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ACCOUNTING | AUDIT | REGULATION | FUNDING

Changes in FCRA 2020

Vishwa Yuvak Kendra Webinar: 17-Nov-20

CAUTION

DevelopAid believes in socially responsible and accountable philanthropy. It supports compliance with both the letter and the spirit of the law. This presentation is meant to help improve understanding of the law. Please do not use this understanding to bypass the law.

Material presented here is for general information and is provided *gratis*, without any warranties. Please confirm independently with your advisers before taking a decision.

Effective Date

- **29-Sep-20 for changes in law**
- **10-Nov-20 for changes in rules**



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A. License Related



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Prior Permission Sec. 11, Rule 9



Conditions

- **Commitment Letter from Donor**
- **Limited connections with Donor**
- **Affidavit from all board members/CEO , etc.**
- **Fees increased to Rs. 5,000**

More Conditions

- **Affidavit from all board members/CEO , etc.**
- **Instalment-based permission if over Rs. one crore**
 - **2nd/subsequent instalment after using 75% of previous**
- **FCRA Account must be mentioned in application**

Suspension of PP

- **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**

Registration

Sec. 12, Rule 9

Conditions

- **At least three years old**
- **Spending at least Rs. 15 lakh in last three years – on activities for which registration sought**
- **Existing assets can be counted towards Rs. 15 lakh**
- **Must commit to using these only for FC related**

More Conditions

- **Affidavit from all board members/CEO , etc.**
- **Fees raised to Rs. 10,000**
- **FCRA Account must be mentioned in application**

Renewal of FCRA Sec. 16, Rule 12

Conditions

- **Apply within last six months before expiry**
- **Expiring on 31-Oct-21?**
 - **Apply after 1-May-21, but before 31-Oct-21**
- **Fees Rs. 5,000**
- **FCRA Account must be mentioned in application**

Renewal Enquiry

- **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**

Delayed Application

- **Permitted up to one year with late fee (Rs. 5,000)**
- **FCRA registration ceases on date of expiry**
- **No further receipt or utilisation - Rule 12(5)**
- **All FC and FCRA assets to vest in Govt. till FCRA renewed/registered again**

Delayed Renewal

- **Applied in time, fees paid online as required**
- **Renewal should 'ordinarily' be granted in 90 days - Sec. 16(3)**
- **FCRA not renewed before expiry**
 - **Can not accept any more FC - Rule 12(5)**
- **Can we continue using old FC?**
 - **Probably not - Rule 12(5)**

Consider

- **Applying for renewal ASAP (within 6 months before expiry)**
- **Completing large programs before expiry**
- **Reducing fixed cost commitments if not renewed before expiry**

Higher Fees

Fees Increased

Purpose	Form	Old Fees	New Fees
Prior-permission	FC-3B	3,000	5,000
Registration	FC-3A	5,000	10,000
Renewal	FC-3C	1,500	5,000
Compounding	None	1,000	3,000



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Extending Suspension Period Sec. 13



Change

- **Suspension may now extend upto 360 days (instead of 180 days)**
- **25% limit remains unchanged**
- **Allows FCRA Dept. more time to investigate**
- **NGO's work may remain disturbed for a longer period**

FCRA Cancellation Rule. 15

Unutilised FC

- **To vest with Government on cancellation**
- **Applies to Unused FC in cash, in bank account and FC assets -
Sec. 15, Rule 15**
- **Handed back to NGO if FCRA restored**



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Surrendering FCRA Sec. 14A, Sec. 15



New provision

- **NGOs can surrender FCRA registration if not needed**
- **Apply in form FC-7**
- **All unused FC and FC assets will vest in District Magistrate**
- **FCRA Dept. may conduct inquiry before accepting**
- **Surrender effective when Government approves it**

Avoid

- **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

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



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B. Activity Related

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

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

Restriction

- **No restriction on associated NGO**
- **Individual 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

- **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**

Political Activities

Rule. 3

Community Organisations



organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups;

- **Not treated as organisation of political nature unless involved in active politics or party politics**

Bandh, Hartal, etc.

Any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like ‘bandh’ or ‘hartal’, ‘rasta roko’, ‘rail roko’ or ‘jail bharo’ in support of public causes.

- **Not treated as organisation of political nature unless involved in active politics or party politics**

Sub-grants/Transfers

Sec. 7

Change

- **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.**

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

- **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**

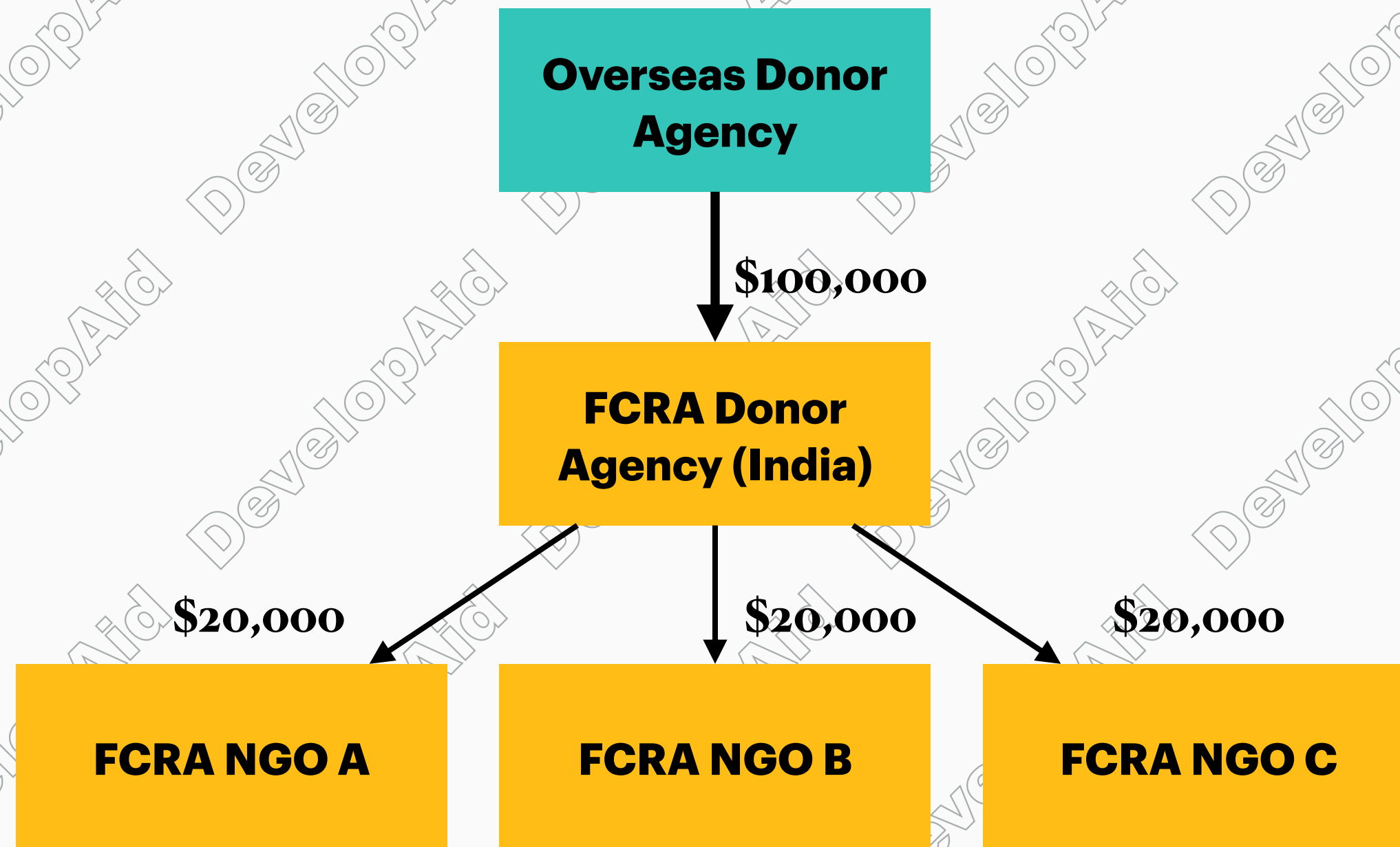
Avoid

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

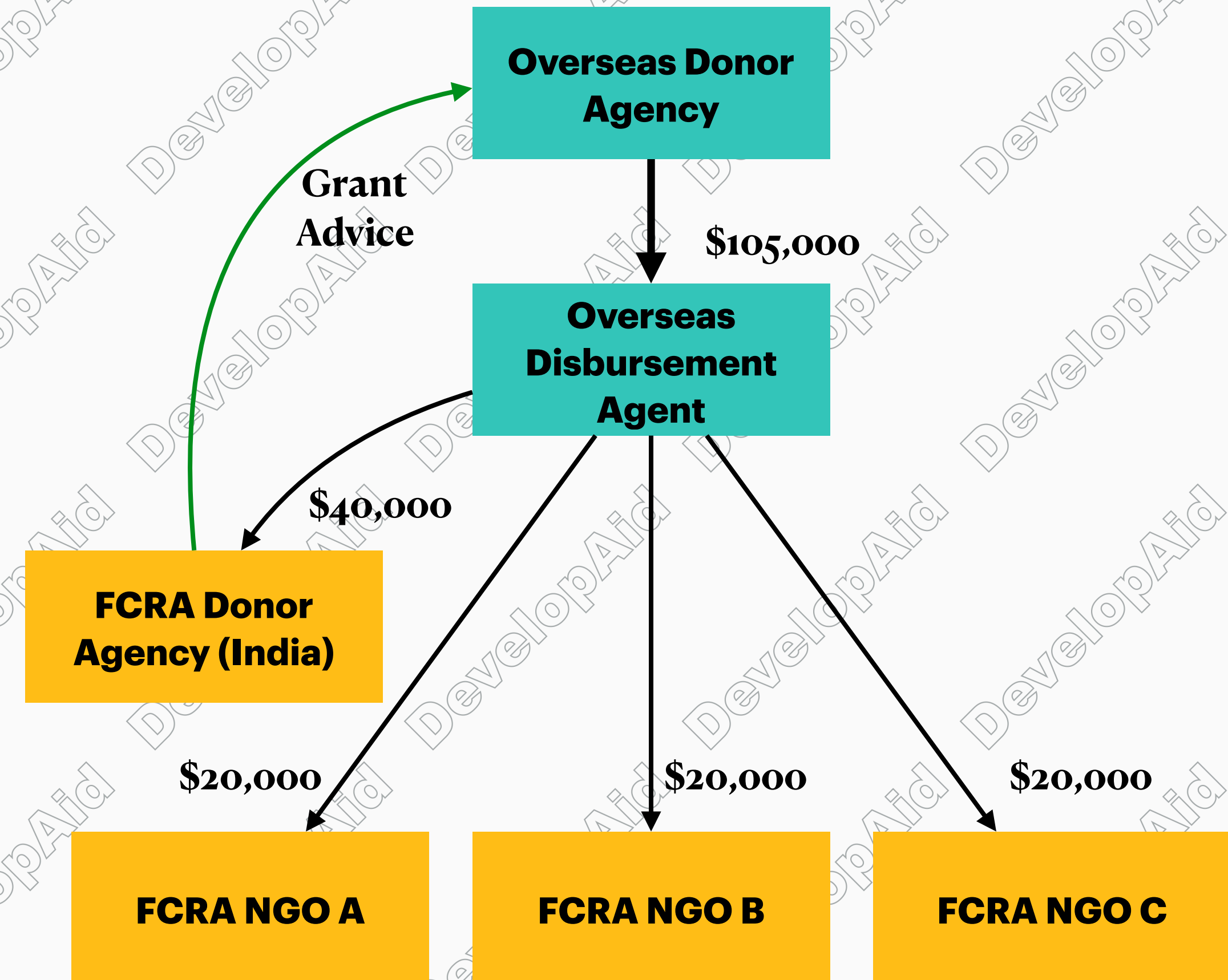
Consider

- **Representation for pending sub-grant commitments**
- **Seek clarification on paying for use of FC facilities**
- **Rethink grant-making operations**

Before 29 Sep 2020



After 29 Sep 2020



Administrative Expenses

Sec. 8

Changed Law

- **Administrative Expenses defined in rule 5**
- **Must be reported separately in FC-4**
- **Restricted to 20% of FC received**
- **In practice, FC used is considered as base**

Rule 5 Definition

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.

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.....**

Who am I?

1. Find out if you are primarily into:

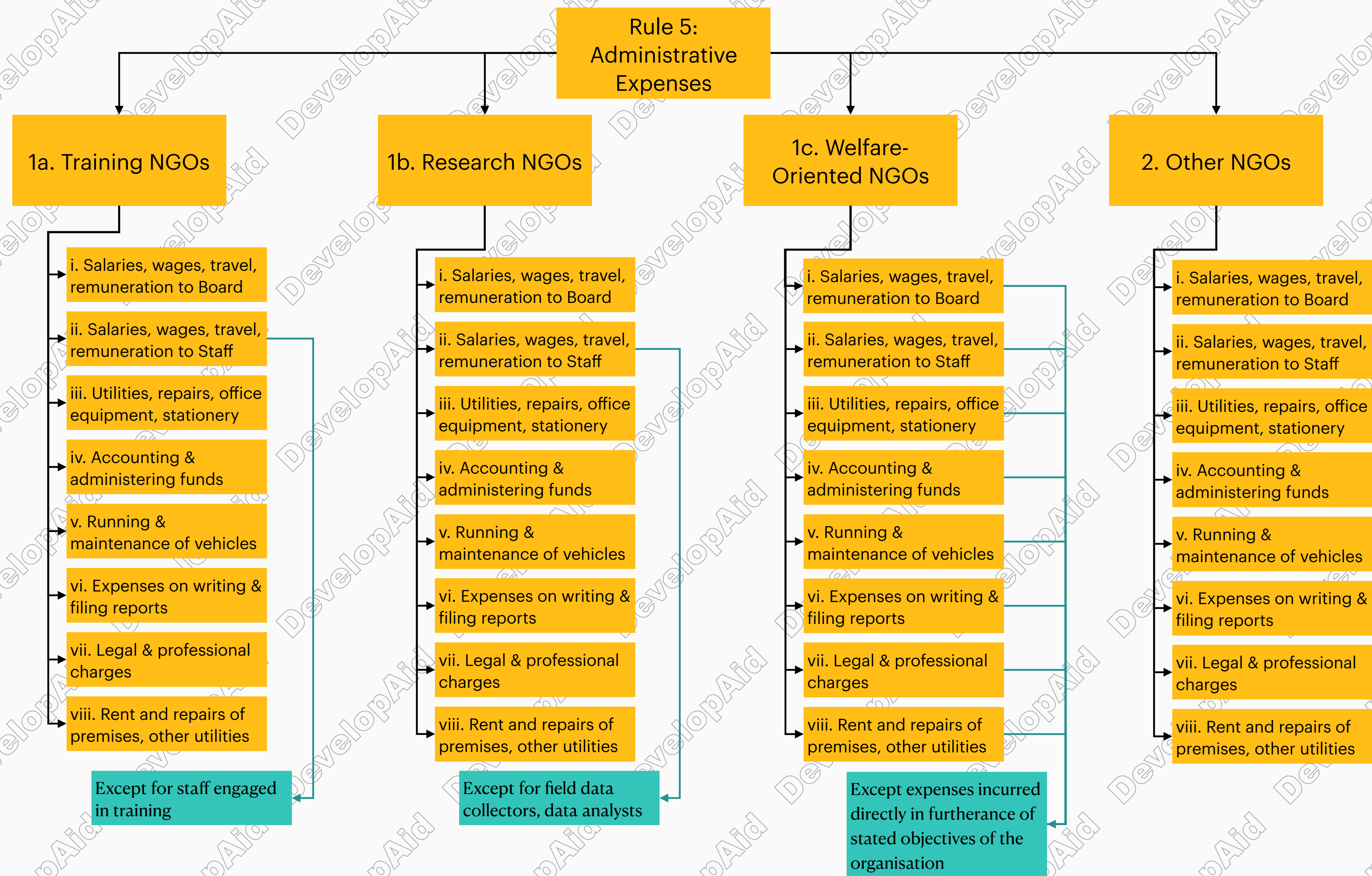
a) Training

b) Research

c) Welfare

2. None of the above

PI see [DevelopAid Guidance Note on FCRA Changes](#) (pp. 7-11) for more on this.



Calculate your Admin

- 3. List all your FC expenses in a worksheet (column A & B)**
- 4. List all admin expenses (clause 1-8) in column C.**
- 5. If you are 1a, 1b, 1c, move relevant items to column D, E, F.**
- 6. Whatever remains in column C is your admin expense.**

Step 3: List all Expenses

Line Item	Spent	Admin - rule 5	Training Organisation	Research Organisation	Welfare Oriented
Conferences	11,00,000				
Program Staff Salaries	45,00,000				
Relief Supplies	7,00,000				
Admin Staff Salaries	12,00,000				
Internet & Telephone	3,00,000				
Traveling	7,50,000				
Repairs	4,00,000				
Printer Purchase	40,000				
Payment to Volunteers	50,000				
Printing & Stationery	1,00,000				
Audit Fees	1,05,000				
Consultancy Fees	2,50,000				
Misc. Expenses	75,000				
Publications	3,50,000				
Office Rent	80,000				
Total	1,00,00,000	0	0	0	0

Step 4: Identify all Admin

Line Item	Spent	Admin - rule 5	Training Organisation	Research Organisation	Welfare Oriented
Conferences	11,00,000				
Program Staff Salaries	45,00,000	45,00,000			
Relief Supplies	7,00,000				
Admin Staff Salaries	12,00,000	12,00,000			
Internet & Telephone	3,00,000	3,00,000			
Traveling	7,50,000	7,50,000			
Repairs	4,00,000	4,00,000			
Printer Purchase	40,000				
Payment to Volunteers	50,000	50,000			
Printing & Stationery	1,00,000	1,00,000			
Audit Fees	1,05,000	1,05,000			
Consultancy Fees	2,50,000				
Misc. Expenses	75,000	75,000			
Publications	3,50,000				
Office Rent	80,000	80,000			
Total	1,00,00,000	75,60,000	0	0	0

Step 5: Move all Trainers

Line Item	Spent	Admin - rule 5	Training Organisation	Research Organisation	Welfare Oriented
Conferences	11,00,000				
Program Staff Salaries	45,00,000	20,00,000	→ 25,00,000		
Relief Supplies	7,00,000				
Admin Staff Salaries	12,00,000	12,00,000			
Internet & Telephone	3,00,000	3,00,000			
Traveling	7,50,000	7,50,000			
Repairs	4,00,000	4,00,000			
Printer Purchase	40,000				
Payment to Volunteers	50,000	50,000			
Printing & Stationery	1,00,000	1,00,000			
Audit Fees	1,05,000	1,05,000			
Consultancy Fees	2,50,000				
Misc. Expenses	75,000	75,000			
Publications	3,50,000				
Office Rent	80,000	80,000			
Total	1,00,00,000	50,60,000	25,00,000	0	0

Step 5: Move all Field Researchers

Line Item	Spent	Admin - rule 5	Training Organisation	Research Organisation	Welfare Oriented
Conferences	11,00,000				
Program Staff Salaries	45,00,000	10,00,000	25,00,000	10,00,000	
Relief Supplies	7,00,000				
Admin Staff Salaries	12,00,000	12,00,000			
Internet & Telephone	3,00,000	3,00,000			
Traveling	7,50,000	7,50,000			
Repairs	4,00,000	4,00,000			
Printer Purchase	40,000				
Payment to Volunteers	50,000	50,000			
Printing & Stationery	1,00,000	1,00,000			
Audit Fees	1,05,000	1,05,000			
Consultancy Fees	2,50,000				
Misc. Expenses	75,000	75,000			
Publications	3,50,000				
Office Rent	80,000	80,000			
Total	1,00,00,000	40,60,000	25,00,000	10,00,000	0

Step 5: Move all Welfare Expenses

Line Item	Spent	Admin - rule 5	Training Organisation	Research Organisation	Welfare Oriented
Conferences	11,00,000				
Program Staff Salaries	45,00,000	0			45,00,000
Relief Supplies	7,00,000				
Admin Staff Salaries	12,00,000	12,00,000			
Internet & Telephone	3,00,000	0			3,00,000
Traveling	7,50,000	0			7,50,000
Repairs	4,00,000	4,00,000			
Printer Purchase	40,000				
Payment to Volunteers	50,000	0			50,000
Printing & Stationery	1,00,000	1,00,000			
Audit Fees	1,05,000	1,05,000			
Consultancy Fees	2,50,000				
Misc. Expenses	75,000	75,000			
Publications	3,50,000				
Office Rent	80,000	80,000			
Total	1,00,00,000	19,60,000	0	0	56,00,000

Consider

- **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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C. Others

Approval for Changes

Rule 17A

Reporting Changes to FCRA



- **All changes reported through 6A-6E require approval**
- **Intimation not enough**
- **Board changes to be reported as they happen**



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Banking Gateway

Sec. 12, Sec. 17



FCRA Account with SBI

- **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'**

Another FCRA Account

- **Funds credited in SBI FCRA account can be**
 - **Spent directly**
 - **Transferred to another FCRA Account with other bank**
 - **No fresh FC deposit in this account**
 - **Secondary deposit allowed?**

FCRA Utilisation Account



- **Funds credited in SBI FCRA account can be**
- **Transferred to an FCRA Utilisation Account with other bank**
- **No deposit in this account except from SBI FCRA Account or another FCRA Account.**



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Aadhar Number Sec. 12A



Change

- **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

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

Avoid

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

Consider

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

Exempt Govt. Entities

Notification Dated 30-Jan-20



- **Entities exempt from FCRA if they meet ALL three conditions**
 - **Set up by or established under a Central or State Law**
 - **Compulsorily audited by CAG**
 - **Owned 100% by the Government which has set it up**

Please send your questions to:
Query@DevelopAid.org

About DevelopAid

DevelopAid Foundation is a sec. 8 not-for-profit company (CIN: U74999DL2016NPL309078), with a mission of enhancing public trust, accountability, financial literacy, governance, and understanding of relevant laws and regulations among philanthropic organisations and social enterprises in India.

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