

Foreign Contribution to NGOs



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More and more NGOs have started adopting a professional approach over the last few years to achieve their respective targets. It is estimated that more than Rs. 5,000 crore go to Indian NGOs every year as foreign contribution and there has been increasing danger of some unscrupulous NGOs utilising such foreign funds for anti-national activities. This article highlights regulatory aspects of such contributions and other related issues.

A non governmental organisation (NGO) is any association having a definite cultural, economic, educational, religious or social cause or any non-profit voluntary citizens' group which is organised around specific issues, such as education, environmental conservation, social welfare, rural development, sanitation, healthcare or human rights, on a local, national or international level.

Definition of NGOs by World Bank

The World Bank defines NGOs as "private organisations that pursue activities to relieve suffering, promote the interests of the poor,

protect the environment, provide basic social services, or undertake community development. NGOs include an array of groups and institutions that are entirely or largely independent of government, and characterised primarily by humanitarian or cooperative, rather than commercial objectives" (Operational Directive 14.70). A World Bank key document, 'Working with NGOs' adds: In wider usage, the term NGO can be applied to any non-profit organisation, which is entirely or largely independent from government and exists to serve humanitarian, social or cultural interests, either of their memberships or of society as a whole. NGOs are typically value-based organisations, which depend, wholly or in part, on charitable donations and voluntary service. Although the NGO sector has become increasingly professionalised over the last two decades, principles of altruism and voluntarism remain key defining characteristics.

Classification of NGOs by World Bank

The World Bank classifies NGOs into two main categories: (i) Operations NGOs—whose primary purpose is the design and implementation of development-related projects, and: (ii) Advocacy NGOs—whose primary purpose is to defend or promote a specific cause and who seek to influence the policies and practices of the World Bank. The World Bank classifies operations NGOs into three main groups: (a) community-based organisations (CBOs), which serve a specific population in a narrow geographic area; (b) national organisations which operate in individual developing countries, and; (c) international organisations, which are typically headquartered in developed countries and carry out operations in more than one developing

country. While national and international organisations are “intermediary” NGOs, which are formed to serve others and normally contracted to deliver services, design projects or conduct research; CBOs (also referred to as grassroots organisation or peoples’ organisations) are normally “membership” organisations made up of a group of individuals who have joined together to further their own interests (e.g.: Women’s groups, credit circles, youth clubs, cooperatives and farmer associations) and more likely to be the recipients of project goods and services.

Source of Funds

NGOs are dependent on donations and contribution from others rather than their self-generated income. Generally, the sources of funds for NGOs are from three different areas, the Government, the public at large and foreign development agencies. The foreign source is a major funding avenue for NGOs in third world countries like India. The Foreign Contribution (Regulation) Act, 1976 (No. 49 of 1976) (the FCRA) regulates the receipt of foreign contribution in India.

FCRA

In 1976, nine years after an uproar over foreign funding of the 1967 general elections, the Central Government enacted the FCRA to prevent foreign funds reaching political parties. Subsequently, in 1984, it was tightened for NGOs based on the findings of the Kudal Commission. The FCRA is not a fiscal act. It is an internal legislation by the Ministry of Home Affairs (MHA). The objective of the FCRA can be briefly summarised as ‘an Act to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations function in a manner consistent with the values of a sovereign democratic republic, and of matters connected therewith or incidental thereto.’

Foreign Contribution

According to section 2(1)(b) of the FCRA, foreign contribution means donations, deliveries or transfers, made by any foreign source,

- (a) of any article, not being an article given to a person as a gift, for his personal use, if the market value, in India, of such an article on the date of such a gift, does not exceed one thousand rupees;
- (b) of any currency, whether Indian or foreign; or
- (c) of any foreign security as defined in clause 2(i) of the Foreign Exchange Regulation Act, 1973.

Foreign Source

Foreign Source is defined in section 2(1)(e) of the FCRA. The definition is an ‘inclusive’ definition.

Foreign source includes:

- i. The Government of any foreign country or territory and any agency of such a Government,
- ii. Any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government, may, by notification in the official Gazette, specify in this behalf,
- iii. A foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956), and also includes-
 - (a) a company which is a subsidiary of a foreign company, and
 - (b) a multi-national corporation within the meaning of this Act.
- iv. A corporation, not being a foreign company, incorporated in a foreign country or territory,
- v. A multi-national corporation within the meaning of this Act,
- vi. A company within the meaning of the

Companies Act, 1956, if more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:

- (a) Government of a foreign country or territory,
 - (b) Citizens of a foreign country or territory,
 - (c) Corporations incorporated in a foreign country or territory,
 - (d) Trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory,
- vii. A trade union in any foreign country or territory, whether or not registered in such foreign country or territory,
- viii. A foreign trust by whatever name called, or a foreign foundation, which is either in the nature of the trust or is mainly financed by a foreign country or territory.
- ix. A society, club or other association of individuals formed or registered outside India,
- x. A citizen of a foreign country, but does not include any foreign institution, which has been permitted by the Central Government by notification in the Official Gazette, to carry on its activities in India;

When FCRA Permission is Not Needed

Prior permission from the FCRA is not required for receiving amounts in the following forms:-

- (a) Salary, wages or other remuneration either to individual or payment for business purposes.
- (b) Payment for international trade or for business transacted outside India.
- (c) By way of a gift or presentation received as member of any Indian delegation.
- (d) Gift not exceeding Rs. 8,000/- per annum.

Forms Prescribed

The Foreign Contribution (Regulation) Rules

1976 contain the various forms prescribed for the FCRA (See table A for a list of forms).

Registration

The FCRA requires all Indian NGOs that receive foreign contributions to receive clearance from the Ministry of Home Affairs, in the form of either regular FCRA registration or prior permission on a case-to-case basis.

The procedure for registration from the FCRA is as follows:

1. *Apply in Prescribed Form:*
Applicant to file the prescribed form (Form FC-8 for regular registration or FC-1A for prior permission) along with required documents (See tables B & C for a list of documents)
2. *Field Inquiry*
An official from the Intelligence Bureau will then visit the main office and may inspect accounts, ask questions, can also visit the field area, and inquire at the local police station. Thereafter he prepares a confidential report to FCRA Department.
3. *FCRA Permission*
Within 90 days thereafter, the FCRA Department sends a registered letter either granting the permission or stating rejection or request.
4. *Appeal Against Rejection*
The NGO can re-apply after ascertaining and rectifying objections on file. The NGO can also file an appeal in the High Court within 60 days of the date of the letter.
5. *Applying Again*
One party can apply for prior permission more than once if needed – considering that projects are varied and/or are under different agencies.

Designated Bank Account

An NGO is required to open a separate, new bank account (savings or current) with Indian

funds exclusively for foreign contributions (fresh or recycled). An association granted prior permission or registration under the Act can receive the foreign contribution and subsequently utilise it using a single designated bank account, as intimated in the application form.

Filing of Returns

An association permitted to accept foreign contribution is required to 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—along with Form FC-3—to be filed every year (1st April to 31st March) within a period of four months from the closure of the year i.e. by 31st July of each year. This return is to be accompanied with the balance sheet and statement of receipt and payment, duly certified by a Chartered Accountant, in duplicate. 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) That the association has maintained the account of foreign contribution and records relating thereto in the manner specified in section 13 of the FCRA, read with sub rule (1) of rule 8 of the Foreign Contribution (Regulation) Rules, 1976.
- (v) That the information furnished in the certificate and in the enclosed balance sheet and statement of receipt and payment is correct.

Legal Decisions

In an appeal petition, the Supreme Court of India delivered a landmark judgement on the

FCRA [*State Represented by Central Bureau of Investigation vs. M Kurian Chief Functionary of the CROSS, Hyderabad (2001)*]

The facts of the case are: The respondent-society, submitted an application in the prescribed form for registration under Section 6 of the FCRA for receiving foreign contribution. It was indicated therein that the foreign contribution will be received only through the main branch of the State Bank of India, Hyderabad, and a separate bank account was opened for the purpose. The society was allotted a registration number by the Central Government in accordance with Section 6(1)(a) of the FCRA. The said society entered into an agreement with M/s HEKS, Switzerland and the latter agreed to finance the project of “teaching aid non-formal education”. The said M/s HEKS issued instructions to the Canara Bank, Cantonment Branch, Bangalore, pursuant to which two bank drafts were issued amounting to Rs. 2 lacs and Rs. 1.65 lacs, in favour of the respondent-society by the Canara Bank, Bangalore. The respondent society instead of depositing the same in the main branch of the State Bank of India, Hyderabad, in accordance with the terms of the agreement, deposited the same into the account of Canara Bank, M.G Road, Secunderabad. It was further alleged that the respondent society even failed to intimate the Central Government about the receipt of the contribution made by M/s HEKS, as required under Section 6(1)(b) of the FCRA. The Central Government in exercise of its power under Section 10(b) of the FCRA, issued a notification, requiring the society to have prior permission of the Government before accepting any contribution. But that notification was quashed by the High Court on a writ petition being filed. The Central Government, thereafter had the accounts of the respondent society inspected by the Assistant Director, appointed under the FCRA, in the MHA and on the basis of the reports submitted

by the Assistant Director, two First Information Reports were lodged against the society. The investigating agency after inspecting the allegations, submitted a charge sheet under Section 6 read with Section 20(3) and it is at this stage that the respondent filed the petition under Section 482 of the Code of Criminal Procedure for quashing of the criminal proceedings. The Delhi High Court in exercise of its power under Section 482 of the Code of Criminal Procedure, has come to hold that a breach of the undertaking given by an Association under Section 6(1)(b) of the FCRA would amount to contravention of the provisions of the FCRA within the meaning of Section 23 of the FCRA and as such quashed the criminal proceedings arising out of the two FIRs, the Central Bureau of Investigation made appeals to the Supreme Court of India.

It held: "Reading the aforesaid provisions together and giving the literal meaning to the expressions contained in the aforesaid provisions, the conclusion is irresistible that receipt of contribution and depositing the same in a bank other than the bank indicated in the application form FC-1, would be a violation of the provisions of Section 6(1)(b) itself, in as much as no association is entitled to accept foreign contribution, unless the association agrees to receive the foreign contribution only through one of the branches of the bank as it may specify in its application of registration. The violation being a violation of the provisions of the Section 6(1)(b), would constitute an offence under Section 23 and, therefore, the High Court, in our opinion, committed serious error in quashing the criminal proceedings on a finding that it does not tantamount to violation of any provisions of the Act. Needless to mention that if associations and political parties would be allowed to receive foreign contribution and would deposit the same in any bank they like notwithstanding their declaration with the Cen-

tral Government at the time of registration, then the very purpose of conferring power on the Central Government to regulate, would be frustrated and all other provisions for inspections and auditing conferring power on the Central Government would be futile. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed serious error by quashing the criminal proceedings in the impugned judgement on an erroneous interpretation of the provisions of the Act and the Rules made thereunder, as stated above, and we accordingly set aside the same".

The Madras High Court in *Usmania Trust, Coimbatore (Registered) vs. Union of India (1991)* held that Central Government does not have any power to pass orders without assigning reasons for rejection of application for FCRA registration. The Court also held that sufficient opportunity should be given to the applicant before rejecting registration requests.

The Delhi High Court in *Association of Voluntary Agencies for Rural Development Vs. Union of India (1990)* held that Section 10 of FCRA, 1976 is not merely a violation or an injury of a civil right, but an adverse predicament for the functioning of any voluntary agency. The Court also held that the assertion that Section 10(b) does not require any reason as untenable.

Foreign Contribution (Management and Control) Bill, 2005

In 2005, the Government of India has introduced a new bill namely Foreign Contribution (Management and Control) Bill, 2005. This bill is eventually expected to replace FCRA.

The salient features of the bill are:

1. Declaration of the administrative structure.
2. The registration is valid for five years.
3. Restriction on administrative expenses is up to 30% of the foreign contribution.
4. Banks to submit returns.

5. Power of Central Government to call for information from any person to know if there is contravention of the Act.
6. Second or multiple bank accounts may be opened to disburse the funds received from abroad.
7. Re-registration of already registered associations within two years.
8. Fee to be paid with application.
9. Provisions such as the suspension and cancellation of registration certificate.
10. Prohibition to transfer foreign contribution to other persons.

Conclusion

The increase of number of NGOs and amount of foreign contribution received over the years changed the Government's role from 'Regulator' to 'Controller'. The proposed legislation will facilitate better compliance by NGOs by utilising the foreign contribution only for genuine and developmental activities.

TABLE A	
Forms Prescribed under the FCRA	
Form	Description
FC-1	Application for seeking prior permission to accept foreign contribution by or on behalf of an organisation of political nature not being a political party
FC-1A	Application for seeking prior permission to accept foreign contribution by an association having a definite cultural, economic education, religious or social programme.
FC-2	Application for seeking prior permission of the Central Government to accept foreign hospitality
FC-3	Yearly account of foreign contribution received and utilised
FC-4	Intimation to the Central Government of receipt of foreign contribution by a candidate for elections
FC-5	Intimation to the Central Government of receipt of scholarship, stipend or any payment of a like nature from a foreign source.
FC-6	Application for Foreign Contribution (Articles) Account
FC-7	Foreign Contribution (Securities) Accounts
FC-8	Application for seeking registration to accept foreign contribution
Correction Form	Intimation of change in address and bank details of registered associations

TABLE - B**Documents to be attached with Form FC-8 (Regular Registration)**

1.	Certificate from the concerned District Collector/ Department of State Government/ Ministry or Department of Central Government;
2.	Audited statements of account for the last three years.
3.	Annual Report specifying activities of the last five years.
4.	List and geographical detail of the state or districts of focus of work.
5.	Note on socio-economic background of the beneficiaries and of the regions to be covered.
6.	Certified copy of the registration certificate issued by the Registrar of Societies (if the NGO is a society).
7.	Certified copy of registered Trust Deed (if the NGO is a Trust).
8.	Certified copies of the registration certificate issued by the Registrar of Companies and Section 25 license issued by the Regional Director, Department of Company Affairs (if the NGO is a not-for-profit company).
9.	Certified copy of the byelaws and the Memorandum and Article of Association whichever is applicable.
10.	Copy of certificates of exemption on registration issued by the Income Tax Department u/s 80G and 12A.
11.	Copy of any prior permission granted to the organisation.
12.	Copy of resolution of the governing body of the organisation, authorising the registration under FCRA.
13.	Copy of the Power of Attorney or the resolution of the governing body by which the chief functionary is authorised to submit FC-8.
14.	List of present members of the governing body of the organisation and the office bearers.
15.	Copy of any journal or other publication of the organisation.
16.	If the association has any parent or sister or subsidiary organisation, which is registered under the FCRA then the registration number along with Ministry of Home Affairs file number should be mentioned.
17.	If the association has submitted any application earlier then its reference number should be mentioned.
18.	If the association has received any foreign contribution with or without the prior approval of the Central Government, then those details should be given.

TABLE - C**Documents to be attached with Form FC-1A (Prior Permission)**

1.	Certificate from the concerned District Collector/Department of the State Government/ Ministry or Department of the Central Government.
2.	Activity report for the past three years.
3.	Audited statement of accounts for the last three years.
4.	Details of the beneficiaries and details of the project for which the foreign contribution is expected. The details should include narrative as well as financial details.
5.	Letter of commitment from the foreign donor agreeing in principle to provide funds. List of states or districts of the focus of work.
6.	Note on socio-economic background of the beneficiaries and of the region to be covered.
7.	Certified copy of registration certificate issued by the Registrar of Societies (if the NGO is a society).
8.	Certified copy of registered Trust Deed (if the NGO is a Trust).
9.	Certified copies of registration certificate issued by the Registrar of Companies and Section 25 license issued by the Regional Director, Department of Company Affairs (if the NGO is a non-profit company).
10.	Certified copy of the byelaws and memorandum and Article of Association, whichever is applicable.
11.	Copy of certificates of exemption on registration issued by the Income Tax Department u/s 80G and 12A.
12.	Copy of any prior permission granted to the organisation.
13.	Copy of resolution of the governing body of the organisation, authorising the registration under FCRA.
14.	Copy of the Power of Attorney or the resolution of the governing body by which the chief functionary is authorised to submit FC-1A.
15.	List or present members of the governing body of the organisation and the office bearers.
16.	Copy of any journal or other publication of the organisation.