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Understanding FCRA Amendment Bill 2020

CAUTION



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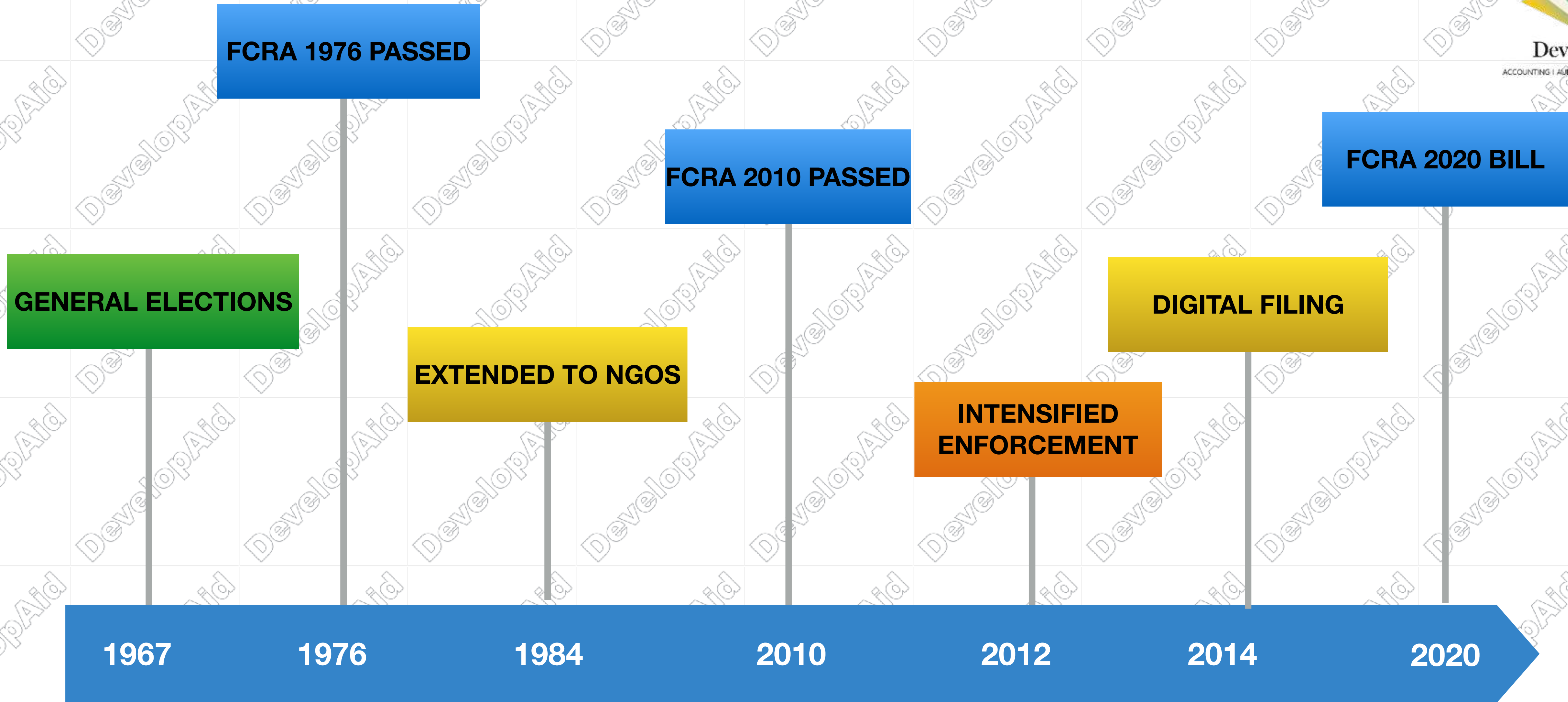
Context



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Purpose & History



Debate & Bill

Kudal
Commission

Political Fragmentation

Political Consolidation

The Idea



The regulations have been so framed that while legitimate charitable, social, educational, medical and activity that serves any public purpose is allowed, **foreign money does not dominate social and political discourse in India.** There is enough money for charity within India. Enough money can be raised within India for **charitable causes**, the **social causes**. But, if you want to access foreign money, then one has to come under a system of regulation.

- Minister of Home Affairs, Rajya Sabha, 19-Aug-10

The Policy



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The general policy of the Government of India is **not to encourage soliciting of foreign contribution.** However, if it is intended for **bonafide welfare activities**, foreign contribution can be received either by obtaining registration or prior permission from the Central Government under the FCRA 2010.

- Home Secretary, FCRA Annual Report, 6-Dec-13



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Returns Filed

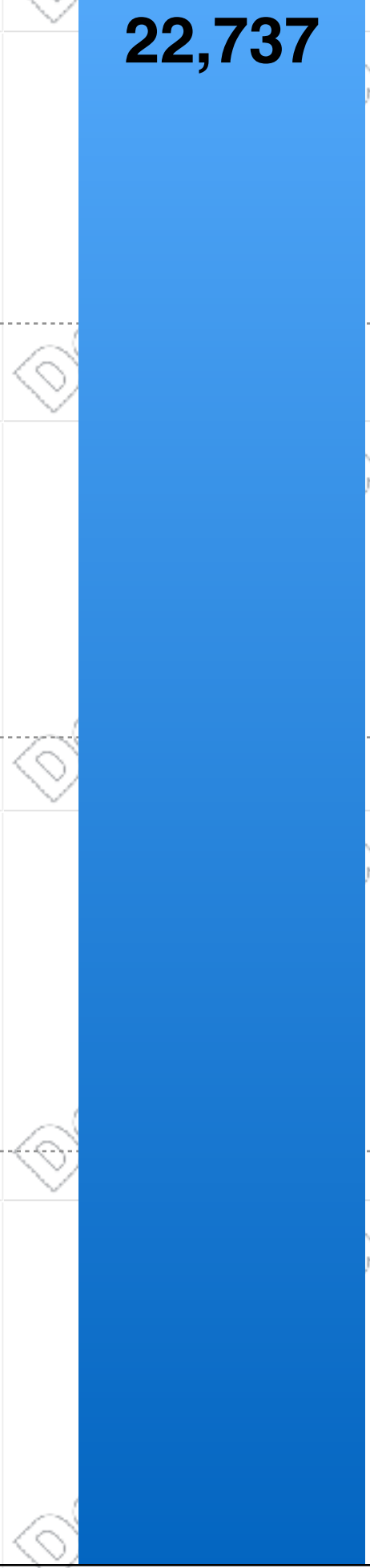
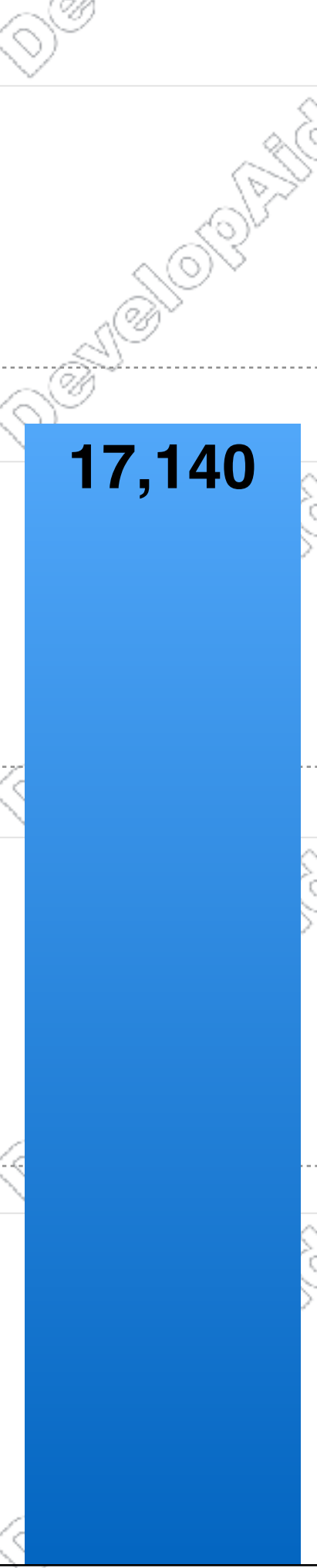
24000

18000

12000

6000

0



2013-14

2014-15

2015-16

2016-17

2017-18

2018-19

Data till 25-May-2020

Direct FC Receipts (Rs. Crores)

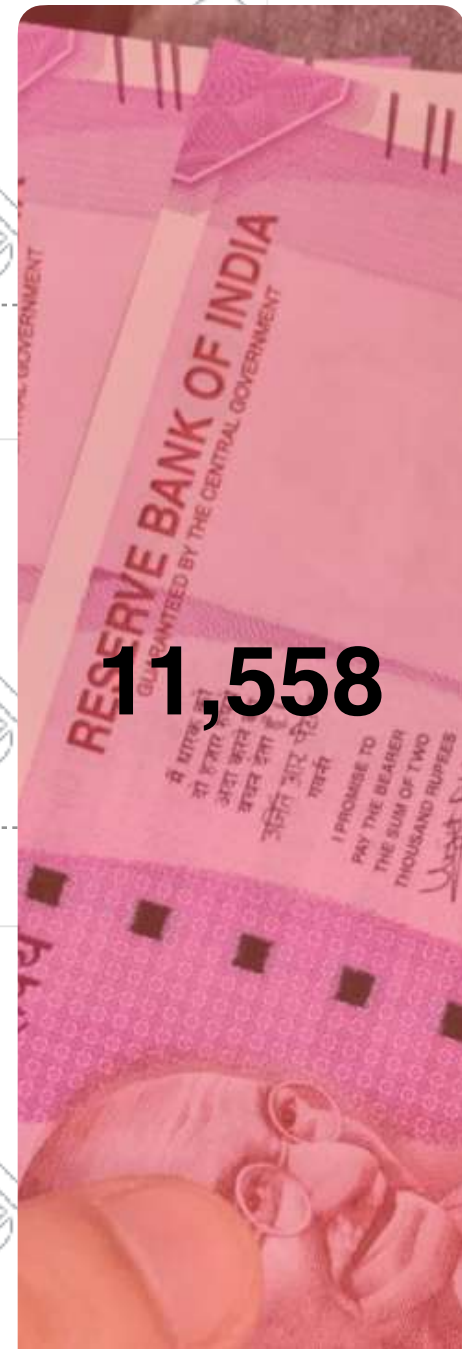
18,000

13,500

9,000

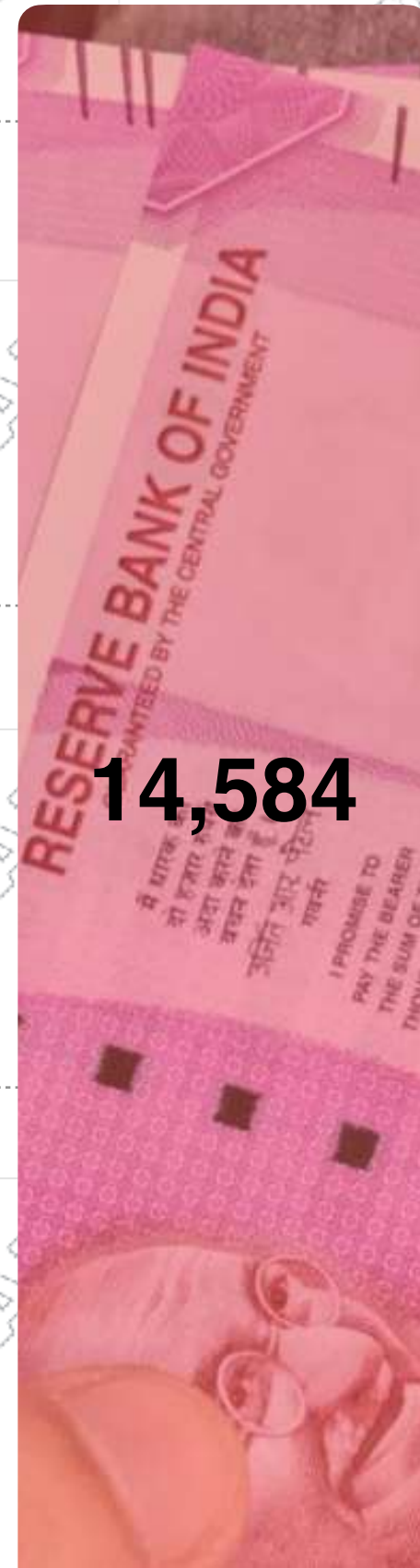
4,500

0



2013-14

11,558



2014-15

14,584



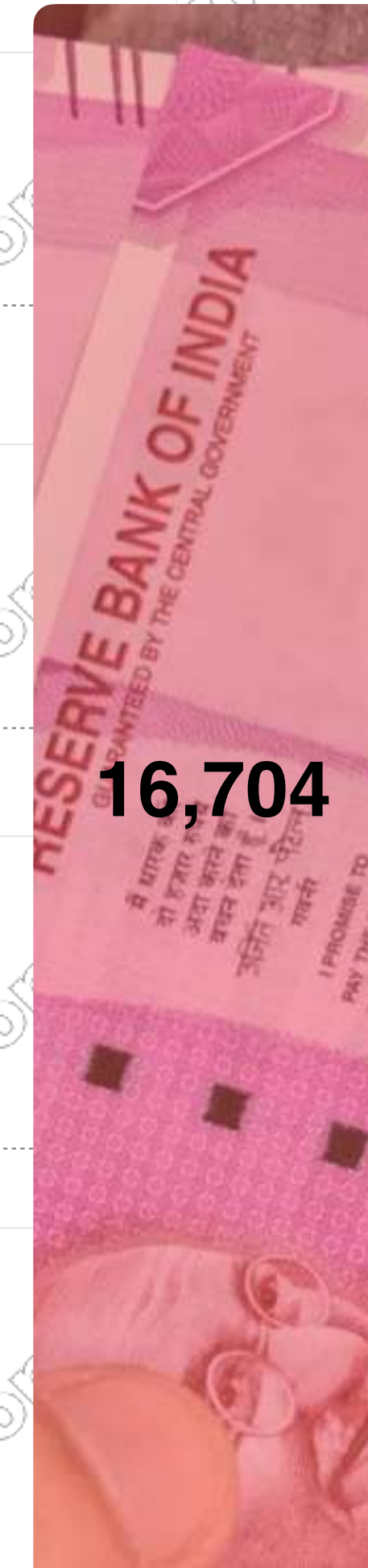
2015-16

17,646



2016-17

14,935



2017-18

16,704



2018-19

16,415

Primary Receipts

Data till 25-May-2020



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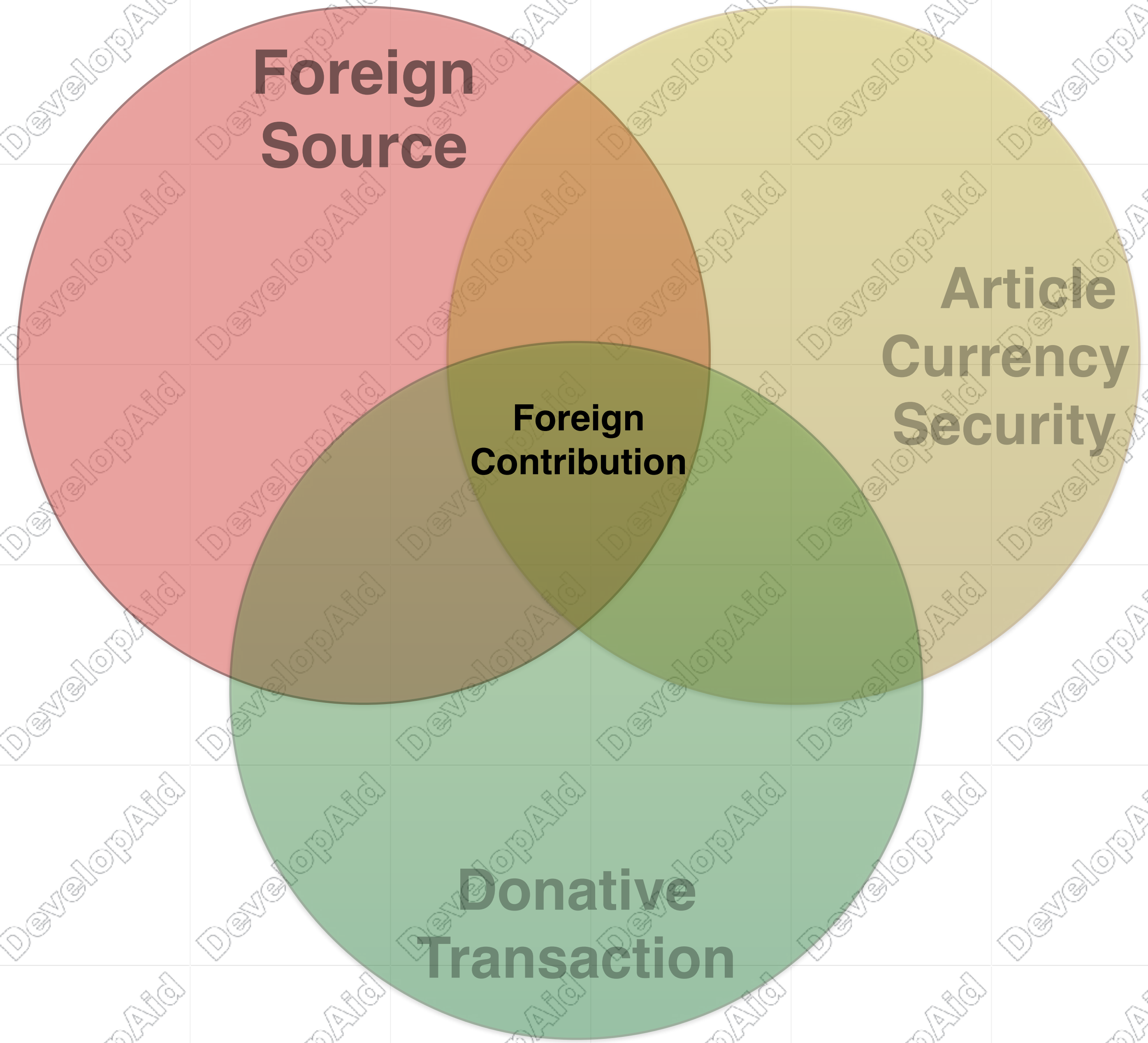
Key FCRA Concepts





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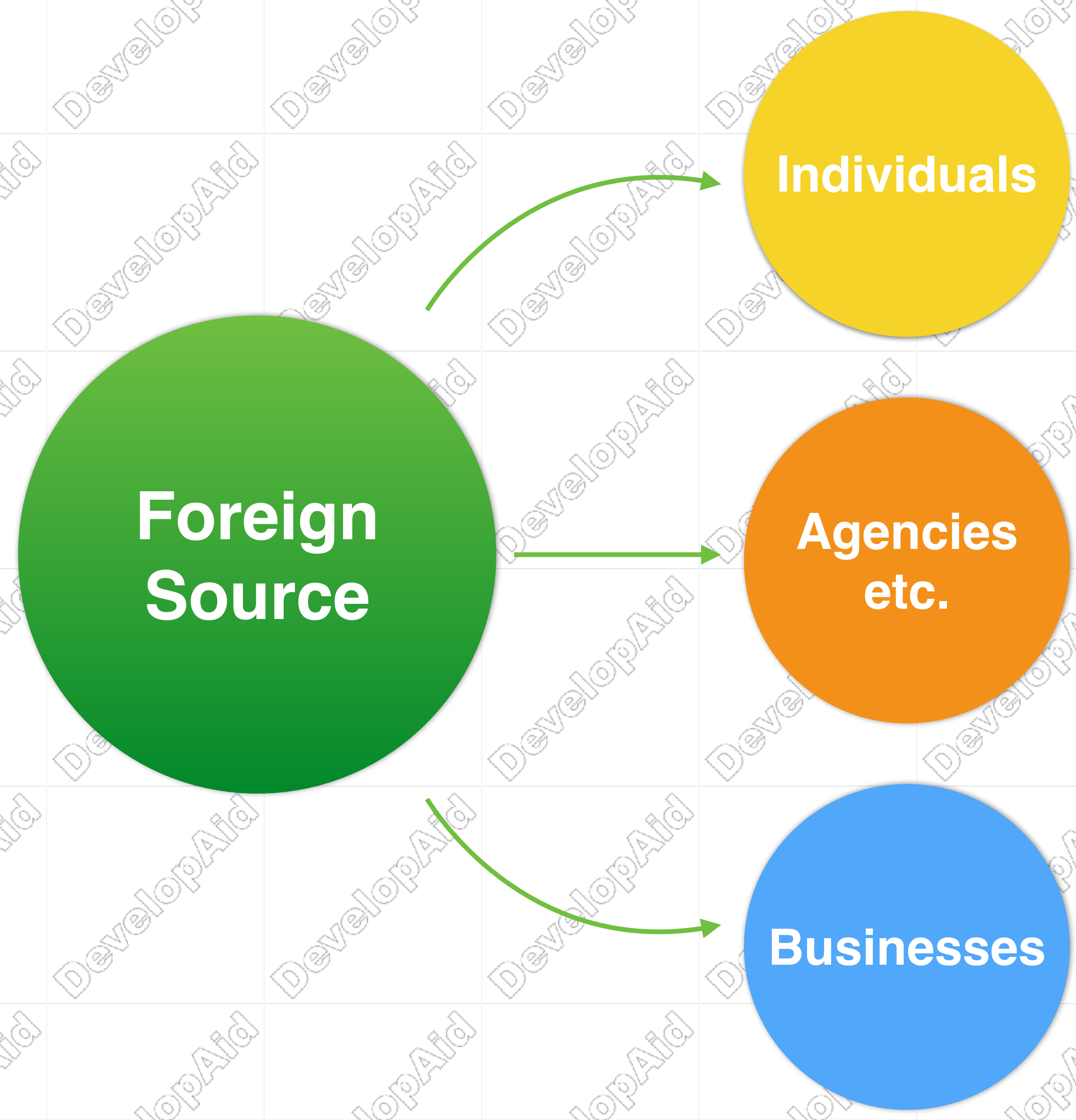
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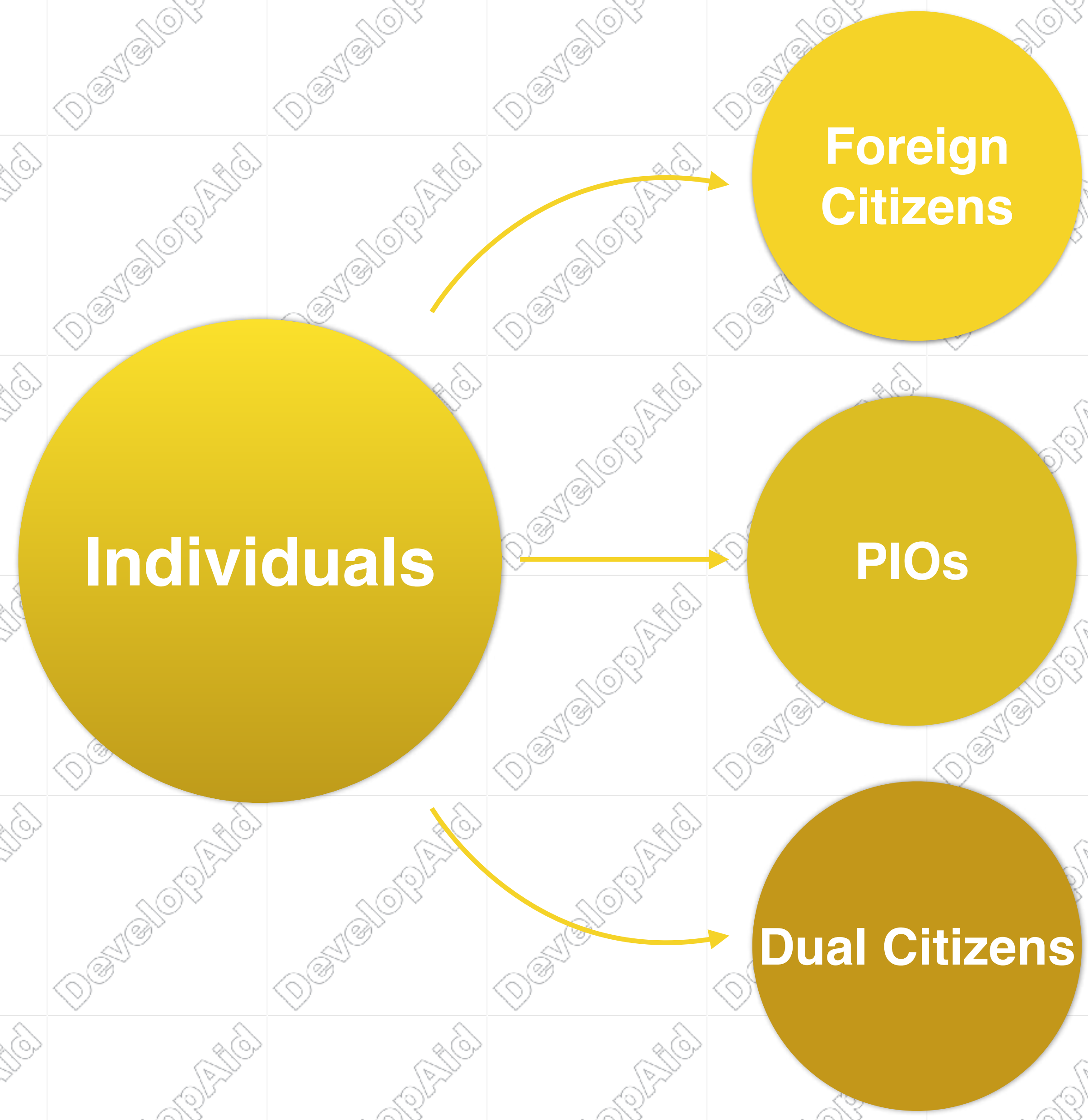
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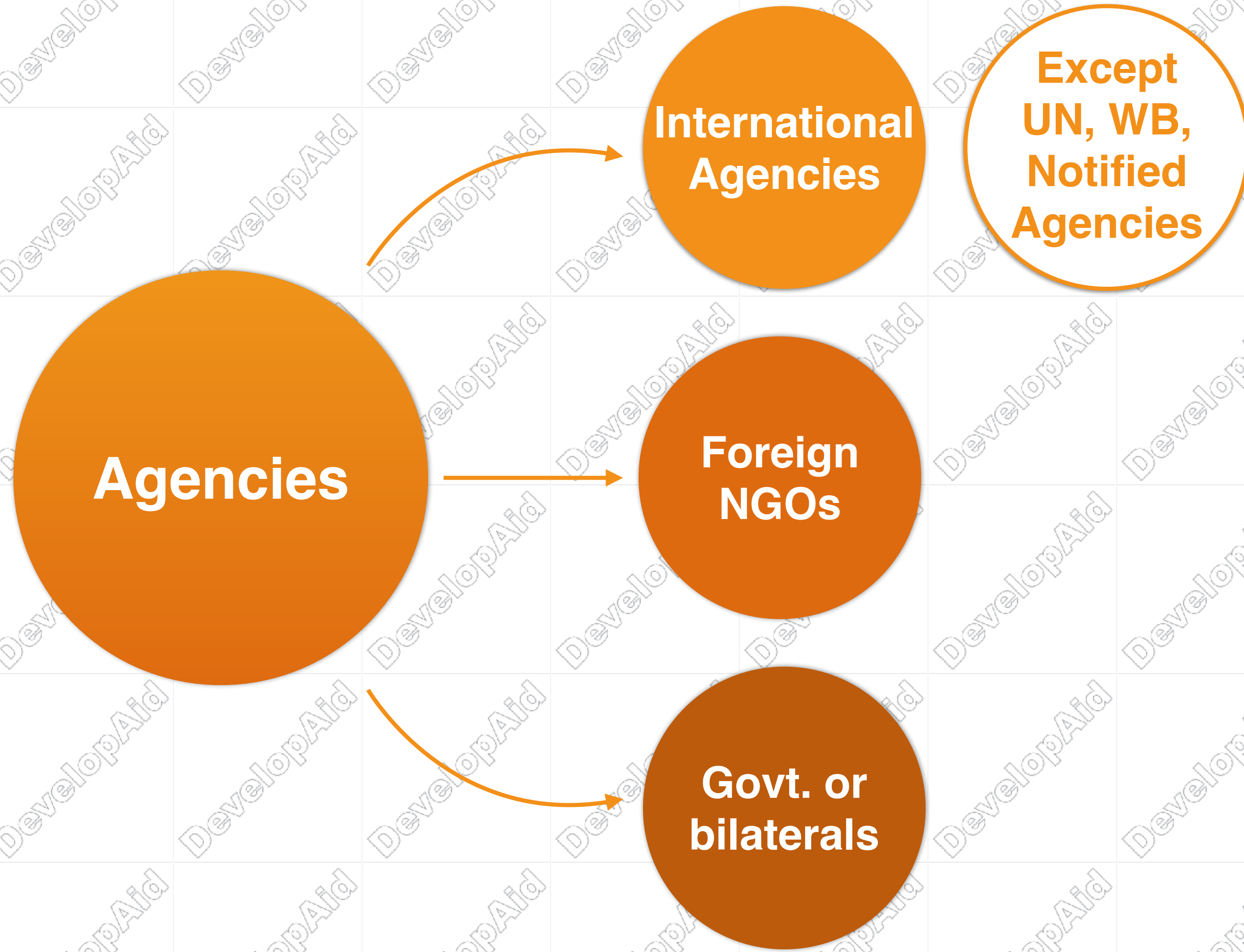




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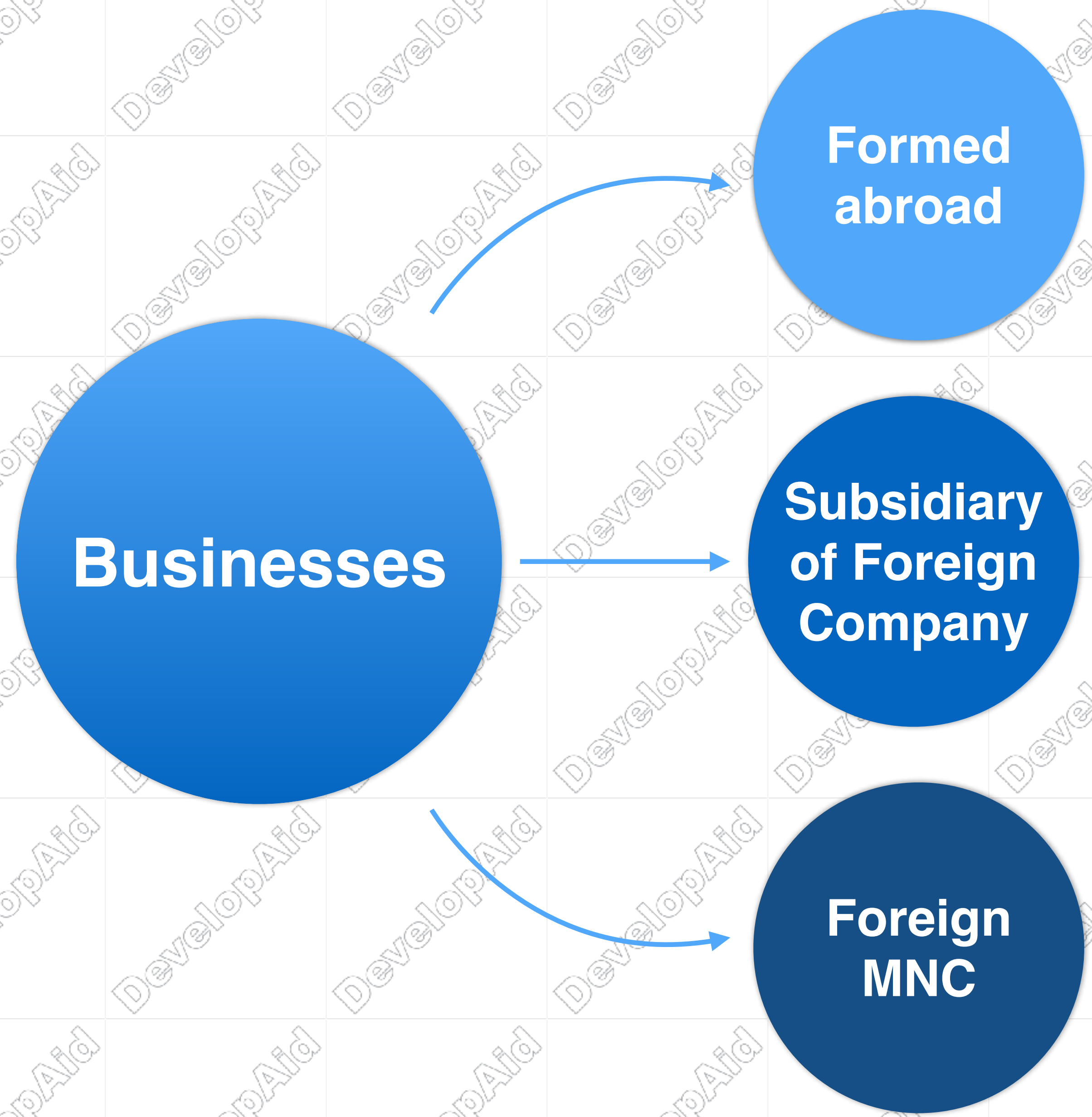
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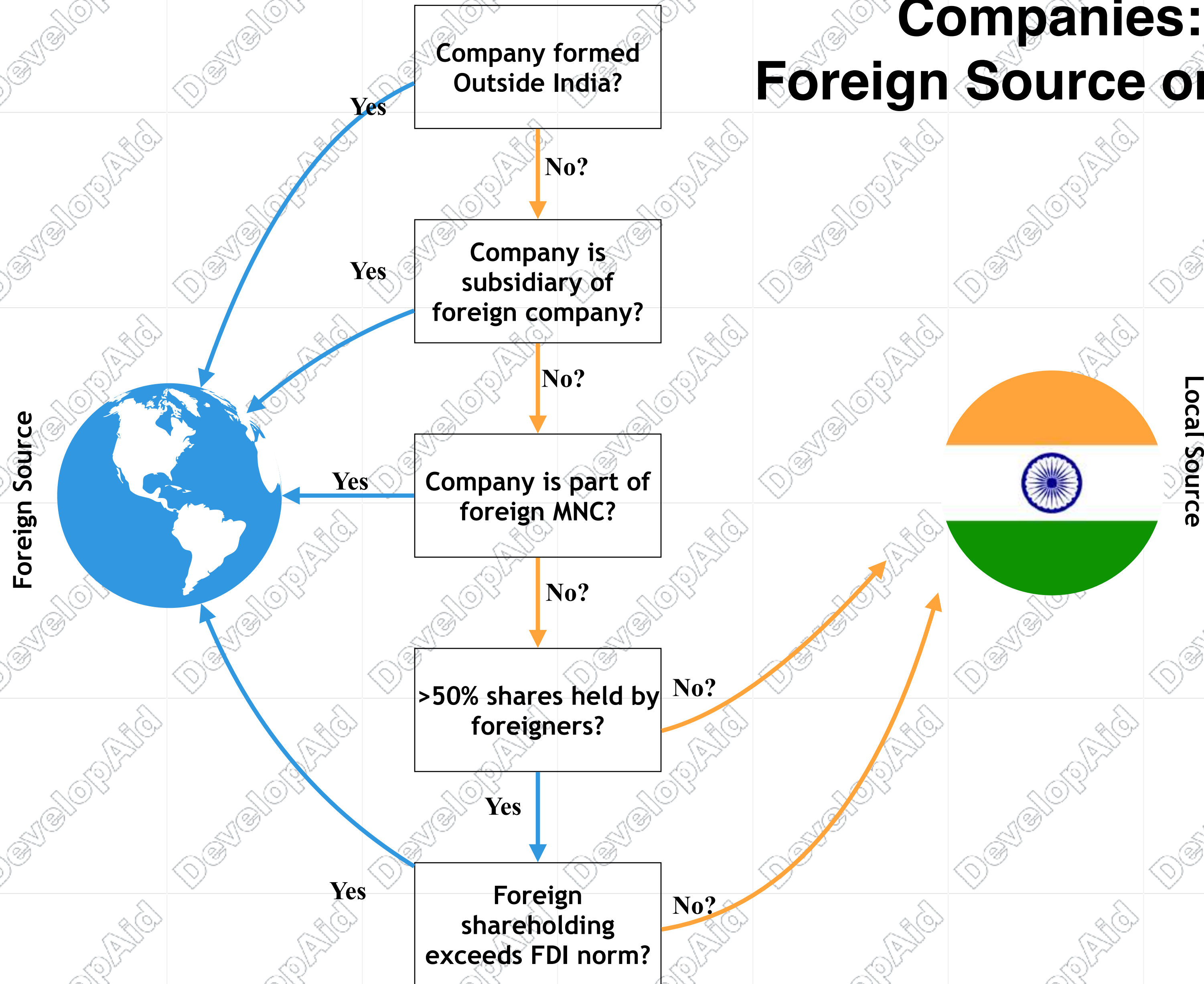




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Companies: Foreign Source or not?



Is this FC?



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What about this?



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Changes Sep-20



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Public Servant Sec. 3

Definition



- **Defined in sec. 21 of Indian Penal Code; includes:**
 - **Court officers, arbitrators, public prosecutors**
 - **—Every person—**
 - **(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;**
 - **(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).**

For NGOs



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- **Will include nominees to (esp. if paid fees by Govt.):**
 - **Juvenile Justice Boards**
 - **Children Welfare Committees**

Restriction



- **Public Servants not to accept FC while holding office**
- **Exceptions:**
 - **Fees or salary in ordinary course of business**
 - **Gifts up to Rs. 1 lakh for personal use**
 - **Foreign hospitality not covered by the restriction**

Impact



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- **Ensure no FC accepted while holding public office**
- **Payment of salary/fees out of FC funds?**
- **Ensure arm's length transaction**
- **Ensure proper documentation**
- **May still be questioned**



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Sub-grants/Transfers

Sec. 7

Present Law



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- **FC can be received by any organisation with FCRA**
- **Receiver can transfer it to other organisations with FCRA**
- **Called sub-grant or secondary transfer**
- **Receiver can transfer up to 10% to non-FCRA organisation**
- **Receiver needs permission (FC-5)**

Change

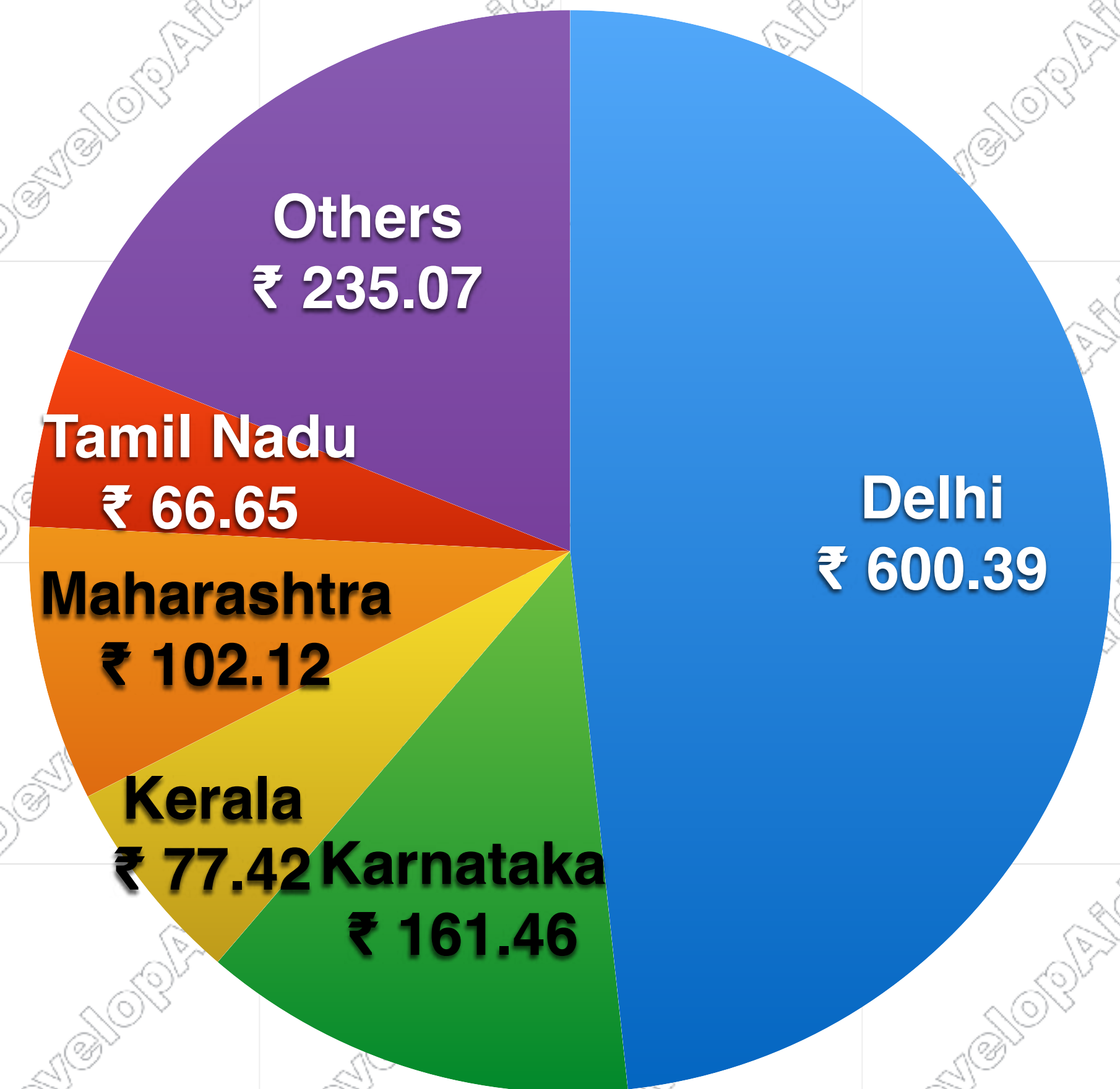


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- **Sub-grants or secondary transfer of FC completely prohibited**
- **Even if secondary receiver has FCRA registration**
 - **Covers transfer of material as well - irrespective of value**
 - **Doesn't cover payment of salary, fees, vendor payments, etc.**

Sub-granting Dimensions

- **Total transferred:**
- **Rs. 1,243 crores or 5.8%**
- **Largest Secondary Transfer: Rs. 105 crores (38%)**
- **16 NGOs transfer 80-100%; averages Rs. 9.66 crores**
- **741 NGOs transfer > Rs. 1 lakh**
- **60 bigger NGOs transfer > 50% of their funds to others**

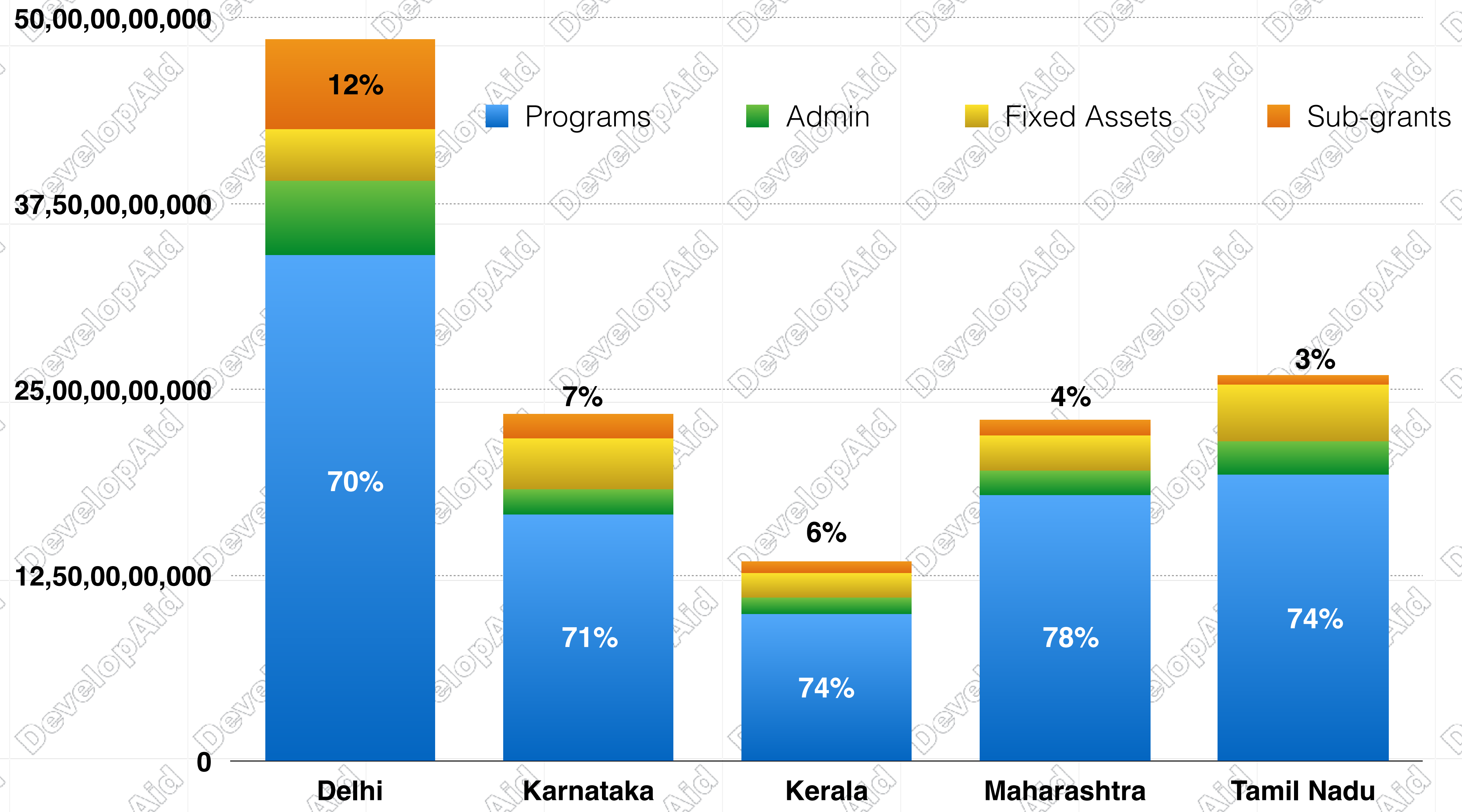


Sub-grants/ Secondary Transfers (Rs. Crores)
2018-19



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Sub-grants/ Secondary Transfers (Rs.) 2018-19



Impact



- **INGOs/Foreign sources must give directly to implementing NGO**
- **All NGOs must spend FC directly**
- **No transfer of FC for collaboration**
- **Payment to other NGOs for use of facilities?**
- **Half-way projects?**

Impacted



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- **Donor agencies which raise and redistribute FC grants**
- **Nodal agencies/ NGO networks**
- **NPOs raising funds for smaller NGOs**
- **NPOs running FC fund-raising platforms**
- **CSR Foundations**

Avoid



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- **Sub-granting FC through service contracts**
- **Off-loading undibursed grants before effective date**

Consider



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- **Representation for pending sub-grant commitments**
- **Seek clarification on paying for use of FC-facilities**
- **Rethink grant-making operations**
- **Merger among collaborating NGOs?**



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Administrative Expenses

Sec. 8



Present Law



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- **Administrative Expenses defined in rule 5**
- **Must be reported separately in FC-4**
- **Restricted to 50% of FC received**
- **In practice, FC used is considered as base**

Rule 5 Definition



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The following shall constitute administrative expenses:-

- (i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;
- (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
- (iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
- (iv) cost of accounting for and administering funds;
- (v) expenses towards running and maintenance of vehicles;
- (vi) cost of writing and filing reports;
- (vii) legal and professional charges; and
- (viii) rent of premises, repairs to premises and expenses on other utilities:

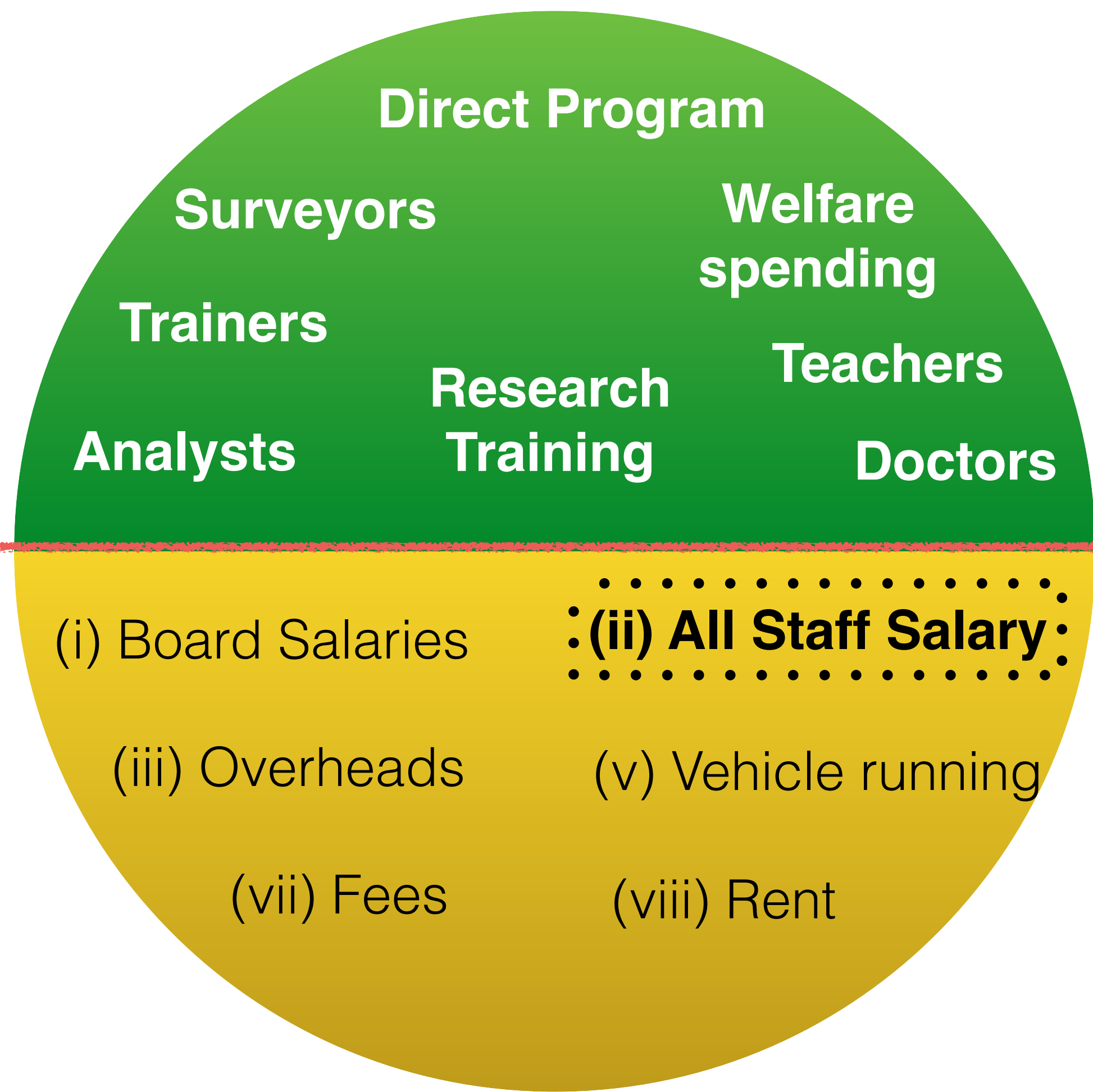
Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

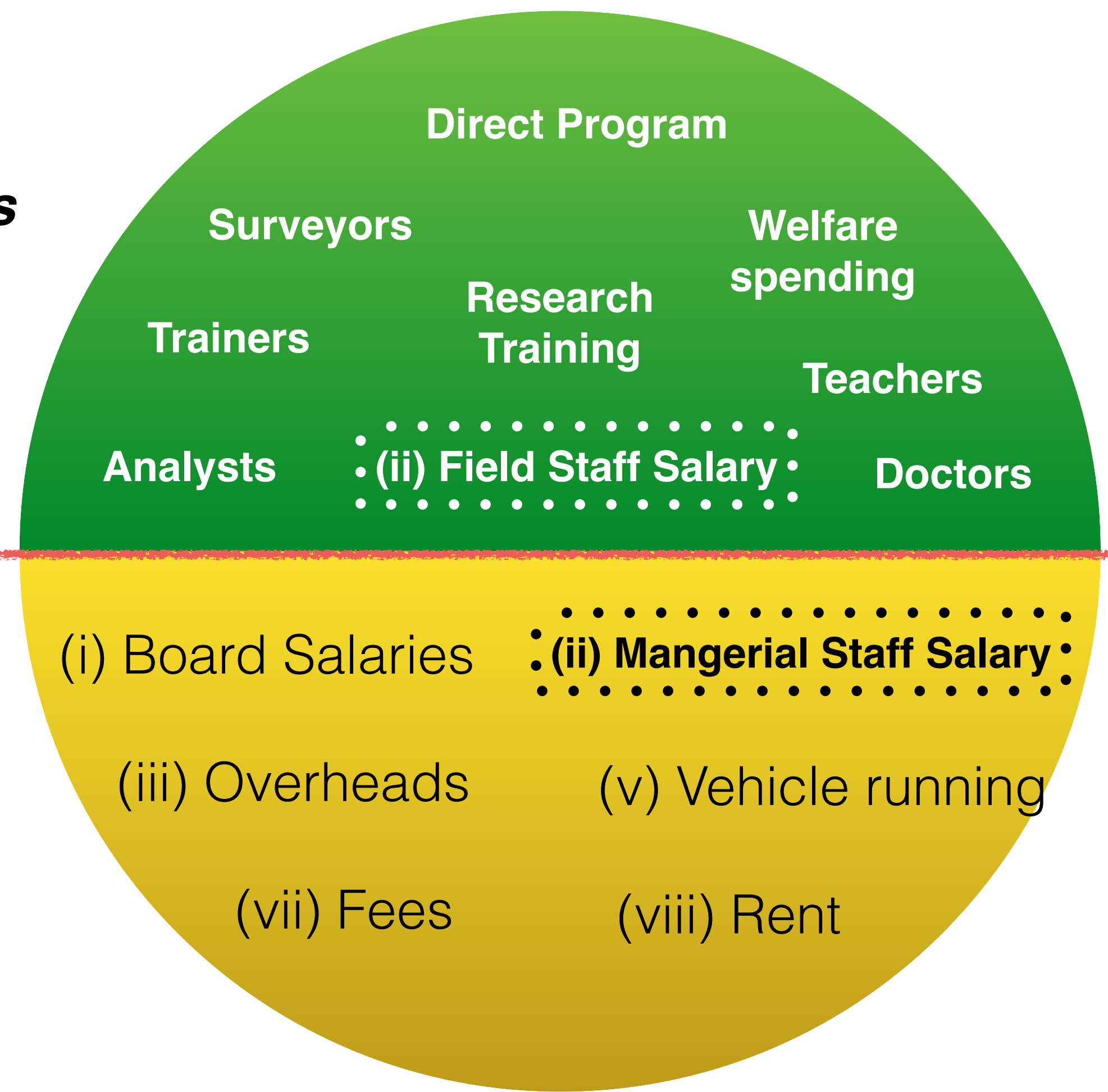


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Other View



Program Expenses



Admin Expenses <50%

FCRA Dept. View



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- **No authorised public clarification on field/program staff salaries**
- **Cancellation letters to some NGOs mention:**
 - **Greenpeace India: 81-89%**
 - **Sabrang Trust: 55-64%**

RSTV: The Big Picture



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“The restriction on administrative expenses also is very vital because many people, the foot soldiers, who carry out this type of narratives, [unclear] or are listed as workers of particular - there’s some Greenpeace or something like that - whether it is happening in the Sterlite case in Tamil Nadu or there are so many other places...”

- RVS Mani, former Under Secretary, MHA, on The Big Picture: FCRA Amendment Bill 2020 (RSTV, 24-Sep-20)



Overspending?

- **Get permission in advance OR**
- **Pay Compounding fee of**
 - **Rs. 1 lakh or 5% of overspending**
 - **Whichever is higher**
- **Can do this only once in three years....**

Change



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- **Limit reduced to 20%**
- **No change in definition given in rule 5**



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Why 20%?

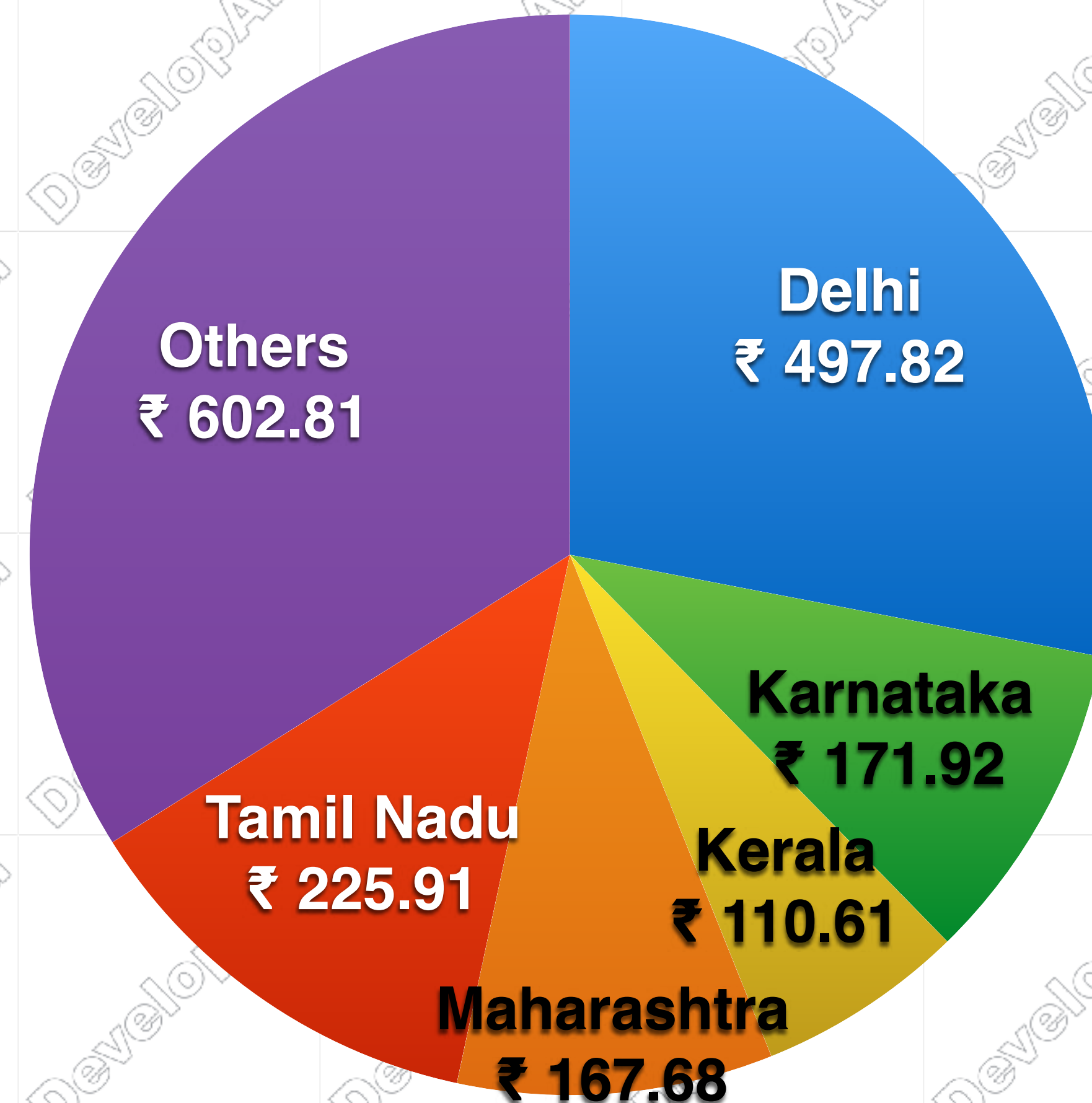
My first point is this. You have come for administrative cost and salaries from 50 per cent to 20 per cent. How have you reached this magic number of 20 per cent? Is that how you are going to control salaries and jobs and the number of people in NGOs? How have you come to this magic number? So, what is the logic behind this 50 per cent and the donor who gives the money, how can any Government control them? Tomorrow, you will say that salaries of CEOs need to be controlled. So, why is this micro-management of the Government? It is a million-dollar question.

-SHRIMATI SUPRIYA SADANAND SULE (BARAMATI)

In Lok Sabha on 21-Sep-20

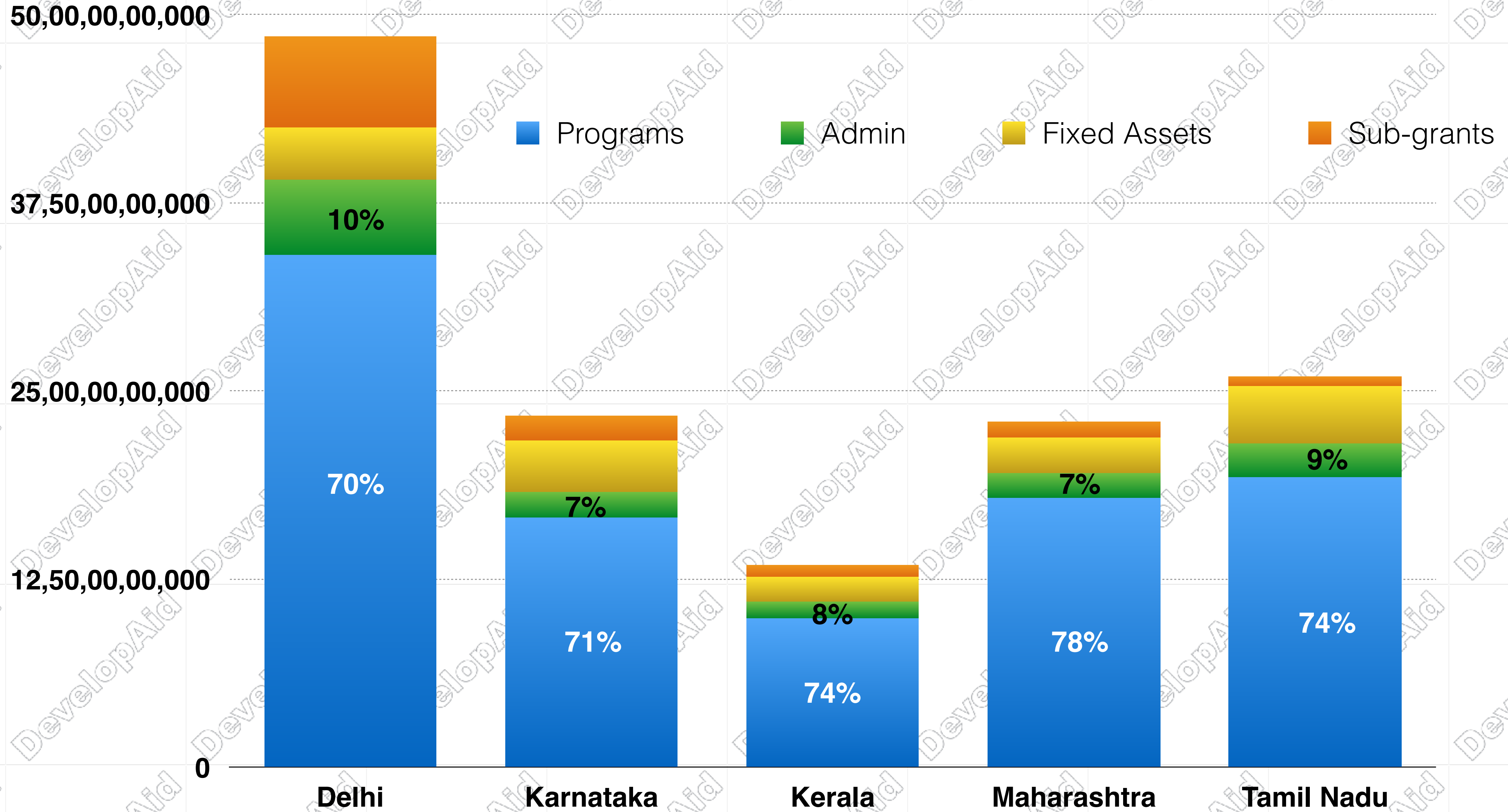
Admin Dimensions

- **Total Spent on Admin**
- **Rs. 1,777 crores or 8% of total used**
- **Largest Spending:**
- **Rs. 42.5 crores (98%)**
- **1,592 NGOs spend >50% on Admin**
- **28 bigger NGOs spend > 50% on admin**



Administrative Expenses (Rs. Crores) 2018-19

Administrative Expenses (Rs.) 2018-19

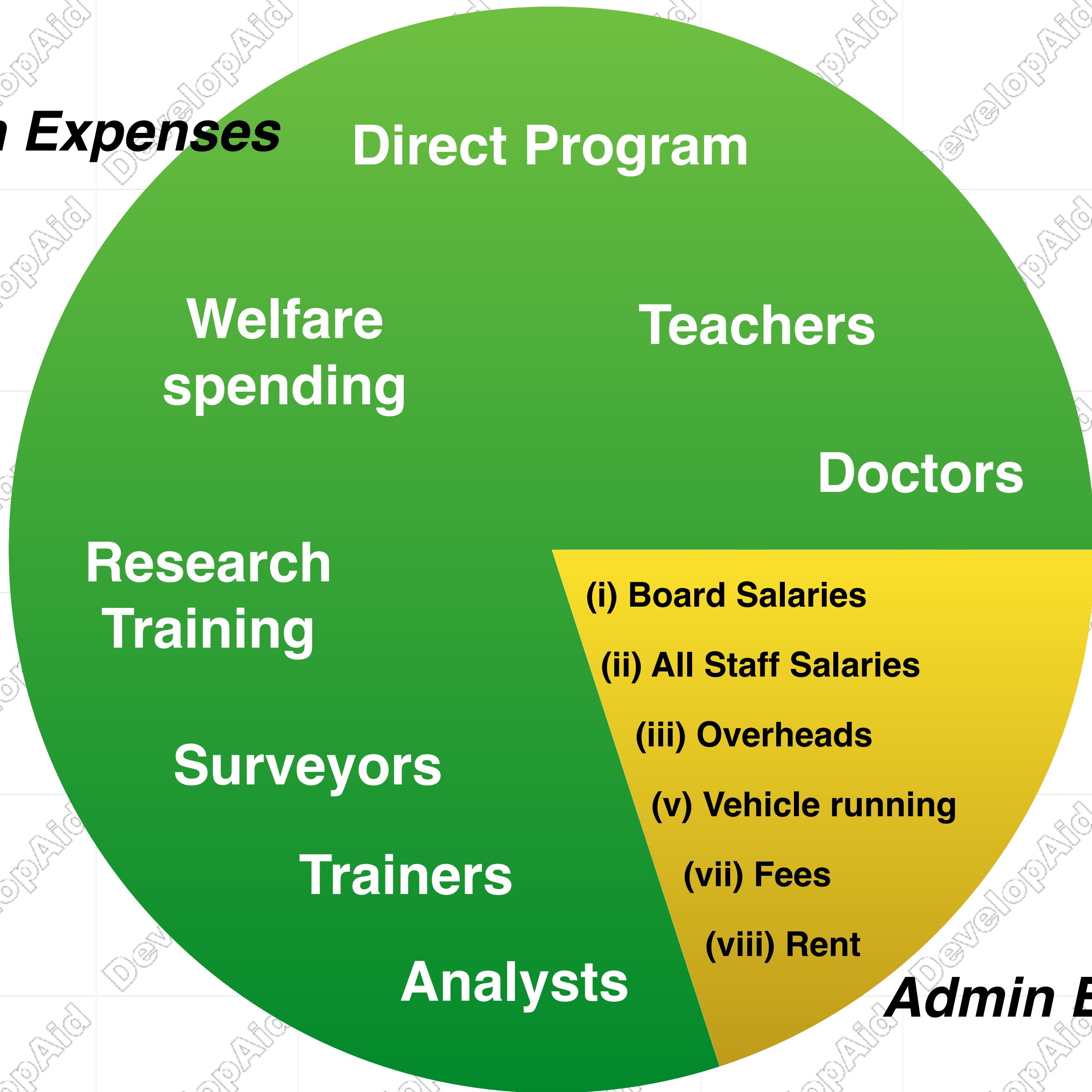




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Program Expenses

Direct Program



<20%

Admin Expenses

New Threshold of 20%



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- **3,157 NGOs spent >20% on Admin in 18-19**
- **139 bigger NGOs spent > 20% on admin in 18-19**

Impact



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- **Advocacy and campaigning organisations**
- **NGOs with large number of staff**
- **NGOs with tiny budgets**
- **Some overheads are fixed costs**

Low or No Impact



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- **If non-managerial staff excluded from definition**
- **Could be viewed as FCRA Dept. as under-reporting**
- **On welfare-oriented organisations**
- **On organisations involved in research or training**
- **Think Tanks?**

Avoid



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- **Under-reporting of administrative expenses**
- **Mis-accounting of salaries etc. as program expenses**

Consider



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- **Writing to support-fcra@gov.in for clarity on what's included**
- **Re-structuring FC programs to lower staff costs**
- **Motivating more volunteers for your work**
- **Raising more non-FC funds for administrative expenses**
- **Applying for prior-approval to spend over 20%**



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Suspending Prior Permission Sec. 11



Present Law



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- **FCRA Registration** can be suspended or cancelled
- **No provision for spending or cancelling prior-permission**

Change



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- **Permission can be suspended after summary enquiry**
- **Applies to receipt of further funds**
- **Applies to spending unused funds as well**
- **Prior-Approval needed to spend during suspension**

Impact



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- **Marginal impact on prior-permission cases**



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Banking Gateway

Sec. 12, Sec. 17



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- **Funds must be received in designated account first**
- **Can be opened in any bank anywhere in India**
- **Can then be spent from this account or secondary utilisation accounts**
- **Both types of accounts can be opened only in PFMS-compliant banks (Public Financial Management System)**

Change: Gateway of India



- **Primary designated Account must be with**
- **State Bank of India, New Delhi**
- **Can be opened through any SBI branch in India**
- **Account must be named as 'XYZ Association - FCRA Account'**

Change: Secondary A/c

- **Funds credited in primary designated SBI account can be**
- **Spent directly**
- **Transferred to secondary/tertiary account with any other PFMS compliant bank**
- **No direct receipt of funds from foreign source in this account**

Change: Tertiary A/c

- **Funds in secondary account can be**
- **Spent directly**
- **Transferred to tertiary account with any other PFMS compliant bank**
- **Can be spent from tertiary account**

Impact



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- **Will allow FCRA Dept. to scrutinise all FC receipts**
- **whether from within India or from abroad**
- **Selected remittances can be halted before being credited**
- **More clarity over which remittances are foreign contribution**

Consider



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- **Limiting number of accounts**
- **Naming tertiary accounts as 'XYZ Association - FCRA tertiary a/c'**
- **Ensuring direct FC donations/cheques are not deposited in secondary or tertiary accounts**



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Aadhar Number Sec. 12A



Present Law



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- **Aadhar of board members sought during registration/renewal/change**
- **Darpan ID of NGO also sought**
- **Both are optional**

Change



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- **Aadhar Number of Board members mandatory for**
- **Prior-permission**
- **Registration**
- **Renewal**
- **Passport or OCI can be given for foreigners**
- **Only PIOs are permitted on board**
- **Darpan ID for NGO likely to be made mandatory**

Impact



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- **Easier for FCRA Dept. to identify**
- **Common board members**
- **Foreigners on board of NGOs**
- **Relatives on board**
- **NGO functionaries serving as public servants**

Avoid



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- **Proxy Board members**
- **Honorary or paid positions in quasi-government bodies**



Consider



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- **Reducing cross-memberships of NGOs boards**
- **Streamlining/strengthening your own Board**



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Extending Suspension Period Sec. 13



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- **FCRA can be temporarily suspended for 180 days**
- **No FC can be received or spent during suspension**
- **Upto 25% of FC can be spent during suspension with prior-approval**

Change



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- **Suspension may now extend upto 360 days**
- **25% limit remains unchanged**

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- **Allows FCRA Dept. more time to investigate**
- **NGO's work may remain disturbed for a longer period**



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Surrendering FCRA Sec. 14A, Sec. 15



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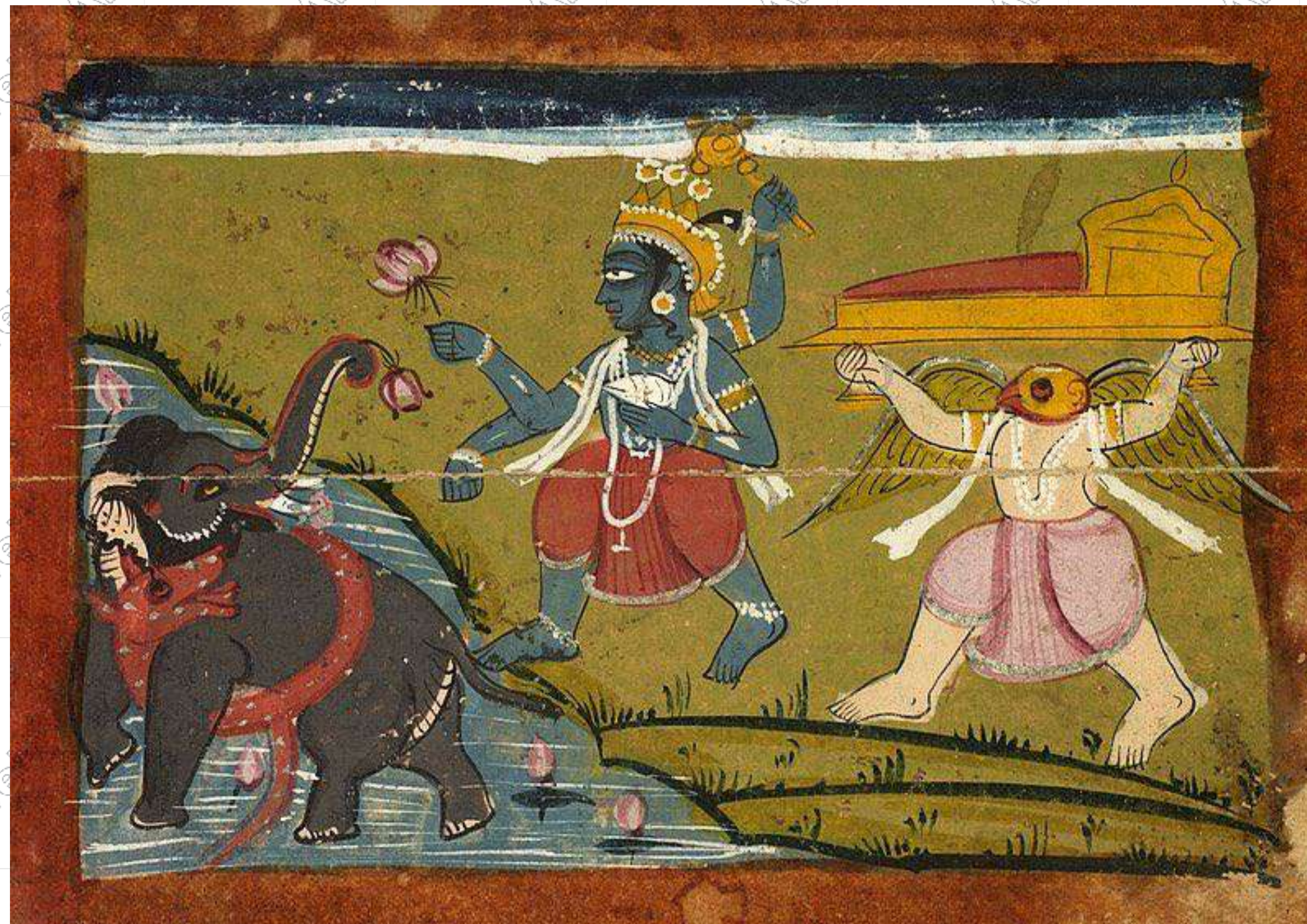
- **No legal provision for surrendering FCRA registration**
- **Surrender accepted in practice — marked as ‘cancelled on request’**

Change

- **NGOs can surrender FCRA registration if not needed**
- **FCRA Dept. may conduct inquiry before accepting**
- **All unused FC and FC assets will vest in District Magistrate**

Impact

- **Moksha Marg for NGOs tired of FCRA compliance**
- **After detaching themselves of all earthly possessions**
- **DMs may need to set up mechanism to maintain and manage FC assets**



Gajendra Moksha: The Salvation of the King of the Elephants; Kota, 1800. Image Credit: Edward L. Whittmore Fund; Creative Commons CC 0

Avoid



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- **Mixing FC and non-FC while creating assets**
- **Both portions will be acquired by DM**
- **Selling FC assets for nominal consideration before surrender**
- **Converting unused FC into Non-FC**

Consider



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- **Reducing build-up of FC assets**
- **Reducing build-up of FC endowments**



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Renewal of FCRA Sec. 16

Present Law



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- **Renewal processed on application**
- **Unless there are violations on record**
- **No detailed verification or enquiry**

Change

- **Enquiry into compliance with sec. 12(4) – just like registration**
- **Conditions include:**
 - **Basic eligibility (*benami*, conversion, misuse, contraventions)**
 - **Reasonable activity**
 - **No conviction/prosecution for NGO or any board member**
 - **No adverse impact on community, Nation or State**

Impact



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- **More control over renewal process**
- **Increased number of rejections**
- **Longer delays in renewal of FCRA**
- **NGOs unable to continue ongoing projects**



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- **Board members with controversial past**
- **Board members residing abroad**
- **Asking for bulk fund disbursements before expiry**

Consider



- **Applying for renewal ASAP (upto 12 months before expiry)**
- **Completing large programs before expiry**
- **Reducing fixed cost commitments if not renewed before expiry**



Prohibition of Sub-granting **Tax Implications**

I Tax Provisions



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- **NGOs allowed to collaborate with others**
- **Sub-grants:**
 - **Considered as direct spending in normal course**
 - **Permitted from funds brought forward (form 9A)**
 - **Not permitted from funds for long terms project (form 10)**
- **Corpus grants from one NGO to another not permitted**

Changed FCRA & I Tax



- **FC grants can no longer be sub-granted during the year or later**
- **Donor agencies may get stuck with unspent FC funds**
- **May need to takeover and execute ongoing FC projects directly**



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