The main point is that FCRA was originally designed only for gathering information. The provisions for compulsory registration were grafted on later. This has produced some strange results.

Consider this fictitious dramatisation: There is an NGO running an old age home in Delhi. A foreigner, who has been living in Delhi for several years, drops by one day. She likes the place. So next time she brings along some old warm clothes. The secretary is delighted and thanks her profusely. The next day, both are arrested and put into jail. Why? The NGO did not have FCRA registration!



Fortunately, FCRA is implemented in spirit and not by the letter of the law. The Department understands that a rigorous interpretation or implementation will cause injustice. So the above story will probably not become news. Nevertheless, the point remains. The law exists and can be misused. Therefore, it needs to be redesigned.

The provisions discussed here are based largely on the existing law. Some of the provisions may seem ridiculous or unnecessarily harsh. Therefore, keep the above in mind: FCRA people are not planning to put you in jail just because you accepted an old shirt from a well-wisher!

The following issues / comments are mainly related to raising of funds. Sections refer to FCRA [Foreign Contribution (Regulation) Act, 1976].

### 1. Anonymous donations

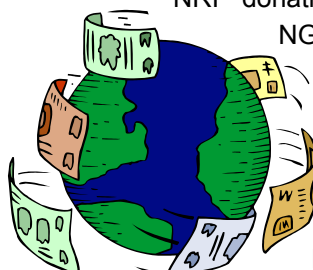
Electronic banking and Internet fund-raising is here. You suddenly receive a credit of Rs. 1.3 lacs in your bank account. The do-

nor does not tell you his or her name. What do you do?

Ask your bank to trace back the donation. If it came from an overseas account, transfer it to your FCRA account. Then report it in

FC-3 as 'Anonymous Donation'. Attach a copy of FIRC (Foreign Inward Remittance Certificate) from the bank.

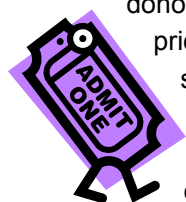
## 2. NRI donations



NRI donations to an Indian NGO may be Indian funds or FC funds. If the NRI holds an Indian passport, then the donation will be Indian funds. If not, then these will be FC funds.

The type of bank account or currency does not matter.

## 3. Charity events



NGOs sometimes organise cultural events for raising funds. At these events, they sell donor passes. These passes are priced high, to generate a surplus. For example, a ticket for a movie may normally be priced at Rs.100. If it is organised as a charity event, donor pass may be for Rs.500 or more. What are the FCRA implications of this?

There can be two situations, depending on how the event was funded:

Funded with	FC Implications
FC funds	1. All proceeds from tickets or donor passes are FC funds. It is immaterial whether guest is Indian or foreign.
Indian funds	1. Proceeds from Indian guests are Indian funds. 2. Proceeds from foreign guests are FC funds. 3. Sponsorship proceeds from MNCs are FC funds.

Separating guests into Indian and foreigners will not be easy. Therefore, implement this only to the extent it is practical. For example, do not bother to segregate

counter sales, when received in Indian currency.

## 4. Raising funds abroad

FCRA authorities cannot allow multiple accounts for receiving funds [section 6(1)(b)]. Therefore, you cannot open an account abroad in your NGO's name for raising funds. You then have two options:

1. Set up an independent sister concern abroad. They will raise funds for you and transfer these to you.
2. Make an arrangement with a fund-raising group / attorney abroad. They will raise funds on your behalf and transfer these to you. Check the local fund-raising laws before you do this. This arrangement should be cleared with RBI and FCRA Department.

## 5. Consultancy income of NGO

NGOs cannot receive consultancy payments from foreign sources without FCRA registration / prior-permission. Such income is treated as FC income. It should be reported in form FC-3 [section 2(1)(c) and section 6].

## 6. Sale of Publications

If the book has been published with FCRA funds, then the sale recoveries (often termed 'contribution' or '*sahyog rashi*') should be kept in FC accounts.

## 7. Staff Recoveries

NGOs sometimes make recoveries for STD calls, room rent etc. from staff. Where should these recoveries go?



If the related expenditure (phone bill, office rent etc.) is booked in FCRA, then

the recoveries should also be credited to FCRA.

Ideally, these recoveries should be credited to the concerned Agency's project ac-

counts. If this is not required, then these can be taken to FCRA unrestricted funds<sup>1</sup>.

### 8. Hire Charges

If you recover hire charges for an asset from a project, where should the income be shown?

If the asset is in FC Balance Sheet, then the income should go to FCRA account. These can be shown there as unrestricted funds (similar to General Fund).

### 9. Guest recoveries

If your NGO is not registered under FCRA, do not accept any payments (for food etc.) from foreign volunteers who stay. You will be violating FCRA!

If you do have FCRA registration, credit these recoveries to the FCRA accounts.

### 10. Recoveries from Beneficiaries

NGOs sometimes make full or nominal recoveries from beneficiaries. These may be



for items distributed (food, blankets, medicines etc.). Or these may be for services provided (school

fees, workshop fees, medical services etc.). How should these be shown?

If the recovery is against items purchased from FC funds, then the recovery is FC money. If the recovery is for FC-6 items, then also it is FC money.

In case of services, you should see how the related expenses are met. If the clinic or workshop is funded by FC funds, then the recoveries must be reported in FC-3.

### 11. Endowment Funds

If you receive money for an endowment or corpus from foreign source, it will remain FCRA



<sup>1</sup> Funds that can be spent at NGO's discretion. See AccountAble 55 for more details

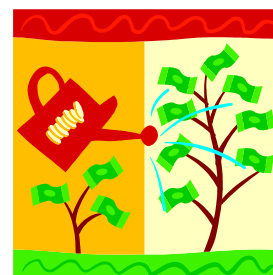
funds. Take it into your FC Receipts & Payments Account and report it in FC-3 under item 27. Also show it on the Liabilities side of FC Balance Sheet as 'Endowment Fund'<sup>2</sup>.

### 12. Endowment Investments

You are free to make investments out of Endowment Funds in the normal way. These can be reported as utilisation in FC-3. But you must show these on the assets side of FC Balance Sheet as 'Endowment Investments'<sup>3</sup>.

### 13. Endowment Income

When you receive interest or dividend on your endowment investments, report these in FC-3 as receipts.



When you make a 'profit' by sale of investments (capital appreciation), show the entire sale realisation as 'receipt' in FC-3.

### 14. How much

In case of prior-permission, you can receive amounts up to the limit given in prior-permission letter.

For example, if the permission is in dollars, you can receive that many dollars or equivalent Indian Rupees.

### 15. Exchange rate variations

Also, in prior-permission cases, you may sometimes receive a little more due to exchange rate variations.

Don't worry<sup>4</sup>. Just report the actual amounts received. Also give a note in FC-3 saying 'excess received due to change in Exchange Rate'.

<sup>2</sup> For example: 'Ford Endowment Fund'

<sup>3</sup> For convenience, you can group these together as, for example: 'Ford Endowment Investments'

<sup>4</sup> This is not a problem for those who have FCRA registration.

## 16. Unused prior-permission

Suppose FCRA gave you prior-permission for \$ 10,000 for a project. But the donor Agency could not give you the funds at that time. Can you now reuse it for another project?

No. Prior-permission is linked to the project and the donor Agency. You can use it only for the approved project. Also, the donor Agency must remain the same.

## 17. Foreign Volunteers

A foreigner can come and work in your NGO without any salary. This is not considered as foreign contribution.

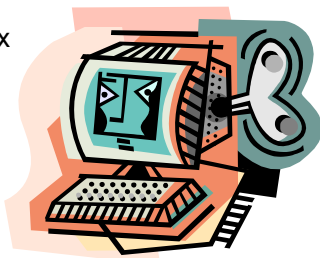
## 18. Items less than thousand rupees

Many people believe that gifts below Rs.1,000 each are not foreign contribution. This is not quite correct. This exemption applies when the gift is given to an individual. Secondly, the gift must be for his/ her personal use, such as a shirt or a watch.

Therefore, if a foreigner gives your NGO a wall clock worth Rs.800, you should record it in FC-6 and report it in FC-3.

## 19. Old items in FC-6 and FC-3

Sometimes foreign Agencies give away old items to NGOs. Examples are vehicles, refrigerators, computers, fax machines, typewriters, filing cabinets etc. The Agencies do not charge any money for this.



These items are foreign contribution. You must record these in FC-6. Later you must report these in FC-3 also.

## 20. PL-480

PL-480 means Public Law number 480. It was passed a long time ago in United States of America. Indian NGOs have been receiving bulgur, oil and milk powder under PL-480. This is distributed to beneficiaries.

These items are received under an agreement between Indian Government and US Government. However, these are routed through USAID and one or more American donor agencies.

When received in India, these are foreign contribution. The NGO receiving and distributing



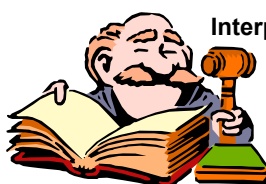
these must maintain an FC-6 and report these in FC-3. The NGO must also have FCRA or prior permission to handle these items.

## 21. Bi-lateral funds

Indian Government negotiates bi-lateral funding with other countries. Such funds are received by the Central Government. These are then transferred to states, funding bodies or NGOs. FCRA act does not apply to these [section 32].

However if you receive funds directly from a bi-lateral Agency, then these will be FCRA funds.

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**Interpretation** of law given here is of a general nature. Please consult your advisors before taking any important steps. Further, the suggestions given here are based on practical experience of various NGOs – these have not been provided or authorised by FCRA Department. AccountAid India also does not provide any liaison services with FCRA Department.

**Contact:** Your questions, comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi -110 014; Phone: 011- 2634 3128; Ph./Fax: 011- 2634 6041; e - mail: [accountaid@vsnl.com](mailto:accountaid@vsnl.com); [accountaid@gmail.com](mailto:accountaid@gmail.com) Web-site: [www.accountaid.net](http://www.accountaid.net) © AccountAid® India 2000