

# INTERface

Vol. XIV

Issue 1

April - September 2014

## *Special Focus*



### *Highlights*

- Procedure for Change of FCRA bank account
- Procedure for Change of Address, Nature or Objectives under FCRA
- Budget 2014- Carrot and Stick for NGOs and Trusts
- Overview of CSR Law in India
- Administrative Expenditure
- Board Committee- Program Committee
- and many more....



*for private circulation only*



## *Between Us ....*

### ***The Art of Giving***

*Once Arjuna asked Krishna - "Why Yudhishtir is called Dharmaraj (Religious king) and Karna Daanveer (Donor king) even though both never refused alms to anyone?". Krishna says "Wait for some time and I will let you know".*

*After a month, it was raining heavily in the whole kingdom when both Krishna and Arjuna, in disguise of Brahmins (wise men/priests), first went to Yudhishtir saying they are doing a Yajna (Special ritual) and need 100Kg of sandalwood. Yudhishtir immediately sent his servants across the kingdom, but could not arrange dry Sandalwood as all the sandalwood was wet. So he apologized saying it is difficult to find dry Sandal wood anywhere. Let me know if I can arrange anything else for you. Both Brahmins said "no thanks" and left the place.*

*Then they went to Karna and made the same demand. Karna thought for a while and realized that it is raining heavily outside; it is least likely to get dry Sandal wood anywhere. He took out his bow and arrow and cut all windows and doors of his palace and gave them for the Brahmins.*

*Later Krishna told Arjuna, "it is not that Yudhishtir would have refused if we would have asked for wood from his doors and windows". But this idea didn't strike Yudhishtir in the first place. Yudhishtir donates because it is written in Dharma (religion), Karna donates because he likes to do it.*

*I cannot vouch for the authenticity of this story but the message is very subtle. It is not enough to put superficial effort to show others that we are charitable and philanthropic which make us feel good about our effort. We have to put our heart and soul into it.*



---



# CONTENTS

The opinions  
expressed by the  
authors are not  
necessarily that of  
FMSE.

## **Legal**

Practical Issues in Renewal of FC Registration Including  
Important Notes for Filing of Form FC-5 05

Transfer of Funds to Organisations Not Registered Under FCRA 13

Transfer of Funds to Other FC Registered Organisations 16

Procedure for Change of FCRA Bank Account 20

Procedure for Change of Address, Nature or Objectives of FCRA 27

Budget 2014 - Carrot and Sticks for NGOs and Trust 37

## **CSR**

Overview of CSR Laws in India 43

## **Finance**

Administrative Expenditure 52

## **Governance**

Board Committee - Programme Committee 58

## **Others**

Workshop on Internal Controls for North East India Partners 61

The Sixth Regional NAN Convention 62

Workshop On Governance 63

**Editorial Team:** Sanjay Patra & Sandeep Sharma  
Published by Sanjay Patra on behalf of  
**Financial Management Service Foundation**  
"ACCOUNTABILITY HOUSE", A-5, Sector-26, NOIDA 201301  
Tel: 00-91-120-4773200, Fax: 00-91-120-4773299  
E-mail: fmsf@fmsfindia.org; Web-site: www.fmsfindia.org



# Legal Section

## **PRACTICAL ISSUES IN RENEWAL OF FC REGISTRATION INCLUDING IMPORTANT NOTES FOR FILING OF FORM FC-5**

- Dr. Manoj Fogla, FCA & Mr. Suresh Kejriwal

### **1) FCRA REGISTRATION & RENEWAL**

- 1.1 The new FCRA 2010 has limited the validity of the registration certificate for a period of 5 years. It may be noted that in the old law FCRA registration was virtually permanent in nature unless it was revoked. FCRA 2010 provides for renewal of registration of organisations after every 5 years.

### **2) RENEWAL FOR PRIOR PERMISSION**

- 2.1 The law pertaining to renewal applies only to those organisations which have regular registration under FCRA. All those organisations which are working on the basis of a prior permission are not subject to the provisions of renewal. No renewal is required for organisations having prior permission as the permission is for specific amount and period.

### **3) DIFFERENT TIME LIMIT FOR APPLICATION FOR RENEWAL FOR ORGANISATIONS IMPLEMENTING MULTI-YEAR PROJECTS**

- 3.1 Rule 12(3) provides that a person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration. In other words, those organisations which are having incomplete projects shall have to apply for renewal one year prior to the date of expiry of the registration. For example, the certificate of registration granted on the 1st May, 2011 shall be valid till the 30th April, 2016. A request for renewal of the registration certificate shall reach the Ministry of Home Affairs, accompanied by the requisite fee.
  - a) in case of an organisation which have multi-year projects, on & before 30<sup>th</sup> April, 2015 and

b) in any other cases, on or before 31st October 2014

- 3.2 ***Contradiction between the Act & the Rules:*** Section 16 of the FCRA, 2010 provides that all organisations should apply for renewal within Six months from the expiry of the period of the certificate. The Act does not make any distinction between organisations with multi-year project and other organisations. In fact the Act prescribes that the application can be made anytime during the last 6 months. However, the Rule 12 of FCRR, 2011 provides two time limits as discussed above. In this context it is advisable to file the renewal application as per the Rules, however, even if, the application is filed during the last six months, it would not tantamount to violation of FCRA, 2010.

#### **4) IMPACT OF REJECTION OF RENEWAL APPLICATION**

- 4.1 Once the renewal application is rejected the organisation ceases to remain a FC registered organisation. The following could be the possible impact of such rejection:
- a) The organisation cannot receive any fresh Foreign Contribution.
  - b) If the organisation wants to receive fresh Foreign Contribution than it should it may apply for prior permission or registration again.
  - c) Rejection of renewal would not imply that the organisation cannot use the available FC funds and

assets towards charitable or religious purposes. However, the organisation may receive directions from the FCRA department for use of FCRA funds and FC assets.

#### **5) APPEAL OR REVIEW OF REJECTION OF RENEWAL APPLICATION**

- 5.1 Once the renewal application is rejected the organisation ceases to remain a FC registered organisation. The order for rejection of renewal passed u/s. 16 is an order which can be subject to review either by the Home Ministry on its own motion or an application for revision made by the NPO in terms of section 32 of FCRA, 2010.
- 5.2 Under FCRA, 2010 an organisation whose registration has not been renewed under section 16 can, apart from the appellate remedy, also apply for a review of them rejection of renewal order. It is advisable to file a formal review petition U/s. 32(1) of the FCRA, 2010 for restoration of the registration. A review petition under section 32 of FCRA is made in plain paper as per Rule 20 with a fee of Rs. 1000/- payable in favour of 'Pay and Accounts Officer, Ministry of Home Affairs', payable at New Delhi. Such petition should be accompanied by the evidence of FC return filed for the last 5 years.
- 5.3 The text of section 32 is provided as under:  
Revision of orders by Central Government



32. (1) The Central Government, may, either of its own motion or on an application for revision by the person registered under this Act, call for and examine the record of any proceeding under this Act in which any such order has been passed by it and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as it thinks fit.

(2) The Central Government shall not of its own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the person referred to in sub-section (1), the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

**Provided** that the Central Government may, if it is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Central Government shall not revise any order where an appeal against the order lies but has not been made and the time within which such appeal may be made has not expired or such person has not waived his right of appeal or an appeal has been filed under this Act.

(5) Every application by such person for revision under this section shall be accompanied by such fee, as may be prescribed.

Explanation- An order by the Central Government declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to such person.

5.4 AA review petition has to be made within a period of one year. It may be noted that an appeal and review petition cannot be made simultaneously; the organisation has to waive its right to appeal before making a review petition. Though, in our opinion, the organisation shall be entitled to file a writ petition before the High Court after rejection of review petition.

## 6) CHANGE IN NAME, OBJECTIVES & ADDRESS OF NPO

6.1 Name, Address, Aims & Objectives and Nature of the NPO may have changed subsequent to the date of registration. Though FCRA, 2010 or Rules does not provide any specific process for prior approval/intimation for such changes. However, there is an undertaking which was given by the NPO at the time of submitting application for registration/ prior permission and as per this undertaking any such changes have to be intimated to the FCRA department within 30 days. Therefore, such undertaking shall be the guiding document for intimation or prior approval of such change.

6.2 Form FC-3 (the form for application for registration) and Form FC 4 (the form for application for prior

permission) require an undertaking from the Chief Functionary of the organisation which states that any change in the address, nature or objectives of the organisation shall be informed to the Ministry within 30 days. The relevant text of the undertaking is as follows:

*"To inform the Central Government (Ministry of Home Affairs) within thirty days, if any change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects together with documentary evidence effecting the change."*

- 6.3 In the light of aforesaid, any change in name, aims or registered address of the organisation should be informed to the Ministry of Home Affairs within thirty days.

***Therefore, if there is a change with regard to Name, Address, Aims & Objectives and Nature of the NPO which has not being intimated, then it is advisable to intimate such changes prior to the filing of the Renewal Application.***

## **7) CHANGE IN GOVERNING BODY OF NPO**

- 7.1 The Governing Body of the NPO may have changed subsequent to the date of registration. Though FCRA, 2010 or Rules does not provide any specific process for prior approval for such changes. However, there is an undertaking which was given by the NPO at the time of submitting

application for registration/prior permission and as per this undertaking any such changes have to be made with prior approval from the FCRA department. Therefore, such undertaking shall be the guiding document for intimation or prior approval of such change.

- 7.2 A declaration and undertaking is given along with Form FC-3 at the time of making application for registration and Form FC-4 at the time of making application for prior permission. The relevant extract of the undertaking under form FC-3/FC-4 is as under:  
(ii) to obtain prior permission for change of Members of the Executive Committee/Governing Council, if, at any point of time, such change causes replacement of 50% or more of such Members as were mentioned in the application no. .... dated ..... for registration under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and undertake further not to accept any foreign contribution except with prior permission till the permission to replace the office-bearer(s) has been granted.

- 7.3 It can be seen that the undertaking provides for seeking prior permission before there is a change in more than 50% of the board members which were mentioned in the application for registration. For example, if there were seven board members at the time of making application for registration then any change in the board in excess of three members shall be made with prior permission. In other words, if the

fourth member out of these seven members wants to resign or retire it should be with prior permission.

**7.4 NPOs registered prior to 27th December 1996:** The undertaking regarding change of more than 50% board member was there in the old form FC-8 also. In fact this undertaking became a part of the application form for registration with effect from 27.12.1996 when the erstwhile form FC-8 was amended. In other words, all organisations who have applied for FCRA registration after 27th December 1996 have given the undertaking regarding prior approval for change in more than 50% of the board members. Therefore, technically all organisations who have applied after 27th December 1996 are bound by this law. The organisations who have applied and obtained registration before 27.12.1996 are not subject to this provision.

**7.5 *Therefore, if there is a change the Governing Body of the NPO which has not approved or being intimated, then it is advisable to intimate such changes prior to the filing of the Renewal Application with a prayer for condonation of delay, though the Act and Rules are silent about any such delayed intimation.***

## **8) CLAUSE WISE COMMENT FOR FILING OF FORM FC 5**

**8.1** Form FC 5 is required to be filed for renewal. Form FC 5 requires information under 10 different heads,

brief notes have been provided with regard to the filing under some of such heads as under :

1. Name of the Association and its complete postal address.  
(The present name and address should be compared with the registration letter and the letter of intimation to the ministry if there is any change)
2. Nature of Association:  
(The present nature should be compared with the registration letter and the letter of intimation to the ministry if there is any change)
3. Registration number:
  - (a) Place of registration:  
***(Should be provided as per FC Registration Letter)***
  - (b) Date of registration:  
***(Should be provided as per FC Registration Letter)***
  - (c) Date of expiry: (30th April 2016)
  - (d) PAN No., if any  
(certified copy of the registration certificate to be attached)  
***(Can be certified by the Organisation)***
4. Foreign Contribution received, if any, since its registration with yearly breakup:
  - i) Refer your FC 3 / FC 6 Return***
  - ii) It will also include in-kind contribution***
  - iii) Only the consolidated amount of total FC received should be provided, year-wise.***
  - iv) If old information, say, more than 10 year old is not***

*available, only the available information should be provided. It may be noted under Rule 17(7) an organisation is required to preserve information for 6 years only.*

5. Details of utilisation of funds:
  - i) Refer your FC3/FC6 Return*
  - ii) It will also include in-kind contribution*
6. Whether various provisions as stipulated in the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) adhered to: **YES**
7. Reasons for seeking renewal of certificate:

*For advancement of objectives and continue the existing projects and initiatives.*

8. Details of Fee: **DD of Rs. 500 to be enclosed in favour of "Pay and Accounts Officer, Ministry of Home Affairs" payable at Delhi.**
9. Whether the organisation/ Association has been blacklisted/ debarred from receiving any aid and/ or assistance by any other Ministry/ Department of Central and/or State Government or Statutory Authority. If so, the details thereof: **No**
10. Any other information which the Association may like to furnish: **No**

## Annexure 1

### FORM FC-5

#### FORM FC-5 [See rule 12(2)]

*The Secretary to the Government of India,  
Ministry of Home Affairs,  
Foreigners Division (FCRA Wing),  
NDCC-II Building, 1st Floor, 'A' Wing  
Jai Singh Road, New Delhi - 110001.*

**Subject:** Application for seeking renewal of 'registration certificate' under section 16(1) of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010). (Application for renewal to be submitted six months before the date of expiry of the certificate of registration):

Dear Sir,

I ..... , on behalf of the Association named hereafter apply for seeking renewal of 'registration certificate', as per details given below:

1.Name of the Association and its complete postal address.

(a) Name:

(b) Address:

Town/City:

District:

State:

Pin Code:

(c) Telephone No. of the Association (with STD code):

(d) Telephone No. (with STD code)/Mobile No. of the Chief Functionary:

(e) E-Mail address:

(f) Details of names and addresses of the members of the Executive Committee/ Governing Council etc. of the Association, starting with the Chief Functionary, in the following table:

Sl. no	Name	Name of father/ husband	Nationality	Occupation with address of place of work (at the time of filling the application)	Post held in association	Relationship with other Member(s) of the Executive Council/ Governing body	Address for correspondence

2. Nature of Association:

3. Registration number:

(a) Place of registration:

(b) Date of registration:

(c) Date of expiry:

(d) PAN No., if any

(certified copy of the registration certificate to be attached).

4. Foreign Contribution received, if any,  
since its registration with yearly breakup:

5. Details of utilisation of funds:

6. Whether various provisions as stipulated in the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) adhered to:

7. Reasons for seeking renewal of certificate:

8. Details of Fee: An amount of ' ..... (Rupees in words ..... ) towards renewal of registration is remitted by way of demand draft/bankers cheque drawn in favour of "Pay" and Accounts Officer, Ministry of Home Affairs viz. DD/Bankers Cheque No. .... dated..... Name of the Bank.....

9. Whether the organisation/Association has been blacklisted/debarred from receiving any aid and/or assistance by any other Ministry/Department of Central and/or State Government or Statutory Authority. If so, the details thereof:

10. Any other information which the Association may like to furnish:

I hereby declare that the information furnished above is true and correct.

Signature of the Chief Functionary  
[Name of the Chief Functionary *in block letters*]

(Seal of the Association)

# TRANSFER OF FUNDS TO ORGANISATIONS NOT REGISTERED UNDER FCRA

- Dr. Manoj Fogla, FCA

## 1) INTRODUCTION

**1.1** As per the provisions of Foreign Contribution Regulation Act, (FCRA) 2010 an NPO can receive foreign contribution only if it has prior permission or registration under FCRA. In this context it becomes important to understand the law pertaining to any subsequent contribution made by such NPOs. Under FCRA an FC registered NPO can provide further contribution only to another organisation which is registered or has prior permission under FCRA.

**1.2** However, an NPO under specific circumstances is also allowed to transfer funds to organisations which are not registered under FCRA. In this issue we shall discuss the provisions pertaining to transfer of foreign contribution to organisations which are not registered or have prior permission under FCRA.

## 2) IS TRANSFER OF FUNDS TO OTHER UNREGISTERED ORGANISATIONS PERMISSIBLE

**2.1** Yes, it is permissible to transfer funds to other unregistered organisations which do not have registration/prior permission under FCRA. However, such transfer can be made only with prior permission in compliance of Section 7 and Rule 24. A snapshot of such compliances is provided at the end of this issue. The provisions of Section 7 and Rule 24 are as under:

### **7. Prohibition to transfer foreign contribution to other person.**

“No person who –

- a) is registered and granted a certificate or has obtained prior permission under this Act; and
- b) receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.”

**2.2** Rule 24 of FCRR, 2011\* prescribes the procedure for transferring foreign contribution as under:

**“Rule 24:- Procedure for transferring foreign contribution to other registered or unregistered persons:-**

1. A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in Form FC-10. <http://mha.nic.in/fcra/forms/fc-10.pdf>
2. Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that
  - a. the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;
  - b. the transferor shall not transfer any amount of

foreign contribution until the Central Government approves such transfer.

3. A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.
4. Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient.”

**3) PROCEDURE TO BE FOLLOWED FOR TRANSFER OF FUNDS TO UNREGISTERED ORGANISATIONS**

- 3.1** The following procedure is to be followed:
- The donor organisation shall apply in Form 10 to the Central Government. The form is available at <http://mha.nic.in/fcra/forms/fc-10.pdf>
  - Under this provision, a maximum amount of 10% of the total foreign contribution received by the donor organisation can be given to unregistered organizations with prior approval.
  - Every application made under sub-rule (1) shall be accompanied by a



declaration to the effect that

- a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;
  - b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.
- Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient. It may be

noted that prior to the amendment of the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012], there was a requirement of approval from the District Magistrate for filing of Form FC 10. After the amendment of the Rule 24, the approval of District Magistrate is not necessary.

It may be noted that prior to the amendment of the Foreign Contribution (Regulation) Amendment Rules, 2012 [G.S.R. 292 (E) dated 12th April, 2012], there was a requirement of approval from the District Magistrate for filing of Form FC 10. After the amendment of the Rule 24, the approval of District Magistrate is not necessary.

\*\*\*\*\*

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)*

# TRANSFER OF FUNDS TO OTHER FC REGISTERED ORGANISATIONS

- Dr. Manoj Fogla, FCA

## 1) INTRODUCTION

1.1 As per the provisions of Foreign Contribution Regulation Act, (FCRA) 2010 an NPO can receive foreign contribution only if it has prior permission or registration under FCRA. In this context it becomes important to understand the law pertaining to any subsequent contribution made by such NPOs. Under FCRA an FC registered NPO can provide further contribution only to another organisation which is registered or has prior permission under FCRA.

1.2 Further, an NPO under specific circumstances is also allowed to transfer funds to organisations which are not registered under FCRA. In this issue, we shall discuss the provision pertaining to another organisation which is registered or has prior permission under FCRA.

## 2) TRANSFER OF FUNDS TO ANOTHER FC ORGANISATION

2.1 There is no restriction on transfer of funds to another organisation which is registered or has prior permission under FCRA provided that the recipient has not been proceeded against under FCRA. In other words, transfer of funds to another FC registration organisation can be made without taking prior approval. However, certain compliances are necessary under Section 7 and Rule 24. A snapshot of such compliances is provided at the end of this issue. The provisions of Section 7 and Rule 24 are as under:

### 7. Prohibition to transfer foreign contribution to other person.

“No person who –

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution, shall transfer such foreign

contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government."

2.2. Rule 24 of FCRR, 2011\* prescribes the procedure for transferring foreign contribution as under:

"Rule 24:-"Procedure for transferring foreign contribution to other registered or unregistered persons:-

(1) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in

Form FC-10. <http://mha.nic.in/fcra/forms/fc-10.pdf>

(2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that

- a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution

received by him during the financial year;

- b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.

(3) A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.

(4) Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient".

### **3) PROCEDURE TO BE FOLLOWED FOR TRANSFER OF FUNDS TO OTHER FC REGISTERED ORGANISATIONS**

**3.1.** The following procedure is to be followed:

- The donor organisation should ensure that the recipient organisation is registered under FCRA or is having prior permission under the Act.

- A certificate/undertaking should be taken from the recipient organisation that it has not been proceeded against under FCRA. A model format of such certificate is provided in Annexure 1.
- The recipient organisation shall reflect the foreign contribution receipts in FC 6 returns in the column of subsequent recipient.
- Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC-6 to be submitted by both the transferor and the recipient.

\*\*\*\*\*

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)*

**MODEL FORMAT OF UNDERTAKING TO BE TAKEN FROM FC REGISTERED ORGANISATION**

**<Letterhead of the Organisation>**

No.....

Date.....

**To**

The Chief Functionary,  
Donor Organisation,

.....  
.....

**Subject:** Undertaking towards receipt of foreign contribution.

Dear Sir,

I \_\_\_\_\_ on behalf of the Association declare and confirm the following in compliance with the Foreign Contribution (Regulation) Act, 2010.

1. Our organisation is authorised to receive foreign contribution under FCRA vide Registration No./Prior Permission letter No..... dated..... (Copy of the registration/prior permission letter is enclosed)
2. Our organisation has been filing FC 3 returns regularly and has complied with all the provisions of the FCRA. The evidence of FC 3 return last file is enclosed herewith.
3. Our organisation has not been proceeded against under any provision of FCRA 1976 or FCRA 2010 and no legal or penal proceedings are pending or contemplated in this regard.

With regards

Chief Functionary

Seal of the Organisation

# PROCEDURE FOR CHANGE OF FCRA BANK ACCOUNT

- Dr. Manoj Fogla, FCA

## 1) INTRODUCTION

- 1.1 Under Foreign Contribution Regulation Act (FCRA), 2010 it is mandatory to receive funds only through an approved designated bank account. Any FC registered organization is not permitted to receive FC funds in any other manner, all funds should be received in the designated bank account only.
- 1.2 However, an organization may need to change its bank account for various reasons, which could be relocation of registered office, services of the bank etc. A change in the designated bank account is only possible through prior approval of the FCRA department. In this issue the procedure for change in bank account is explained.

## 2) CHANGE OF BANK ACCOUNT

- 2.1 Form FC-3 (the form for application for registration) and Form FC-4 (the form for application for prior permission) require an undertaking from the Chief Functionary of the organization which states that the designated bank account cannot be changed without prior approval. The relevant text of the undertaking is as follows:  
*"Not to change the bank or branch of the bank without prior permission of the Central Government. The reasons for change of bank or branch of bank shall have to be relevant and justifiable."*
- 2.2 In the light of aforesaid, there should not be any change in the bank or branch of the bank of designated bank account without prior permission of the Central Government.

It may be noted that prior approval shall not be necessary in case of any change in multiple bank accounts.

- 2.3** In the undertaking specified to be given by the Chief Functionary in Form FC-3 & FC-4 uses the phrase “*relevant and justifiable*”. Therefore, the statute seems to be in favor of allowing opening/change of bank accounts if the reasons are relevant and justifiable. In this regard one has to remember that even if the reasons are relevant and justifiable, changes cannot be made without the prior permission of the Central Government. Relevant and justifiable reasons for the change in bank account could be for the following:
- Change of office from one place to another;
  - Lack of requisite/efficient services provided by the bank, etc.

### **3) PROCEDURE FOR CHANGE OF BANK ACCOUNT**

When a change of bank account becomes a necessity by virtue of relevant and justifiable reasons, the following procedure may be followed:

- i. A new bank account which is proposed to be designated bank account should be opened by depositing the minimum amount required for opening of the account.
- ii. The proposed account, since it is subject to approval, should not be made operational. It should be

treated as a multiple bank account opened with FC funds.

- iii. An application to the FCRA authorities should be made by citing the relevant and justifiable reasons for such change along with complete details of the old account as well as the new account in the application. The prescribed format of the application form is provided in **Annexure 1**.
- iv. The application form should be accompanied by the following documents:
  - a. Resolution of Governing Body for proposed change of Bank/ Bank Account model format of the minutes along with the resolution for change of bank account is provided in **Annexure 2**;
  - b. Copy of letter granting Registration / Prior Permission;
  - c. Certificate from the Bank for the Account to be opened/ opened exclusively for FCRA purposes;
- v. After receiving the permission from FCRA authorities, the entire balance from the old designated FC account should be transferred to the new account.
- vi. It is not legally necessary to close the old account. Therefore, the organization may use the old account as a domestic account. But it is desirable to close the old account, to ensure that even by mistake the foreign funds are not credited to the old account.

\*\*\*\*\*

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

**APPLICATION FORM FOR CHANGE OF BANK ACCOUNT/BANK**

[Application form for seeking change in the **designated Bank Account/Bank** of the association granted registration/prior permission under FCRA.

No.....

Date.....

**To**

The Secretary to the Government of India  
Ministry of Home Affairs, Foreigners Division (FCRA Wing),  
NDCC-II Building, 1st Floor, 'A' Wing  
Jai Singh Road, New Delhi - 110001

**Subject:** Application for change in the **designated Bank/ Bank Account** of association registered/ granted prior permission under Foreign Contribution (Regulation) Act.

Sir,

I \_\_\_\_\_ on behalf of the Association, whose details are given below, apply for change in the designated Bank Account/Bank of association registered/granted prior permission under the Foreign Contribution (Regulation) Act, 1976/Foreign Contribution (Regulation) Act, 2010.

1. Name of the association and its complete postal address:

Name:  
Address:  
Town/City:  
District:  
State:  
PIN Code:  
Phone/Fax No. :  
E Mail:

2. FCRA Registration No. /Prior Permission letter No.....dated.....  
(Copy of the registration/prior permission letter to be enclosed)

3. Nature of Association:

(a) religious (b) cultural (c) economic (d) educational (e) social

**Note:** If religious association, state whether – (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.



4. Name and addresses of the members of the Executive Committee/Governing Council etc. of the association, including the Chief functionary in the following manner:

SL. NO	NAME	NAME OF FATHER/HUSBAND	NATIONALITY	OCCUPATION	OFFICE HELD IN THE ASSOCIATION	RELATIONSHIP WITH OFFICE BEARS IF ANY	ADDRESS
1	2	3	4	5	6	7	8

5. Please indicate date of submission of Annual FC 3 returns of Last 3 years.

	YEAR	DATE
1		
2		
3		

6. Please indicate whether the Association is functioning as editor, owner, printer or publisher of a Publication required to be registered as 'newspaper' under the Press and Registration of Book Act, 1867. If so, the details thereof.

7. Please indicate whether the association has close links with another association, or its unit or branch which has been

- Refused registration under the Act;
- Prohibited from accepting foreign contribution.

8. Please indicate-

- The name and address of the branch of the bank through which foreign contribution is to be received.
- Please specify the designated Bank account number in the said branch of the bank.

9. Justification for proposed change

Yours faithfully,  
Signature of the Applicant  
(Name of the Chief Functionary or authorised office Bearer)  
(With the seal of the association)

**Declaration and Undertaking**

I hereby affirm that the information furnished above is correct.

Place:

Date:

Signature of the Applicant  
(Name of the Chief Functionary or authorised office Bearer)  
(with the seal of the association)

**Instructions:**

1. Fill in all the details carefully and correctly.
2. Strike off columns which are not applicable.
3. Following documents are to be attached with the application:
  - i. Resolution of Governing Body for proposed change of name/address;
  - ii. Copy of letter granting Registration Number;
  - iii. Copy of revised certificate of Registration under Societies Act/Trust Act/Companies Act, whichever is applicable, in the case of change of name request.

**MODEL FORMAT OF MINUTES REGARDING CHANGE IN BANK ACCOUNT & RESOLUTION**

Minutes of the meeting of the members of "..... organisation"  
held on  
....., 20..... .

A meeting of the board of members of ".....  
Organisation" was held on ....., 20 ..... at..... a.m. /p.m. in the  
Registered Office at.....

**Members present:**

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. ....

1) Mr. /Mrs. /Ms. .... was voted to the chair.

**2) Leave of absence:**

Letters from Mr. /Mrs. /Ms..... and Mr. /Mrs. /Ms.  
..... regretting their inability to attend the meeting was placed on  
the table and leave of absence was granted.

**3) Confirmation of the minutes of the previous meeting:**

The minutes of the meeting held on ....., 20 .....were read  
and confirmed.

**4) Change of Designated FCRA Bank Account:**

The governing body member, Mr. /Mrs. /Ms. .... proposed  
that for administrative convenience or other reasons.....  
....., a new savings/current account be opened  
with.....bank at .....The proposal was  
seconded by Mr. /Mrs. /Ms. ....and passed unanimously. It was  
further proposed that all the necessary legal compliances under FCRA, 2010 and other  
statutes be made as per the legal requirements.

Accordingly, the following resolution was passed:

"RESOLVED that a new savings/current account be opened in the name of  
"....." with ..... bank .....branch.

FURTHER RESOLVED that Mr. /Mrs. /Ms. ...., Mr. /Mrs. /Ms.....andMr./Mrs./Ms.....be the authorised signatories and the account may be operated by **any two** of the authorised signatories **jointly**".

5) **Other issues, if any:**

.....

The meeting terminated with a vote of thanks to the chair

Chairman

# PROCEDURE FOR CHANGE OF ADDRESS, NATURE OR OBJECTIVES OF FCRA

- Dr. Manoj Fogla, FCA

## 1) INTRODUCTION

**1.1** Under Foreign Contribution Regulation Act (FCRA), 2010 the objects of the society and the registered office address are recorded with the Ministry of Home Affairs, FCRA department. Any FC registered organisation is required to inform to the FCRA department if there is any change in the objects of the society or the registered office address.

**1.2** If the change in the office of the society is from one state to another state or from one district to another, then it may result in change of the FCRA registration no. also. The FCRA registration number is issued on the basis of district & state codes. Similarly, if there is any change in the objects, then it becomes important for the FCRA department to know such changes. However, it is not necessary to obtain prior approval for such changes. In this issue the procedure

for change in address or the objects has been explained.

## 2) CHANGE IN ADDRESS

**2.1** Form FC-3 (the form for application for registration) and Form FC-4 (the form for application for prior permission) require an undertaking from the Chief Functionary of the organization which states that any change in the address, nature or objectives of the organisation shall be informed to the Ministry within 30 days. The relevant text of the undertaking is as follows:

*"To inform the Central Government (Ministry of Home Affairs) within thirty days, if any change takes place in regard to the name of the Association, its address, its registration, its nature, its aims and objects together with documentary evidence effecting the change."*

2.2 In the light of aforesaid, any change in name, aims or registered address of the organisation should be informed to the Ministry of Home Affairs within thirty days.

### **3) PROCEDURE FOR CHANGE OF NAME, ADDRESS, NATURE OR OBJECTIVE**

3.1 When a change in name, aims or registered address of the organisation is affected the following procedure may be followed:

- (i) The changes should be made in compliance with the statute under which such organisation is registered. It may be noted that such changes may not be possible in case of a trust unless such change is empowered by the Trust deed;
- (ii) Within 30 days from the date on which such changes become effective, an intimation should be sent to the Ministry of Home Affairs in the prescribed form provided in **Annexure 1**;
- (iii) The application form should be accompanied by the following documents:
  - a) Resolution of Governing Body for proposed change name, address, nature or objectives. A model format of the minutes along with the resolution for change of address etc. is provided in **Annexure 2**;
  - b) In case such changes are subject to approval of specified authority

then a copy of such approval/ acknowledgement;

- c) Copy of letter granting Registration/ Prior Permission;
- d) Copy of revised certificate of Registration under Societies Act/ Trust Act/ Companies Act, whichever is applicable, in the case of change of name request;

### **4) CHANGE OF ADDRESS TO ANOTHER DISTRICT OR STATE**

4.1 When the change of address is from one district to another or to another state, then it may be noted that the FCRA department is following a detailed procedure for validating such changes. The FCRA department has been asking the concerned organisation to file a new application for registration in form FC-3. It is not very clear why the FCRA department is insisting on filing an application for registration in form FC-3, merely to validate and update the change of address. One probable reason is to conduct a fresh intelligence inquiry with regard to the presence of the organization in the new address. Another reason for asking for a registration application is that the registration number of organisation are based on district code and state code which also require change. However, any inquiry or internal procedure regarding change of address should be done internally and it seems irrational in asking a registered organisation to apply for fresh registration.

**4.2** The FCRA department simultaneously also request the organisation to apply for cancellation of the old registration in lieu of the new registration. It is confusing to the applicant organisations to request for cancellation of the existing registration. It is important that FCRA department evolves a more rational mechanism for change of address.

**4.3** The FCRA department has also clarified that change of address outside the districts area, all organisations should apply in Form FC-3. The clarification letter by FCRA is provided in **Annexure 3**.

**4.4** The format of letter of request sent by FCRA department in such cases is enclosed in **Annexure 4**.

\*\*\*\*\*

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)*

## APPLICATION FORM FOR CHANGE OF NAME/ADDRESS

[Application form for seeking change in the **Name/Address** of the association granted Registration/prior permission under FCRA.]

No.....

Date.....

**To**

The Secretary to the Government of India  
Ministry of Home Affairs, Foreigners Division (FCRA Wing),  
NDCC-II Building, 1st Floor, 'A' Wing  
Jai Singh Road, New Delhi - 110001

**Subject:** Application for change in the **Name/Address** of association registered/granted prior permission under Foreign Contribution (Regulation) Act.

Sir,

I \_\_\_\_\_ on behalf of the Association, whose details are given below, apply for change in the Name/Address of association registered/granted prior permission under the Foreign Contribution (Regulation) Act, 1976/Foreign Contribution (Regulation) Act, 2010.

1. Name of the association and its complete postal address:

Existing      Proposed

Name:  
Address:  
Town/City:  
District:  
State:  
PIN Code:  
Phone/Fax No. :  
E Mail:

2. FCRA Registration No. /Prior Permission letter No.....dated.....  
(Copy of the registration/prior permission letter to be enclosed)

3. Nature of Association:

(a) religious (b) cultural (c) economic (d) educational (e) social

**Note:** If religious association, state whether – (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.



4. Name and addresses of the members of the Executive Committee/Governing Council etc. of the association, including the Chief functionary in the following manner:

SL. NO	NAME	NAME OF FATHER/HUSBAND	NATIONALITY	OCCUPATION	OFFICE HELD IN THE ASSOCIATION	RELATIONSHIP WITH OFFICE BEARS IF ANY	ADDRESS
1	2	3	4	5	6	7	8

5. Please indicate date of submission of Annual FC 3 returns of Last 3 years.

	YEAR	DATE
1		
2		
3		

6. Please indicate whether the Association is functioning as editor, owner, printer or publisher of a Publication required to be registered as 'newspaper' under the Press and Registration of Book Act, 1867. If so, the details thereof.

7. Please indicate whether the association has close links with another association, or its unit or branch which has been

- Refused registration under the Act;
- Prohibited from accepting foreign contribution.

8. Please indicate-

- The name and address of the branch of the bank through which foreign contribution is to be received.
- Please specify the designated Bank account number in the said branch of the bank.

9. Justification for proposed change

Yours faithfully,  
Signature of the Applicant  
(Name of the Chief Functionary or authorised office Bearer)  
(With the seal of the association)

**Declaration and Undertaking**

I hereby affirm that the information furnished above is correct.

Place:

Date:

Signature of the Applicant  
(Name of the Chief Functionary or authorised office Bearer)  
(with the seal of the association)

**Instructions:**

1. Fill in all the details carefully and correctly.
2. Strike off columns which are not applicable.
3. Following documents are to be attached with the application:
  - i. Resolution of Governing Body for proposed change of name/address;
  - ii. Copy of letter granting Registration Number;
  - iii. Copy of revised certificate of Registration under Societies Act/Trust Act/Companies Act, whichever is applicable, in the case of change of name request.

**MODEL FORMAT OF MINUTES REGARDING CHANGE IN ADDRESS/LOCATION & RESOLUTION**

Minutes of the meeting of the members of “..... organisation”  
held on  
....., 20..... .

A meeting of the board of members of “.....  
Organisation” was held on ....., 20 ..... at..... a.m. /p.m. in the  
Registered Office at.....

**Members present:**

- i. ....
- ii. ....
- iii. ....
- iv. ....
- v. ....

1) Mr. /Mrs. /Ms. .... was voted to the chair.

**2) Leave of absence:**

Letters from Mr. /Mrs. /Ms..... and Mr. /Mrs. /Ms.  
..... regretting their inability to attend the meeting was placed on  
the table and leave of absence was granted.

**3) Confirmation of the minutes of the previous meeting:**

The minutes of the meeting held on ....., 20 .....were read  
and confirmed.

**4) Change of the address/location of registered office:**

The governing body member, Mr. /Mrs./Ms. .... pro-  
posed that for administrative convenience or other reasons  
.....,the registered office shall be shifted from  
..... to ..... The proposal was seconded by  
Mr. /Mrs. /Ms..... and passed unanimously. It was further  
proposed that all the necessary legal compliances under the Societies Registration Act,  
1860\*, FCRA, 2010 and other statutes be made as per the legal requirements.

AAccordingly, the following resolution was passed:

“RESOLVED that the registered office be shifted from .....  
..... to ..... by com-  
plying with the provisions of the Societies Registration Act, 1860\*, FCRA, 2010 and other  
statutes as may apply.

5) Other issues, if any:

.....  
.....

The meeting terminated with a vote of thanks to the chair

Chairman

**CLARIFICATION ON CHANGE OF ADDRESS BY FCRA DEPARTMENT**

**Speed Post**

F. No. II/21022/23(15)/2013-FCRA-III

Ministry of Home Affairs

Foreigners Division

(FCRA-Wing)

\*\*\*\*

1st Floor, NDCC-II Building, 'A' Wing, Jai Singh Road,  
New Delhi – 110 001, Dated: 22nd May, 2013

To

**Shri Harsh Jaitli,**

Chief Executive Officer,

Voluntary Action Network India (VANI)

BB-5, Greater Kailash Enclave-II,

New Delhi-110048

Subject: Clarification on FCRA

Sir/Madam,

I am directed to refer to your mail dated ..... on the subject cited above and to state that in connection with change of address of FCRA Regd. NGO from one State/District to another State/District, it is stated that 9 digit registration number allotted to a association follows a logical sequence as the first 2 digits represent the code of the State, the next 3 digits are code of that District and the next 4 digits represent sequential number of registration within that District. In such circumstances, the Association has to seek fresh registration by submitting an application in Form FC-3 in the prescribed manner duly indicating reasons. On approval, new registration number will be allotted and the previous Regn. Number would be cancelled.

Yours faithfully,

(xxxxxxx)

Deputy Secretary (FCRA)

**MODEL FORMAT OF LETTER OF REQUEST  
SENT BY FCRA DEPARTMENT**

**Registered**

F. No. II/21022/....(.....)/.....  
Government of India  
Ministry of Home Affairs, FCRA-I Section  
\*\*\*\*

NDCC-II Building, 1st Floor, 'A' Wing,  
Jai Singh Road, New Delhi-110 001  
Dated: .....

To  
**The Chief Functionary,  
(Name & Address of the Association)**

**Subject:** Application for change in the address of the Society registered under FCRA

Sir/Madam,

I am directed to refer to your letter dated 'Nil' on the subject mentioned above and to say that change of address of ..... from ..... to..... the state code and registration number of the association will be changed. You are, therefore, requested to apply for fresh registration of your association under FCRA in the changed address and separate request for cancellation of old registration may also be sent.

Yours faithfully,

(xxxxxxx)  
Under Secretary to the Govt. of India

# BUDGET 2014 - CARROT AND STICKS FOR NGOS AND TRUST

- Dr. Manoj Fogla, FCA

## 1) INTRODUCTION & SALIENT FEATURES

- 1.1 The innocuous looking Finance Bill, 2014 has brought some very far reaching and important amendments for the charity sector, particularly for those NGOs and Trusts which are availing tax exemptions under section 10(23C) and section 11. subjected to 85% of application, earlier the Trusts & NGOs could transfer the entire amount of otherwise exempted income to corpus without applying for charitable/religious purposes during the year. This will not apply to agricultural income of the trust.
- 1.2 Under the sub-clauses (iiiab) and (iiiac) to Section 10(23C) educational and medical institutions which are substantially funded by government are totally exempted. The Finance Bill 2014 has proposed to define the term “*substantially funded*” which shall be such percentage as may be notified.
- 1.3 The NGOs & Trusts which are registered or notified u/s. 11 or Section 10(23C) cannot claim the tax exemption under other provisions of section 10 i.e. except Section 10(23C). In other words, all otherwise exempted income shall also be
- 1.4 The contentious issues of whether double deduction of depreciation is permissible, has been laid to rest. The Finance Bill, 2014 proposes that depreciation will not be considered as application of income if the assets on which depreciation is charged has already been considered as a part of application of income, earlier.
- 1.5 There is a clarifying amendment with regard to the computation of tax liability in case of Anonymous Donations. It is proposed that while computing the tax liability of the total income instead of excluding entire amount of anonymous donation only

the amount in excess of 5% of total income or Rs.1.00 lac whichever are higher should be deducted.

**1.6** There is a great relief for NGOs & Trusts applying for registration under section 12AA; hitherto they were allowed tax exemptions only from the financial year in which the application for registration is made. The Finance Bill, 2014 proposes to exempt past assessment years where the assessment proceedings are pending before the Assessing Officer on the date of registration, if the objects and the activities are the same which have been considered by the Commissioner while granting registration. Further no action under section 147 can be taken by the Assessing Officer, in such cases.

**1.7** There has been considerable increase in the scope and powers of the CIT under section 12AA regarding cancellation of the registration under section 12AA. The Finance Bill, 2014 proposes that the CIT can initiate cancellation proceedings if any violation under sub-section (1) of section 13 is found during the assessment proceedings. Such unfettered powers may cause undue hardship as explained below.

## **2) RETROSPECTIVE TAX EXEMPTIONS**

**2.1** The biggest take away for the NGO sector is the retrospective tax exemption after 12AA registration. There is a great relief for NGOs & Trusts getting registration under

section 12AA; hitherto they were allowed tax exemptions only from the financial year in which the application for registration is made.

**2.2** The Finance Bill, 2014 proposes to exempt past assessment years where the assessment proceedings are pending before the Assessing Officer on the date of registration, if the objects and the activities are the same which have been considered by the Commissioner while granting registration. Further no action under section 147 can be taken by the Assessing Officer, in such cases.

**2.3** Actually, *the Finance Bill, 2014 restores the provisions back to 2007. Prior to 1-6-2007 the CIT had the power to condone the delay in filing of an application for registration under section 12AA.*

The Finance Act, 2007 withdrew the power of CIT to condone the delay as a result if the application was filed after the said period, then the Chief Commissioner or the Commissioner could not condone the delay w.e.f. 1-6-2007. Therefore, the exemptions were available for the assessment year immediately following the financial year in which the application was made.

**2.4** The omission of power to condone by the Finance Act, 2007 was a very irrational and retrograde amendment which caused hardship and litigations throughout the country. The CIT after granting the registration under section 12AA were directing the AO to open past assessment years under section



147 under the plea that the registration can only be prospective.

**2.5** This is a much needed amendment and shall save the deserving NGOs & Trusts from needless financial hardship and scrutiny by the department. The proposed amendments are reproduced as under:

8. In section 12A of the Income-tax Act, in sub-section (2), the following provisions shall be inserted with effect from the 1st day of October, 2014, namely:—

**“Provided that** where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year:

**“Provided further** that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year:

**Provided also** that provisions contained in the first & second provisions shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA.”

### **3) SWEEPING POWERS OF CANCELLATION – PUNISHING TWICE FOR SAME OFFENCE**

**3.1** The amendment which could cause discomfort to NGOs and may result in more litigations in future, is the increase in power of this CIT to cancel 12A registration. There has been considerable increase in this scope and powers of the CIT under section 12AA regarding cancellation of the registration. The Finance Bill, 2014 proposes that the CIT can initiate cancellation proceedings if any violation under sub-section (1) of section 13 is found during the assessment proceedings. It is proposed to add a new sub-section (4) to the section 12AA. The proposed provision are as under: In section 12AA of the Income-tax Act, after sub-section (3), the following sub-section shall be inserted with effect from the 1st day of October, 2014, namely:—

“(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and subsequent it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Principal

Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution:

**Provided that** the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.”

**3.2** This amendment brings a fundamental shift in the regulatory and assessment power of the CIT. It may be noted that section 13 is the section under which NGOs and Trust loose tax exemptions only for a particular assessment year if they violate any of the provisions of section 13(1).

**3.3** Just to remind the provisions of section 13(1) state that the exemptions of the assessee shall be forfeited if it is engaged in (a) any private religious purpose (b) provide benefit to any particular community or caste (c) provide benefit to interested persons (d) invest in violation of section 11(5).

**3.4** The provisions of section 13(1) are in the domain of the Assessing Officer and there are various offences which are not punished with withdrawal of total exemptions.

For example it has been held that if certain investments are made in violation of section 11(5) then only that portion of investment should be subjected to tax. In other words, the ‘so called’ violations of section 13(1) have already been adequately addressed with penalties in that

section itself. The penalties may be total or partial withdrawal of exemptions. The matters under section 13(1) are assessment issues and the registration under section 12AA is given on fundamental and constitutional issues such as genuineness and the charitable or religious purpose. Therefore, bringing CIT to act upon an assessment issue which is already subject to punishment may create confusion and needless litigations. This provision should have been brought with a *caveat*.

**3.5** In such circumstances providing sweeping powers to the CIT to cancel 12AA registration for any violation of the provisions of section 13(1) may not be a prudent idea. Such amendment should have come with a protective provision clarifying the circumstances under which the CIT can cancel 12AA registration for any violation of the provisions of section 13(1) only if the assessee is a habitual offender under section 13(1), then the CIT may initiate cancellation proceeding.

The proposed amendment is creating an overlap between the powers of the AO & the CIT. It also proposes to punish the assessee twice for the same offence, once under section 13 and against under section 12AA.

#### **4) DOUBLE DEDUCTION OF DEPRECIATION**

**4.1** The contentious issues of whether double deduction of depreciation has been laid to rest. The Finance Bill, 2014 proposes that depreciation will not be considered as application of income if the assets on which depreciation is

charged has already been considered as a part of application of income, earlier. The proposed provisions are as under:

In section 11 of the Income-tax Act, after sub-section (5), the following sub-sections shall be inserted with effect from the 1st day of April, 2015, namely:—

“(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

- 4.2** There are many cases in various High Court both in favor and against allow ability of double deduction of depreciation. In the past in many cases it was held that NGOs can claim double depreciation even if the entire cost of the asset was treated as application/ expenditure in the year of purchase. The issue of allowing further depreciation, even if the entire cost of the asset has been allowed in the year of purchase, has always been a matter of debate in the light of the various contradicting case laws.

In the case of Commissioner of Income-tax v. Market Committee, Pipli [2011] 238 CTR 103 (Punjab. & Haryana.) was held that such deduction was permissible. The court was of the view

that depreciation in case of trusts was not a double deduction as it was not an expenditure; it only reduced the percentage of funds available for charitable or religious purposes. The court declined to accept the applicability of the Supreme Court ruling in Escorts Ltd. v. Union of India [1993] 199 ITR 43. It may be noted that in Escorts case Supreme Court held that double depreciation was not permissible however, this ruling was in context of a commercial organisation where the facts and circumstances are different from an NGO. On the other hand there were other High Court decisions which were against allowing double deduction of depreciation including the decision of the Kerala High Court in the case of Lissie Medical Institutions vs. CIT 76 DTR (Ker) 372.

- 4.3** *The proposed provision regarding disallowing double deduction of depreciation seems to be a positive step but it may cause undue hardship to assessee due to the wrong accounting and disclosure policies.* For instance, many NGOs and Trusts show restricted grants as income and purchase of assets from such grant as application. The organisation which follows such practices will suffer from the proposed amendments. The correct method would be to treat restricted grants as legal obligations and therefore, any purchase of assets would not be required to be treated as application out of income during the year.

## 5) CONCLUDING REMARKS

**5.1** Overall the proposed Finance Bill, 2014 is a mixed bag for the NGO sector where some much needed relief has been provided, in the shape of retrospective exemptions. It has the potential to create a threatening environment by

providing unfettered powers of cancellation to the CIT under section 13(1) for violation where there is an existing penal provision is already in place. It rationalizes various needless controversies and confusions pertaining to depreciation, anonymous donation etc.

\*\*\*\*\*

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)*

# CSR Section

## OVERVIEW OF CSR LAWS IN INDIA

- Dr. Manoj Fogla, FCA

### 1. Introduction

1.1 Corporate Social Responsibility (CSR) in India is a statutory requirement under the Companies Act, 2013. Specifically, Section 135 and Schedule VII of the Act provide for the CSR compliances along with the Companies (Corporate Social Responsibility Policy) Rules, 2014. India is the leading country in the world to pass such legislation. In this chapter a brief summary of the CSR provision and the analysis thereof has been provided.

### 2. Effective Date

2.1 CSR law became effective from 1st April, 2014. In other words, it will apply from the financial year 2014-15. The Companies Act, 2013 received the assent of the President of India on 29th August 2013. The Ministry of Corporate Affairs (MCA) has vide its notification dated 27th February, 2014, and in exercise of powers conferred by section 1(3) of the Companies Act, 2013 ('the Act'), notified 1st April 2014 as the date on which

the provisions of section 135 and Schedule VII of the Act shall come into force. The MCA has also notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('the Rules') to be effective from 1st April, 2014.

### 3. Companies to which it applies

3.1 The CSR laws apply to every Indian company including its holding company or subsidiary company. The CSR provisions also apply to foreign company having its branch office or project office in India. The CSR law will apply to aforesaid companies only if the criteria specified in sub section (1) of section 135 applies.

### 4. Financial Criteria of Applicability of CSR

4.1 Under sub section(1) of section 135 the CSR Laws applies to every company having net worth of rupees

five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year.

4.2 In case of foreign companies the net profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

4.3 In case of foreign companies the net worth of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

#### **5. Amount to be spent on CSR**

5.1 Every company referred falling under the provisions of CSR, shall ensure that it spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

5.2 The two percent net profit shall be determined as per the financial statements of the company computed under the provisions of the companies act. The net profit for the purposes of determining CSR contribution shall not include:

- Dividend received from other companies which are also covered under CSR provisions.
- Income received from overseas/foreign branches or subsidiaries.

5.3 In case of foreign companies the net profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

#### **6. Surplus Generated from CSR Activities**

6.1 Under Rule 6(2) the CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. In other words surplus generated from CSR activities should be ploughed back to CSR funds over and above the 2% contribution. In this context it is not clear how the taxation of such surplus will be treated. Any income including the surplus from CSR activities will be taxable if the CSR activities are implemented directly by the company. However, such surplus shall be exempted from tax, if the CSR activities are implemented through registered NPOs.

#### **7. CSR Committee**

7.1 All companies to which the CSR laws apply shall under Rule 5 constitute CSR Committee of 3 members including one independent member. However, the requirement of 3 members with one independent will not be applicable in following circumstances:

- i. An unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an Independent Director pursuant to sub-section (4) of

section 149 of the Act, shall have its CSR Committee without such Director;

ii. A private company having only two Directors on its Board shall constitute its CSR Committee with two such Directors;

iii. With respect to a foreign company covered under these Rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

7.2 It may be noted that clause (d) of sub-section (1) of section 380 of the Act a foreign company is required to provide the name and address of one or more person resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

## 8. Role of CSR Committee

8.1 The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company. Further the role of CSR committee shall include:

- Formulate the CSR policy and recommend to the board.
- Planning, Budgeting and Recommending expenditure on CSR to the board.
- Prepare strategic plans & implementation schedules for CSR expenditures.

- Monitor the implementation of the CSR projects or programs or activities undertaken by the company.

- Ensure that the surplus (if any) generated from CSR activities are ploughed back to the CSR funds over and above the 2% contribution.

## 9. Role of the Board of the Company

9.1 The Board of the company will be legally accountable for the CSR activities and shall have an oversight function over the CSR Committee. Further the role of the Board shall include:

- To constitute the CSR committee
- To approve the CSR policy
- To keep oversight control of the CSR activities
- To ensure legal compliance of at least 2% spending
- Report CSR activities
- Disclose reason for non compliance or under spending, if any under section 134(3)(o) specifying the reasons for not spending
- Ensure that CSR activities and compliances are uploaded on the official website of the company

## 10. CSR Expenditure & Modes of Implementation

10.1 CSR expenditure shall include all expenditure including contribution to corpus on projects or programs relating to CSR activities approved

by the Board on the recommendation of its CSR Committee, but it does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of schedule VII of the act.

10.2 It may be noted that CSR expenditure are subject to the following conditions:

- The CSR activities have to be confined to the activities described in the schedule VII of the Act.
- The CSR expenditure can be made directly by the company.
- The CSR expenditure can be made through registered organisations having at least 3 years experience in similar programmes.
- The CSR expenditure can also be made through registered organization promoted by the company. In such cases the condition of having at least 3 years experience in similar programmes, will not apply.
- The company cannot make any contribution to any political party or political purpose as defined under section 182.
- The company should give priority to the local area and the areas around it where it operates.
- The company should spent at least 2% of the average net profit made during the three immediately preceding financial years.
- The expenditure on employees shall not be permissible, unless it is upto 5% on capacity building pertaining to CSR. Further upto 5% on capacity building

pertaining to CSR shall also be permissible for the implementing NPOs.

- Activities undertaken in pursuance of the normal course of business of the company is not CSR. For instance a company engaged in plantation cannot claim that the plantation is made as a part of its activity is CSR.
- Only CSR activities within India will be taken into consideration. Any activity outside India will not be considered even if it complies with all other conditions.
- If the company is unable to spend CSR funds as per provisions then it will have to report under section 134(3)(o) specifying the reasons for not spending.

## **11. Permissible CSR Activities as per Schedule VII**

11.1 The various activities permissible under CSR as per schedule VII are as under:

- i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation and making available safe drinking water;
- ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- iii. Promoting gender equality, empowering women, setting up homes and hostels for women and



orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water;

v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

vi. Measures for the benefit of armed forces veterans, war widows and their dependents;

vii. Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;

viii. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

ix. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

x. rural development projects.

## 12. Content of CSR Report

12.1 The Board of the company shall prepare a CSR report under section 134(3)(o),

the Companies (CSR Policy) Rules, 2014 provide the format (Annexure 1) for reporting CSR activities annually. In the CSR report the CSR committee also is required to provide a responsibility statement regarding proper implementation of CSR activities.

12.2 The major areas/points to be reported are as under:

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.

2. The Composition of the CSR Committee.

3. Average net profit of the company for last three financial years

4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)

5. Details of CSR spent during the financial year.

a. Total amount to be spent for the financial year;

b. Amount unspent, if any;

c. Manner in which the amount spent during the financial year is required to be mentioned in the prescribed format (see Annexure 1)

6. In case the company has failed to spend the two per cent, of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.

7. A responsibility statement of the CSR Committee that the

implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

### **13. Collaboration with other Corporates**

13.1 Under Rule 4(3) a company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with the Rules. In other words, a group of companies can jointly execute CSR programmes, such companies can be holding and subsidiary companies also. The modalities of such joint execution have not been explained in the Act or the Rules.

### **14. Penalty for Non Compliance of CSR Provisions**

14.1 There is no specific penal provision under which a company can be penalised for violation of CSR Rules. However, there are two provisions under the act which provide for penalties and can be invoked against CSR violation.

14.2 It may be noted that, under Section 134(3)(o) the board of Directors are required to report on the CSR policy and its implementation during the year. Further, under Sub Section (8) of Section 134 if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not

be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

14.3 Further, Section 450 of the Companies Act is another general section where punishment can be provided for any offence/violation where penal provision has not been specifically provided. Under this section, if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the Rules made there under, or any condition, limitation or restrictions subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

14.4 To sum up, under the Act for violation of CSR provisions penalties and punishments can be to the extent of (i) imprisonment for a term which may

extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both (ii) fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

#### **15. When Company ceases to come under CSR criteria**

15.1 When a company ceases to come under CSR criteria, even then it has to

continue CSR activities for 3 years. In other words if the CSR criteria does not apply for three consecutive financial years, then the company can stop complying with the CSR regulations.

15.2 Under Rule 3(2) every company which ceases to be a company covered under sub – section (1) of section 135 of the Act for three consecutive financial years shall not be required to –  
(a) Constitute a CSR Committee; and  
(b) Comply with the provisions contained in sub – section (2) to (5) of the said section, till such time it meets the criteria specified in sub – section (1) of section 135.

\*\*\*\*\*

*(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)*

**FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES****FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT**

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
  - (a) Total amount to be spent for the financial year;
  - (b) Amount unspent , if any;
  - (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR activity or activity identified	Sector in which the project is covered	Project of programs (1) Local area or other  (2) Specify the State and district where Projects or programs was undertaken	Amount Outlay (budget) or project or program wise	Amount Spent on project or programs Subheads:  (1) Direct expenditure on projects or programs  (2) Over heads	Cumulative expenditure upto the reporting period	Amount spent: Direct or through implementing agency
1							
2							
3							
	<b>Total</b>						

\*\* Give details of implementing agency:

6. In case the company has failed to spend the two per cent, of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/-	Sd/-	Sd/-
(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee)	(Person specified under clause (d) of sub-section (1) of section 380 of the Act (wherever applicable)

# Finance Section

## ADMINISTRATIVE EXPENDITURE

- Dr. Manoj Fogla, FCA

### 1) INTRODUCTION

**1.1** The main objective of this chapter is to provide guidance on the assessment of administrative expenditure and the policy with regard to apportionment of such expenditure. The important issues/questions in this regard are as under:

- Has the organization assessed and booked the administrative expenditures separately?
- Is there a clearly defined policy with regard to expenditure apportionment between programme heads and administrative heads, particularly expenditures such as salaries, travel, etc.?
- The administrative expenditure should be distinguished from fund raising expenditure and the core cost of the organization even without projects

and programme activities.

- What is the percentage of administrative expenditure to total expenditure? The percentage of administrative expenditure to total expenditure should be reasonable, anything in the range of 20% is acceptable. The administrative expenditure may vary according to the size and nature of activity.
- What is the ratio of administrative expenditure to programme expenditures?
- Is the total travel expenses at board and senior management level separately assessed and documented? Is such expenditure reasonable with regard to the activities?
- Is the administrative expenditure in compliance with the donor's agreement?
- Is the administrative expenditure in compliance with

legal status such as the Foreign Contribution Regulation Act, 2010 and the Indian Income Tax Act, 1961?

## 2) GENERAL NOTES ON ADMINISTRATIVE EXPENDITURE

- Administrative expenditure is an eternal challenge for the NPOs. High administrative expenditure decrease the amount available for programmes and very low administrative cost may affect the quality of the programme.
- Administrative expenditure may pertain to the core cost of the NPO. It may also pertain to the specific project. The distinction between the two is important.
- There is a general understanding that expenditures such as salaries and travel are administrative in nature. However, salaries can also be entirely programme related. It is very important that the NPO distinguishes the salaries in categories such as core administration, programme administration and program cost. Sometimes it may be necessary to apportion a part of the salary/ expenditure as programme or administrative expenses.

## 3) ADMINISTRATIVE AND ESTABLISHMENT EXPENSES AS PER INCOME TAX LAW

- 3.1. Administrative and establishment expenses have always remained an issue for judicial and legislative debate under Income Tax Laws. The prime issue in this regard is whether the income available for charitable or

religious purposes should be considered after deducting administrative and establishment expenses or should be considered as an application for charitable or religious purpose. Or to what extent establishment expenditure where the activities are dormant but establishment expenditure still continues.

- 3.2. The view of income tax department: The view of Income Tax department seems to be towards deducting administrative and establishment expenses from the total income to determine the income available for application for charitable purposes. Establishment or administrative expenses are considered as a charge to the income of the organization and, therefore, only the net income after such expenses is available for charitable purposes. Circular No. 5-P (LXX-6) of 1968, dated 19, 1968, states that the income should be computed on the basis of normally accepted commercial principals. Therefore, it implies that establishment expenses should be deducted in order to determine the net income available for charitable purpose. The relevant extracts of the said circular are as under:

*"Where the trust derives income from hose property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e book income, after adding back any appropriations or applications thereof towards the purposes of the*

*trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amount spent or applied for the purposes of the trust is to get the full benefit of the exemption under section 11(1)."*

#### **4) WHETHER SUCH EXPENSES AMOUNT TO APPLICATION OF INCOME FOR CHARITABLE PURPOSES**

4.1. There seems to be a generic treatment to the establishment expenses and they are considered as application for charitable purposes along with other items of expenses, through in strict commercial/accounting sense, such treatment is debated. The establishment expenses are a charge on the income and 'application' is analogous to 'appropriation' of the income available for charitable purposes. Administrative and establishment expenses could be of various categories, some part of which could be directly attributed to the generation of income and some part could be towards charitable or religious purposes. This issue has been debated in various cases, whether establishment expenses can be considered as application for the objects of the organization.

- In *CIT v. Birla Janahit Trust* (1994) 208 ITR 372 (Cal.), the court opined that *expenses incurred for running a trust should be considered to have been applies for the objects of the trust*. In this case, reference to various other cases was also made. The Following extracts are very relevant in this regard:

"It appears from the order of the Appellate Assistant Commissioner that the assessee has incurred the expenditure on salaries and miscellaneous expenses for the purpose of carrying out the objects and purposes of the trust and not only to earn the income from dividend. It is now well-settled that in determining the portion of income applied or accumulated for charitable or religious purposes, regard should be had to the trust income in a commercial sense or according to the accounts of the trust and not the total income as computed under the provisions of the Income-tax Act. Our attention has been drawn to several decisions in this connection. In *Deo Radha Madhava Lalji Genda Trust v. Property Tax Officer* (1980) 125 ITR 531 (MP), it has been observed that tax liability and other outgoing in respect of the trust property are all incidental expenses relating to and connected with the main object of the trust, which are exclusively religious and charitable. If the trust property is not properly maintained and proper accounts are not kept, the very existence of the trust would be in jeopardy and its object and purpose would be lost. In this view of the matter, simply because a part of the



rental income is spent in the maintenance, repair, payment of salaries to employees, taxes and legal expenses, etc., it could not be said that the income derived from the trust property was not applied exclusively to religious or charitable purposes.”

- 4.2. In *Gem and Jewellery Export Promotion Council v. ITO* (1999) 68 ITD 95 (Mum.), the Tribunal held that the entire non-code expenditure could not be said to have been incurred towards earning of the income and, therefore, only that portion of the expenditure-which could be attributed to the earning of income should be deducted from the gross income for computing the income on which application and accumulation under section 11(1)(a) was allowed . the following extracts are relevant in this regard:

“It is clear from the decisions cited above, that it is the income computed on commercial principals which is available for purposes of accumulation under section 11(1) (a). The contention that in the case of Trust, gross receipts is the income of the Trust, in the light of the above decisions, we find is not well founded. We accordingly hold that the income available for accumulation under section 11(1)(a) is the income as computed on commercial principles, as also taking into account the provisions of the Income-tax Act, 1961.

We however, agree with the contention on behalf of the assessee, that the entire non-code expenditure cannot be attributed to the earning of the income of the assessee. The

contention of the assessee that only a small portion of the expenditure is attributed to the earning of income shall have to be determined by the revenue authorities, after giving an opportunity of being heard to the assessee. For that purpose, the issue is set aside and remitted to the Assessing officer for working out the income and then working out the 25% of the same for accumulation.”

- 4.3. In other words, the expenditure which can be precisely or reasonably be attributed to earning of income should be deducted first to determine the income available for charitable purposes, the rest portion of expenditure shall be treated as applied towards charitable purposes.

## 5) ADMINISTRATIVE EXPENSES UNDER FCRA

- 5.1. FCRA 2010 prescribes that the administrative expenditure in any year should not exceed 50% of the total utilisation of FC funds received in that year. For the purpose of determining the administrative expenditure Rule 5 of FCRR 2011 provides the list of expenditure which shall be treated as administrative in nature.

- 5.2. The text of Rule 5 of FCRR 2011 is as under:

**“Administrative expenses-** The following shall constitute administrative expenses;-

1. *Salaries, wages, travel expenses or any remuneration realized by the Members of the*

Executive Committee or Governing Council of the person;

- II. 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;
- III. All expenses related to consumables like electricity and water charges, telephone charges, postal charges, repair to premise(s) from where the organization 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, repair to premises and expenses on other utilities.

**Provided that the expenditure incurred on salaries or remuneration of personal 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."**

5.3. It can be seen that the definition of administrative expenses includes various expenses such as rent, vehicles etc. which may also be incurred for programme purposes. Therefore, the scope of the Rule is more important than the traditional understanding of administrative expenses. In other words, some expenditure may be related with the programmes but for the purpose of FCRA 2010 they shall be treated as administrative expenditure if such expenditure fall under the list of expenditures defined in the rule above. For example, the salary of the programme director may be rated as administrative expenditure. However, in order to accommodate such aberrations, the limit of administrative expenditure has been kept at a high level of 50%.

5.4. The definition of administrative expenditure briefly is as under:

- Remuneration and other expenditure to board members and trustees.
- Remuneration and other expenditures to person managing activity.
- Expenses at the office of the NPO

- Cost of accounting and administration.
- Expenses towards running and maintenance of vehicle.
- Cost of writing and filing report.
- Legal and professional charges.
- Rent and repairs to premises.

The Rule further provides that the following salaries shall not be considered as administrative in nature:

- Salaries of personal engaged in training or for collection or analysis of field data of an association primarily engaged in research or training (1<sup>st</sup> proviso)
- Expenses related to activities, for example, salaries to doctor of hospital, salaries to teachers of school etc.  
( 2<sup>nd</sup> proviso)

5.5. From the above definition of administrative expenses, the following expenditures may be carefully ascertained.

- All kind of vehicles expenditure has been considered as administrative in nature. However, the last proviso provides that expenses for furtherance of activity 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.
- The rule includes the salaries of

person engaged in management of activity and at the same time the proviso as discussed above also applies. Therefore, salaries paid to all the staff directly engaged in implementation of the programmes shall be treated as administrative expense.

**5.6. Is separate Accounting Necessary:** it is not necessary to maintain separate books of account showing the administrative expenditure as per FCRR 2011 however, the organization should be in a position to clearly segregate the expenditure, which is administrative in nature, in the books of account. In other words, the organization may not maintain separate ledger heads based on the FCRR 2011 rules for administrative expenditure but it should have the detail and the supporting accounts to justify the percentage of administrative expenditure for the purpose of audit and reporting, if necessary.

**5.7. Is admin. Expenditure required to be reported to FCRA authorities:** Under the current scheme of law the administrative expenditure is not required to be reported to the FCRA authorities. It is a statutory compliance which the organization has to follow. The annual return form FC-6 also does not require the reporting of administrative expenditure. However, the central government may call for such information and records.

\*\*\*\*\*

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

## Governance Section

# BOARD COMMITTEE - PROGRAMME COMMITTEE

- Mr. Sanjay Patra, FCA

### 1) INTRODUCTION

Every organization has a vision and mission statement to direct it. Further, organizations plan various activities and programs in order to fulfill this mission. There is the Board and there is the Management team who provide oversight and supervision, respectively. The Board may set up various sub-committees to effectively run the organization of which Program Committee is one. However, in case of small organizations, the Board may not form Committees and can be directly responsible. Generally, the Program Committee is a Standing Committee of the Board that works with the senior staff team (Chief Functionary and Head of Programs) to monitor various programs of the organization. Programs being the center of every organization, it can be said that Program Committee performs a key role in the governance of an organization.

### 2) THE NEED FOR PROGRAM COMMITTEE

The Program Committee usually comprises of both Board and Non- Board members who have adequate knowledge to support various programmatic operations of the organization. However, in small organizations, the Board may oversee all program related activities directly without creating a sub- committee.

In case of medium or large organizations, it makes more sense to have a designated Program Committee to oversee the program activities on behalf of the Board. The Program Committees's responsibilities would include monitoring the quality of implementation, effectiveness of the planned activities and timely reporting to various stakeholders. The Program Committee especially ensures that the donor's program reporting compliances are being met.

### **3) RESPONSIBILITIES OF BOARD COMMITTEES**

The Program Committee members are expected to be specialist in the field of programs. The Program Committee of each organization comprises of thematic experts. At the larger level, the Board keeps an oversight of all the programs. The major responsibilities of the Program Committee are:-

- To oversee new program development
- To monitor and assess the performance of the existing programs and suggest improvements, at strategic level
- To initiate and guide program evaluations

### **4) MEMBERS OF PROGRAM COMMITTEE**

The Program Committee should have a minimum of three members of whom two should be Board members. Apart from the two members, the Board can nominate one/two person's ( who can be from outside the Board) to be co-opted based on the specialised skills in the areas of program/project management. Therefore, the following individuals constitutes the Program Committee:-

- Two members of the Board
- One/Two persons having expertise in non –profit Programs management/ related field (from outside the Board) like Consultants, Project monitoring and evaluation experts and other persons with related experience.
- Chief Functionary and Head of Program participates as invitees for inputs and consultation. (This practice ensures independent functioning of the committee.) As can be seen from

above, the size of the Program Committee should be between three and seven members (including chief Functionary and Head of programs as invitees) .

### **5) CREATING AND MANAGING PROGRAM COMMITTEE**

The Board of NPOs comprises of individuals from diverse backgrounds. To ensure that the Board effectively stewards the organization, a formal mandate is adopted that distictly sets out the functions of the board and its various Committee among which the Program Committee is one.

#### **5.1 Create a mandate**

It is very important to clearly develop a Terms of Reference (ToR) for the Program Committee. The ToR/ mandate of the Program Committee is determined by the Board. The mandate would depend upon the willingness of the Board to delegate the progammatic responsibilities. However, the ultimate responsibility for the organization rests with the Board thus, strategic and critical decisions should not be delegated by the Board. The Program Committees should have more of supervisory and advisory role rather than a critical decision making role.

#### **5.2. Choose the members**

There should be a clear guideline for choosing members of the Program Committee. The Board should select the Program Committee in its Annual General Meetings (AGM) every year. The composition of the members of

the Program Committee should be a combination of Board members, staff, as well as certain subject matter experts. A broad combination of the Program Committee has been mentioned in point No.4.

### **5.3. Establishing processes**

The Board should determine the number of times the Program Committee should meet. Generally, the Program Committee should meet three to four times a year. At least once every six months, the Committee members should make visits to field areas during the course of program implementation. The minutes of the meeting should be clearly recorded. During the Board meetings, report and updates on program activities should be shared with the Board members.

### **5.4. Induction plan**

There should be a clear induction plan for the new members of the Program Committee. For the induction process, the Chair of the Program Committee (chosen from among the Board) and the Chief Functionary should be involved. Certain key documents i.e. Program Policy, Human Resource Policy and other major policies, annual activity report and any other relevant papers need to be provided. The induction process should happen before the first meeting of the Program Committee.

## **6) ROLE OF CHAIR OF PROGRAM COMMITTEE**

The Chairperson of the Program Committee is elected among the Board who is a veteran at programs and is independent of the implementation of the programs of the organization. Therefore, the following roles are envisaged as the Chair of the Program Committee:

- Chairing the meetings
- Finalizing the agenda with the Chief Functionary and Head of Programs
- Ensuring that clear and proper minutes of the meetings are recorded
- Ensuring that decisions are implemented in appropriate time and reported back to the Committee
- Keeping the Board informed about the issues and decisions of the Program Committee, at periodic intervals

## **7) CONCLUSION**

The Program Committee provides oversight on program related issues on behalf of the Board. The Program Committee is set up by the Board and is accountable to the Board. A Program Committee which is well-structured, well-informed and comprises of experts in programs is beneficial for the organization as the Committee is constantly involved in overseeing, mentoring and approving the programs and services of the organization, and in the process ensuring that all services reflect the organization's mission.

\*\*\*\*\*

*(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)*



## Others

### **WORKSHOP ON INTERNAL CONTROLS FOR NORTH EAST INDIA PARTNERS**

The Internal Control workshop was organized for BftW North east Partners from 15<sup>th</sup> July to 16<sup>th</sup> July, 2014 in Imphal, Manipur. There were 25 participants from 7 BftW North east Partner Organizations. The workshop touched upon dimensions of financial management system and of which 'internal control' formed a significant part. The importance of plans, budget and activity plan for better project implementation was discussed. Issues pertaining to risk identification and risk assessment were also covered. Some of the risks identified by the participants in their day to day work were:

- Lack of proper banking facilities
- Village conflicts
- Lack of proper bills and receipts in the program area

There was a brief discussion about the Notional Expenditure like charging of depreciation, charging of rent for owned premises, etc.

Further session on Policy setting and BftW requirements were also taken up. The two days workshop comprised of various group works and discussions to make the workshop more participative.



## **THE SIXTH REGIONAL NAN CONVENTION**

The sixth NGO Accountants Network (NAN) was organized on the 4th and 5th of August, 2014 by FMSF at Don Bosco, New Delhi. The convention was attended by 104 NGO professionals, which included senior managers and accountants from 17 states of India. Out of the total, 38 participants were from Bread for the World (BftW), Germany supported organizations. The participants were predominantly experienced accountants working with grass root organisations. The sixth NAN convention was organized with the following objectives:

1. To develop understanding on incorporation laws and related governance practices
2. To develop understanding on various aspects of grant management
3. To develop clarity on various legal requirements applicable to the voluntary sector, especially on FCRA and Income Tax

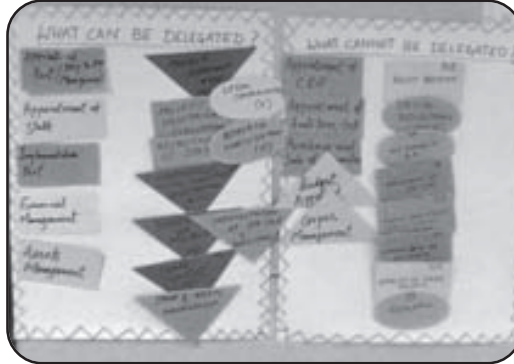
The resource persons for this two days convention comprised of professionals experts with rich background and experience in the voluntary sector such as Mr. Rajan Khosla, Dr. Manoj Fogla, Dr. John Dayal, Mrs. Sharda Jain, Mr. Joselyn Martins, Mr. Anjani Kumar Sharma, Mr. Suresh Kejriwal, Mr. Subhajit Sahoo, Mr. Samir Manocha, Mr. Sanjay Patra and Mr. Sandeep Sharma.

The sessions that were covered during the convention are Incorporation Laws, Governance and related Governance Practices; Grant Management; FCRA: Laws and Practices and Controversies; and Income Tax: Laws, Practices and Controversies.



## WORKSHOP ON GOVERNANCE

The workshop on 'Governance of NGOs' was organized by Financial Management Service Foundation (FMSF) for Bread for the World (BftW) partner organisations on 18<sup>th</sup> and 19<sup>th</sup> September, 2014 in Noida, UP. The workshop was attended by 16 participants from 8 partner organisations. The two days workshop comprised of six technical sessions where the topics such as Understanding Governance of NGOs, Knowing Fundamental Documents, Best Practices in Governance, Meetings & Minutes, Board Processes and Risk management & mitigation were covered.

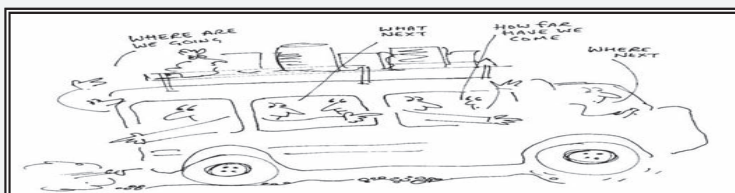


The two days workshop comprised of various group works, role-plays, group discussions and self-assessment tests to make the session interactive.





# NPO GOVERNANCE PROGRAMME ( 4 MONTHS CERTIFICATE PROGRAMME)



Non – Profit Organization (NPO) Governance Program is a four months online certificate Program which takes the participants systematically through a sustained learning process. The objective of the program is to build capacity and create a facilitative atmosphere of personnel working in the voluntary sector in the area of NPO Governance (includes Voluntary Associations/ Civil Society Organization). Since the program is built on virtual platform, it is open to participants globally.

## ELIGIBILITY CRITERIA

- CEOs, Chief Functionaries / Executive Directors of Non Profit Organizations (NPOs).
- Persons working in senior / mid-management level positions in NPOs, Donor / CSR Organizations.
- Individuals serving in the board of Non Profit Organizations.
- Consultants involved in the reviews & evaluation of NPOs.

## COURSE FEES

CATEGORIES	AMOUNT
For Applicants from India	INR 5500
Applicants from SAARC countries	US \$ 135
Applicants from other than SAARC Countries	US \$ 170

\* Inclusive of 12.36% Service

## Modules

**Module I** — NPO Constitution, Accountability & Legal Framework

**Module II**— NPO Governance and Board Issues

**Module III**— Board processes and Tools

**Module IV**— Meeting, Records, Board Reports and other issues



Registration is open  
Limited Seats  
Register Now!!!

For Details please visit  
[www.fmsflearningsystems.org](http://www.fmsflearningsystems.org) or [www.fmsfindia.org](http://www.fmsfindia.org)  
Contact us at: [coordinator@fmsflearningsystems.org](mailto:coordinator@fmsflearningsystems.org)  
Contact Person: Sritika Singh  
Contact Address: A-5, Sector-26, NOIDA, 201 301  
Phone No: 0120-4773200



## A Joint initiative of FMSF & TISS



The Diploma in Financial Management & Accountability (DFMA) is a one year diploma program in the financial management of the non-profit organizations. The course is open to all applicants from all over the world. The course is offered online via the internet.

Ideal for persons already working in the Voluntary Sector seeking to equip themselves with Financial Management Skills and for persons who are seeking to join the Voluntary Sector.

- ♦ The entire program is divided into 4 modules. These module are further sub-divided into 8 papers.
- ♦ Now offered in a flexi-mode with exit option after 6 months!
- ♦ On completion of first 4 papers, Certificate will be provided and on completion of all 8 papers Diploma.

Course Fee		For Indian Applicants	
		Certificate	Diploma
1.	For institutional sponsored candidates	14,500/	22,500/
2.	For individual candidates	7250	14,500
3.	For students	3,625	7,250
		For International applicants	
		Certificate	Diploma
4.	For applicants from developed countries	US\$ 750	US\$ 1500
5.	For applicants from SAARC & other developing countries	US\$ 275	US\$ 550

\* Service Tax Of 12.36% is also applicable on course fee

**Registration is now open**  
**Limited Seats**  
**Register Now!!!**

Please visit: [www.fmsflearningsystems.org](http://www.fmsflearningsystems.org) or [www.fmsfindia.org](http://www.fmsfindia.org)  
 Contact us at: [coordinator@fmsflearningsystems.org](mailto:coordinator@fmsflearningsystems.org)  
 Contact Person: Sritika Singh  
 Contact Address: A -5, Sector 26, NOIDA 201 301  
 Phone No: 0120- 4773200











## **Financial Management Service Foundation**

**"ACCOUNTABILITY HOUSE", A-5, Sector-26, NOIDA 201301**

**Tel: 00-91-120-4773200, Fax: 00-91-120-4773299**

**E-mail: [fmsf@fmsfindia.org](mailto:fmsf@fmsfindia.org); Website: [www.fmsfindia.org](http://www.fmsfindia.org)**

