

# VESTING OF PROPERTY UNDER FCRA

◆ Legal Series Vol. XVII ◆ Issue 8

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**Standards & Norms**

Resource support on NGO Governance, Accounting and Regulations



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## WHAT ARE THE PROVISIONS REGARDING VESTING OF PROPERTY UNDER FCRA?

**1.01** The FCRA Act under section 15 read with Rule 12(6A) and 15 provides that the properties shall vest in the prescribed authority in the event of cancellation, surrender or non-renewal. The text of section 15 is as under

*“15. Management of foreign contribution of person whose certificate has been cancelled [or surrendered].*

*(1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 [or surrendered under section 14A] shall vest in such authority as may be prescribed.<sup>41</sup>*

*(2) The authority referred to in sub-section (1) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct, and such authority may utilize the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.*

*(3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub-section if such person is subsequently registered under this Act.”*

The text of Rule 12(6A) is as under:

*“(6A) The amount of foreign contribution lying unutilized in the FCRA Account and utilization account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government”*

The text of Rule 15 is as under:

*“15. If the certificate of registration of a person who has opened an FCRA Account under section 17 is cancelled, the amount of foreign contribution lying unutilized in that Account shall vest with the prescribed authority under the Act.”*

**1.02** Rule 12(6A) of FCRR 2011 provides that the un-utilised foreign contribution and asset created out of FC shall vest in the prescribed authority in the event of non-renewal.

The text of Rule 12(6A) is as under:

*“(6A) The amount of foreign contribution lying unutilized in the FCRA Account and utilization account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government”*

### **1.03 Analysis of above Sections and Rules**

From the reading of Section 15, Rule 15 & 12(6A) it is clear that :

- Section 15 of FCRA, 2010 deals with the management of foreign contribution of the person whose certificate has been cancelled/surrendered, whereas Rule 15 of FCRR, 2011 deals only with cancellation and it provides that the bank balance in FCRA a/c u/s. 17 shall vest with the prescribed authority under the act .
- The vesting of property on non renewal is only guided by Rule 12(6A) which provides that the foreign contributions lying unutilized in the FCRA A/c and assets, if any created out of foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.

## WHO IS THE PRESCRIBED AUTHORITY IN WHICH THE PROPERTY SHALL BE VESTED?

**2.01** Prescribed Authority shall be the Additional Chief Secretary or Principal Secretary (Home) of the concerned State Government or Union Territory (where the assets of the person whose registration has been cancelled under section 14 of the said Act are physically located). The Notification No. II/21022/23(43)/2018-FCRA-III; S.O. 5650(E), dated 5-Nov-2018) is reproduced as under:

*“In exercise of the power conferred by sub-section (1) of section 15 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) (herein after referred to as the said Act), the Central Government hereby prescribes the Additional Chief Secretary or Principal Secretary (Home) of the concerned State Government or Union Territory (where the assets of the person whose registration has been cancelled under section 14 of the said Act are physically located), as competent authority for the purposes of section 15 of the said Act. No. II/21022/23(43)/2018-FCRA-III; S.O. 5650(E), dated 5-Nov-2018)”*

**2.02** The above notification notifies the prescribed authority only for the person whose registration has been cancelled u/s. 14. Hence technically , this notification does not include the vesting of property on surrender as per Section 14A or non-renewal as per Rule 12(6A). We understand the matter should be clarified by the Ministry.

## OVERVIEW ON VESTING AND MANAGEMENT OF ASSETS AFTER CANCELLATION/SURRENDER OF REGISTRATION

**3.01** Under section 15 of the FCRA 2011, it is provided that the custody of foreign contribution or assets of any organisation or person whose certificate has been cancelled shall vest in such authority as may be prescribed. In other words, once the registration certificate is cancelled or surrendered, the Central Government reserves

the right to determine the authority and way the foreign contribution and foreign assets shall be kept and managed. The text of section 15(1) is as under:

*“15. (1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 [or surrendered under section 14A] shall vest in such authority as may be prescribed.*

*(2) The authority referred to in sub-section (1) may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.*

*(3) The authority referred to in sub-section (1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said subsection if such person is subsequently registered under this Act.”*

**3.02** Further, as per Rule 15 of FCRR 2011 the bank balance in FCRA Accounts as referred in Rule 17 of FCRA 2010 is cancelled, the amount of foreign contribution lying unutilised in that account shall vest with the prescribed authority under the act. The text of the Rule is reproduced as under:

*“15. If the certificate of registration of a person who has opened an FCRA Account under section 17 is cancelled, the amount of foreign contribution lying unutilized in that Account shall vest with the prescribed authority under the Act.”*

Even though, explicitly Rule 15 (as above) does not say about surrender of Registration, however, by implication of amendment to section 15(1) and insertion of 14A, it can be concluded that in case of surrender, funds and assets will vest with such authority

as prescribed the Central Government.

**3.03** In the event of cancellation of the FCRA registration, the Central Government may exercise that the following powers:

- The authority considers *necessary and in public interest, manage the activities of the person for such period and in such manner, as the Central Government may direct*
- The authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity
- The authority shall return the foreign contribution and the assets vested upon it to the person referred to in the said subsection if such person is subsequently registered under this Act.

## **OVERVIEW ON VESTING AND MANAGEMENT OF ASSETS AFTER REFUSAL OF RENEWAL OF REGISTRATION**

**4.01** Rule 12(6A) deals with the vesting of amount unutilized under FCRA account of a person in the case of non renewal of registration. This will vest with the prescribed authority under the act until the certificate is renewed. But how the property shall be managed in the interim period is not prescribed in the Rule.

## **CAN AN ORGANIZATION SHOW THE FCRA FIXED ASSETS (IMMOVABLE & MOVABLE) IN THE BALANCE SHEET AFTER FCRA CANCELLATION?**

**5.01** Yes, the organisation whose FCRA registration has been cancelled should continue to show the FC assets in its balance sheet. The vesting of property in common law implies that the custodian shall manage and protect the property. The title normally does not go to the prescribed authority. Further, Section 15 of FCRA also begins with the words “**Management of Foreign Contribution**” which implies that the vesting will be for management of FC contribution lying in the shape of assets including bank balances. Under such circumstances the FC asset should continue in the balance sheet.

**5.02** The Supreme Court of India and other High Courts on numerous occasions has explained the meaning and implication of the term vesting. It has been consistently held that the mere use of the word ‘vest’ in a statute does not confer absolute title over the subject matter. The consensus view of the Apex and other courts is that the word vest in common parlance would not result in transfer of title and the implication of vesting will depend on the language of the statute. The extract from some of the landmark cases is discussed below.

**5.03** The Supreme Court in the recent case of *Shakti Yezdani and Ors. Vs. Jayanand Jayant Salgaonkar and Ors.* 2023 INSC 1076 held that mere use of the word ‘vest’ in a statute does not confer absolute title over the subject matter. It further held that the term ‘vest’ should be interpreted logically under each applicable statute. In this case the Apex Court quoted the decision of Bombay High Court which is reproduced as under:

*“33. In Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corporation, MANU/SC/0517/2001: (2001) 8 SCC 143 it was observed that the term ‘vesting’ is capable of bearing the meaning of limited vesting, in title as well as possession, and is referable to the context and situation within which it operates. The above would suggest that the word ‘vest’ has variable meaning and the mere use of the word ‘vest’ in a statute does not confer absolute title over the subject matter.*

*34. Further, the term ‘vesting’ is also used in other contexts such as the Indian Succession Act, 1925 wherein Section 211 vests the deceased’s estate in the administrator or executor, although neither become the owner of the said property but merely hold the same until it is distributed among the lawful successor(s). The term ‘vests’ in Section 109A of the Companies Act 1956 is therefore required to be interpreted in these logical lines.”*

**5.04** The meaning of expression ‘vesting’ has also been dealt with by Hon’ble Supreme Court in the case of *State of Uttar Pradesh v. Hari Ram* with analogous cases reported in MANU/SC/0226/2013MANU/SC/0226/2013: (2013) 4 SCC 280 paragraphs 25 to 28, are quoted hereunder:

*“25. Vest/vested, therefore, may or may not include “transfer of possession” the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions.*

*26. What is deemed “vesting absolutely” is that “what is deemed to have acquired”. In our view, there must be express words of utmost clarity to persuade a court to hold that the legislature intended to divest possession.....”*

**5.05** The Supreme Court in the case of *Municipal Commissioner of Dum Dum Municipality and Ors. Vs. Indian Tourism Development Corporation and Ors.* 1995 INSC 433 held that the nature and character of vesting must be ascertained with reference to the relevant provisions of the enactment. The relevant extract is as under:

*“22. It is true that the expressions “vest” and “vesting” have different shades of meaning as pointed out by this Court in Fruit and Vegetable Merchants Union v. Delhi Improvement Trust MANU/SC/0082/1956MANU/SC/0082/1956: 1957 S.C.R.1 and that the nature and character of vesting has to be ascertained with reference to the relevant provisions of the enactment.”*

In the light of the above judicial precedence, it is very clear that ‘vesting’ does not imply transfer of property or title unless the act specifically provides.

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