

FCRA FAQs

◆ Legal Series Vol. XIII ◆ Issue 7 ◆ October 2020

For private circulation only

ROAD AHEAD AFTER ENACTMENT OF FOREIGN CONTRIBUTION (REGULATION) AMENDMENT ACT, 2020



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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Credibility Alliance
Improving Governance Building

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INTRODUCTION

- 1.01** The Foreign Contribution (Regulation) Amendment Act, 2020 has been enacted and notified effective from 29th September, 2020. This act amends the Foreign Contribution (Regulation) Act, 2010 and has brought many radical changes. Some of the changes have resulted in operational issues and have an direct impact on the ongoing activities and transactions. In this issue we are addressing some of such issues and confusions.

CAN THE GOVERNMENT ALLOW TRANSITION PERIOD FOR PROVIDE EXEMPTIONS FOR SOME PERIOD

- 2.01** It may be noted that once the effective date of the new Act has been notified then the provisions of the older law will no longer apply. Therefore, all organisations have to follow the amended law in letter and spirit, irrespective of the practical problems which may arise.
- 2.02** However, under Section 50 of the FCRA 2010 the Central Government has the power to exempt the application of certain provisions of the amended law for specific period as it may decide in the light of the practical problems which may arise.
- 2.03** It is expected that the FCRA department may issue an order (circular) under Section 50 of the FCRA 2010 to provide relief from the various interim crisis which have emerged. It is strongly recommended that no activity or transaction in violation of the amended law should be undertaken until such order or circular is issued.

FAQ No. 1 : Whether NGO can receive FC fund from Foreign sources from 29th September till the FCRA bank account is opened in specified branch of SBI.

Ans : No, in our opinion, as per the amended Act, the FC funds are to be received in the specified branch of SBI in New Delhi. However, the specific branch has

not been notified till date by the Ministry of Home affairs. Therefore, in our opinion, we should wait for further notification in this regard to receive funds in FC Designated Bank Account.

FAQ No. 2 : What would be the implication of FC fund received on or after 29th September, 2020 in the existing bank accounts received from a foreign source?

Ans : In our opinion, it not permissible to receive the funds in any other bank other than the notified Branch in SBI, New Delhi. Therefore, unless a notification/circular is issued from FCRA department any funds whether received or disbursed as Inter Charity Grant would be a violation of the amended law.

As per Section-17 as amended by FCRA Amendment Act, 2020 effective from 29th September,2020,

“Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf”

Hence after 29th September,2020, Foreign Fund can be received only through the bank account maintained in the specified branch of SBI.

However, if any amount has been received or disbursed as Inter Charity Grant on 29th September 2020 then such transfer cannot be treated as an wilful violation on the part of such organisations as the communication regarding the effective date of the new law was available in public domain only after the start of banking hours on 29th September 2020.

Finally, it is very likely that the FCRA department shall issue a notification/circular in this regard; it is advisable to wait for such notification/circular.

FAQ No. 3 : Whether NGO can receive FC fund from Indian Organization as a subsequent receipt from 29th September through their existing Designated bank account.

Ans : No, as per Section 7, sub-granting of FC funds has been disallowed and therefore, an Indian Organization should not receive any funds from an Indian organization as a subsequent recipient. However, sub granting of non FC funds is permissible.

FAQ No. 4 : What would be the implication of FC Funds received from an Indian Organization as a subsequent receipt (inter charity donation) on or after 29th September, 2020?

Ans : Same as per Opinion No. 2.

FAQ No. 5 : What would be the implication of regular FC income like (interest, rent, sale proceeds of assets etc.) being received in designated bank account on or after 29th September, 2020.

Ans : It may be noted that, FC income like (interest, rent, sale proceeds of assets etc.) are *deemed foreign contribution* as they are generated locally. However, the amended provision under section 17 does not distinguish between (i) Foreign Contribution received from foreign source and (ii) *deemed foreign contribution* as they are generated locally. Therefore, technically such income is also foreign contribution and our Opinion No. 2 shall apply. It is important that the FCRA department clarifies and allows such receipts in other approved bank accounts.

FAQ No. 6 : Should the NGO write to the bank to hold the payment till FCRA account with SBI is opened? In the case of rent or any income from FCRA Assets, should the NGO write to the tenant or any other vendor to hold their payments till the new SBI bank is notified?

Ans : In our view, you may write to your respective Banks, Vendors or tenant to hold the payments till the MHA notifies further instructions in this regard.

FAQ No. 7 : Whether NGO can utilize FC fund lying with them as on 29th September, 2020.

Ans : Yes, the **utilization** of the FC funds can be done from the existing bank accounts and hence, there is no restriction on the utilization of the funds from the existing bank accounts. However, such funds cannot be sub-granted to another FCRA registered organization in compliance with the amended Section 7 of the Act. In other words, the existing unutilized funds can be directly spent by the NGO on Programme, Admin or Capital expenditures.

FAQ No. 8 : Whether NGO can transfer fund (in terms of the agreement with sub grantee) to other FC registered organization on or after 29th September, 2020.

Ans : No, as per the amended Section 7 of the Act, sub-granting of FC funds has been disallowed. Hence, no sub-granting can be done to another NGO, whether registered or unregistered under FCRA, on or after 29th September, 2020. This provision would supersede the fund commitments made under such Grant agreement by the FCRA registered organization. In other words, sub-granting of FC funds would be disallowed irrespective of the contractual obligations made under the Grant Agreements, unless FCRA department grants any exemptions in this regards through an order under Section 50 of FCRA 2010.

FAQ No. 9 : Whether sub grantee can refund the unutilized balance lying with them to the Foreign Donor on or after 29th September, 2020.

Ans : This issue has to be understood in the light of the technicalities and the contractual term. Normally, refund of a grant received is not treated as a grant; only the net amount is treated as the sub grant from the donor. However,

for all practical purposes organisations treat any refund of grant, also, as utilisation towards charitable purposes both under Income Tax and FCRA Law.

We understand Section 7 of amended FCRA Act prohibits any type of transfer of FC fund to another person and therefore, even the refund of unutilised balance by sub-guarantee to mother NGO in India shall be covered u/s. Sec.7 of Amended FCRA act.

It is recommended that any such return or refund of the unutilised grant amount should be made with approval from FCRA department.

FAQ No. 10 : Whether sub grantee can refund the unutilized balance lying with them to the Indian Donor on or after 29th September,2020

Ans : Same as per Opinion No. 9

FAQ No. 11 : *As per the amended law, the admin expenses are reduced to 20%. Whether such reduced limit of 20% for Administrative expenses shall be calculated for expenses since 29th September or 20% limit shall apply for the entire financial year 2020-21?*

Ans : The limit of 20% of Administrative Expenses should apply on FC utilization w.e.f. 29/09/2020. During FY 2020-21 the organisation can spend up to 50% on administrative Expenses up to 28/09/2020 and from 29/09/2020 the limit of 20% on administrative Expenses shall apply.

FAQ No. 12 : *What precaution an NGO should take to adhere to the reduced limit of 20% for Administrative expenses ?*

Ans : The organisation should review all the budgets for the period from 29/09/2020 to 31/03/2021 and calculate the Administrative Expenses going to be incurred out of the FC fund and initiate necessary action including the

option of charging the excess administrative cost under the local funded program so as to make the total Administrative costs within the limit of 20% under FC fund.

However, in cases where Administrative Expense is projected to be more than the specified limit of 20%, then in such cases, necessary application shall be submitted before the Central Government for prior approval.

FAQ No. 13 : Whether the NGO can transfer funds from existing designated bank account to the utilization bank account for utilization purposes?

Ans : Yes, as per the existing laws, there is no restriction on transfer of funds from existing designated bank accounts to the utilization bank account for utilization purposes.

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