

AccountAble™

Puzzles of FCRA

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A strict interpretation of FCRA [Foreign Contribution (Regulation) Act, 1976] gives you strange results. Consider the following common situations:

1. A student from Ghana registers at an Indian University and pays the course fees. The university is violating FCRA if it admits him without having an FCRA number.
2. A well know educational trust runs schools all over India. One of the schools brings out a souvenir. The mother of one of the students works for an International Bank. They insert an advertisement in the souvenir. Is this a violation of FCRA?
3. The Ambassador of Zenda visits the shop of an NGO at Dilli Haat and buys two hand-knit shawls. The NGO should deposit this in their FCRA account or lose their registration.



4. An NGO gives a revolving fund grant to Kalyani Mahila Mandal. The grant is given from FC funds. The Mahila Mandal is functioning as an unregistered society and does not have FCRA. Both the NGO as also the Mahila Mandal are in deep trouble.
5. A foreign relief Agency ties up with an NGO in Puri to help them distribute polythene sheets. The NGO receives and stocks these in their office. But they do not have FCRA. Both the Agency and NGO have violated FCRA.

Is there a solution to this? As the conditions in society change, laws need to change. The FCRA completes silver jubilee on 5th August 2001. It is unlikely that the Government will repeal it in near future. But there is a need for review so that there can be reasonable compliance.

We discuss here 19 puzzles of FCRA. Sections refer to FCRA.

1. FCRA grants to individuals

Can you make FCRA grants to individuals? Apparently, yes. They do not need FCRA permission or registration for this.

But, there is one very important condition. The individual must work totally on his/ her own. He or she should not employ people or tie up with others. In legal terms, he / she must not form an association of individuals or an organisation [Section 2(1)(a)].

2. Business people/ professionals

Profit-oriented organisations are not covered by FCRA. These people can receive payments from foreign agencies or out of FCRA funds. They do not need FCRA registration for this. This exemption is not available to NGOs doing consultancy.

3. Electronic media

FCRA covers print-media. But it does not cover electronic media (radio and TV). Why?



Back in 1976, Government ran the entire electronic media. Secondly, the main Act has not been amended since 1985. Electronic media was opened up to private sector much later.

4. Change of bank account number

Many banks are computerising their accounts now. Your bank may also give you a new number for your FCRA bank account.

This does not mean that you have changed your bank account. Just write a letter to the FCRA Department explaining this. Attach a copy of the bank's letter showing change of account number.

5. Advances from FC funds

Advances from FC funds cannot be given to NGOs that do not have FCRA. The reason is that section 2(1)(c) covers 'donation, delivery or transfer' of funds. Advances obviously involve either transfer or delivery.

The same reasoning applies to loans from FCRA funds.

6. Loan between FC and Indian

FCRA does not allow mixing up of Indian funds and FCRA funds. This means you should keep track of both funds separately.

However, the Act does not prohibit taking or giving loans to the Indian section. The most obvious example is money required to open the FCRA bank account. This money is always a loan from the Indian section.

In recent years, FCRA Department has felt that this facility is being used carelessly. As a result, they often take up glaring cases with the concerned NGOs.

7. Mahila Mandals

Do Mahila Mandals need FCRA to receive loans or grants from FC-funded NGOs?

This is a very complex question. To understand this, Mahila Mandals can be categorised into five stages of evolution:

Stage	Association ¹	Program ²
1	People just meet every week. No formal leadership.	No program. Just a common interest.
2	Meetings continue. A name is given to the Mandal. Leaders start emerging.	No program. Just a common interest in savings and credit.
3.	Group becomes more organised. A membership register is started. Office bearers are appointed.	Objectives of the group are widened and put down in writing.
4.	Memorandum of Association is signed. Society is not yet registered.	Memorandum of Association serves as a definite program.
5.	Society is formally registered.	Definite program continues to exist.

What happens if these groups want to receive FC funds?

- Groups at stages 1 & 2 do not need FCRA registration or prior permission.
- Groups at stage 3 may or may not need FCRA.
- Groups at stages 4 & 5 definitely need FCRA.

8. Indian office of foreign Agency

If a foreign donor agency opens a branch or liaison office in India, the Indian office needs FCRA registration or prior permission. This applies even if the branch office

¹ Section 2(1)(a)

² Section 6(1)

is only receiving administrative funds and not grants.

9. Opening branch abroad

FCRA is totally silent on this. However, it appears that:

- An NGO can work abroad or set up an office, if its Memorandum allows it.
- The foreign contribution should be first received in India, in the FCRA bank account [section 6(1)(b)].
- It can then be transferred to the bank account of foreign branch. For this, you will need MHA³ permission under rule 8(1)(b). This permission should be taken before transferring FC funds to foreign account.

10. Organisations of a political nature

Can NGOs get involved in political activities? Yes – but at the risk of losing their FCRA registration.

The Central Government can name an NGO as organisation of a political nature [Section 5(1) and its explanation]. Before doing this, the Government will look at the following:

- Activities or program of the NGO
- Ideology being spread by the NGO
- Its involvement in activities of a political party.

The Government will then publish an order in the Gazette saying that the NGO is an 'organisation of a political nature'. This will mean that the NGO cannot accept foreign contribution without specific prior-permission on case-by-case basis.

11. Churches and Ashrams

Some organisations set up additional organisations to carry out some of their work. Each of these bodies may specialise in one aspect of the work or be run independently. This is common in the case of religious

groups such as ashrams and churches (diocese).

Can the organisations under the main umbrella use the FCRA of the parent body?

No. Under FCRA, each of these NGOs is a separate entity and needs independent FCRA registration or prior-permission.

This concept also applies to Federations.

12. Does second receiver need FCRA

Yes. The second, third, fourth, fifth and all the subsequent receivers need FCRA registration or prior-permission.

13. When do FC funds become Indian

Never, so far as NGOs are concerned. FC funds do not become Indian merely by changing hands. It is believed that even the Holy Ganga cannot purify funds of foreign origin!



When these are spent or given to individual beneficiaries, the funds become Indian. However, if these people give it back to the NGO (for example, repayment of a loan), they again become FCRA [explanation to section 2(1)(c)].

14. Catalogue sponsorship

An International Bank or MNC sponsors your catalogue or souvenir. They pay the printers directly. The printers deliver the booklets to you. What happens now?

The catalogues or booklets are now foreign contribution. You should enter these into FC-6. You should also report this in FC-3.

³ Ministry of Home Affairs, FCRA Department

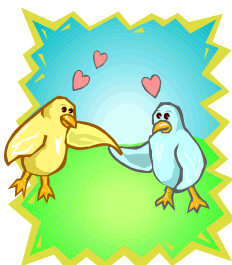
15. Souvenir Advertisements

Your NGO brings out a souvenir. An MNC agrees to insert a full-page advertisement. What do you do with the money?

FCRA says that you should deposit this money in the FCRA account. If you don't have FCRA registration, too bad. Just refuse the advertisement or run it free of cost.

16. Relatives

Till death do us part... holy vows of matrimony notwithstanding, it is not a good idea to keep your spouse on the board.



Nowadays, FCRA people get alarmed when they find assorted sons, parents, in-laws and other family members on the board of an applicant NGO. This often results in rejection of the NGO's application for FC registration or prior-permission.

17. Unrestricted FC funds

Any income generated from FC funds or assets is kept in FCRA account. Examples are surplus on sale of assets, interest on FCRA bank account. What should you do with this? There are three possibilities:

Possibility	Treatment
1. Donor Agency has asked you to use this income in a certain manner.	Use it according to Agency's directions.
2. Agency is not interested in how you use this income.	Treat it as unrestricted funds.
3. The income cannot be linked to any Agency.	As above.

What are unrestricted funds? These are similar to General Fund in the Indian section. We use a different name for clarity. You can use these funds to maintain your buildings, meet other institutional expenses or add to your corpus.

You can also use it for any other purpose for which the organisation has been registered with FCRA. How do you find that out?

Read the objectives clause of your Memorandum of Association.

Whatever you do, remember that you should not move these funds into the Indian section. They must remain in FCRA account. You must also follow all other normal precautions related to FCRA funds.

18. Unrestricted FC funds – under Prior Permission

Suppose you do not have FCRA registration. You have been working under prior-permission. Then you can use the unrestricted funds only for the approved project. You cannot use these for general organisational purposes.

19. FEMA and FCRA

FERA⁴ has been replaced by FEMA⁵. When will they replace FCRA with FCMA?

Not in the near future. The purpose of these two laws is different. FERA / FEMA is a financial law. FCRA is an internal security law. FCRA, therefore, has nothing to do with economic liberalisation.

This is also the reason why the Government cannot move FCRA from Ministry of Home Affairs to Ministry of Finance.

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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.

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⁴ Foreign Exchange Regulation Act, 1973

⁵ Foreign Exchange Management Act, 1999