

INTERface

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Special Focus



Highlights

- It is not mandatory to file FC renewal application before 30th April
- More than 50% change of board under FCRA
- Analysing impact of budget 2015 on NPOs
- All about CSR reporting & disclosures
- Policies – Human Resource Policy

and many more....



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Between Us

The Intent of Giving

Once Krishna and Arjuna were walking towards a village. Arjuna was pestering Krishna, asking him why Karna should be considered a role model for all Danas (donations) and not himself. Krishna, wanting to teach him a lesson snapped his fingers. The mountains beside the path they were walking on turned into gold. Krishna said "Arjuna, distribute these two mountains of gold among the villagers, but you must donate every last bit of gold". Arjuna went into the village, and proclaimed he was going to donate gold to every villager, and asked them to gather near the mountain. The villagers sang his praises and Arjuna walked towards the mountain with a huffed up chest. For two days and two continuous nights Arjuna shoveled gold from the mountain and donated to each villager. The mountains did not diminish in their slightest.

Most villagers came back and stood in queue within minutes. After a while, Arjuna, started feeling exhausted, but not ready to let go of his ego just yet, told Krishna he couldn't go on any longer without rest. Krishna called Karna. "You must donate every last bit of this mountain, Karna" he told him. Karna called the villagers. "You see those two mountains?" Karna asked. "Those two mountains of gold are yours to do with as you please" he said, and walked away.

Arjuna sat dumbfounded. Krishna smiled and told him "Arjuna, subconsciously, you yourself were attracted to the gold, you regretfully gave it away to each villager; giving them what you thought was a generous amount. Thus the size of your donation to each villager depended only on your imagination. Karna holds no such reservations. Look at him walking away after giving away a fortune, he doesn't expect people to sing his praises, he doesn't even care if people talk good or bad about him behind his back. That is the true sign of a man on a higher ground".

Again, I cannot vouch the authenticity of this story, but brings out the true intent of the heart of the giver.



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expressed by the
authors are not
necessarily that of
FMSE.

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Legal Section

IT IS NOT MANDATORY TO FILE FC RENEWAL APPLICATION BEFORE 30TH APRIL **(INCLUDING IMPORTANT NOTES FOR FILING OF FORM FC 5)**

- Dr. Manoj Fogla, FCA

FCRA REGISTRATION & RENEWAL

1.1.1 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.

1.1.2 In our previous issues of “Standards & Norms” we discussed the law relating to renewal of FC registration. In this issue we shall analyse whether it is mandatory for large organisation to file the FC 5 form before the 30th April 2015. This issue may be read together with the earlier issues on this subject available at www.fmsfindia.org.

1.1.3 There is an apprehension that all organisations having multi-year projects are mandatorily required to file FC renewal application before 30th

April, 2015. However, It is clarified that it is not mandatory to file renewal application within 30th April, 2015 even for the organizations having multi-year project. A Multi-year project implementing organization has the additional advantage of applying one year prior to the date of expiry. However, it is clarified herewith that any application made before six months shall not be treated as a violation.

1.1.4 It is understood from reliable sources that the FCRA wing of MHA is in the process of creating facilities for Online filing of FC 5 form for renewal. It is also advised that once the return is submitted online, hardcopies can be sent together with the copy of Demand Draft, certified copy of FC registration certificate. No other enclosures are required to be submitted.

DIFFERENT TIME LIMIT FOR APPLICATION FOR RENEWAL FOR ORGANISATIONS IMPLEMENTING MULTI-YEAR PROJECTS

- 1.2.1** 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 multi-year 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 should reach the Ministry of Home Affairs, accompanied by the requisite fee.
- (a) in case of an organisation which have multi-year projects, on & before 30th April, 2015, and
 - (b) in any other cases, on or before 31st October 2014

- 1.2.2** *Contradiction between the Act & the Rules:* Section 16 of the FCRA, 2010 provides that all organisation 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, even though the application

is filed before six months or even during the last six months, would not tantamount to violation of FCRA, 2010.

FC RENEWAL APPLICATION CAN BE SUBMITTED BY 31ST OCTOBER, 2015

- 1.3.1** There is an apprehension that all organisations having multi-year projects are mandatorily required to file FC renewal application before 30th April, 2015. However, it is clarified that it is not mandatory to file renewal application within 30th April, 2015 even for the organizations having multi-year project. A Multi-year project implementing organization has the additional advantage of applying one year prior to the date of expiry. **However, it is clarified herewith that any application made before six months shall not be treated as a violation.**

MEANING OF MULTI-YEAR PROJECT

- 1.4.1** Multi-year project means the organization having programs for a project period of more than one year.

ONLINE FILING OF FC 5 FORM FOR RENEWAL

- 1.5.1** It is understood from reliable sources that the FCRA wing of MHA is in the process of creating facilities for Online filing of FC 5 form for renewal. It is also advised that once the return is submitted online, hardcopies can be sent together with the copy of Demand Draft, certified copy of FC registration certificate. No other enclosures are required to be submitted.

NUMBER OF YEARS FOR WHICH FINANCIAL INFORMATION MAY BE PROVIDED

1.6.1 The financial information as required under clause No. 4 & 5 of the Renewal Form (FC 5) can be submitted since inception or if such information is not available then it is recommended that the information for a minimum period of preceding 8-10 years may be provided.

ONLY CONSOLIDATED AMOUNT OF FC RECEIPT TO BE REPORTED UNDER CLAUSE 4 OF FC-5 FORM

1.7.1 Amount of Foreign Contribution received as required under Clause No. 4 can be taken from the total receipt as per FC 3 / FC 6 return or from the Auditor's certificate.

ONLY CONSOLIDATED AMOUNT AND BRIEF DETAIL OF FC UTILISATION TO BE REPORTED UNDER CLAUSE 5 OF FC-5 FORM

1.8.1 The details of foreign contribution as required under Clause 5 can be given as per the broad purposes as summarized in the FC 3 / FC 6 return.

CLAUSE 3 OF FC 5 FORM SHOULD CONTAIN FC REGISTRATION DETAILS AND THE PLACE OF REGISTERED OFFICE AT THAT TIME OF FC REGISTRATION

1.9.1 Clause 3 of FC 5 form should contain registration details of FC registration and the place of registration should be mentioned on the basis of address at which FC registration was obtained.

OTHER ISSUES

1.10.1 Incorporation details like Societies Registration No. and the FC Designated bank account detail should be given in Clause 10 of the form.

1.10.2 For the organization furnishing renewal application after 31st March, 2015 but before the finalisation of the audited statements and within the last date of filing FC-6 return, it is not mandatory to provide audited statements for F.Y 2014-15.

1.10.3 For regularization of various changes the following is advised:

- In the nature of the organization: separate intimation should be given to the ministry in the format attached.
- In address: separate intimation should be given to the ministry in the format attached.
- In the board : if the change in the board has taken place for which prior permission was required, a separate request for approval should be submitted
- necessary format attached.

1.10.4 The regularisation of various changes should not be enclosed with the FC 5 form for renewal. These intimations should be sent separately.

CLAUSE WISE COMMENT FOR FILING OF FORM FC 5

1.11.1 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 FC 3 / FC 6 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: **Yes**

The following two information need to be provided (details of registration of the organization and details of FC designated bank account).

1. Provide the details of registration of the organization such as:

- Name
- Registration number
- Registered as : Society/Trust/
Company
- Registering authority

2. Details of FC designated bank account:

- Name of the account
- Bank account number
- Name of the bank and complete address

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

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.

Sub: 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) Email 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 filing the application. Phone/ Mobile No., if any)	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)

**APPLICATION FORM FOR CHANGE
OF NAME/ADDRESS/NATURE**

[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:

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 Bearers, 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
- (a) refused registration under the Act;
 - (b) Prohibited from accepting foreign contribution.
8. Please indicate-
- (i) The name and address of the branch of the bank through which foreign contribution is to be received.
 - (ii) 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. proposed 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.

Accordingly, the following resolution was passed:

“RESOLVED that the registered office be shifted from to by complying 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

²If the organisation is a Trust or a Society then the appropriate Act shall apply.

**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

MORE THAN 50% CHANGE OF BOARD UNDER FCRA (PRACTICAL STEPS BEFORE RENEWAL)

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 Under Foreign Contribution Regulation Act, 2010 (FCRA), any change in the board members in excess of 50% shall be made with prior permission. This condition is a part of the undertaking provided by the applicant at the time of making application for 'registration' or 'prior permission'. Therefore, even though it is not mentioned in the Act or the Rules, it becomes binding on all the organisations by virtue of the undertaking given at the time of making application for 'registration' or 'prior permission'.

1.1.2 This requirement came into place when the form for applying for registration in the earlier act (of 1976 form FC-8) was amended on 27th December, 1996. Therefore, all organizations who have applied for registration before 27th December, 1996 have not applied in this new form and therefore technically not covered.

1.1.3 However, the intent of the law enforcing agency (FCRA Department) seems

to be to ensure that Organisations take prior approval before changing more than 50% of Board Members.

1.1.4 Therefore, if there is a change the Governing Body of the NPO which has not approved by FCRA department or being intimated to FCRA department, 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.

1.1.5 A letter for condonation of delay should be filed along with the requisite information.

The format of letter is provided in **Annexure 1**.

1.1.6 It has been noticed the FCRA department requires the information pertaining to the board members in a specific format. The format is provided in **Annexure 2**.

1.1.7 All those organisations, which have not intimated or not taken prior permission regarding change of more than 50% in Board Members, are strongly recommended that they should apply in the manner specified above to the FCRA department and seek condonation of delay. Such letter should be sent prior to the application for renewal of FCRA registration.

1.1.8 The overview of the law pertaining to change in more than 50% Board Members is provided hereunder.

CHANGE IN GOVERNING BODY OF NPO

1.2.1 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.

1.2.2 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.

1.2.3 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.

1.2.4 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 that have applied and obtained registration

before 27.12.1996 are not subject to this provision.

1.2.5 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.

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

Annexure 1

**FORMAT OF LETTER FOR CONDONATION OF
DELAY IN INFORMING CHANGE OF BOARD MEMBERS**

<Letterhead of the Society/Trust>

Date:

Letter No.:

To
The Secretary to the Government of India,
Ministry of Home Affairs,
FCRA Wing/Foreigners Division,
“NDCC-II Building”, Jai Singh Road,
New Delhi-110001

Sub.: Intimation regarding more than 50% change in Trustees/Board Members of the organization and request to condone the delay.

Sir,

We hereby intimate the more than 50% change in Trustees/Board Members of the organization. The reasons* for change were:

- (i) change through elections or as per the required norms of the society/trust
- (ii) due to death or retirement of the members
- (iii) any other reason as the case may be. The reasons of change could have been known in advance, particularly in case of election, death etc.

The details in respect of the (i) List of Old Trustees/Board Member at the time of FC registration (ii) List of the current Trustees/Board Members is provided in the attachments.

Kindly condone the delay and record the changes and do the needful at your end.

Chief Functionary
(Name and seal of the Organisation)

*Strikeout whichever is not applicable

**FORMAT FOR PROVIDING THE DETAILS OF
BOARD MEMBERS TO FCRA DEPARTMENT**

Sl.	Name	Father's/ Husband's Name	Nationality	Occupation	Office held in the Association, If Any	Relationship with Officer Bearers, If Any	Full Address & Contact No.

PROGRAMME ADVANCE TO BANK ACCOUNT OF EMPLOYEES & REIMBURSEMENT OF EXPENSES

(ANALYSIS OF ABOVE PAYMENTS UNDER FCRA, 2010)

- Dr. Manoj Fogla, FCA

INTRODUCTION

The Foreign Contribution Regulation Act, (FCRA) 2010 provides specific compliances with regard to opening of bank accounts and utilisation of funds. It has been noted that many NPOs transfer FC funds to the bank account of their employees to implement programmes in remote places. Similarly many organisations transfer funds to the bank account of other individuals or non-FC organisations as reimbursement of expenses. The legal and procedural issues in these regard have been discussed in this issue and a brief summary is provided below:

- FCRA does not allow transfer of FC fund to any bank account unless it is the designated bank account or a FC approved multiple bank accounts for utilization purposes.
- Transfer of FC programme advance to the bank account of employees to implement programmes in remote places is legally not permissible.
- There is a misunderstanding that legally

an employee should be entitled to receive FC programme advance to the bank account because employees are otherwise entitled to carry cash on behalf of the organisation. In other words, if cash can be carried why not transfer to bank account. However, such practices are legally not consistent.

- FCRA law applies to individuals as well as other organisations. Nobody is permitted to receive FC funds for a definite purpose without prior permission or approval from FCRA department. The same shall apply to transfer of FC programme advance to the bank account of employees. It may further be noted that FCRA funds have to be utilised through FCRA registered organisation only. Under no circumstances, such funds can be utilised through any other individual or institution unless there is prior permission.
- An organisation should consider opening multiple bank accounts in remote places and such employee may

be made the signatory to such bank account.

- Transfer of salary or travel reimbursement to the bank account of employees is legally permissible.
- However, individual receiving FC funds for personal purposes or as end utilisation are not covered under FCRA.
- Some NPOs transfer funds as reimbursement of expenses to unrelated individuals or non FC organisation. Such transfer implies that there is a commercial or fiduciary relationship and in either case FCRA law would apply. In other words, such transfers are legally not permissible.
- Some NPOs award commercial contract to NPOs which are not registered under FCRA to implement projects. There is considerable legal risk in a commercial contract, because *quid pro quo* (give and take) has to be established between the FC registered organisation and the organisation which is not registered under FCRA. In other words, such contracts are generally not permissible.

PROGRAMME ADVANCE IN STAFF BANK ACCOUNT

1.2.1 It is not permissible to transfer FC programme funds to the bank account of the staff. Many organisations follow this practice for transferring project funds to remote places. However such practices may not be legally consistent. Some legal and accounting reasons against such practices are explained below.

1.2.2 Handling money or funds as a part of employment contract is permissible

but accepting funds for definite purpose in fiduciary capacity is not permissible. When an employee is handling the cash he/she is not a trustee to the fund, he/she is just an extended arm of the organisation. For example, if an employee is withdrawing cash from the bank account of the organisation; the organisation can take transit insurance and if there is a theft then the FIR (First Information Report) can also be filed in the name of the organisation. However, if the employee is withdrawing cash from his/her personal bank account the organisation cannot take transit insurance and if there is a theft then the FIR (First Information Report) cannot be filed in the name of the organisation.

1.2.3 Further, if some amount remains unutilized in the personal bank account of the staff at the end of the year, then such amount cannot be treated as a part of the FC closing balance of the organisation, but the cash in hand with the employee is always be treated as a part of the FC closing balance of the organisation.

1.2.4 Based on the above it is advised that NPOs should not transfer FC funds to the bank account of their employees to implement programmes in remote places.

RECOMMENDED PROCEDURE OF TRANSFERING FUNDS TO REMOTE PLACES

1.3.1 The recommended procedure to transfer FC funds to remote places is

to open multiple bank accounts and inform the FCRA department within 15 days of opening such account. Such employee may be made the signatory to such bank account.

- 1.3.2** Sometimes large cash funds are necessary to implement one time project at a specific location. In such circumstances also it is advisable to make transfer through banking channels. Organisations may also consider opening multicurrency utilisation bank account under FCRA. The multicurrency bank accounts can be used for cash withdrawals.

CASH EXPENDITURE UNDER INCOME TAX & FCRA

- 1.4.1** There is a misunderstanding that it is prohibited to make cash expenditure above Rs. 20,000/- as per Income Tax Act. Such provision applies to business entities and not NPOs particularly during implementation of charitable or religious activities. However, it is recommended that expenditure should invariably be made through bank only, as far as possible.
- 1.4.2** FCRA Department has issued a circular which mandates to incur expenditure above Rs.20,000/- by cheque or draft only. A copy of the circular has been enclosed as **Annexure 1**.
- 1.4.3** The circular advises FC registered organisations to incur expenditure above Rs. 20,000/- by cheque or draft only. It further provides that organisations indulging in cash

payment above Rs. 20,000/- shall be subjected to more intensive scrutiny.

- 1.4.4** It is noteworthy to mention that the circular makes a reference to the Income Tax Act regarding the provision pertaining to expenditure above Rs.20,000/-. However, there is no provision under the Income Tax Act which prohibits NGOs from incurring cash expenditure beyond Rs. 20,000/- for charitable or religious activities. The Income Tax Act has such a provision only for the organisations which have income under the head "Business and Profession". Though this circular is legally inconsistent however, till it is challenged or withdrawn FC registered organisation are advised to avoid cash expenditure above Rs.20,000/-.

REIMBURSEMENT OF EXPENSES TO CBOs & INDIVIDUALS WHO ARE NOT WORKING WITH THE ORGANISATION

- 1.5.1** It is not permissible to transfer FC programme funds to the bank account of CBOs & individuals who are not working with the organisation. It is only permissible to reimburse expenses and claims of authorised personnel. An organisation may reimburse the expenditure incurred by the staff but it cannot hire another individual or institution (whether registered or not) to implement the programme since FC funds cannot be received by any individual or institution (whether registered or not) for a definite purpose.

WHY REIMBURSEMENT CONTRACTS AND COMMERCIAL CONTRACT TO OTHER NPO ARE NOT PERMISSIBLE

1.6.1 Some NPOs transfer funds as reimbursement of expenses to unrelated individuals or non FC organisations. Such transfers imply that there is a commercial or fiduciary relationship and in either case FCRA law would be attracted.

1.6.2 Some NPOs award commercial contract to NPOs which are not registered under FCRA to implement projects. There is considerable legal risk in a commercial contract, because *quid pro quo* (give and take) has to be established between the FC registered organisation and the organisation which is not registered under FCRA. Working on behalf of a FC Registered NPO is legally permitted only if the implementing NPO also has FC registration. By engaging unregistered organisation to do the activity in

India, FC registered organisation will effectively run its operations through another organisation. There is a fundamental difference between hiring a contractor to render services and hiring an NPO to implement a development program. In the former case the services are given back to the organization and in the later the services are provided onward on behalf of the organization. Since in reality there will be no 'quid pro quo' in such contracts, therefore technically FCRA Laws will apply. It

may be understood in the following sequence:

- i. FCRA Law applies to both **for profit** and **not for profit** organizations including individuals.
- ii. The nature of transactions is important and not the legal character of the recipient. All NPOs have right to engage in incidental commercial activities. This does not imply that NPOs start camouflaging development contracts as commercial contracts, for want of FC registration. Whether the recipient organisation has Service Tax registration or not, does not matter.
- iii. FCRA law will apply to all non commercial transactions made with FC funds.
- iv. Therefore, to receive a grant from a foreign source one needs prior permission or registration under FCRA.
- v. A commercial transaction with a foreign entity is also often misunderstood. An organization may render services to a FC Registered NPO but cannot do activities on behalf of a FC Registered NPO in India, unless such organization is FC Registered NPO, itself.

OPENING OF MULTIPLE BANK ACCOUNTS AFTER REGISTRATION

1.7.1 Rule 9(1)(e) of FCRR 2011 specifically provides that multiple bank accounts can be opened after the registration is granted. The text of Rule 9(1)(e) is as under:

“(e) The person may open one or more accounts in one or more banks for the purpose of utilising the foreign

contribution after it has been received and, in all such cases, intimation on plain paper shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.”

- 1.7.2** It may be noted that the multiple bank accounts may be opened with FC funds only. Such accounts should be used for utilisation purposes only, no FC should be received in such accounts directly. **It is not necessary to take permission for opening of such multiple bank accounts.** However, it is necessary to submit an intimation to the Central Government within 15 days of the opening of such bank accounts. A sample format of the intimation letter is provided in **Annexure 2**.

FCRA, 2010 ALSO APPLIES TO INDIVIDUALS

- 1.8.1** As per the FCRA 2010, the law applies to whole of India including Indian ‘persons’ domiciled outside India. The specific section for the applicability of FCRA is reproduced as under:

Section 1(2) It extends to the whole of India, and it shall also apply to—

- (a) citizens of India outside India; and*
- (b) associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.*

- 1.8.2** It may be noted that the scope of the FCRA 2010 has been broadened. This is evident from the preamble to the Act itself which is reproduced as under:
An Act to consolidate the law to regulate the acceptance and utilisation

*of foreign contribution or foreign hospitality by **certain individuals or associations or companies** and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.*

- 1.8.3** It may be noted that the act applies to certain individuals or associations or companies. These individuals or entities have been defined in the definition of the term “person” under section 2(1)(m).

- 1.8.4** The act does not apply to all persons it only applies to certain person receiving foreign contribution only. In other words they have does not apply to all the foreign exchange receipts of certain persons.

WHO IS COVERED UNDER THE TERM “PERSON”

- 1.9.1** The individuals or entities covered in the definition of the term “person” under section 2(1)(m) is as under :

“person” includes—

- (i) an individual;*
- (ii) a Hindu undivided family;*
- (iii) an association;*
- (iv) a company registered under section 25 of the Companies Act, 1956.*

- 1.9.2** Further the term “association” has been defined under section 2(1)(a) as under :
“association” means an association of individuals, whether incorporated

or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organisation, by whatever name called;

1.9.3 The term ‘association’ covers all types of associations in the widest possible sense. The Act does not specify registration as a condition precedent for the purposes of this Act. It is not necessary for an association to be a registered one but there must be some documentary evidence to establish the existence and activities of the association.

All types of conceivable associations of two or more individuals are covered under the definition of the Act. All charitable organisations (educational, social, cultural, religious, political etc.), societies, trusts, companies etc. are covered under the Act. Organisations established for the promotion of science, research, literature, fine arts, libraries, museums, hospitals, trade unions come within the purview of this Act. It also includes co-operative societies, firms registered under the Partnership Act, 1932 and chit fund societies created under the Chit Funds Act, 1982 etc.

WILL INDIVIDUAL RECEIVING CONTRIBUTION FOR PERSONAL PURPOSES BE COVERED

1.10.1 As explained above, the term ‘person’ includes individuals, therefore, all individuals except the

prohibited category can receive foreign contribution subject to the compliance of FCRA 2010. The FCRA, 2010 has confusing provisions in this regard; however, the overall intent seems to be towards regulating all foreign contributions received by individuals from foreign source.

1.10.2 An individual may receive foreign contribution or gift for personal consumption or as a trustee to execute any specific programme, research, activity etc. Some foreign donors do send money in individual bank accounts for charitable project. The issue is whether both types of foreign contribution receipts shall be covered by the act or not.

1.10.3 Section 11(1) of the FCRA provides that any person receiving foreign contribution for a definite programme should apply for registration. In other words it may be implied that any person receiving foreign contribution for personal use may not apply for registration. This provision creates confusion on whether individuals receiving gifts or contribution for personal purposes are exempted from the law. Further section 12(4)(a)(vi) provides that any person applying for registration or prior permission shall not use foreign contribution for personal gain or divert it for any undesirable purpose. To sum, the registration and procedural provisions of the act have been structured only to cover contribution received for a definite purpose, but the statutory definition of foreign contribution and inclusion of individuals in the

definition of the term 'person' makes it applicable on all individuals who receive foreign contribution from a foreign source. But at the same time the act is not clear how such contribution received by individuals will be regulated when the registration and prior permission are required to be taken only when foreign contribution is received for definite purpose.

1.10.4 In other words, the application of the act on individual is very clear, further gifts from foreign sources also seem to be covered under the definition of foreign contribution.

But the act does not regulate personal gifts or contribution therefore, individuals or even institution, technically, can receive gifts from foreign sources without prior permission or registration. The regulation of personal receipts and gifts from foreign sources has not been properly articulated. Further, the act does not debar receiving gifts and contribution for personal purposes.

The act provides for reporting of gifts received from relatives above Rs. 1 lakh, but it is silent about reporting of gifts received from foreign source. (In this context, the chapter on *"Gift Received from Relatives & Foreign Sources"*.) Further, the preamble of the act as provided in the beginning of this chapter states that the act is to regulate the foreign contribution or foreign hospitality of certain individuals, associations or companies. In other words, the act at the outset also makes it clear that it does not apply to all categories of persons.

1.10.5 Overall, subject to judicial interpretation in times to come, it seems that the act applies to all persons for foreign contribution received **for a definite purpose**, in other words the act would not apply to foreign contribution received for personal use or as gift. Only the specified individuals under section 3 are debarred from receiving FC except gifts from relatives.

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

FCRA CIRCULAR ON CASH PAYMENT

F. No.II/21022/58(136)/2014-FCRA(MU)
Government of India
Ministry of Home Affairs
Foreigners Division (FCRA Wing)
.....

NDCC-II Building, Jai Singh Road,
New Delhi, Dated 21st October 2014

Circular

Subject: Advisory to associations registered/ granted prior permission under FCRA, 2010 to incur expenditure above Rs.20,000/- by cheque/ drafts

During the course of inspection of records and accounts of the associations registered/ granted prior permission under Foreign Contribution (Regulation) Act, 2010 from time to time, it has been observed that some associations withdraw huge amount of foreign contribution (FC) from their FC designated bank accounts and Utilisation Accounts by Cash.

2. It is noted that as per the Income Tax Act, any expenditure incurred by certain categories of NGOs in respect of which payment is made for a sum exceeding Rs.20,000/- otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft, shall not be allowed as a deduction under the Income Tax Act.
3. The issue of fixing an upper limit for incurring expenditure by association registered/ granted prior permission under FCRA, 2010 by cash from FC designated bank accounts and Utilisation Accounts has been under consideration of the Government for some time. The Government, after considering the issue, advises all FCRA associations that items of expenditure/ payments amounting to Rs.20,000/- or more should be done by cheque/ demand drafts.
4. It is also informed that the records and accounts of Associations indulging in cash payments of Rs.20,000/- or more from FC designated accounts or Utilisation Accounts are likely to require more intensive scrutiny by Government.
5. This issues with the approval of Competent Authority.


(G. K. Dwivedi)

Joint Secretary to the Government of India
Tele: 011-2343-8034

**SAMPLE FORMAT FOR INTIMATION TO BE SENT
AFTER OPENING MULTIPLE BANK ACCOUNTS**

<Organisation's Letter head>

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

Subject: Intimation of opening of multiple bank accounts for utilisation purposes.

Ref.: FCRA Regd. No., dt.

Sir,

We hereby inform you that, our organisation has opened the following bank account(s) as per the details provided here under. We further declare that the said bank account(s) shall be used only for utilisation purposes, no foreign contribution shall be received in such accounts directly and no local fund will be deposited in such bank account(s).

Name of the Bank Account(s) :

Name & Address of the Bank :
.....
.....

Bank Account No. :

Date of Opening of the Bank account :.....

With regards

(Chief Functionary)

<Name of the Organisation>

IT IS NOT MANDATORY TO FILE NIL RETURN FOR CONTRIBUTION RECEIVED IN KIND (ANALYSIS OF RETURNS TO BE FILED UNDER FCRA, 2010 FOR ARTICLES & SECURITIES)

- Dr. Manoj Fogla, FCA

INTRODUCTION

- 1.1.1** Under Foreign Contribution Regulation Act (FCRA), 2010, three types of Annual Returns are required to be filed. Namely, FC-6 for consolidated Foreign Contribution, FC-7 for Articles received from Foreign Sources and FC-8 for Securities received from Foreign Sources.
- 1.1.2** The FCRA, 2010 requires that even in cases where no contribution is received during the year, the organisation is required to file nil return every year. There is a confusion regarding filing of nil return in FC-7 and FC-8 in addition to FC-6. In other words, there are conflicting views; some consultants and organisations are not clear whether filing of nil return in FC-7 and FC-8 is also compulsory, in addition to FC-6.
- 1.1.3** There is nothing in the Act and Rules to suggest that filing of FC-7 and FC-8 is compulsory, in those cases where the organisation has not received any articles or foreign securities.
- 1.1.4** If one carefully reads Form FC-6 then it is evident that it is an all inclusive form for reporting all types of foreign contribution received and utilised during the year. In other words, FC-6 includes all types of foreign contribution including cash, bank receipts, articles, securities etc. It will not be proper to compartmentalise Form FC-6 along with FC-7 and FC-8. It cannot be said that Form FC-6 is for cash & bank receipts and FC-7 and FC-8 are for articles and securities.
- 1.1.5** It may further be noted that Form FC-6 does not use the words articles or securities, it uses a very broad term '*contribution received in kind*' which includes articles and securities. Further

if the organisation has received articles or securities then it is required to file FC-7 and FC-8, additionally.

1.1.6 Even if it is assumed that the requirement of filing FC-7 and FC-8 is also compulsory, then it will be a violation since the enactment of FCRA 2010 was from 1st May 2011. The FCRA department levies very heavy penalties for delay in filing of returns. Kindly see **Annexure 1**. The penalties are for delay in filing of any type of form, the penalties are not confined to the delay in filing of FC-6 only. It may also be noted that the FCRA department does not have any discretionary power to condone the delay in filing of returns. Therefore, it is not advisable to file delayed returns with a request for condonation of delay, as the delay cannot be condoned without penalties.

1.1.7 A technical analysis of the return filing requirement under FCRA has been provided in this issue.

RETURNS, STATEMENTS & CERTIFICATES TO BE FILED

1.2.1 Rule 17 provides that the annual return accompanied by Income and Expenditure statement, Receipt and Payment Account and Balance Sheet shall be submitted by 31st of December. The requirement regarding filing of annual returns is as under:

- Annual return shall be filed in Form FC-6, accompanied by
- Audited Income and Expenditure

Account

- Audited Receipt and Payment Account
- Audited Balance Sheet
- A copy of bank statement certified by the bank
- A nil return is required to be filed even if there is no transaction

1.2.2 The law pertaining to filing of return and statements is provided in Section 18 of FCRA 2010 and Rule 17 of FCRR 2011 which are as under:

Section 18 – Intimation

“18.(1) Every person who has been granted a certificate or given prior approval under this Act shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government, and such other authority as may be specified by the Central Government, as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him.

(2) Every person receiving foreign contribution shall submit a copy of a statement indicating therein the particulars of foreign contribution received duly certified by officer of the bank or authorised person in foreign exchange and furnish the same to the Central Government along with the intimation under sub-section (1).”

“Rule-17. Intimation of foreign contribution by the recipient. –

(1) Every person who receives foreign

contribution under the Act shall submit a report in Form FC-6, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

(2) The annual return in Form FC-6 shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form FC-7.

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-8.

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.

(6) Every such return in Form FC-6 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.

(8) A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year."

1.2.3 It can be seen that Rule 17(1) requires that all types of foreign contribution should be reported in Form FC-6 by

31st December 2015. Further Rule 17(8) requires that a nil report shall be furnished even if no foreign contribution is received during a financial year. In context of Rule 17(8) two things should be noted

(i) the requirement of nil report stands complied by filing of Form FC-6 as its includes articles and securities

(ii) the sub rule does not use the word 'report' in plural as three types of reports are required to be furnished under Rule 17. **Therefore, it is not necessary to file FC-7 and FC-8 if the organisation has not received any articles or securities from foreign sources.**

WHAT IS THE PROCEDURE FOR FILING ANNUAL RETURNS

1.3.1 An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilisation of the foreign contribution. The return is to be filed for every financial year (1st April to 31st March) within a period of nine months from the closure of the financial year i.e. by 31st December each year. Submission of a 'Nil' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. The return is to be submitted, in prescribed Form FC-6, duly accompanied by the Balance Sheet and Statements of Income & Expenditure and Receipt & Payment,

certified by a Chartered Accountant. The form is available on MHA's web-site—
<http://mha.nic.in/fcra/forms/fc-6.pdf>.

AUDITED CERTIFICATE AND STATEMENTS WITH ANNUAL RETURN UNDER FC-6

1.4.1 Along with FC-6 return, a certificate of the Chartered Accountant and audited Income & Expenditure Account, Receipt and Payment Account and Balance Sheet should also be submitted. On the basis of the relevant books and vouchers, the Chartered Accountant is required to certify the following:

- (i) The brought forward balance of the foreign contribution at the beginning of the year.
- (ii) The foreign contribution received during the year.
- (iii) The unutilised balance of foreign contribution at the end of the year.
- (iv) Certify that the association has maintained the account of foreign contribution and records relating thereto in the manner specified in Section 19 of the Foreign Contribution (Regulation) Act, 2010 read with Rule 17 of the Foreign Contribution (Regulation) Rules, 2011.
- (v) The information furnished in the certificate and in the enclosed balance sheet and statement of receipt and payment is correct.

1.4.2 It may be noted that the certificate under form FC-6 does not mention Income and Expenditure Account to be certified by a Chartered Accountant. However, it is advised that all the financial statements including Income and Expenditure Account should be

certified by the Chartered Accountant.

1.4.3 The Ministry of Home Affairs has provided a charter for the Chartered Accountants which provide the procedures and compliances to be followed by Chartered Accountants. The Charter is provided in **Annexure 2**.

OTHER CERTIFICATES BY CHARTERED ACCOUNTANT

1.5.1 Every organisation which receives foreign contribution in kind or as securities is further required to furnish certificates from a Chartered Accountant. The following additional certificates are to be furnished wherever applicable:

- Certificate for foreign contribution in kind under Form FC-7.
- Certificate for foreign contribution in securities under Form FC-8.

1.5.2 The proforma of the certificate to be given by the Chartered Accountant is provided in the respective forms.

1.5.3 It may be noted that Chartered Accountants shall be required to provide certificates with regard to the foreign contributions in kind or as securities in monetary terms in Indian rupees. Therefore, the Chartered Accountants shall be required to certify the value of the goods and securities. There is no guideline provided for such valuation. It is expected that an approximate and reasonable valuation shall be made by the

Chartered Accountants. For this purpose, Chartered Accountants may use the facts and declaration provided by the management of the organisation as a basis for such valuation.

FILING OF NIL RETURN

1.6.1 If an organisation having FCRA registration does not receive any foreign contribution during the year even then it should file nil return. It is mandatory to file Form FC-6 every year. It may be noted that one of the conditions for cancellation of certificate, as prescribed under section 14 of FCRA, 2010 includes no reasonable activity for two consecutive years. Therefore, continuous filing of nil return is necessary and at the same time more than two years of “nil activity” can be a reason for cancellation of registration.

DECLARATION AND AUTHENTICATION

1.7.1 The FC-6 form is required to be signed by the Chief Functionary of the organisation and a certificate is also required to be given by a Chartered Accountant giving a brief summary of the FCRA funds movement and the opening and closing balances of FCRA Funds.

1.7.2 The Term “Chief Functionary” has not been defined in FCRA 2010 or

FCRR 2011. Normally the head of the organisation should be construed as the Chief Functionary. The organisation may also designate any office bearer as the Chief Functionary through a General Body/Governing Body resolution, for the purposes of filing the FCRA returns, Forms etc.

SEVERE PENALTY FOR DELAYED FILING OF FC RETURNS

1.8.1 The FCRA department, Ministry of Home Affairs (Foreigners Division-FCRA) has issued notification No. II/21022/23(49)/2012-FCRA-III, dt. 26th April, 2013 through which it has provided stringent penalties for delayed filing of annual return under FCRA.

1.8.2 It may be noted that currently the last date of filing Form FC-6, FC-7 and FC-8 is 31st December, i.e. nine months from the end of the financial year. The penalties proposed are as under:

- 2% of the amount received or Rs.10,000/- whichever is higher, if the delay is within 90 days.
- 3% of the amount received or Rs. 25,000/- whichever is higher, if the delay is between 90 to 100 days.
- 5% of the amount received or Rs. 50,000/- whichever is higher if the delay is more than 180 days, plus Rs. 500/- per day for every day beyond 180 days.

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

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 26 अप्रैल, 2013

का.आ. 1070(अ).—केन्द्रीय सरकार, विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का 42) की धारा 41 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विनिर्दिष्ट करती है कि नीचे दी गई सारणी के स्तंभ (4) में विनिर्दिष्ट अधिकारी अधिनियम के अधीन कोई अभियोजन संस्थित करने से पूर्व उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट अपराधों का उक्त सारणी के स्तंभ (3) में विनिर्दिष्ट रकम का संदाय करने पर शमन कर सकेगा, अर्थात् :-

सारणी

क्रम सं.	अपराध	शास्ति की रकम	शमन करने के लिए सक्षम प्राधिकारी
(1)	(2)	(3)	(4)
1.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् नब्बे दिन तक विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की दो प्रतिशत या दस हजार रुपए, जो भी अधिक हो, की शास्ति।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।
2.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् इक्यानवें दिन के पश्चात् एक सौ अस्सी दिन तक विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की तीन प्रतिशत या बीस हजार रुपए, जो भी अधिक हो, की शास्ति।	गृह मंत्रालय के विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।
3.	प्रत्येक वर्ष 31 दिसम्बर के पश्चात् एक सौ अस्सी दिन के पश्चात् विवरणी प्रस्तुत न करना।	वित्त वर्ष के दौरान प्राप्त रकम की पांच प्रतिशत या पचास हजार रुपए, जो भी अधिक हो, के साथ एक सौ अस्सी दिन के पश्चात् विलंब के प्रत्येक दिन के लिए पांच सौ रुपए की शास्ति।	गृह मंत्रालय में विदेशी प्रभाग का विदेशी अभिदाय (विनियमन) अधिनियम खंड का प्रभारी निदेशक या उपसचिव।

[सं. II/21022/23(49)/2012-एफसीआरए-III]

1706 GI/2013

(1)

वी. वमलनमंग, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 26th April, 2013

S.O. 1070(E).—In exercise of the powers conferred by sub-section (1) of section 41 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010), the Central Government hereby specifies that the officer specified in column (4) of the Table below, may, before institution of any prosecution under this Act, compound the offences specified in column (2) of the said Table on payment of the amount specified in column (3) of the said Table, namely :—

TABLE

S. No.	Offences	Amount of penalty	Officer competent for compounding
(1)	(2)	(3)	(4)
1.	Non-furnishing of return upto ninety days after 31st December every year.	Penalty of two per cent of the amount received during the Financial year or rupees ten thousand, whichever is higher.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.
2.	Non-furnishing of return after ninety one days upto one hundred and eighty days after 31st December every year.	Penalty of three per cent of the amount received during the Financial year or rupees twenty thousand, whichever is higher.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.
3.	Non-furnishing of return after one hundred and eighty days after 31st December every year.	Penalty of five per cent of the amount received during the Financial year or rupees fifty thousand, whichever is higher. with rupees five hundred per day of delay after one hundred and eighty days.	The Director or Deputy Secretary in charge of the Foreign Contribution (Regulation) Act Wing of Foreigners Division in the Ministry of Home Affairs.

[No. II/21022/23(49)/2012-FCRA-III]

V. VUMLUNMANG, Jt. Secy.

CHARTER FOR THE CHARTERED ACCOUNTANTS

Since FCRA, 2010 is a national security legislation, Associations are required to exercise extreme care and caution in dealing with foreign contribution from the time of its receipt to its final utilization.

As the Chartered Accountants audit the accounts of the Associations and certify the accounts before submission to the Government, they are required to provide proper guidance to the Associations who are either applying for grant of prior permission/registration or who have been granted prior permission/registration under FCRA, 2010.

The Chartered Accountants are requested to get themselves thoroughly familiarised with FCRA, 2010 and FCRR, 2011 so that they can properly advise the Associations:

- To verify whether an Association is eligible to receive foreign contribution.
- To guide the applicant organization in submission of application for registration/prior permission;
- To ensure that an Association receives and utilises the foreign contributions through its bank account exclusively opened for the purpose in accordance with the provisions of FCRA, 2010 and FCRR, 2011 and that foreign contribution is not deposited or utilised from the bank account being used for domestic funds.
- To assist the Association in proper maintenance of prescribed books of accounts in accordance with the provisions of FCRA, 2010 and FCRR, 2011;
- To ensure that the annual returns of an Association have been prepared in accordance with the provisions of FCRA, 2010 and FCRR, 2011.

ANALYSING IMPACT OF BUDGET 2015 ON NPOs

- Dr. Manoj Fogla, FCA

PATH BREAKING AMENDMENT TO THE DEFINITION OF 'CHARITABLE PURPOSE'

1.1.1 The Finance Bill, 2015 has amended the definition of 'Charitable Purpose'. Basically two important changes have been proposed, Yoga has been included as an independent limb of 'Charitable Purpose' and secondly some clarity has been provided to the notorious proviso regarding business activity. The proposed amendments are as under:

(b) In clause (15),—

(i) After the word "education," the word "yoga," shall be inserted;

(ii) For the first and the second provisos, the following proviso shall be substituted, namely:—

"Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to

any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

(i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) The aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;"

1.1.2 The implication of the amendments can be summarised as under:

- It has been clarified that Charitable Organisations engaged in advancement of any other object of general public utility, can have incidental business activities to the

extent of 20% of the total receipts. It will immensely help large organisations which were suffering because of the existing 25 lakh limit. However, there is no clarity whether the total receipt shall also include the business receipts to determine 20% amount and at the same time this may have impact on small NGOs which are presently getting a blanket limit of Rs.25 Lakhs irrespective of their total receipts.

▪ It has been clarified that Charitable Organisations engaged in advancement of any other object of general public utility, can have incidental business activities only if it pertains to advancement of their charitable objectives. This will create litigation and hardship for the seventh limb organisations i.e. Charitable Organisations engaged in advancement of any other object of general public utility, other organisations can have even unrelated incidental business activities in the light of the Supreme Court decision in the case of *Asstt. CIT v. Thanti Trust* [2001] 247 ITR 785, wherein it was held that if the income generated from a business of publishing newspaper is totally used for charitable purposes then such business should be considered as incidental. In this case, the assessee was having the business of publishing newspaper and the entire income was used for charitable purposes. In other words, newspaper publication itself is not a charitable purpose but can be held as an incidental business, subject to the provision of sections 2(15) and 11(4A).

YOGA INCLUDED AS A LIMB OF CHARITABLE PURPOSE

1.2.1 The memorandum to the Finance Bill 2015 states “The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore, it is proposed to include ‘yoga’ as a specific category in the definition of charitable purpose in the lines of education.”

1.2.2 Earlier Yoga was considered as a charitable activity under the limb advancement of any other object of general public utility by virtue of judicial precedence. In the case of *CIT v. Rajneesh Foundation* [2006] 280 ITR 553 (Bom.), it was held that meditation, yoga and propagation of philosophy was charitable in nature and an object of general public utility. The Bombay High Court relied on the ruling of the Supreme Court in *CST v. Sai Publication Fund* [2002] 258 ITR 70/122 Taxman 437.

1.2.3 However, the major advantage of including Yoga in the first six limb of charitable purpose implies that, Charitable Organisations engaged in Yoga can now have incidental business activities without any financial limit. It may be noted that Charitable Organisations engaged in advancement of any other object of general public utility, can have incidental business activities to the extent of 20% only.

1.2.4 Now onwards, technically, organisations engaged in advancement of Yoga can generate income from even unrelated business activity as the proviso to section 2(15) which states that the business activity should be related to the objectives applies only to organisations engaged in the advancement of any other object of general public utility only.

AMENDMENT OF ACCUMULATION RELATED PROVISIONS

1.3.1 There are radical changes in the provision relating to accumulation of income for utilisation in future. The relevant amendment is as under:

“In section 11 of the Income-tax Act, with effect from the 1st day of April, 2016, -

- (I) In sub-section (1), in Explanation, in clause (2), after sub-clause (b), in the long line, for the brackets and words “(such option to be exercised in writing before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income)”, the brackets and words “(such option to be exercised before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income, in such form and manner as may be prescribed)” shall be substituted;
- (II) In sub-section (2), for clauses (a) and (b) and the first and second provisos, the following shall be substituted, namely:—
 - (a) Such person furnishes a

statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

- (b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section(5);
- (c) The statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.”

1.3.2 Under section 11, currently, organisations can accumulate their income to be utilized in future years. There are two options available, (i) the organisation can exercise option under in sub-section (1), in Explanation, in clause (2), after sub-clause (b), to be utilised in next 12 months or when the income is actually received in future (ii) under section 11(2) for next five years. Under the provisions of section 11 of the Act, the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in

India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section. While 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions that such person submits the prescribed Form 10 to the assessing Officer in this regard and the money so accumulated or set apart is invested or deposited in the specified forms or modes. If the accumulated income is not applied in accordance with these conditions, then such income is deemed to be taxable income of the trust or institution.

1.3.3 To exercise the above options the AO was required to be informed through filing of an intimation and Form 10 respectively. Though it was expected that the intimation and Form 10 were required to be filed along with the return under section 139(1) however, due to lack of clarity and judicial precedence assessee were allowed to file the intimation and Form 10 anytime before the completion of assessment under section 143(3). Now onwards the bill specifically provides that intimation and Form 10 have to be filed within the time limit provided under section 139(1). Organisations have to file firstly, return in time under section 139(1) and also file the intimation and Form 10 along with the return otherwise such accumulation will become taxable. In other words, organisation will lose benefit of accumulation and the entire amount

of the relevant accumulation will become taxable, accordingly a new sub section (9) has been inserted to section 13.

1.3.4 Further, the accumulation under section 11(2) can only be upto 5 years, earlier, effectively six years accumulation was permissible by virtue of section 11(3).

AMENDMENT TO SECTION 35

1.4.1 There is a procedural amendment to section 35 which provides deduction to business entities for contribution towards scientific or social causes. The amendment is as under: Section 35 of the Income-tax Act, with effect from the 1st day of April, 2016,—

(i) In sub-section (2AA), in the proviso, after the words “submit its report to the”, the words “Principal Chief Commissioner or Chief Commissioner or” shall be inserted;

(ii) In sub-section (2AB),—

a) in clause (3), for the words “for audit of accounts maintained for that facility”, the words “fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed” shall be substituted;

b) in clause (4), after the words “approval of the said facility to the”, the words “Principal Chief Commissioner or Chief Commissioner or” shall be inserted.

1.4.2 Impact: For any sum paid to National Library or IIT or specified person:

i) Presently the prescribed

authority has to submit the feasibility report to Principal Director General or Director General in such form as may be prescribed. Now it is provided that such authority for submission shall also include Principal Chief Commissioner or Commissioner.

ii) At the time of granting the approval to any company for such research work in terms of section 35(2AB) the prescribed authority in addition to the audit of accounts may also provide for fulfilling such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed”.

AMENDMENT TO SECTION 80G

1.5.1 There is amendment to section 80G which will enable the donation made to Swachh Bharat Kosh & Clean Ganga Fund as set up by Central Govt. shall be subject to deduction u/s. 80G of the Income Tax Act, 1961.

FURNISHING OF RETURN OF INCOME BY CERTAIN UNIVERSITIES & HOSPITALS REFERRED TO IN SECTION 10 (23C) OF THE ACT

1.6.1 The Bill proposes that organisations claiming exemption under sub-clause (iiiab) and (iiiac) of clause (23C) will also have to income tax returns under section 139. It may be noted that under sub-clause (iiiab) and (iiiac) of clause (23C), subject to specified conditions, is available

to such university or educational institution, hospital or other institution which is wholly or substantially financed by the Government. This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

CONCLUDING REMARKS

1.7.1 The Finance Bill has made an honest effort to rationalise the provisions, particularly pertaining to business activities of Trusts and NGOs, it will provide great relief to both the assessee and the revenue from needless litigations which are currently galore. However, the business activity related provisions are still subject to different interpretation and controversies thereof. Further, the shift from 25 lakh to 20% of receipt regarding business activity will help large NGOs but may create hardship to small NGOs.

1.7.2 Further the controversy created by the Supreme Court decision in the case of *Asstt. CIT v. Thanti Trust* [2001] 247 ITR 785, still continues. In this case it was held that if the income generated from a business of publishing newspaper is totally used for charitable purposes then such business should be considered as incidental. In other words, Charitable Organisations engaged in the first six limbs of activities such as education, health, yoga, environment etc. can have business activity without limit, even

if such business is not related with the objects. The poor seventh category Charitable Organisations cannot have

business activity without beyond 20% total receipts and such business should be related with the objects.

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

CSR Section

ALL ABOUT CSR REPORTING & DISCLOSURES

- Dr. Manoj Fogla, FCA

SUMMARY OF THE PROVISIONS

- 1.1.1** With regard to the reporting under CSR there are various statutory requirements as well as recommended practices which should be followed. In this chapter all such issues are discussed.
- 1.1.2** The Board of the company is required to prepare a CSR report under Section 134(3)(o) of the Companies Act, 2014 as provided in the format (*as per Annexure 1*) for reporting CSR activities annually.
- 1.1.3** If the Board of the company is unable to spend the CSR amount during the year then also it is required to be reported under Section 134(3)(o) of the Companies Act, 2014.
- 1.1.4** In case of foreign companies under Rule 8(2), a foreign company is also required to file an annexure on CSR along with its balance sheet under Section 381(1)(b).
- 1.1.5** All companies are required to display the CSR policy and other information on the website of the company.
- 1.1.6** In the audited account the CSR expenditure is required to be disclosed under clause (k) of para 5(i) of Schedule III in the notes to accounts.
- 1.1.7** The expenditure in the audited account should be disclosed on accrual basis of accounting.
- 1.1.8** In the audited accounts it is not required to provide the break-up of total CSR expenditure. Further it is also not required to disclose the computation of 2% average net profit.
- 1.1.9** It may be noted that the reporting is required to be done under two different Schedules of the act i.e. Schedule III and Schedule VII. The Schedule VII is only about CSR reporting and details as per format are required to be furnished. On the

other hand Schedule III provides the framework of financial reporting and no specific detail or elaboration has been prescribed to be furnished.

1.1.10 Under Section 134(3)(o) the Board of the company is required to report the shortfall in CSR expenditure, however, there is no such requirement of reporting the shortfall of CSR expenditure, in the audited financial statements.

1.1.11 Any income or surplus generated from CSR activities should not be added back to the business income of the company. In other words, such surplus should be used for CSR purpose only. However, there is no accounting or disclosure regulation prescribed in this regard.

1.1.12 Certain recommended disclosures in the annual accounts have been discussed.

1.1.13 All companies are also required to file Annual Return with the Registrar of Companies every year under Section 92 of the Act. In the Annual Return to be filed before the Registrar of Companies it is also required to report on CSR under other disclosures.

CONTENT OF CSR REPORT

1.2.1 The Board of the company shall prepare a CSR report under Section 134(3)(o) read with the Companies (CSR Policy) Rules, 2014 which 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.

1.2.2 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.

REPORTING REQUIREMENT OF FOREIGN COMPANIES

- 1.3.1** In case of foreign companies under Rule 8(2), a foreign company is also required to file an annexure on CSR along with its balance sheet under Section 381(1)(b).
- 1.3.2** In addition to the above requirement the foreign company should also disclose the CSR related information in its India specific website.
- 1.3.3** It is also recommended that all foreign companies should provide CSR detail as per the prescribed format provided in **Annexure 1** in the India specific annual report, if any.

DISPLAY OF CSR POLICY & INFORMATION ON WEBSITE

- 1.4.1** All companies are required to display the CSR policy and other information on the website of the company. Under Section 135(4)(a) it is required that CSR policy should be placed on the company's website. Therefore, displaying the CSR policy on the website is statutory requirement. Display of other information on the website of the company is a recommended practice.
- 1.4.2** The companies which are covered under the CSR criteria are required to have their website, in case, they are not having one.

DISCLOSURE IN THE FINANCIAL STATEMENT

- 1.5.1** In the audited account the CSR expenditure is required to be

disclosed under clause (k) of para 5(i) of Schedule III in the notes to accounts.

- 1.5.2** The text of para 5(i) of Schedule III in the notes to accounts is as under:

5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—

- (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].
- (b) Depreciation and amortisation expense;
- (c) Any item of income or expenditure which exceeds one per cent of the revenue from operations or Rs.1,00,000, whichever is higher;
- (d) Interest income;
- (e) Interest expense;
- (f) Dividend income;
- (g) Net gain/loss on sale of investments;
- (h) Adjustments to the carrying amount of investments;
- (i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
- (j) Payments to the auditor as (a) auditor; (b) for taxation matters; (c) For company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses;
- (k) In case of

Companies covered under Section 135, amount of expenditure incurred on corporate social responsibility activities; (l) Details of items of exceptional and extraordinary nature; (m) Prior period items;

- 1.5.3** The expenditure in the audited account should be disclosed on accrual basis of accounting. There is no specific requirement / direction regarding the accrual basis of reporting of CSR expenditure. However, all companies are required to follow the accrual basis of accounting and the use of the words “*expenditure incurred*” in clause (k) of para 5(i) of Schedule III above also indicates the requirement of accrual basis. As the word ‘payment’ has not been used.
- 1.5.4** Further, in the audited accounts it is not required to provide the break-up of total CSR expenditure. It is also not required to disclose the computation of 2% average net profit.
- 1.5.5** It may be noted that the 2% Average Net Profit is across the year computation, it pertains to more than one financial year. However, it is recommended that the financial statement should show the computation of 2% Average Net Profit as per Section 198.
- 1.5.6** It may be noted that the reporting is required to be done under two prescribed formats i.e. Schedule III and the format under Companies (CSR Policy) Rules, 2014. The format under Companies (CSR Policy) Rules, 2014 specifically prescribed CSR reporting as per format provided.

On the other hand Schedule III provides the framework of financial reporting however, there is no specific detail or elaboration prescribed to be furnished. It is recommended that appropriate detail regarding CSR expenditure should also be provided in the financial statements.

REPORTING OF SHORTFALL AND SURPLUS

- 1.6.1** Under Section 134(3)(o) the Board of the company is required to report the short fall in CSR expenditure, however, there is no such requirement for reporting the short fall of CSR expenditure in the audited financial statements. It is recommended that the shortfall of expenditure should also be reported clause (k) of para 5(i) of Schedule III as discussed earlier.
- 1.6.2** Similarly, any income or surplus generated from CSR activities should not be added back to the business income of the company. In other words, such surplus should be used for CSR purpose only. However, there is no accounting or disclosure regulation prescribed in this regard. It is recommended that the shortfall should also be reported clause (k) of para 5(i) of Schedule III as discussed earlier.

DISCLOSURE IN THE ANNUAL RETURN

- 1.7.1** All companies are also required to file Annual Return with the Registrar of Companies every year under Section 92 of the Act. In the Annual Return it is

also required to report on CSR under other disclosures. It may be noted that the Annual Return is different from the Annual Report and the Financial Statements.

- 1.7.2** The Annual Return is required to be filed under Section 92 of the Act, read with the Companies (Management and Administration) Rules, 2014. The return is filed in Form MGT-7. The disclosure pertaining to CSR as per the form is as under:

XV. OTHER DISCLOSURES

(1) Corporate Social Responsibility
(a) Amount spent by the company during the financial year in pursuance of its Corporate Social Responsibility policy –

(b) The amount spent as percentage of the average net profits of the company made during the three immediately preceding financial years-

- 1.7.3** It can be note that minimal disclosures in the Annual Return are required to be made regarding the amount spent and the percentage of the amount spent of the average net profits of the company made during the three immediately preceding financial years.

DISCLOSURE ISSUES WHEN THE CSR IS IMPLEMENTED THROUGH OTHER NPOS

- 1.8.1** The reporting and disclosure requirement discussed above are most appropriate when the company itself is implementing the CSR

programme. However, if the programme is implemented by other NPOs or corporate, then also similar reporting has to be made, but with some diligence, as discussed hereunder.

- 1.8.2** When the CSR programme is implemented by other NPOs (whether promoted by the company or not) then the reporting should be made, based, on the actual disbursement of the grants to such NPOs, because under law the transfer of grant itself is treated as applied towards charitable purposes. The Company may provide the breakup in Schedule VII as per the proposed activities. However for monitoring and control purposes the Company should obtain the audited utilisation statements.

DISCLOSURE ISSUES WHEN THE CSR IS IMPLEMENTED THROUGH OTHER CORPORATES

- 1.9.1** When the CSR programme is implemented in collaboration with other corporate including the holding or subsidiary companies, then the proportionate amount pertaining to that particular corporate should be reported. For instance if the holding company is implementing the CSR on behalf of its two subsidiaries then as far as reporting is concern all these 3 companies should report to the extent of their share/contribution of the CSR activities. It may be noted in case of inter-corporate pooling of expenditures the reporting should

be made, based, on actual utilisation and not on the basis of transfers made from one corporate to the other.

OTHER DISCLOSURE ISSUES

1.10.1 The CSR law and rules are not very explicit about the CSR disclosures. However, it is suggested that the following issues should be disclosed by the company:

- The expenditure in Schedule VII should be supported by the break-up of expenditures. Similar break up should find a place in the Annual

Report on CSR by the Directors.

- The report should also specify the mode of implementation i.e. whether implementing directly or through other NPOs or other corporates.

- When CSR expenditures are pooled together by various corporates, then it is advisable to provide the break-up of the share of each corporate. It is also important to specify the corporate responsible for the implementation.

- The computation of the average profit for past 3 years and also the surplus or short fall should be reported.

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

ANNEXURE - 01**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 Project or Activity identified	Sector in which the project is covered	Projects or Programs (1) Local areas or other (2) Specify the State and District where projects and programs was undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Subheads: (1) Direct expenditure on projects or programs. (2) Overheads:	Cumulative expenditure upto the reporting period	Amount spent: Direct or through implementing agency
1							
2							
3							
	TOTAL						

*Give details of implementing agency:

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.
2. 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/- (Chief Executive Officer or Managing Director or Director)	Sd/- Chairman CSR Committee	Sd/- (Persons specified under clause (d) of sub-section (1) of section 380 of the Act)
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CONFUSING & DEBATABLE ISSUES UNDER CSR

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 With effect from 01.04.2014 Corporate Social Responsibility (CSR) has become mandatory for Indian Companies and Foreign Companies working in India. The law relating to CSR in India is provided in Section 135 of the Companies Act, 2013 read with Schedule VII of the Act and The Companies (Corporate Social Responsibility Policy) Rules, 2014. The CSR laws are new and still evolving, therefore, there are many areas which lack clarity. In this issue some of the confusing and debatable issues have been discussed.

INDEPENDENCE OF CSR COMMITTEE & NPO PROMOTED BY COMPANY

1.2.1 Under Rule 4(2) a Company can implement CSR activity through Trust or Society promoted by it. A Company can promote a Trust and immediately start working through such Trust. It

may be noted that if a Company works through other Trust or Society (which are not promoted by the Company) then such Trust or Society should have at least 3 years existence and experience.

1.2.2 A Trust or Society promoted by the Company can be controlled by the Company. There is no requirement of having Independent management or Directors in such Trust or Society promoted by the Company.

1.2.3 However, Section 135(1) requires that a CSR Committee should be formed. There should be at least one Independent Director in such CSR Committee. More importantly the CSR law does not address the independence of the NPO or Trust to be promoted by the Company, which is more important.

1.2.4 It may further be noted that contribution towards corpus to a Trust

or Society promoted by the Company is also permissible as CSR expenditure. Currently a Company can create a closely held Trust and transfer funds including corpus without any real utilisation or control mechanism.

CSR EXPENDITURE WHETHER CHARGE AGAINST INCOME OR APPROPRIATION

1.3.1 Whether CSR is a charge to the income or appropriation of income has not been clarified. Expenditures of various natures have been allowed as permissible under CSR. For instance the following types of CSR expenditures are permissible:

- Direct expenditure on charitable activities
- Direct expenditure on charitable activities in local area
- Direct expenditure on capacity building of employees and implementing NPOs
- Grant to Trust or Society
- Transfer to other corporates under pooling of expenditure
- Donation to Govt. recognised funds where 100% tax relief is available.

1.3.2 All the above type of expenditures requires different type of accounting and tax treatment. For instance, 5% expenditure on capacity building of employees or local area development are judicially/legally considered as a charge against the income. Therefore, they can be directly claimed as expenditure. If that is true then it is not clear whether the 'average

income' for CSR should be determined before or after charging such expenditure.

1.3.3 On the other hand grant, donations, etc. are voluntary appropriation of income and cannot be charged as expenditure against the income. The CSR law allows all these various type of applications as CSR expenditures. Therefore, there is lot of ambiguity with regard to the accounting and legal treatment.

THE FUNDAMENTAL DIFFERENCE BETWEEN SECTIONS 181 AND 135

1.4.1 Section 181 of the Companies Act, 2014 allows all the Companies to make voluntary contribution to bonafide charitable funds upto 5% of profit even without the approval of the general body. In other words there is an overlap in the provisions of the Companies Act, 2013 with regard to voluntary contribution for charitable purposes. The fundamental difference between Section 181 and 135 has not been addressed and therefore, there is lack of clarity as far as income tax on CSR is concerned. It is not clear whether a contribution for charitable purposes will be permissible under Section 181 or 135 or both.

1.4.2 Ideally all application under Section 135 should be treated as charge against the income. And all contribution under Section 181 should be treated as voluntary contributions which are

appropriation of income. Section 181 and Section 135 should be linked when CSR funds are utilised through other NGOs/Trust.

ACCOUNTING AND UTILISATION ISSUES IN CSR

1.5.1 When CSR funds are utilised through other NPOs/Trust—then there are Accounting and Disclosure issues which need attention:

- If voluntary contribution is given to a Trust then the transfer itself should be treated as expenditure, irrespective of subsequent utilisation. However, under Schedule VII a Company has to give restricted grant as legal obligation for specific purposes, therefore it is not clear whether CSR grant can or cannot be voluntary contribution or should they be restricted grant only.

- If restricted project grants are given, then such grant are given as a fiduciary responsibility to the recipient organisations. Therefore, there should be clarity on how it should be treated in the books of the Company. If it is treated as application then an unexecuted contract at both ends is accounted as complete. Such treatment would not be correct. The other option would be to show utilisation to the extent of utilisation made by the implementing organisation. However, the follow such accounting the CSR grant will remain a liability in the NPO's books and an asset in the Companies book. The Company

cannot show it 'to the extent utilised' unless the grant continues on the asset side of the Company.

- If restricted project grants are given, such grant cannot be treated as income in the books of the recipient (unless the recipient organisation itself is the beneficiary and its net worth increases). If it becomes a liability then there should be a corresponding asset in the books of Company.

1.5.2 The Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) do not distinguish the grants received in Independent capacity and fiduciary capacity. On the contrary the judicial precedence on such distinction is very clear and well settled.

CORPUS DONATION AND ALLIED ISSUES

1.6.1 Corpus Donations cannot be given for specific purpose. They are normally given with specific direction for indefinite retention without assigning any purpose. In other words a corpus fund is like a general fund; the only difference being the authority to retain the corpus fund for long period.

1.6.2 In such background (i) it is not possible to give a corpus donation for the specific activities mentioned in Schedule VII because, then a corpus would become an endowment. In other words, even if a long term fund is given for purposes under schedule VII, it cannot be, technically a corpus donation. It has to be a restricted

endowment (ii) an endowment is held in fiduciary capacity therefore, it cannot increase the corpus or networth of the recipient Trust

- 1.6.3** The current CSR provisions provide undue leeway to Companies to claim CSR without spending through corpus donation. Moreover, as discussed a corpus donation cannot be given for purposes under schedule VII.

COMPANIES FACING CONFLICT WITH FCRA LAWS

- 1.7.1** Under Foreign Contribution Regulation Act (FCRA), 2010 the Foreign Companies and even Indian Companies are not allowed to provide grant to other NPOs unless they have FCRA prior permission or registration. There are many Indian Companies having more than 50% share holding by foreigners; ICICI Bank, HDFC Bank, Infosys etc. are few examples. A corresponding amendment in the FCRA law is necessary otherwise most of the larger Companies will be implicated. Technically an Indian Company like HDFC Bank or Infosys cannot give grant to its own NPO or Foundation unless it has FCRA registration or prior permission.
- 1.7.2** As a matter of fact such deemed Foreign Companies cannot even setup Indian Trust or Society by making initial contribution/expenditure, because technically, even for such initial contribution/expenditure also FCRA permission is necessary.

- 1.7.3** It is important that such clarity is brought in both FCRA and Companies Act.

REPORTING REQUIREMENT OF CSR

- 1.8.1** The reporting format under the Companies (CSR) Rule is a broad guideline. It should have been linked with the schedule III of the Companies Act in order to create formal responsibility of the auditor. Currently there is no formal linkage of CSR reporting with the audited financial statements, except as notes to be accounts.
- 1.8.2** In the formal financial audited reports, reporting on CSR expenditure is not required to be reported in the main statement, they only come as a note to the auditor's report. It is important to provide more specific reporting and disclosure requirement including:
- (i) The break up between Companies in case of pooling of expenditure;
 - (ii) The activity wise break up;
 - (iii) A declaration on the actual status of fund which have been given as grant to other NGOs because as per law the grant itself should be treated as application in the books of the Company;
 - (iv) In case of corpus donation the status & activities of the organisation.
- 1.8.3** In other words, the current reporting format under CSR should be linked with schedule III of the Companies Act. Currently in the audited

accounts, the CSR expenditure is required to be disclosed under clause (k) of para 5(i) of Schedule III in the notes to accounts.

LACK OF CLARITY REGARDING ADMINISTRATIVE EXPENSES

1.9.1 There is no accounting standard or mechanism to determine administrative expenses. The judicial precedence is confusing and most of the administrative expenses have been treated as programme expenses. This will result in use of discretionary norms in determining the administrative expenses, affecting the uniformity in reporting under CSR Rules.

CSR EXPENDITURE BEFORE OR AFTER DETERMINING NET INCOME

1.10.1 The computation of average net income shall be made under Section 198. For the purposes of CSR irrespective of the nature of expenditure, the Company has to apply 2% of the net profit computed under 198. From a finance planning point of view, a Company may distinguish between the chargeable expenditure and the voluntary expenditure, because the chargeable expenditure can be deducted during computation of net profit under Section 198.

1.10.2 For example, a Company spends Rs. 4 lakh on CSR including Rs. 2 lakh on local area issues which are directly incidental to the business.

Therefore, the Company can claim Rs. 2 lakh on local area issues as business expenditures, which will reduce its net profit as well as the CSR spends. The question which needs to be clarified is that whether such overlapping expenditures (which can be claimed both as business as well as CSR expenditures) will be treated as CSR expenditure and if so should they be deducted during computation of net profit under Section 198.

TREATMENT OF SHORT FALL OR EXCESS IN CSR EXPENDITURE

1.11.1 Under Section 134(3)(o) the Board of the Company is required to report the short fall in CSR expenditure, however, there is no such requirement of reporting the short fall of CSR expenditure, in the audited financial statements.

1.11.2 A short fall in expenditure is a financial issue with a legal accountability of the board. Such shortfall should be formally computed in the audited statement and the Company should be required to apply such short fall in future years based on Rules as may be determined.

1.11.3 Similarly, there is lack of clarity in reporting and off setting of surplus in CSR expenditures. For example, if a Company spends more than 2% of the average profit in any year towards CSR, then will it be allowed to spend less in subsequent years? Ideally such set off should be permissible.

TREATMENT OF INCOME MADE FROM CSR ACTIVITIES

1.12.1 There is lack of clarity about incidental income from CSR activity. This issue becomes more complicated when the income happens at the end of the implementing NGO.

1.12.2 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.

1.12.3 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. Similarly if surplus is generated by another Corporate under pooling of expenditures, then also reporting and taxation issues remain unresolved.

1.12.4 There is a need to distinguish the various kind of surplus generated at various level and the treatment thereof.

COMPLIANCE OF A LOSS MAKING COMPANY FALLING IN CSR CRITERIA

1.13.1 Corporate Social Responsibility (CSR)

will apply even to a Company which is making losses if the net worth exceeds Rs. 500 crore or the turnover exceeds Rs. 1,000 crore.

1.13.2 The current CSR provisions does not require any CSR activity if such Companies are making losses. There might be Companies which are making cash profits but book losses. For example, a Company may have cash profit before charging depreciation but loss after charging depreciation.

1.13.3 The intent of the Act seems to make CSR an appropriation of income activity rather than a charge against income. For instance, even a loss making Company is required to make all statutory payments and expenditures.

1.13.4 The current CSR laws do not distinguish between the statutory nature and the voluntary nature of CSR expenditures

CAN LOSSES BE TREATED AS NEGATIVE INCOME FOR AVERAGE PROFIT?

1.14.1 The current CSR law requires computation of average profit for the past 3 years. 2% CSR expenditure has to be made based on such average profit. However, it is not clear whether losses in any particular year will be treated as negative income for average profit. For example, a Company has made profit in past 2 years and loss in one of the past 3 years. In such circumstances it is not clear whether the loss should be deducted for computing average profit. Ideally loss should be allowed to be deducted.

CAN COMPANIES AVERAGE OUT CSR EXPENDITURE IN CASE OF POOLING?

1.15.1 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.

1.15.2 However, it is not clear whether, in case of pooling of expenses, one Company spends less and another more. In other words, can Companies average out CSR expenditure? Normally each Company should be required to spend the requisite amount under CSR with or without pooling of expenses.

WILL CSR APPLY IN FIRST THREE YEAR?

1.16.1 A Company which falls into the CSR criteria in the first year of its operation, the question arises whether it should conduct CSR activities. There is no clarity in this regard. However, since the CSR expenditure is based on the last 3 years average profit, it seems that the CSR law shall not apply in the first 3 years of existence, even if a Company falls into the CSR criteria.

CAN FOREIGN BRANCHES DO ACTIVITIES DIRECTLY?

1.17.1 By virtue of the CSR Rule 3(1) the branches or project office of any Foreign Company as defined under Section 2(42) of the Act is also required to implement CSR.

1.17.2 However, the Foreign Companies and their Branches are subject to FEMA approval and restrictions. Under FEMA Foreign Companies are permitted to conduct only those activities which are specifically permitted by Reserve Bank of India. Therefore, technically CSR activities cannot be implemented unless approved by RBI under FEMA, as the normal permissible list of activities does not include charitable activities.

1.17.3 Any Foreign Corporate or Foreign NPO does not have a right to do charitable activity in India without specific approval from RBI under FEMA. A Foreign Corporate or Foreign NPO can have charitable activity in India only through registered charitable organisation having FCRA registration.

1.17.4 Technically and under strict legal interpretation all branches of Foreign Company should seek specific approval from RBI under FEMA if they fall under the criteria specified for CSR, otherwise they cannot do direct implementation of CSR activities.

1.17.5 However, as per the new Companies Act, 2013, CSR has been made mandatory as a part of business

activity, therefore, even if CSR is not explicitly provided in the RBI letter of approval, it should be construed as permissible.

- 1.17.6** It is important that clarification is issued by RBI under FEMA in this regard.

APPLICABILITY OF CSR IN FIRST 3 YEARS OF FOREIGN BRANCH OR PROJECT OFFICE

- 1.18.1** In case of a Foreign Company the net profit for CSR purposes has to be determined for the Indian operations for a period of 3 years under Section 381(1)(a). This issue is not clear from CSR Rule, however, in our opinion Foreign branches and project offices will not come under the CSR provision for the first 3 years of their operation.

HOW MONITORING WILL BE DONE WHEN FUNDS ARE GIVEN TO OTHER NGOS?

- 1.19.1** Under CSR laws, the CSR Committee is required to monitor the implementation of CSR activities and report to the Board. However, when a Company is working through other Trust or NPOs, legally, the grant itself is treated as application of funds. In other words the CSR funds are utilised the moment the transfer of funds is made. In such circumstances it is not clear how the monitoring will be done by the CSR Committee. It seems that the audited statements and activity report from the implementing partner have to be relied upon.

ACTIVITIES UNDER SCHEDULE VII DO NOT SEEM TO BE MANDATORY

- 1.20.1** The Section 135 and the Companies (CSR) Rules, 2014 provide that specific activities have to be conducted under CSR. Further, schedule VII has been provided which elaborate the specific activities. **1.20.2** Section 135(3)(a) provides that the activities should be undertaken by the company as specified in Schedule VII. In other words on plain reading of section 135 it seems that no other activities other than the one specified in Schedule VII are permissible.

- 1.20.3** However, Rule 2(c) defines that Corporate Social Responsibility shall not be confined to the projects and programmes specified in Schedule VII therefore, if one goes by the definition of CSR then all kinds of charitable activities are permissible and Schedule VII is just a indicative list.

- 1.20.4** Under the current enacted Rules it seems that there would not be any violation if a company conducts legitimate charitable activities even beyond the list provided in Schedule VII. However, it could be legally debated whether a Rule can supersede the Act because Section 135(3)(a) clearly provides that the CSR activities should confirm to Schedule VII.

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

Governance Section

BOARD COMMITTEE - PROGRAMME COMMITTEE

- CA Sanjay Patra

1. INTRODUCTION

Policies are clear, simple statements of how an organization intends to conduct its working be it services, actions or business. It guides the standard operating protocol of an organization. The human resource policy is one such document that broadly contains details on employing staff, managing employee performance, dealing with employee concerns and supporting staff in the organization. It is a formal guide of principles or rules in the organization that employees are expected to adhere to. It aims to describe organization's practices, such as employment, compensation, benefits, leaves, hiring and termination procedures, and other pertinent information.

The human resource policy is essential for communicating an organization's workplace policy and therefore it must be detailed, accurate and approved by the appropriate authority. The policy manual should also be accessible to all staff

members and be accompanied by procedures on how the policy will be implemented. Generally, procedures describe how a policy will be put to action in an organization. Broadly, each procedure should outline the following:

- Who will do what;
- What steps they need to take;
- Which forms of documents are to be used?

Policies and their accompanying procedures will vary between organizations because they reflect the values, approaches and commitment of a specific organization and its culture.

2. OBJECTIVES OF HUMAN RESOURCE POLICY

Human Resource policy helps the organization to establish robust structure and basic set rules that is used to manage the employees on a day to day basis. It encourages fair and consistent treatment

of employees. The board objectives of the human resource policy are:

- 2.1. To provide formal procedure on hiring, induction and termination of employees. It should contain the framework for managing staff, while allowing management to respond and adapt to individual situations.
- 2.2. To provide clear reporting structures that spell out who's in charge and how tasks are to be accomplished in the organization. Every successful team has well-defined positions for its members. Everyone knows what he or she is to do; how to do it; and how their performance can impact those around them. The policy should provide a clarification and validation of the responsibilities.
- 2.3. It has been seen that an employer is usually held accountable for the bad behaviors of his/her employee, especially when that bad behavior affects other employees, target groups or individuals. In such cases, the human resource policy should provide clear and specific behavioral standards in the form of rules for spotting and addressing violations of those standards.
Overall, human resource policy serves as a guide on decision-making guideline for the management. For the employees, it serves as a guide on how to conduct oneself in the organization.

3. STEPS INVOLVED IN HUMAN RESOURCE POLICY DEVELOPMENT

Generally, the human resource policy development process includes the following steps:

- 3.1. Need for the policy on Human Resource in the organization should be established.
- 3.2. The establishment of need should be followed by development of the draft policy. This will be done by a team of people who are assigned this job.
- 3.3. Along with the policies a draft on the procedures should also be developed.
- 3.4. Once the draft policy is ready, it should be critically reviewed by key members (usually by all those who will be using it).
- 3.5. Next, the reviewed policy should be approved by the approving authority (usually the Board).
- 3.6. The approved policy should then be formally implemented and the policy manual should be shared with the employees along with all necessary application formats such as leave format, travel requisition format, etc.
- 3.7. After sometime the existing policy should to be review and updated, so that the policy is robust and relevant on any particular date. The interval for policy review shall be discerned by the Board in consultation with the management. In many cases, the interval is not fixed and the review can take place when a need is felt which has to be approved by the Board.
- 3.8. Once the old policy has been reviewed and necessary changes have been incorporated, it should be appropriately conveyed to all.

4. RESPONSIBILITY OF DEVELOPING HUMAN RESOURCE POLICY

In large organizations, it is the human

resources department and in small organizations a small assigned committee/ team which develop the policy after taking into consideration the vision, mission and objectives of the organization. The draft of the policy is shared with the management for feedback and after changes the same is approved by the board. The key areas that should be covered in the human resource policy manual are:

1. Scope of the Policy
2. Functions (Roles & Responsibilities)
3. Standards of Conduct
 - 3.1. Conflict of Interest Guidelines
 - 3.2. Confidentiality
 - 3.3. Privacy
 - 3.4. Complaint/ Grievance Resolution
4. Employment Practices
 - 4.1. Recruitment, Selection, Appointment Practices
 - 4.2. Orientation and Induction
 - 4.3. Probationary Period
 - 4.4. Anti-discrimination/ Equal Opportunity
 - 4.5. Discrimination and Harassment
5. Termination of Employment
 - 5.1. Notice of Resignation
 - 5.2. Discipline by Suspension or Dismissal
 - 5.3. Terminations
 - 5.4. Retirement
 - 5.5. Exit Interviews

6. Hours of Work / Leave
 - 6.1. Hours of work
 - 6.2. Annual Leave
 - 6.3. Statutory Holidays
 - 6.4. Special Leave
 - 6.5. Maternity Leave / Paternity Leave
 - 6.6. Medical Leave
7. Compensation & Employee Administration
 - 7.1. Pay Administration
 - 7.2. Job Description
 - 7.3. Performance Evaluations
 - 7.4. Travel & Expenses
8. Benefits
 - 8.1. Insurance and other benefits
 - 8.2. Pension
 - 8.3. Payroll
9. Training and Development
10. Work Environment
 - 10.1. Safe and Healthy Work Environment

For a more detailed template on Human Resource Policy, refer to Annexure A.

5. UPDATING THE HUMAN RESOURCE POLICY

One very crucial element of any policy is that its relevance remains intact in current time. Hence, developing the human resource policy is an on-going process. The department/ committee/ team involved in formulating the human resource policy is also entrusted with the responsibility of reviewing, adding, deleting or revising the policy. This is to ensure that the

policy remain current with the objective and with organization needs. Further, the human resource department/ committee/ team help interpret policies, ensuring that they are applied fairly and equitably throughout the organization. Key issues that must be ensured by the organization's human resource department are:

- The policy manual is kept up-to-date;
- The policy manual continues to set out the procedure that must be followed in the operation of the system and procedures;
- Sufficient copies of the manual are available;
- Amendments to the policy manual are properly authorized and communicated to the concerned parties immediately.

6. CONCLUSION

There are different types of people in an organization and they react differently to the need for policies and procedures based on those differences. For example, some people prefer there should be a written policy for everything, while

others favor having no policies at all and would leave everything open to interpretation as situations arise. Neither of these extremes contributes to a work environment that is conducive to high productivity levels. The focus of an organization is not just about meeting specific goals and objectives, but also about how one can achieve them. Thus, policies and procedures are like the lighthouse which guides an organization on its way to its destination i.e. achievement of the organizational goals/objectives. Policies are the 'means' but not the 'end'. It is important to note that human resource policy is an internal document of an organization and is not a legal requirement. It takes some effort to develop and implement the human resource policy, but it brings definite long-term benefits as it will overall minimize the incidence of disputes or grievances within the organization. The human resource policy does not have to be complex, but comprehensive and compliant with the organizations objectives and need.

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

HUMAN RESOURCE POLICY TEMPLATE

1. **Definitions**

This section outlines both legal and non legal definitions for the purpose of providing clarity on the terms used in the policy.

2. **Functions (Roles & Responsibilities)**

2.1. **Management** - A summary description of the roles and responsibilities of core management of the organization.

2.2. **Staff** - Staff may have different expectations, duties, terms and conditions of employment and accountabilities. Policies should indicate the roles and responsibilities for the following types of employees:

- a. Full-time staff
- b. Term appointments
- c. Part-time appointments
- d. Probationary Appointments
- e. Casual or Contractual employees

2.3. **Board** - The Board has a role to play regarding Human Resource Management of an organization. That role should be outlined both in the Board policy as well as in the organizational human resource policy.

3. **Standards of Conduct**3.1. **Conflict of Interest Guidelines**

- o The extent of Conflict of Interest Guidelines is dependent on the type of organization.
- o Conflict of Interest Guidelines may differ for management, employees, board members. Guidelines might outline or indicate:
 - § Obligations
 - § Use of property
 - § Disclosure of information
 - § Feasibility of acceptance of hospitality or other benefits
 - § Soliciting or acceptance of economic benefit or preferential treatment

3.2. **Confidentiality**

- o Employees may be required to sign confidentiality agreements / statements for the purposes of information handling. If this is the case, the policy may indicate that a particular level of Security Clearance is required.

3.3. Privacy

- o Employee files are to be kept confidential – the process to ensure confidentiality should be outlined.
- o Privacy statements should include the process for employee access to and use of confidential and private information.

3.4. Complaint/Grievance Resolution

- o Complaint resolution process guidelines could include timeframes, responsibilities and possible mechanisms.
- o Formal and informal complaint processes may be described.

4. **Employment Practices**

4.1. Recruitment, Selection, Appointment Practices

- o Who is authorized to make selection and where approvals are required
- o What competitive processes are to be followed
- o Procedures around conducting reference checks

4.2. Orientation and Induction

- o Induction plan and schedule for new recruits
- o Documents to be provided for orientation

4.3. Probationary Period

- o Who all are eligible for probation
- o Time frame for employee's probationary periods
- o Performance evaluation process at the end of the probationary period

4.4. Anti-discrimination/ Equal Opportunity

- o Guidelines for equality and fair practices in the organization

4.5. Discrimination and Harassment

- o Defining the acts to be covered under discrimination & harassment
- o Procedure for handling such issues
- o Consequences of indulging in such acts

5. **Termination of Employment**

5.1. Notice of Resignation

- o To whom resignation is to be given
- o Timeline for submitting resignation

5.2. Discipline by Suspension or Dismissal

- o Procedures for Suspension in the incident of employee misconduct
- o Processes for disciplinary action should be outlined

5.3. Terminations

- o Processes and circumstances for layoff and termination may be outlined in the policy

5.4. Retirement

- o Age for retirement
- o Procedure to be followed for retiring employees.

5.5. Exit Interviews

- o Exit interviews between management and employees are often a important feedback for the organization. The process of conducting the interview may be outlined in the organization policy.

6. **Hours of Work / Leave**

6.1. Hours of work

- o Hours of work for staff / employees would include the normal work week and the work day schedule
- o Any processes for time recording and management would be indicated in this section, as would any repercussions regarding attendance
- o The definition of "Overtime", who it applies to, and the structure for compensation or payment options would be outlined in this section

6.2. Annual Leave

- o Eligibility for annual leave will be specific to classification of employee and may be subject to a probationary period
- o Include procedures for vacation accrual, scheduling, vacation pay and vacation carry over

6.3. Statutory Holidays

- o Designated statutory holidays, statutory holiday entitlement and their application for employees
- o Any recognition or accommodation of other religious or cultural holidays should be included

6.4. Special Leave

- o Guidelines for other types of leave may be included

6.5. Maternity Leave / Paternity Leave

- o Eligibility of employees for Maternity and Paternity leave
- o Procedure and time frame for Maternity and Paternity leave

6.6. Medical Leave

- o Procedures for the sick leave for full and part time employees

7. Compensation & Employee Administration

7.1. Pay Administration

- o Processing pay or pay administration procedures, including any pay deductions, pay frequency and salary increases would be outlined in this section
- o This may include notes on maintenance of the pay system

7.2. Job Descriptions

- o Standardized job descriptions may be found within the policy itself
- o Wherein the job descriptions are not included a policy may reflect how the descriptions will be developed and used by employers and employees
- o In the case of Bands, job descriptions may be provided for all Band Officers / Councilors

7.3. Performance Evaluations

- o Procedures outlining performance reviews may include timeframes (annual, bi-annual reviews), reports and evaluations, signing, and keeping of records

7.4. Travel & Expenses

- o Provision for work related travel and expenses should be outlined
- o Organizations and communities may refer to federal (Treasury Board) or provincial standard rates

8. Benefits

8.1. Insurance and other benefits

- o Where insurance is provided to employees – this information would be provided

8.2. Pension

- o Any possible employer contributions to pensions, as well as the terms of those contributions will be outlined in writing

8.3. Payroll deductions

- o Type of deductions to be outlined

9. Training and Development

- o Providing opportunities to the staff for capacity building, which may include internal on-the-job training, written instructions such as standard operating procedures, coaching, external training and courses for the development of the staff.

10. Work Environment

10.1. Safe and Healthy Work Environment

☐ To include any regulations with regard to the work place, including but not limited to:

- Occupational safety
- Workplace violence
- Drug or alcohol policies
- Smoking

CONFLICT OF INTEREST POLICY

- CA Sanjay Patra

1. INTRODUCTION

A Policy is a guiding document for an organization which helps in better understanding the conduct of working and action. It is also helpful during the orientation of new employees. Conflict of Interest policy is one such policy which guides the standard operating protocol of an organization to be adopted wherever the organization or an individual in the organization has an interest in different capacities.

2. WHAT IS CONFLICT OF INTEREST?

Conflict of interest is a situation where a person has an interest in different capacities. Interest in different capacities may be understood as a situation where a person has a responsibility for promoting an interest, but has another competing interest at the same time. When the competing interest is exercised over the fiduciary interest, this situation is termed as Conflict of Interest. In simple terms, when an interested person is

involved in decision making, it is termed as conflict of interest.

2.1. Illustrations for conflict of interest in an organization

When the decision making person of an organization is involved in the following transactions, conflict can arise:

- Appointment of relatives in board or senior management;
- Selection of a vendor who is in relation;
- Deciding and Payment of fees and remuneration to self or relatives;
- Purchasing/Leasing a property for organization from a relative or self;
- Selling/taking on lease a property for organization from a relative or self;
- Directorship or management position in other competing organization;
- Providing consultancies in

personal capacities;

- Having personal interest in any decision or resolution;
- Having relations/ownership or substantial interest in an organization giving or receiving donations.

2.2. Who is an Interested Person?

Whenever a person involved in decision making has another competing interest as illustrated in section 2.1, she/he should be considered as an interested person. Generally, the following persons are involved in the decision making process and may face a conflict of interest while making a decision.

- Founder(s),
- Board Members/Trustees,
- Senior Management: Executive Director, Chief Executive Officer, Chief Finance Officer, other Head of Departments etc.

3. WHAT IS CONFLICT OF INTEREST POLICY?

Conflict of Interest Policy is a guiding document which sets the standard operating protocol of an organization to be adopted wherever the organization or an individual in the organization has a Conflict of Interest.

3.1 Objectives of Conflict of Interest policy

Conflict of Interest policy helps the organization to establish robust structures and procedures to be

adopted in case a conflict of interest is identified. Following are the key objectives of a Conflict of Interest policy.

- To provide guidelines for identification of the conflict of interest,
- To provide formal procedures to be adopted in case of a conflict of interest,
- To provide clear reporting structures that spell out the nature and persons having a conflict of interest,
- To provide guidelines to the individual/ organization for avoiding conflict of interest.

3.2 How to handle Conflict of Interest?

The conflict of interest within the organization shall be handled with due transparency and the decision shall be made in interest of the organization instead of the interest of an individual involved in decision making. The proper handling of conflict of interest in case of a selection of employee in an organization ensures that all the applicants get a fair chance of selection irrelevant of his/her relations with the employer.

The handling has three common steps irrelevant of the size, nature or operations of an organization. The procedure starts with Identification followed by Disclosure and ends with the Decision making.

i. Identification

All the Conflict of Interests should be duly identified by the persons holding an office, Board Members, and Senior Management team of the organization. The "Related Party Questionnaire" is a

relevant tool for identification of Conflict of Interests. The format of the Related Party Questionnaire may be referred from **Annexure 1**.

ii. Disclosure

Once the Conflict of Interest has been identified, the disclosure shall be made by all the interested parties. As a good practice the disclosure shall be submitted as per the following:

Person having a Conflict of Interest	Disclosure to be submitted with
Employees	Senior Management
Senior Management	Board
Board Members	Chairman
Chairman	Board Members

The organization may however adopt a different system for submission of disclosure. Such disclosures may be submitted either annually or upon occurrence of a conflict of interest.

i. Decision Making

Once the disclosure is made by every individual, the decision regarding such transactions/events may be made by the Board or the concerned department/committee. Person(s) having a conflict of interest should refrain from being part of such processes. This would ensure transparency and fair decision making in the process. It should be ensured that all such processes of decision making shall be duly documented, i.e. the minutes of the proceedings should be duly recorded for future reference.

3.1 How to Develop a Conflict of Interest policy?

A conflict of interest policy may be developed within an organization by following the below suggested process:

Step 1: Need Establishment

The organization needs to have an internal discussion on the need to have a Conflict of Interest. This

discussion should be led by the board.

Step 2: Formation of Drafting Committee

The Board shall form a committee to prepare a draft of the policy. The key issues and requirements may also be discussed within this team for a better understanding of the members.

As a good practice following members should be part of the drafting committee:

- At least one board member
- Executive head/ Chief Functionary
- Representative from Finance team
- Representative from HR/ Administration team
- Representative from Programme Team

Step 3: Preparation of Draft

The drafting committee should prepare the draft of the policy after thorough discussion and identifying the procedure to be adopted in case of a conflict within the organization. The committee may also seek advice from external experts; however the suggestion from the experts should be included only after unanimous consent of the committee members. While preparing the draft, the committee should define the scope and purpose along with the procedures to be adopted. This will help the stakeholders in better understanding the applicability and purpose of this policy.

Step 4: Review of the Draft

The draft shall then be reviewed individually by each drafting committee members who will make the required changes as per their discussion with majority acceptance.

Step 5: Approval

Once the drafting committee is satisfied with the draft, it is shared with the Board for their approval. After receiving the draft, the Board may make the desired changes in the draft or direct the drafting committee to make certain changes and thereafter approve the policy after unanimous consent within the Board members.

3.2 What should be the content of the Conflict of Interest policy?

An ideal Conflict of Interest Policy should at least have the following contents:

- a) Preamble/Introduction to the policy,
- b) Aim of the policy,
- c) Scope or the coverage of the policy,
- d) Objectives of the policy,
- e) Definitions of the technical words in the policy,
- f) Procedures for handling the conflict of interest,
- g) Addressing the violations of Policy,
- h) Procedure for the reviews and amendment to update the policy,
- i) Declaration for the acceptance and date of adoption of the policy with signatures of the board members.

Please refer **Annexure 2** for the template of Conflict of Interest Policy.

1. CONCLUSION

It should be understood that the policy on Conflict of Interest is merely a tool for handling the cases of identified conflict of interests. The policy does not ensure addressing all the potential cases until and unless the cases are identified. Further, the identification of the cases is subjective to the integrity and conscience of the persons concerned. The organization should ensure to cultivate a sense of integrity and accountability within all its stakeholders for a better management of Conflict of Interest.

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

RELATED PARTY QUESTIONNAIRE

S No.	Question	Answer
1	Do you or any related party of yours have any material interest, direct or indirect, in any completed or pending transaction?	
2	Do you or any related party of yours been indebted to the organization at any time during your tenure with the organization? Please exclude amounts due for purchases on usual trade terms and for ordinary travel and expense advances.	
3	If you have ownership or management control of another entity which could significantly affect the operating results or financial position of organization, please indicate the nature of the relationship.	
4	Please list all companies, partnerships, associations, or other organizations of which you or a related person are a Director, Trustee, Partner, or Member	
5	Please list all companies, partnerships, associations, or other organizations of which you or a related person is an officer or employee	

The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature:

Date:

Name:

Designation:

Schedule IA List of Relative

I. Definitions for Purposes of This Questionnaire

- a) Related Person:** A related person means the same as defined in Income Tax Act 1961 and Companies Act 2013.

Following is an extract from Section 6 of The Companies Act, 1956 which defines relative:

[Meaning of “relative” - A person shall be deemed to be a relative of another if, and only if,-

- (a) They are members of a Hindu undivided family; or
- (b) They are husband and wife; or
- (c) The one is related to the other in the manner indicated in Schedule IA.]

1. Father
2. Mother (including step-mother)
3. Son (including step-son)
4. Son's wife
5. Daughter (including step-daughter)
6. Father's father
7. Father's mother
8. Mother's mother
9. Mother's father
10. Son's son
11. Son's son's wife

12. Son's daughter
13. Son's daughter's husband
14. Daughter's husband
15. Daughter's son
16. Daughter's son's wife
17. Daughter's daughter
18. Daughter's daughter's husband
19. Brother (including step-brother)
20. Brother's wife
21. Sister (including step sister)
22. Sister's husband

The Income Tax Act 1961 defines a 'person' as:

- i. An individual;
- ii. A Hindu undivided family;
- iii. A company;
- iv. A firm;
- v. An association of persons or a body of individuals, whether incorporated or not;
- vi. A local authority; and
- vii. Every artificial juridical person, not falling within any of the preceding.

a) Control: Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a specified party whether through ownership, by contract, or otherwise.

b) Management: Means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and make the decisions by which such objectives are to be pursued. It would normally include members of the Board of Directors, the president, secretary, treasurer and vice president in charge of an organization and other individual persons who perform similar policymaking functions.

c) Disclosure: Means disclosure by the Director who has a conflicting interest of:

- The existence and nature of the Director's conflicting interest, and
- All facts known to the Director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment as to whether or not to proceed with the transaction.

Ownership: Means beneficial ownership of a company, including, but not limited to, stock options, warrants, debentures, and other convertible securities.

TEMPLATE OF A CONFLICT OF INTEREST POLICY

i. Preamble/Introduction

This section should deal with the introduction of the policy. It should mention the situations leading to conflict of interest and the need for the policy on conflict of interest.

ii. Aim

This section should mention the aim of the policy for better understanding of the policy to the reader.

iii. Scope

This section shall define the overall applicability of the policy. It should mention all the individuals and the office bearers which are covered under the policy.

iv. Objectives

The objectives of the policy as per the organizational context shall be mentioned in the policy.

v. Definitions

The policy should also incorporate the definitions of the technical words in the policy for better understanding of the policy. This also ensures that the reader infers the same meaning to a statement with which it was incorporated in the policy.

vi. Procedures

The procedure for the management of conflict of interest shall be duly mentioned in detail. It shall describe the process for identification of the conflict of interests and the disclosure procedure. It shall deal with all the required actions to be performed, or not to be performed by an individual in case of conflict of interest.

vii. Violations of Policy

The policy shall also describe the procedure to be adopted in case a violation to the policy is identified.

viii. Reviews and amendment

The document shall also describe the procedure for review and amendments of this policy.

ix. Declaration

At the last page of the policy document, a declaration shall be made stating the date of the adoption of the policy in the organization and shall be duly signed by the board members which represent the acceptance of the policy by the members.



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		For International applicants	
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4.	For applicants from developed countries	US\$ 750	US\$ 1500
5.	For applicants from SAARC & other developing countries	US\$ 275	US\$ 550

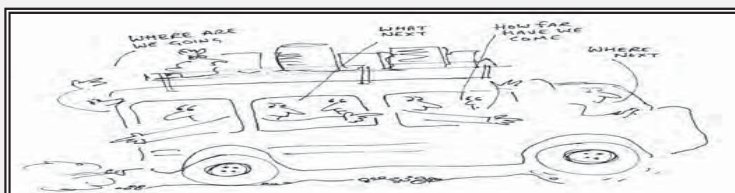
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ELIGIBILITY CRITERIA

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National Outreach Initiative on FCRA Renewal through FCRA Clinics



A nationwide outreach initiative was launched in the form of “FCRA Clinics for Voluntary Organizations”, which sought to provide clarifications on the process of renewal and various compliance requirements under the FCRA law.

Structure of each Workshop:

The one day's Workshop comprised of:

- ◆ Input Sessions on Compliance requirement of FCRA law and Specific information on renewal
- ◆ Query solving sessions with discussion on specific issues

Resource Panel:

Dr. Manoj Fogla, FCA, Senior Consultant

Mr. Suresh Kejriwal, FCA, Senior Consultant

Mr. Noshir H. Dadrawala, Chief Executive, Centre for Advancement of Philanthropy

Mr. J.K. Chattopadhyay, Ex-Deputy Secretary (FCRA), Ministry of Home Affairs, New Delhi

Mr. Harsh Jaitli, CEO- VANI

Mr. Sanjay Patra, FCA, Executive Director, FMSF

Mr. Sandeep Sharma, Head Programme Desk, FMSF

Dates of the Workshop in different Cities:

Delhi	1 st Apr 2015	Raipur	21 st Apr 2015	Imphal	7 th May 2015
Bangalore	7 th Apr 2015	Ahmedabad	24 th Apr 2015	Bhubaneswar	18 th May 2015
Chennai	10 th Apr 2015	Goa	4 th May 2015	Bhopal	19 th May 2015
Lucknow	14 th Apr 2015	Patna	5 th May 2015	Hyderabad	20 th May 2015
Mumbai	16 th Apr 2015	Kolkata	5 th May 2015	Udaipur	26 th May 2015
Pune	17 th Apr 2015	Ranchi	7 th May 2015		

In the second phase, the following cities will be covered: Vijayawada, Trivandrum, Cochin, Baroda, Dehradun, Chandigarh, Guwahati & Jalpaiguri

Contact person: Ms. Akrita Bharos - akrita.bharos@fmsfindia.org





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