

FCRA FAQs

♦ Legal Series Vol. XVII ♦ Issue 2

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Analysis of the FCRA Law on Administrative Expenses



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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1.01 Introduction:

In this issue, we shall cover issues pertaining to “Administrative Expenses. Section 8 of FCRA, 2010 provides the limit up to which Administrative expenses can be incurred beyond which prior approval from the Central Government is to be taken and Rule 5 of FCRR 2011 defines what can be included under Administrative Expenses.

1.02 What is the administrative expenses as per Section 8 of FCRA, 2010?

FCRA, 2010 provides that administrative expenditure out of FC fund should not exceed 20% [reduced from 50% w.e.f. 29th September 2020 vide FCR (Amendment) Act 2020] of FC fund received during a year. The text of Section 8 of FCR (Amendment) Act 2020, regarding restriction to utilize foreign contribution for administrative purpose is as under:

Restriction to utilize foreign contribution for administrative purpose

- (i) *Every person who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—*
 - (a) *shall utilise such contribution for the purposes for which the contribution has been received:*

Provided *that any foreign contribution or any income arising out of it shall not be used for speculative business;*

Provided *further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section.*
 - (b) *shall not defray as far as possible such sum, not exceeding **twenty** percent of such contribution, received in a financial year, to meet administrative expenses:*
Provided that administrative expenses exceeding twenty per cent. of such contribution may be defrayed with prior approval of the Central Government.

- (ii) *The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated."*

It may be noted that the limit was reduced to 20% by the FCR (Amendment) Act 2020; earlier it was 50%. Section 8 of the FCRA, 2010 provides a cap on administrative expenditure up to 20% of FC fund **received** during the year. The section also provides that the administrative expenditure may exceed this limit of 20% with the prior approval of Central Government.

1.03 What is included in administrative expenses as per Rule 5 of FCRR, 2011?

Rule 5 of FCRR, 2011 defines that administrative expenses include the following:

- (i) Salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;
- (ii) all expenses towards hiring of personnel for the management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
- (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
- (iv) cost of accounting for and administering funds;
- (v) expenses towards running and maintenance of vehicles;
- (vi) cost of writing and filing reports;
- (vii) legal and professional charges; and
- (viii) rent of premises, repairs to premises and expenses on other utilities;

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare-oriented organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

1.04 How to meaningfully interpret administrative expenses as per Rule 5 of FCRR, 2011?

Rule 5 of FCRA 2010 provides what shall constitute administrative expenditure and further provides a list of expenditure which shall be treated as administrative in nature.

It can be seen that the definition of administrative expenses includes various cost such as salaries, rent, vehicles etc. which are also incurred for programme purposes. Therefore, the scope of the Rule is more important than the traditional understanding of administrative expenditure. In other words, some expenditure may have been incurred specifically for the programmes but for the purpose of FCRA 2010 they shall be treated as administrative expenditure, as per the list of expenditures defined in the Rule above.

The administrative expenditure shall briefly consist of :

- Remuneration and other expenditure to Board Members and Trustees.
- Remuneration and other expenditure to persons managing activity.
- Expenses at the office of the NGO.
- Cost of accounting and administration.
- Expenses towards running and maintenance of vehicle.
- Cost of writing and filing reports.
- Legal and professional charges.
- Rent and repairs to premises.

For example, the salary of the *Programme Director* shall be treated as administrative expenditure, as a Program Director is a person responsible for the management of activities. The Rule 5(ii) is reproduced here:

“all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;”

In the light of the above Rule all the senior program management personnel are treated as administrative cost. This above rule has to be read in context of the following exclusions:

“Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

*Provided further that the expenses incurred directly in furtherance of the stated objectives of **the welfare oriented organisation** shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.”*

Now one has to understand that all salaries are first treated as administrative expenses and subsequently the above two exclusions are provided.

That means a research organisation can exclude “salaries or remuneration of personnel engaged in training or for collection or analysis of field data”.

Other organisations can exclude:

“expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation such as salaries to doctors of hospital, salaries to teachers of school etc.”

This exclusion is subject to interpretation but seems to imply that only salaries of those persons who are technically qualified for programs such as *Doctors, Nurses, Teachers, Health Workers, experts in their respective fields such as environment,*

livelihood etc. In other words, the exclusions are too narrow and confusing and it seems that most of the salaries and other expenditure shall be covered under the category of “administrative expenditure”. Further, salaries of all such staff who are involved directly in implementation of programs at the grassroots level shall also not be treated as administrative expenditure.

From the above exclusion, the following expenditures may be carefully examined whether they will fall under Administrative category. All kinds of vehicle expenditure have been considered as administrative in nature. However, the last proviso provides that expenses for furtherance of activities shall be excluded. Therefore, all direct programme related vehicle expenses and other expenditures are excluded from calculation of administrative expenses. All vehicle expenditure, other than those which could be established as ‘directly incurred on activities’, shall be treated as administrative expenses.

1.05 What is the meaning of “Welfare-oriented Organization” for the purpose of exclusion?

The word “Welfare-oriented Organization” has not been defined under FCRA.

Section 2(2) of the FCRA Act, 2010 provides –

(2) *“Words and expressions used herein and not defined in this Act but defined in the Representation of the People Act, 1950 (43 of 1950) or the Representation of the People Act, 1951 (43 of 1951) or the Foreign Exchange Management Act, 1999 (42 of 1999) shall have the meanings respectively assigned to them in those Acts.”*

However the word “Welfare-oriented Organization” has not been defined in either of the above Act.

We understand that “Welfare-oriented Organization” shall deemed to include an organization which directly works with the beneficiaries for protection and promotion of their well- being through various economic health, education and other programs

1.06 What are the restrictions to utilise foreign contribution for administrative purpose under FCRA, 2010?

Section 8 of FCRA Act, 2010 as amended by The FCRA Amendment act 2020 prescribes that the administrative expenditure in any year should not exceed 20% of the total FC funds received in that year.

However, any person may spend more than 20% on administrative expenses with prior approval of Central government.

1.07 Whether administrative expenses include capital expenses?

The Administrative Expenses, as per Rule-5 of FCRR, 2011 **does not include** Capital Expenses.

It may be noted that Form FC-4 bifurcates total FC Utilization as under:

- (a) Details of utilization of Foreign Contribution:
 - i) Total utilization for projects as per the aims and objectives of the association (Rs.)
 - ii) Total Administrative expenses as provided in Rule 5 of the Foreign Contribution (Regulations) Rules, 2011 (Rs.)
- (b) Total purchase of fresh assets (Rs.)
- (c) FC transferred to other associations.

The above reporting requirements also consider Capital expenditure and Administrative Expenditure separately, for the purposes of FCRA 2010.

However, such capital expenditure should be towards the advancement of charitable objectives.

1.08 What are the specific exclusions for calculating admin expense as per Rule 5?

Rule 5 of FCRR, 2011 provides for the following specific exclusions –

- (i) expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses;
- (ii) expenses incurred directly in furtherance of the stated objectives of the welfare-oriented organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

1.09 Can administrative expenses exceed 20% limit?

The Administrative Expenses can exceed the limit of 20% with prior approval of Central Government.

1.10 How the 20% limit should be computed in the light of the word “received” used in the section?

As discussed above section 8(1) of the FCRA 2010 states that the administrative expenditure should not exceed 20% of the foreign contribution received during the financial year. However, the literal interpretation of the above provision will lead to absurdity and render the section otiose and inoperative in various circumstances. For example, an organisation receives Rs. 5 lakh foreign contribution in the financial year 2021-22 but does not utilise the amount in the same financial year. In the subsequent financial year 2022-23, it does not receive any foreign contribution but utilises Rs. 5 lakh for charitable purposes. In this case, on a literal interpretation of section 8(1) of the FCRA 2010 the organisation will not be entitled to any administrative expenditure in the FY 2022-23, which could not have been the intent of the statute.

On the contrary if the organisation follows the principle of confining the amount of administrative expenses to 20% of the amount utilised then it would be complying with the 20% limit, both with regard to receipt as well as utilisation. For example, an organisation receives Rs. 5 lakh foreign contribution the financial year 2021-22 but equally utilises the amount in the next 5 financial years including the financial year 2021-22. In this case the organisation can claim Rs. 20,000/- as administrative expenditure in each of the 5 financial years of utilisation. Further, the total administrative expenditure at the end of the 5 year would not be more than 20% of the amount of contribution received in financial year 2021-22.

In our opinion **the 20% limit administrative expenditure should be calculated based on the amount utilised during the year.** This interpretation is based on the various judgements of Supreme Court and High Courts wherein it has been ruled that the statutes should be interpreted in a sensible manner if there is a drafting defect or if the literal interpretation renders it otiose or inoperative.

The Supreme Court of India in the case of *Shamarao V. Parulekar vs The District Magistrate, Thana, ...* on 26 May, 1952 AIR 324, 1952 SCR 683 held that if the grammatical or literal meaning of a statute leads to absurdity and inconsistency, then the interpretation which through common sense reflects the intent of the statute should be adopted. The relevant observation of the Apex Court is as under:

"It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

The Andhra High Court in the case of *N. Sarada Mani vs G. Alexander And Anr.* on 21 October, 1997, AIR 1998 AP 157, 1997 (6) ALT 270 held that if the literal or

grammatical interpretation of the statute makes it otiose or inoperative, then a liberal construction should be adopted in order to make the provision effective and operative. The court further object that if there is an defect in drafting of the statute then the possible intention of the legislature should be adopted.

1.11 How to calculate and apply for approval if admin expenditure exceeds 20%?

Section 8 of the FCRA, 2010 provides a cap on administrative expenditure of 20% on total FC fund received during the year. The section also provides the administrative expenditure may exceed this limit of 20% with the prior approval of Central Government.

However, the FCRR 2011 has so far not prescribed any process for seeking approval for increase in administrative expenditure beyond 20%, and therefore it appears that request for prior approval may be sent by email communication.

How to calculate : The limit of 20% of Administrative Expenditure is on the basis of Foreign Contribution **received** during the year instead of Foreign Contribution utilized and therefore it may have its impact when Foreign Contribution is received in advance in one year and expenditure is incurred in the subsequent year. In other words, the law states that 20% of the FC received during the year shall be allowed as administrative expenditure. Ideally it should have been 20% of the FC utilized during the year. Further, no distinction has been made for FC funds received specifically as corpus donation or for creation of specific assets. Such anomalies compound the problem of determination of administrative expenditure.

1.12 What are the consequences of incurring administrative expenses in excess of specified limit of 20% without any prior approval?

Administrative expenses in excess of 20% without prior approval of central government shall constitute non-compliance under FCR Act, 2010. In such cases, the person may have to seek for compounding of this non-compliances. As per the Notification dated: 05/06/2018 providing for compounding fees, it is provided that for spending more

than 20% of the Administrative Expenses the compounding fees shall be Rs.1 lacs or 5% of excess expense on Administrative expenses whichever is higher.

1.13 Can the violation pertaining to administrative expenses be compounded every year?

It may be noted that under section 41(2) an offence once compounded cannot be compounded again within a period of 3 years i.e. second or subsequent offences cannot be compounded within a block of 3 years. In other words, a violation pertaining to administrative expenditure cannot be compounded more than once in block of three years. The Act does not specifically provide for the penalty for second or third offence pertaining to administrative expenses, but it will be treated as a violation under the Act which may lead to non-renewal or cancellation of the certificate of registration.

It may be noted that under section 41(2) an offence once compounded cannot be compounded again within a period of 3 years. i.e. second or subsequent offences cannot be compounded within a block of 3 years. Section 41(2) provides that nothing in sub-section 41(1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

1.14 Whether Administrative Expenditures include grant made to other registered organisation?

Administrative Expenditure does not include grant made to other FC registered organization even if there are approved budget for Administrative Expenditure for which grant is being made to other FC registered organization. Administrative Expenditure incurred out of the grant amount shall be reported by the donee organisation under FCRA. However, the FCR (Amendment) Act, 2020 has also prohibited inter charity grant by amending section 7 and therefore, this issue becomes academic in nature.

1.15 Is separate accounting necessary for administrative expenses as per FCRA?

There is no specific requirement for separate accounting of administrative expenses. The requirement of separate books of accounts is for FC fund received and utilised. However, the organisation should be in a position to clearly segregate the expenditure, which is administrative in nature from books of account maintained by them.

1.16 Is administrative expenditure required to be reported to FCRA Authorities?

Under the current scheme of law, the administrative expenditure is required to be reported to the FCRA authorities under clause 3(ii) of Form FC 4.

In addition to the above Form FC-4 also requires a declaration in Yes/No as to whether “the association has made expenditure on Administrative expenses exceeding 20% of the foreign contribution received”

1.17 Whether administrative expense as per FCRA Financial Statement (prepared as per donor’s approved budget head) can be different than the administrative expense reported under FC-4?

For the purpose of FCRA, Administrative Expense needs to be calculated only as per Rule 5 of FCRR, 2011 which may be different from administrative cost as per donor approved budget. Normally, FC financial statement is prepared following the approved heads by Donors and therefore administrative expense as per FCRA Financial Statement can be different than the administrative expense reported under FC-4. However, in such cases, it is advisable to mention the details of administrative expense as per rule 5 of FCRR by way of notes to account forming part of FC Audited financial statement.

1.18 Can salary of one staff be proportionately divided under both programme and administrative expenses if actually the person gives his time under both

programme and admin? Further, what documents should be kept to prove that the person has actually involved in the programme activities?

There is no specific restriction in allocating one person salary in between programme and administrative expenses. However, in such cases a working time sheet to be maintained and this should be the base document for allocating the salaries in between programme an administrative. It is also to be noted that the job profile of such person should include dual role of programme an administrative.

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