

Social Sector Hotline

September 29, 2023

A STEP TOWARDS FOSTERING TRANSPERANCY UNDER FCRA

- The Ministry of Home Affairs recently notified Foreign Contribution (Regulation) Amendment Rules, 2023 on 22nd September, 2023.
- This amendment mandates NGOs registered under the Foreign Contribution Regulation Act, 2010 to provide detailed disclosures regarding assets created through foreign contributions.

INTRODUCTION

The Ministry of Home Affairs ("MHA") has recently introduced significant amendments to the Foreign Contribution (Regulation) Rules, 2011¹ ("FCRA Rules") with the objective of enhancing transparency in the operations of Non-Governmental Organizations ("NGOs") registered under the Foreign Contribution Regulation Act, 2010 ("FCRA Act"). These amendments, which came into effect on September, 2023, mandate detailed disclosure regarding assets created through foreign contributions by these NGOs.

BACKGROUND

The FCRA Act has been a pivotal piece of legislation governing the acceptance and utilization of foreign contributions by NGOs operating in India. Its primary goal is to ensure transparency, accountability and compliance in the handling of foreign contributions by these organizations. Over time, MHA has periodically updated the FCRA Rules to adapt to evolving regulatory needs, exercising its powers conferred by Section 48 of the FCRA Act.²

FCRA AMENDMENT RULES, 2023

The latest amendments to the FCRA Rules, introduced in September 2023, emphasize the importance of transparency. NGOs registered under the FCRA Act, are now required to provide detailed information about both movable and immovable assets created using foreign contributions. These changes are incorporated into Form FC-4, with the addition of two clauses in serial number 3, following clause (b). NGOs are obligated to make mandatory disclosures of assets created from foreign contributions as of March 31 of the financial year.³

ANALYSIS

The recent FCRA amendments demonstrate the government's commitment to enhancing transparency in the operations of NGOs registered under the FCRA Act. By mandating the disclosure of assets created through foreign contributions, authorities aim to ensure that foreign funds are being utilized for their intended purposes. This approach aligns with the global trend of increased scrutiny over foreign funding to NGOs, aiming to prevent any misuse or diversion of funds.

While the amendments intend to boost transparency, one may argue that they impose an increased compliance burden. NGOs will now need to allocate additional resources and efforts to gather and report asset-related information. However, it is essential to recognize that this increased compliance aligns with the broader objective of preventing misuse of foreign contributions.

Furthermore, these amendments follow a series of regulatory changes introduced by the MHA. The FCRA Amendment Act of 2020,⁴ for instance, offered certain relaxations, such as permitting relatives to send more money under the FCRA and extending the time for organizations to inform the government about the opening of bank accounts for fund utilization under Section 17 of the FCRA Act. The 2023 amendments can be seen as balancing these relaxations with enhanced disclosure requirements.

CONCLUSION

The FCRA Amendment Rules, 2023, represent a significant step toward fostering transparency and accountability in the utilization of foreign contributions by NGOs in India. These amendments, with their focus on asset disclosure, reflect the government's commitment to ensuring that foreign funds are put to their intended use. While one may argue that these changes increase the compliance burden on NGOs, it is imperative to note that they align with the broader global trend of scrutinizing foreign funding to prevent potential misuse. As these regulatory changes continue to shape the landscape, it is crucial for NGOs to stay informed and adapt their practices accordingly.

– Sehar Sharma, Rahul Rishi & Dr.Milind Antani

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¹https://fcaonline.nic.in/home/PDF_Doc/FC-rules2011.pdf

²<http://www.bareactslive.com/ACA/ACT1405.HTM?AspxAutoDetectCookieSupport=1#:~:text=%2D%20A%20donation%2C%20delivery%20or%20transfer,the%20meaning%20of%20this%20clause>

³<https://egazette.gov.in/WriteReadData/2023/248983.pdf>

⁴https://fcaonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf

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