

FCRA - LEGALLY INCONSISTENT PUBLIC NOTICE ON CHANGE IN FUNCTIONARIES



Authors* :

Dr. Manoj Fogla

Suresh Kejriwal,

Dr. Sanjay Patra, ED, FMSF

Sandeep Sharma, Director Prog., FMSF

* The Principal Author can be contacted at mfogla@yahoo.com

A joint initiative of



FCRA - LEGALLY INCONSISTENT PUBLIC NOTICE ON CHANGE IN FUNCTIONARIES

CONTENTS

1.	INTRODUCTION	01
2.	THE AMENDMENT RULE 17A UNDER FCRR, 215	01
3.	AMENDMENT IN RULES AND FC FORMS IN 2019	02
4.	SUMMARY OF OLD AND NEW FORMS	03
5.	CAN THE AUTHORITIES MAKE CHANGES SUBJECT TO APPROVAL	03
6.	IS SUCH A PUBLIC NOTICE CONSTITUTIONALLY VALID	04
7.	SUPREME COURT ON UNLAWFUL CIRCULAR AND PUBLIC NOTICE	05
8.	OTHER LEGALLY INCONSISTENT ACTS AND DIRECTIONS OF FCRA DIVISION	05
9.	THE PUBLIC NOTICE IS NOT CONSISTENT WITH THE NEW FORM 6E	06
10.	WAY FORWARD	06
ANNEXURE 1	PUBLIC NOTICE FOR SUBMISSION & APPROVAL REGARDING CHANGE IN KEY FUNCTIONARIES	07
ANNEXURE 2	FCRA RULE AMENDMENT 2019 NOTIFICATION	09

Authors* :

Dr. Manoj Fogla

Suresh Kejriwal,

Dr. Sanjay Patra, ED, FMSF

Sandeep Sharma, Director Prog., FMSF

A joint initiative of



INTRODUCTION

- 1.1.1** The Ministry of Home Affairs, Foreigners Division (FCRA Wing) has issued a Public Notice dated 07.06.2019 directing all organisations registered under Foreign Contribution Regulation Act, 2010 (FCRA 2010) to submit online application in Form FC-6E regarding any change in the office bearers/key persons within one month of the Public Notice. A copy of the Public Notice is provided in **Annexure 1**.
- 1.1.2** The Public Notice also states that any change in the office bearers/key persons is subject to approval of the Ministry of Home Affairs and such change should be updated on a real time basis. Such an understanding of the FCRA Division in our opinion is legally inconsistent and therefore may render the Public Notice unsustainable. In this issue we shall discuss the law in this regard and the legality of the Public Notice regarding change in office bearers/key persons.

THE AMENDED RULE 17A UNDER FCRR, 2015

- 1.2.1** The FCRA Act is silent about the change in office bearers/key persons of an organisation. However, the Rule as amended by Foreign Contribution Regulation Rule, 2015 published vide Notification No. GSR (E) dated the 14th December, 2015 states that any change in the:
- (i) office bearers/key persons
 - (ii) designated bank account,
 - (iii) name and address,
 - (iv) aims and objectives
- shall be **intimated** within 15 days electronically through online submission in the respective form.
- 1.2.2** The Rules of 17A as Amended by Foreign Contribution Regulation Rule, 2015 published vide Notification No. GSR (E) dated the 14th December, 2015 is as under:

17A. Change of designated bank account, name, address, aims, objectives or Key members of the association :-

A person who has been granted a certificate of registration or prior permission under section 11 of the Act shall intimate electronically online in Form FC-6, within fifteen days, of any change in the following, namely:-

- (i) name of the association or its address within the State for which registration/ prior permission has been granted under the Act;
- (ii) its nature, aims and objects and registration with local/relevant authorities.;
- (iii) bank and/or branch of the bank and/or designated foreign contribution account number; and
- (iv) key members of the association if at any point of time such change causes replacement of fifty percent or more of the original key members as reported in the application for grant of registration/ prior permission/ renewal of registration under the Act.”;

1.2.3 The FCRA 2010 and FCR Rules 2015 in fact empowered the organisations by simplifying various key provisions. It may be noted that in the old FCRA 1976, organisations were not allowed to open multiple bank accounts and further, change in the designated bank account was not possible without the approval of the FCRA authorities. The law makers created a very enabling environment by inserting liberal provisions allowing the organisations to take all the routine and executive decisions at their discretion and only intimation was required to be filed. However, this intimation process should have been just a submission of information without any assessment on the part of the authorities. The only process at the end of the authorities was to notify the organisations if there is any defect in filing of the required information.

AMENDMENT IN RULES AND FC FORMS IN 2019

1.3.1 The Central Government vide Notification No. G.S.R.199(E) dt. 07/03/2019 has made amendment in Foreign Contribution (Regulation) Rules, 2011. These rules shall be called the Foreign Contribution (Regulation) Amendment Rules, 2019. There are

considerable changes in the Rules as well as in the Forms. In this issue the major changes made in the Rules have been discussed. The amended Rules are provided in **Annexure 2**.

SUMMARY OF OLD AND NEW FORMS

1.4.1 The amended rules have changed the old forms and the form numbers also have changed at some places, a summary of the old and new forms is as under:

Existing Form	New Form	Particulars
FC-1	FC-1	Gift from relative & Contribution in Kind
FC-2	FC-2	Intimation - Foreign Hospitality
FC-3	FC-3A	Registration
	FC-3B	Prior Permission
	FC-3C	Renewal
FC-4	FC-4	Annual Return
FC-5	FC-5	Transfer to Unregistered Persons
FC-6	FC-6A	Change of Name/address within the state
	FC-6B	Change in aims and objectives
	FC-6C	Change of FC Designated Bank Account
	FC-6D	Opening of FC Utilization Account
	FC-6E	Change in more than 50% of the key members of the organization

CAN THE AUTHORITIES MAKE CHANGES SUBJECT TO APPROVAL

1.5.1 The Public Notice (supra) states that any change without approval will be deemed as a violation and penal action will be initiated. The relevant extract is as under:

“It is noticed that some associations/persons, having been registered under the Act, have changed their office bearers/key functionaries without approval from the Ministry of Home Affairs and without updating this data on a real time basis through the online application meant for change of these details.”

“.....failing which penal action shall be initiated under the appropriate provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011.”

- 1.5.2** It can be seen that the notice is written under presumption that any change in functionaries is subject to prior approval. Whereas the Rule provides that only an intimation is required to be made that to if the change exceeds 50%. Further, the notice states that penal actions would be taken, however, there is no provision under the FCRA 2010 which empowers the authorities to make a change subject to prior approval or take penal measures thereof. Such notice creates an environment of fear and insecurity among the FC registered organisations and it is expected that the authorities shall revise the notice in consonance with law.

IS SUCH A PUBLIC NOTICE CONSTITUTIONALLY VALID

- 1.6.1** It may be noted that Article 19 of the Constitution empowers all citizens with the right to form associations and make the changes thereof. The Parliament of our Country in its wisdom has rightly refrained from inserting any provisions in FCRA, 2010 which regulates the formation or changes in the organisation. The Rules have been amended to regulate micro changes in the registered organisations, however, the rules also do not empower the FCRA Division to command or approve any change in any organisation. The only empowerment with FCRA Division is to ensure that it is intimated about the changes and it can take remedial measures only if such changes are likely to result in any violation of FCRA 2010.

- 1.6.2** In the light of the above the Public Notice is legally unsustainable.

SUPREME COURT ON UNLAWFUL CIRCULAR AND PUBLIC NOTICES

1.7.1 It has been held that any Circular or Notice issued by the Government is merely the understanding of the authorities about the statutory provisions, it has no legal consequences as the respective Act shall determine the application of law. In the case *Commissioner of Central Excise, Bolpur Versus M/s Ratan Melting & Wire Industries* Civil Appeal No. 4022 of 1999 in its judgement dated 14th October 2008 the Supreme Court observed as under:

“So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

1.7.2 In the light of the above ruling the Public Notice looks bad in law and needs reconsideration.

OTHER LEGALLY INCONSISTENT ACTS AND DIRECTIONS OF FCRA DIVISION

1.8.1 It has been noticed there are some legally inconsistent practices being followed by the FCRA Department, some of which can be outlined as under:

- For change of the designated FC Bank Account the rule provides, only, intimation to be given by the organisation. However, the online portal of FCRA Department keeps such intimation in abeyance with a message “..... under process” and the organisation is not allowed to use such Bank Account till it is cleared by the authorities. It is beyond the mandate of the FCRA Department to keep an intimation on hold subject to approval.
- Further, once an intimation for a change in Bank Account is filed the organisation is not allowed to file further changes or information about new utilisation Bank Accounts. In other words if an organisation has opened one utilisation bank account and has given online intimation to the FCRA Department in Form FC-6D

it is not allowed to upload another Form FC-6D if one more utilisation bank account is opened, such practices are not consistent with the law.

- For change of the key persons/office bearers the Rule 17A provides that an intimation should be sent only if the change is more than 50% from the list of key persons/office bearers provided at the time of registration or renewal. Very few organisations have more than 50% change within such a short time frame, therefore very few intimation in this regard are filed. Therefore, issuing a Public Notice to all organisations is not warranted under the law.
- Filing a form is the prerogative of the organisation, the FCRA Department can only regulate whether the forms have been appropriately filed or not. **However, in practice the filing of form and acceptance of information itself is treated as an assessment/approval process, which is not as per the liberalised FCRA 2010 and the Rules thereof.**

THE PUBLIC NOTICE IS NOT CONSISTENT WITH THE NEW FORM 6E

- 1.9.1** The Public Notice regarding change of key functionaries/office bearers requires that any change should be reported on real time basis, which is not consistent with the revised Form 6E. Revised Form 6E provides that intimation should be given only if the change is more than 50% of key functionaries/office bearers. Further, under the Form 6E the requirement is to provide intimation there is no clause or column which refers to the condition of prior approval.

WAY FORWARD

- 1.10.1** It is suggested that Form FC-6E for change of key functionaries/office bearers should be filed only if there is a change of more than 50% and intimation has not been submitted with the FCRA Department. If the changes already filed have not been updated then the same may be informed to FCRA Department for updation or further guidance, if any.

**PUBLIC NOTICE FOR SUBMISSION & APPROVAL
REGARDING CHANGE IN KEY FUNCTIONARIES**

F.No.II/21022/36(0207)/2015-FCRA-II

Government of India

Ministry of Finance

Foreigners Division (FCRA Wing)

MDC National Stadium

New Delhi-110001

Date: 07.06.2019

Sub: Online submission and approval from the Ministry of Home Affairs before effecting any change in the list of office bearers/key functionaries of FCRA registered associations.

1. All persons who have been granted a certificate of registration under section 11 & 12 of the Foreigners Contribution (Regulation) Act, 2010 have reported details of their office bearers/key functionaries while applying for registration under the Act. It is noticed that some associations/persons, having been registered under the Act, have changed their office bearers/key functionaries without approval from the Ministry of Home Affairs and without updating this data on a real time basis through the online application meant for change of these details.
2. All associations/persons who have been granted a certificate of registration and who have effected any change/modification in the details of their office bearers/key functionaries after their registration are hereby called upon to submit online application for additions/deletion/change of details in the statutory FORM FC-6E about such office bearers/key functionaries within one month from the date of issue of this Public Notice, failing which penal action shall be initiated under the appropriate provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011.
3. It may also be noted that the online application for any service must be signed by the chief functionary of the association and the name of the chief functionary/signatory must also be reflected in the list of office bearers/key functionaries.

4. All associations registered under the FCRA may take note of the above notice to ensure compliances with the provisions of the FCRA, 2010.

(Santosh Sharma)

Director (FCRA)

Tel: 23077504

FCRA RULES AMENDMENT 2019 NOTIFICATION**MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 7th March, 2019

G.S.R.199(E).- In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, namely:-

1. Short title and commencement. - (1) These rules may be called the Foreign Contribution (Regulation) Amendment Rules, 2019.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Foreign Contribution (Regulation) Rules, 2011, -
 - (i) in rule 2, in sub-rule 1, after clause (a), the following clause shall be inserted, namely:- “(aa) “bank account” means a bank account in a core banking compliant bank, which is integrated with the Public Financial Management System (PFMS)”;
 - (ii) in rule 6, after the word “Government”, the following words shall be inserted, namely:- “by uploading details electronically online”;
 - (iii) in rule 7, in sub-rule (1), after the word “apply”, the following words shall be inserted, namely:- “electronically online”;
 - (iv) in rule 9, -
 - (a) in sub-rule (1), -
(A) for clause (a), the following clause shall be substituted, namely:-
“(a) An application for certificate of registration by a person under sub-section (1) of section 11, for acceptance of foreign contribution shall be made electronically online in Form FC-3A and an application for obtaining prior permission by a person under sub-section (2) of section 11, for acceptance of foreign contribution, shall be made electronically online in Form FC-3B.”;

(B) in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;

(b) in sub-rule (2), in clause (e), for the letters and figure “FC-6”, the letters and figure “FC-6D” shall be substituted;

(c) in sub-rule (4), -

(A) in clause (a), for the letters, figures, brackets and words “Rs.1000/- (One Thousand only)”, the letters, figures, brackets and words “Rs.3000/- (Three Thousand rupees only)” shall be substituted;

(B) in clause (b), for the figures, brackets and words “2000/- (Two Thousand only)”, the letters, figures, brackets and words “Rs.5000/- (Five Thousand rupees only)” shall be substituted;

(v) in rule 12, -

(a) in sub-rule (2), for the words, letters and figures “to the Central Government in Form FC-3”, the words, letters and figures “to the Central Government electronically online in Form FC-3C” shall be substituted;

(b) in sub-rule (4), for the letters, figures, brackets and words “Rs.500/- (Five Hundred only)”, the letters, figures, brackets and words “Rs.1500/- (One Thousand Five Hundred rupees only)” shall be substituted;

(c) in sub-rule (8),-

(A) after the words “requisite fee”, the letters, figures, brackets and words “and with late fee of Rs.5000/- (Five Thousand rupees only)” shall be inserted;

(B) for the words “four months” the words “one year” shall be substituted;

(vi) in rule 17A, -

(a) the words, letters and figure “in Form FC-6” shall be omitted;

(b) in item (i), after the word “Act”, the words, letters and figures “in Form FC-6A” shall be inserted;

(c) in item (ii), after the word “authorities”, the words, letters and figures “in Form FC-6B” shall be inserted;

(d) in item (iii), -

(A) after the word “number”, the words, letters and figures “in Form FC-6C” shall be inserted;

(B) the word “and” occurring at the end shall be omitted;

(e) after item (iii), the following item shall be inserted, namely:-

“(iiiia) bank and/or branch of the bank for the purpose of utilising the foreign contribution after it has been received in Form FC-6D; and ”;

(f) in item (iv), after the word “Act”, the words, letters and figures “in Form FC-6E” shall be inserted;

(vii) for forms FC-1 to FC-6, the following forms shall be substituted, namely:-

Standards & Norms aims to provide relevant informations and guidance on NGO governance, Financial Management and Legal Regulations. The informations provided are correct and relevant to the best of the knowledge of the author and contributor. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner.



Published by **Dr. Sanjay Patra** on behalf of
FINANCIAL MANAGEMENT SERVICE FOUNDATION
 'ACCOUNTABILITY HOUSE', A-5, Sector 26, Noida-201 301
 Tel. : 91-120-4773200, website : www.fmsfindia.org
 e-mail : fmsf@fmsfindia.org



Voluntary Action Network India (VANI)
 BB-5, Greater Kailash Enclave Part - II,
 New Delhi - 110048
www.vaniindia.org

